

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

DATED THIS THE 12th DAY OF NOVEMBER -2024.

Present: Sri. ASHAPPA, B.Com., L.L.M.,
Senior Civil Judge & JMFC
Banahatti.

O.S.No.364/2022.

Plaintiff:

1. Smt. Akshata W/o: Pundalik Karewwagol,
Age: 26 years, Occ: Household work,
R/o: Chimmad. Tq: Rabkavi-Banhatti,

(Through **Sri. S.R.K. Adv**)

-Versus -

Defendants:

1. Smt. Awwakka W/o: Shankar Madar,
Age: 56 years, Occ: Household work,
R/o: Kulhalli, Tq: Rabkavi-Banhatti.
2. Sangappa S/o: Shankar Madar,
Age: 44 years, Occ: Agriculture,
R/o: Kulhalli, Tq: Rabkavi-Banhatti.
3. Vittal S/o: Shankar Madar,
Age: 38 years, Occ: Household work,
R/o: Kulhalli, Tq: Rabkavi-Banhatti.
4. Prakash S/o: Shankar Madar,
Age: 29 years, Occ: Household work,
R/o: Kulhalli, Tq: Rabkavi-Banhatti.

5. Smt. Anita W/o: Shivalingappa Madar,
Age: 31 years, Occ: Household work,
R/o: Kulhalli, Tq: Rabkavi-Banhatti.
6. Kum. Sneha D/o: Shivalingappa Madar,
Age: 15 years, Occ: Student,
R/o: Kulhalli, Tq: Rabkavi-Banhatti.
7. Kum. Shweta D/o: Shivalingappa Madar,
Age: 13 years, Occ: Student,
R/o: Kulhalli, Tq: Rabkavi-Banhatti.
8. Kum. Prajwal S/o: Shivalingappa Madar,
Age: 10 years, Occ: Student,
R/o: Kulhalli, Tq: Rabkavi-Banhatti.
9. Shankreappa S/o: Basappa Madar,
@ Kullollikar, Age: 62 years, Occ: Agriculture,
R/o: Ashok Nagar, Banhatti, Tq: Rabkavi-
Banhatti.

**(Since defendant No.6 to 8 are minors they
are R/by their mother defendant No.5)**

(Through **Sri S.S.S. Adv** for D.1,
Sri. I.C.B. Adv for D.9 and D.2
to D.8 placed ex-parte)

IA.No.II

Applicants :

Smt. Akshata W/o: Pundalik Karewwagol.

-versus-

Opponents:

Smt. Awwakka W/o: Shankar Madar
and Others.

IA.No.III**Applicant** :

Shankreappa S/o: Basappa Madar,
@ Kullollikar

-versus-**Opponent** :

Smt. Akshata W/o: Pundalik Karewwagol,

COMMON ORDER ON IA NO. II & III

- 1.** The Plaintiff has filed the present IA No.2, U/o. 39 rule 1 & 2 of C.P.C, seeking to grant order of temporary injunction to restrain the defendant No.9 from alienating the suit land Sy.No.134/4 measuring 04 acres 22 guntas of Kulhalli village, Tq: Rabkavi-Banhatti, till disposal of the suit.
- 2.** In supporting of affidavit, it is stated that, she has filed the suit for declaration and consequential relief of injunction and partition in respect of the suit property. It is stated that, the suit land inherited by the plaintiff and defendant No. 1 to 8 through their ancestor namely Ittappa. After death of said Ittappa his son Shankar not reported to the revenue authority nor get

mutation of suit land in his name. It is further stated that, the defendant No.9 had got mutated the suit land in his name illegally in collusion with revenue authorities by giving false vardi stating there is no any class-I legal heirs to the deceased Ittappa, without having any right or title over suit property. The name of defendant No.9 appearing in the ROR is illegal and not binding on him.

- 3.** It is further stated that, the plaintiff obtained the records of rights of suit land then she came to know that, the her father Shankar had filed suit in OS.No. 45/2003 before Civil judge and JMFC Banahatti and it was ended into compromise with defendant No.9 illegally. The father of plaintiff himself not exclusive owner of suit land nor he has right to give the suit land in terms of compromise to the defendant No.9. The defendant No.9 also not get any exclusive right over suit land.
- 4.** It is further stated that, taking undue advantage of his name in the RTC, the defendant No.9 denying the rights of the plaintiff in the suit land and also trying to alienate the suit land to others

illegally to cause loss to the plaintiff and hence, it is resulted in filing the present suit and IA under discussion.

