

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
AT BANAHAATTI.**

**Present: Sri. ASHAPPA,
B.Com., LL.M.**

Sr. Civil Judge & JMFC, Banahatti

Original Suit No.294/2023

Dated this 2nd day of September -2024

Plaintiffs:

1. Holeppa S/o Sangappa Kamannavar
and others.

(By Sri.D.M.J, Adv.)

// Versus //

Defendants:

1. Tippanna S/o Basappa Kamannavar
and others

(By Sri V.A.B, Adv.)

-I.A.No.I-

Applicants/plaintiffs:

1. Holeppa S/o Sangappa Kamannavar
and others.

-Versus-

Opponents/ Defendants:

1. Tippanna S/o Basappa Kamannavar
and others.

: ORDER ON IA No.I :

This is an I.A filed under Order 39 Rule 1 & 2 of C.P.C seeking to restrain the defendants, from alienating, creating the charge over suit Land Sy.No.228/1B measuring 10 acres 12 guntas out of total measuring 12 acres 21 guntas situated at Navalgi village, Tq: Rabhakavi-Banahatti having boundaries, East: Land of Mang, West: Land of Mugalkod and road, North: Land of Patansheetti and South: Land of plaintiff family, till disposal of the suit.

2. In the supporting affidavit, plaintiff No.1 stated that, suit schedule property is ancestral and joint family property of themselves and defendants. It is stated they are joint in possession and they are having half share in the suit property.

3. It is further stated that, taking advantage of names of defendants in the suit land, attempting to alienate including

creating any type of charge over suit land and also the defendants denying the rights of the plaintiffs over suit land and therefore, it resulted in filing of the suit and the present IA under discussion. Accordingly, the plaintiffs prayed to grant temporary injunction as sought.

4. The defendants appeared through their counsel and resisted the claim of the plaintiff by filing written statement. Memo filed with request for treating the contents of written statements as objection to IA No.1. Accordingly, memo has been allowed and contents of written statement treated as objections to IA No.I.

5. In the written statement, the contents of plaintiff averments are specifically denied. It is denied that, the suit property is ancestral property of plaintiffs and defendants and they are joint in possession. It is further denied that, the plaintiffs are having share in the suit land.

6. It is further stated that, one Doddavva W/o Channappa Kanti was owner and possessor of said land and it was

purchased by her from its previous owner. The said land self acquired property of said Doddawwa.

7. It is further stated that, the said Doddawwa had bequeathed the said land Sy.No. 228/1/B, to the extent of measuring 10 acres 21 guntas towards northern side in favour of Gadigeppa and remaining land measuring 2 acres 00 guntas to one Paddavva which is towards southern side.

8. It is further stated that, the said Paddvva also died on 09.11.2016. The said Paddavva also bequeathed the said land measuring 2 acres 00 guntas and executed registered will deed in favour of father of defendant No. 1 and 2 namely Basappa. It is stated the defendants are absolute owners and possessors of suit land. The plaintiffs are having no any rights or title over suit land and even without any cause of action filed present suit to harass these defendants. On these grounds sought to reject the IA under discussion.

9. On the basis of the said pleadings, the following points arise for consideration:

POINTS

- 1. Whether the plaintiffs have made out prima facie case in their favour?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs?**
- 3. Whether plaintiffs will be put to hardship and injury if order of Temporary injunction is not granted?**
- 4. What Order?**

10. Heard hearing on both side and perused the material on record.

11. My findings on the above points are as below:

Point No.1 :: In the **Negative**

Point No.2 :: In the **Negative.**

Point No.3 :: In the **Negative.**

Point No.4 :: As per final order,
for the following:

:: REASONS ::

12. Point No.1: This is a suit for Partition and Separate possession filed by the plaintiffs against the defendants. Herein the present IA, the plaintiffs seeks the ad-interim relief

to restrain the defendants from alienating, creating charge over suit schedule property, till disposal of the suit.

13. Plaintiffs claimed that, the suit property is ancestral and joint family property of themselves and defendants and they are having $\frac{1}{2}$ share. Material averments of the plaint are categorically denied by the defendants. However the relationship between the parties is not in disputed. As stated above, the plaintiffs seeking to grant temporary injunction against the defendants restraining them from alienating or creating charge on the suit property and therefore the plaintiffs have to make out three principles for granting the temporary injunction i.e., plaintiffs have to make out a prima-facie case to go in to trial, balance of convenience lies in their favour and they have to establish that, they are going to be irreparable loss or injury which cannot be compensated in terms of money if injunction is not granted.

14. As stated, the plaintiffs satisfy the court that, the dispute raised by them in the present case is bonafide dispute which

needs to be investigation and decision on merits by this court. They must also establish that, there is probability of plaintiffs being entitle the relief claimed by them in this suit. The burden is on the plaintiffs to prove and establish that there is a prima-facie case in their favour.

