

IN THE COURT OF ADDL SENIOR CIVIL JUDGE, JAMKHANDI.**Present:****Shri.Rajashekhar.S. Harsoor****B.A. LL.B.,****Addl Senior Civil Judge, Jamkhandi.****O.S No.88/2020****Dated this, the 17th day of June, 2023.**

1. Smt. Bourawwa W/o Channayya Math @ Ganachari,
Age : 75 years, Occ : House hold work & Agriculture,
2. Smt. Sushila W/ Basavaraj Gourimath,
Age : 56 years, Occ : House hold work & Agriculture,
Both are R/o: Gothe, Tq: Jamkhandi, Dist: Bagalkot.

... Plaintiffs**(Represented by Sri.A.P.K., Advocate)****- Vs -**

1. Smt. Mahadevi W/o Sidarayya Hiremath,
Age : 65 years, Occ : House hold work & Agriculture,
R/o : LIG – 61 KHB Colony, 4th Stage,
Near RMP Colony, Kuvempu Nagar,
Mysore.
2. Smt. Shobha W/o Sangayya Hiremath,
Age : 50 years, Occ : House hold & Agriculture,
R/o : Daneshwari Nilay, Tiwari Chaal,
Line Bazar, Dharawad.
3. Smt. Neelabai W/o Vidyadhar Mamadapur,
Age : 45 years, Occ : House hold & Agriculture,
R/o : Virakta Math complex, Devi Medicals & General
Stores, Near Ambabhavani Temple, Jorapur Peth, Vijayapur.

4. Arun S/o Basavaraj Gourimath,
Age : 33 years, Occ : Business & Agriculture,
R/o : Gothe, Tq : Jamkhandi.

... Defendants

(Deft. No.1 represented by Sri. K.P.K., Adv)

(Deft. No.2 represented by Sri. V.A.T./A.T.S./K.P.O., Advocates)

(Deft. No.3 represented by Sri. S.V.K., Adv)

(Deft. No.4 represented by Sri. P.P.N., Adv)

: PARTIES IN I.A No. X :

1. Smt. Shobha W/o Sangayya Hiremath & another.

... Applicants/Def No.1 & 2

- Vs -

1. Smt. Bourawwa W/o Channayya Math @ Ganachari,
plaintiffs and defendant No.4.

...Opponents/plaintiffs & defendant No.4

: ORDER ON I.A No.X:

1. The defendant No.2 filed IA.No.X U/o.XXXIX Rule 1 & 2 R/w Sec.151 of Civil Procedure Code with a prayer to restrain the plaintiffs & the defendant No.4 from interfering/obstructing to her possession over the suit schedule property bearing land R.S.No.233/1 measuring 10 acres 08 guntas and also

restrain them from interfering/obstructing to third defendant's possession over the suit schedule property bearing R.S.No.447/2/1 measuring 9 acres 20 gunta both situated at Gote village, till the disposal of suit.

2. In support of above application, the defendant No.2 has sworn to the affidavit on her behalf and on behalf of defendant No.3. It is stated in the affidavit that, the plaintiff No.2 & the defendant No.1 to 3 are the children of plaintiff No.1. The defendant No.4 is the son of plaintiff No.2. The husband of plaintiff No.1 & the father of plaintiff No.2 & the defendant No.1 to 3 by name Channayya S/o. Mallayya Math died on 29.07.2020 leaving behind the plaintiffs & the defendants No.1 to 3 as his legal heirs. The plaintiff No.2 & the defendants No.1 to 3 have been residing in their respective matrimonial homes since the date of their marriage.