- 5.** After service of suit summons and notice on IA.No.II, the defendant No.1 appeared through Sri. S.S.S. Adv, defendant No.2 to 8 did not appeared and they have placed ex-parte. The defendant No.9 appeared through Sri. I.C.B. Adv and contested the case by filing written statement. Memo filed stating the contents of written statement treated as objections to IA.No.II. Accordingly, same was allowed. The contents of written statement are treated as objections to IA.No.II.

6. Brief facts of the averments of written statement of defendant No.9 are as under;

In the written statement, the averement of plaint are categorically denied. It is stated that, to grab the suit property and to harass this defendant, the plaintiff and defendant No.1 to 8 in collusion with each other have filed the suit without any cause of action .

- 7.** It is stated that, the plaintiff has no right to challenge the decree passed before Lok-Adalat dated 16.04.2005 effected in between present defendant No.9 and father of plaintiff. The plaintiff ought to have challenged the said Lok-Adalat decree within 3 years. As per the plaint cause title, the age of the plaintiff is 26 in the year 2022. It means, she was born in the year 1996-97 and attained majority in the year 2014-15. The suit filed after lapse of 17 years.
- 8.** It is further stated that, the suit is barred by law of limitation and therefore considering the IA.No.II is not at all arises. It is stated that, the IA No.II itself not survive at all. The plaintiff and defendant No. 1 to 8 intentionally suppressed the material facts and obtained exparte order from the court.
- 9.** It is further stated that, the father of plaintiff had filed suit in OS.No. 45/2003 before civil judge and JMFC Banahatii seeking the relief of declaration and injunction. Prior to filing of suit, the father of plaintiff also challenged the ME.No.6283 before Assistant commissioner Jamakhandi. The said appeal dismissed

by confirming ME.No. 6283. From 2003 till 2015, the entries in the name of defendant No.9 not challenged by any one. The suit in OS.No. 45/2003 has been ended into compromise and settled before Lok-Adalat. The father of plaintiff received Rs. 10,00,000/- and house property VPC No.573/A of Kulahalli village. Wife of defendant NO. 9 had executed relinquishment letter in favour of father of plaintiff in respect of said house. The market value of said house is Rs. 40,00,000/-. After death of father of plaintiff, the said house got mutated in the name of defendant No.2 in the panchayat records. The defendant No. 2 and 5 taken loan on the said house. All these material facts not disclosed by the plaintiff herein and filed suit as well as IA under discussion by suppressing real facts.

- 10.** It is stated the decree passed before Lok-Adalat is withing the knowledge of plaintiff and other defendants and it was acted upon in the year 2005. The defendant No.9 made huge expenditure to develop the suit land. By way of counter claim

this defendant sought to grant permanent injunction against the plaintiff and other defendants.

11. The defendant No.9 filed IA No.III, U/o. 39 rule 1 and 2 of CPC, with prayer to grant temporary injunction against the plaintiff, restraining her from causing obstruction to the day to day agriculture operations over the suit land Sy.No. 134/4 measuring 4 acres 26 guntas of Kulahalli village till disposal of the suit.

12. In supporting affidavit, it is stated that, he has grown sugar cane crop by making huge expenditure and he is in the possession and enjoyment over suit land since 1982. The plaintiff in collusion with defendant No. 1 to 8 are trying to damage the crop and day to day agriculture operations by obtaining the exparte TI order on IA No.II. It is further stated this defendant having prima-facie case and balance of convenience. Hence sought to grant temporary injunction against the plaintiff.

13. The plaintiff not filed any objection to IA No.III inspite of sufficient time granted. Hence objection to IA No.III taken as not filed.

14. The following points arise for consideration of this court are as under:-

POINTS

1. In whose favour the prima- facie case is made out ?
2. Balance of convenience lies in whose favour?
3. Who will be put to hardship and injury if order of Temporary injunction is not granted?
4. What Order?