15. On perusal of plaint family pedigree it is very much clear that, one Tippanna was common ancestor of the parties to the suit. The said Tippanna and his wife Tangevva died long back leaving behind two sons and three daughters namely Gadigeppa, Chinnavva, Sangappa, Paddavva and Anyavva. Plaintiffs are the sons and wife of said Sangappa. The defendant No.4 is wife of Gadigeppa. Defendant No.5 and one Basappa are the sons of said Giadigappa and defendant No.4. Defendant No. 1 and 2 are sons of said Basappa and defendant No. 3 is the wife of said Basappa. The plaint averments further reveals that, one Doddavva W/o Channappa Kanti is a maternal aunt of Gadigappa and Sangappa. The said Doddavva was residing with Gadigeppa and his sons. Out of joint family income of the Gadigeppa and Sangappa, the suit land

purchased in the name of said Doddavva and therefore it is joint family property. The plaintiffs stated that, they are having share in the suit land. The contents of plaint averments itself clears that, the suit property is not the ancestral property nor it was acquired from their ancestor namely Tippanna. It was purchased by one Doddavva. The said Doddavva is none other then the sister of mother of Gadigeppa and Sangappa namely Tengevva. Herein main contention of the plaintiffs that, the suit property was purchased in the name of Doddavva from the joint family funds and therefore the suit land is joint family property of the parties to the suit. In order to substantiate the contention, the plaintiffs produced revenue records of suit land and copy of mutation. The revenue records shows that the suit land standing in the name of defendants jointly. The copy of mutation extract produced herein. The contents of mutation extract shows that, the Sangappa, Gadigeppa Sons of Tippanna Kamannanavar obtained loan of Rs. 1,35,000/- from SBI Banahatti on the land Sy.No.228/1, 164/3 and land Sy.No. 101. No such documents produced by the plaintiffs to show

the suit property has been acquired through ancestors and even has failed to file the sale deed in the name of Doddavva to show it was purchased from joint family funds. Admittedly, the said Doddavva not the family member of the plaintiffs neither defendants and therefore purchasing the land in her name from the joint family funds is absolutely far away from the truth. Normally under Hindu law and under joint family, if any property wants to purchase from joint family income it was purchasing in the name of elder member of such family. Herein the claim of plaintiffs itself doubtful and there is no supporting documents produced by the plaintiff. Therefore at this stage it can be held that, the suit property is acquired by the defendants from said Doddavva. The claim of the plaintiffs at this stage is not supported with any material documentary evidence and therefore the plaintiff failed to establish prima facie case in their favour.

16. It is contention of the defendants that, the plaintiffs are having no any rights over suit land. It is stated that, the common ancestor of defendants namely Gadigeppa has

acquired the suit land under Will which was executed by the owner of suit land namely Doddavva. It is further defence of the defendants that, they are absolute owners and possessors of suit land. No any documents produced by the defendants in support of their defence. But contents of written statement reveals that, on the basis of Will deeds, the defendants filed application to enter their names in the revenue records of suit lands. These defendants filed objection before revenue authorities. The RRT proceedings was pending before revenue authorities. Further, the pleadings of written statement reveals that, the plaintiffs also filed suit in OS.No.233/2022 before Hon'ble Civil Judge and JMFC Banahatti challenging the alleged Will deed which is also pending for consideration. During the pendency of the said suit, the present suit has been filed seeking the partition. Even on perusal of plaint averments the plaintiffs not at all stated about filing of suit before Civil judge and JMFC Banahatti. This itself shows that, the plaintiffs not come to the court with clean hands seeking justice. Hence, if the entire plaint is read as a whole, it shows that the intention

of plaintiffs is something else and from the present suit, it appears they have not come to the court with clean hands. It appears that, the plaintiffs have not got good case to go for trial. Thus, plaintiffs failed to show the prima facie case in their favour. Accordingly, the **Point No.1 is answered in the Negative.**

17. Points No.2 & 3: As both points are interconnected, they are taken up for discussion together in order to avoid repetition of facts and circumstances of the case.

18. As held above, plaintiffs miserably failed to show the prima facie case in their favour. Hence, question of considering the balance of conveyance and irreparable loss does not arise. Even, otherwise presuming that defendants alienate the suit property taking their name in the RTC, if at all the plaintiffs got any right of share or win the case, their rights are protected under law. Hence, plaintiffs are not put to loss or injury and no mischief will be caused to them. These two ingredients are

also not in favour of plaintiffs. **Accordingly, Point No.2 and 3 are answered in the Negative.**

19. Point No.4: In view of the above said discussions and reasoning, the following:-

ORDER

The I.A.No.I filed by the plaintiffs U/o 39 rule 1 and 2 is here by rejected.

Parties to bear their own cost.

(Typed to my dictation directly on computer by the stenographer, corrected, signed by me, and then pronounced in the open Court on this 02nd **day of September -2024**)

(Sri. ASHAPPA)
Senior Civil Judge & JMFC,
Banahatti.