15. Heard on IA's under reference on both sides. Learned counsel for plaintiff filed written arguments.

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

Point No.1 :: **In favour of defendant No.9.**

Point No.2 :: **In favour of defendant No.9.**

Point No.3 :: **In favour of defendant No.9.**

Point No.4 :: As per final order

for the following:

R E A S O N S

17. Point No.1: This is a suit filed by the plaintiff against the defendants with a prayer to declare herself and defendant No. 1 to 8 are absolute owners of suit land Sy.No.134/4 measuring 4 acres 22 guntas of Kulahalli village and she is having legal share in the suit land. The permanent injunction against the defendant No.9 is also sought. In the IA No.2, the plaintiff seek ad-interim relief to restrain the defendant No.9, from alienating, transferring or creating charge etc., over suit land, till disposal of the suit.

18. The defendant No.9 also filed IA No.III with a prayer to restrain the plaintiff and other defendants from interfering in his possession over suit land till disposal of the suit. Revival contention of the both parties already discussed supra. The IA No.II contested the defendant No.9 by filing objection but the

IA No.III not denied by the plaintiff and other defendants by filing objections.

19. Herein the present IA's, the parties seeking the relief of temporary injunction and therefore they have to make out three principles for granting the temporary injunction i.e., a prima-facie case to go in to trial, balance of convenience lies and 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.

20. Keeping above principles in the mind I have perused the material on record. In support of the claim, the plaintiffs produced the documents, particularly certified copy of ME.No.6283 and certified copies of records of rights of suit land for the year 1964-65 to 2000-2001. RTC for the year 1964-65 to 1974-75 reveals that, one Itappa S/o Shankrappa Madar was previous owner and possessor of land Sy.No.134/4 measuring 4 acres 26 guntas of Kulahalli village, Tq: Rabakavi-Banahatti. After death of said Itappa, this defendant got mutated the suit

land in his name as per ME.No.6283 dated 29.04.1982 and accordingly the name of defendant appearing in the records of right as owner and possessor up to till date.

21. The defendant No.9 in his written statement not disputed that, previously said Itappa S/o Shankrappa was owner and possessor of suit land. The relationship of plaintiff and defendant No. 1 to 8 is also not in dispute. The defendant No.1 appeared through counsel but not contested the case by filing written statement nor consented the claim of the plaintiff. In spite of service of suit summons and notice on IA No.II, the defendant No. 2 to 8 are did not appeared and therefore they have been placed exparte. Herein, only the defendant No.9 contested the case and it is his specific defence that, as per Lok-Adalat decree he is absolute owner and in possession of suit land, the plaintiff and other defendants are no way concerned to the suit land or family of defendant No.9. It is stated he became became absolute owner and possessor of suit land for which the plaintiff and other defendants are not having any

rights. In spite of having knowledge, the plaintiff and other defendants filed suit in collusion with each other. It is stated the suit of the plaintiff is also not within the law of limitation.

22. In support of the defence, the defendant No.9 also relied the documents particularly , RTC of suit land, CC of order of Assistant commissioner, C.C of application filed U/o 23 rule 3 of CPC in OS.No.45/2003, C.C of compromise award passed in OS.NO.45/2003 before Lok-Adalat, CC of relinquishment deed, CC of Khata extracts of house property and copy of resolution, agreement deed and tax paid receipts.

23. On perusal of documents relied by the defendant No.9, particularly the award passed before Lok-Adalat is very much clear that, the father of plaintiff and defendant No. 2 to 8 namely Shankrappa filed suit in OS.No.45/2003 against present defendant No9, seeking the relief of Declaration and injunction. The said suit ended into compromise before Lok-adalat held on 16.04.2005. As per compromise decree it was held that, the Itappa S/o Shankrappa was absolute owner and possessor of

suit land Sy.No. 134/4 measuring 4 acres 26 guntas and it was granted to him from the government of Karnataka. It was further mentioned that, the said Itappa died on 14.04.1982 without any issues and the present defendant is class-II heir of deceased Itappa and therefore ME.No.6283 certified in the name of defendant No.9 and this defendant is absolute owner of the property. It was further held that, the plaintiff of the said case, i.e father of plaintiff and defendant No. 2 to 8 is not having any rights over the said land. He was admitted that, the suit land is absolute property of the present defendant No.9. It was further held that, as a good gesture and with the advise of the village elders the present defendant paid Rs.1,00,000/- to the plaintiff i.e father of plaintiff and other defendants. Further the present defendant also given rights, interest of property GP No.573/A of Kulahalli village to the father of plaintiff. These are all not disclosed by the plaintiffs herein the present plaint. The compromise decree is clear that the father of plaintiff and defendant No. 2 to 8 admitted the ownership and possession of

defendant No.9 on the suit land. The compromise decree is still not challenged any one including the plaintiff and other defendants and therefore it was acted upon in accordance with law.

24. The plaintiff makes allegations that, the defendant No.9 got created the ME and Lok-Adalat decree. The said mutation order also confirmed by the Assistant commissioner Jamakhandi. If these documents are created, why they keep quite till date is un-explained. It shows that, the plaintiff come to the court by suppressing the real facts seeking justice. If any of the party come to the court without clean hands such relief can not be granted in favour of such party. Further the plaintiff not produced any documents to show herself and defendant No. 1 to 8 are joint in possession over suit land. The documents on record are shows from 1982, the name of defendant No.9 appearing as owner and possessor and he is paying the tax to the government. The plaintiff simply pleaded that, herself and defendants are Hindu undivided joint family members but

failed to produce the material in support of the said contention.

Hence, if the entire plaint is read as a whole, it shows that the intention of plaintiff is something else and from the present suit, it appears she has not come to the court with clean hands.

It appears that, the plaintiff has not got good case to go for trial. Thus, the plaintiff failed to show the prima facie case in ther favour to grant of temporary injunction as sought.

25. By way of IA No.III, the defendant seeking the temporary injunction against plaintiff and defendant No. 1 to 8, restraining them from making obstruction and interfering in the possession of defendant No.9 over suit land. It is alleged that, he is owner and possessor of suit land and the plaintiff and other defendants are no way concerned to the suit land. In support of his contention has produced the revenue records of suit land, tax paid receipts and other documents. The records of rights are clearly reveals that, his name came to be entered as per ME.No.6283, which was confirmed by the Assistant commissioner Jamakhandi. The revenue records, Lok-Adalat

decree, tax paid receipts and other documents are all prima facie shows that, the defendant No. 9 is in the possession over suit land and he is enjoying the same. The records of rights and tax paid receipts are the best documents to prove the possession of a person over the such property. Further the plaintiff nor defendant No.1 to 8 are not contested the IA No.III by filing objection. Even they have not filed any rejoinder to counter claim. Under these circumstances, it is sufficient at this stage that, the present defendant show the prima facie case in his favour to grant the temporary injunction and on the other hand the plaintiff failed to prove prima facie case in her favour as sought under IA No.II. Accordingly, the **Point No.1 is answered in favour of defendant No.9.**

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

27. As discussed above, the plaintiff failed showed a prima facie case in her favour and therefore she is not entitled any interim

relief as sought. The defendant No.9 showed the prima facie case in his favour and therefore if the temporary injunction is not granted as sought, the defendant No.9 will sustained the irreparable loss than the plaintiff. Thus, the defendant No.9 has show even other two ingredients in his favour. **Accordingly, Point No.2 and 3 are answered in favour of defendant No.9.**

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

O R D E R

I.A.No.II filed by plaintiff U/O.39 rule 1 and 2 of C.P.C is here by rejected.

IA No.III filed by the defendant No.9 U/O.39 rule 1 and 2 of CPC is hereby allowed.

Plaintiff or the defendant No. 1 to 8 or their agents, servants or any other persons claiming through them are hereby temporarily restrained from interfering in the possession of plaintiff over suit land Sy.No. 134/4 measuring 4 acres 26 guntas situated at Kulahalli village, Tq: Rabakavi-Banahatti, till disposal of the suit.

Parties to bear their own cost.

(Typed by the Stenographer on my dictation directly on computer then corrected, signed by me, and then pronounced in the open Court on this **12th day of November 2024**)

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