2.1 It is further stated in the affidavit that, the husband of plaintiff No.2 is the drunkard. As such the life of plaintiff No.2 and her children became so pathetic and miserable. The said Channayya S/o Mallayya Math also did not like the

husband of plaintiff No.2 as he is drunkard. Such being the state of affairs, the defendants No.2 & 3 have requested their father said Channayya to help plaintiff No.2 & her children. Accordingly their father & mother i.e., plaintiff No.1 herein had allowed the plaintiff No.2 & her children to stay in their home. Apart from this the defendants No.1 & 3 have also provided shelter to the plaintiff No.2 & her children. The defendant No.3 had taken care of the children of plaintiff No.2 in all respect.

2.2 It is further stated in the affidavit that, after demise of said Channayya, the plaintiff No.2 and her son defendant No.4 instigated the plaintiff No.1 to come out from the company of the defendants No.1 to 3. Due to said differences, the plaintiffs & defendants No.1 to 3 have got divided their joint family properties under **“Memorandum of Temporary Arrangement (Settlement)”**. As per said temporary family arrangement, the suit schedule property bearing R.S.No.233/1 measuring 10 acres 08 guntas was fallen to the share of defendant No.2. Likewise the suit schedule property bearing R.S.No.447/2/1 measuring 9 acres 20

guntas was fallen to the share of defendant No.3. Such being the state affairs, the defendant No.4 is interfering into aforesaid suit schedule properties by plying his tractor & cutting the Neem trees grown therein, at the instigation of the plaintiffs. Hence, the defendant No.2 & 3 are constrained to file this application.

2.3 It is further stated in the affidavit that, earlier the defendant No.2 had filed similar application i.e., I.A.No.IV seeking same the relief against defendant No.4. But this court had rejected said application by making an observation that, “since the defendant has not pleaded the alleged Memorandum of Temporary Arrangement (Settlement) in the written statement, she is not entitled for the relief of interim injunction.” In view of such observation, the defendant No.2 filed I.A.No.VII U/o.VI Rule 17 of CPC for amendment of written statement and same was allowed by this court. Accordingly, the defendant No.2 pleaded necessary facts in the written statement & also sought counter claim. Thereafter, being aggrieved by the order passed on I.A.No.VII, the plaintiffs had challenged it before the Hon'ble

High Court of Karnataka in W.P.No.105134/2021, but it came to be dismissed on 20.12.2021.

2.4 It is further stated in the affidavit that, the defendant No.2 being aggrieved by the order passed on I.A.No.VI filed U/o.XXXIX Rule 1 & 2 of CPC, challenged it in MFA.No.102016/2021 before the Hon'ble High Court of Karnataka Dharwad Bench and it was disposed off on 19.10.2021. Wherein the Hon'ble High Court of Karnataka passed an order that, *“this appeal is disposed off reserving liberty to the defendants No.2 & 3 to file appropriate application before the trial court to seek interim injunction, if such application is filed, the trial court shall dispose it of in accordance with law and independently without being influenced by the impugned order passed by it on 12.07.2021”*.

3. On the contrary, the plaintiffs have filed detailed objection to above application by denying the contents of affidavit. They have mainly submitted that, the defendants No.2 & 3 have filed this application on the basis of the alleged unregistered

partition deed dated 11.08.2020. The said defendants have not produced original partition deed before this court. The unregistered photo copy of partition deed is not admissible in evidence in view of Sec.17 & 49 of Indian Registration Act. They further submitted that, the defendants No.2 & 3 shall have to prove said alleged partition during the course of trial. Therefore the above application filed by the defendants No.2 & 3 is not maintainable at this pre-trial stage of the suit. They further submitted that, the defendant No.2 filed above application U/o.XXXIX Rule 1 & 2 of CPC. But the plaintiffs can only invoke said provision, the defendants cannot, as such, above application is not tenable in the eye of law also. They further submitted that, as the plaintiff No.1 & 2 are co-owners, no interim injunction can be granted against them. They further submitted that, the Hon'ble High Court of Karnataka Dharwad Bench has given one more opportunity to the defendant No.2 in MFA No.102016/2021 to file an appropriate application for injunction, only on the basis of subsequent amendment of the written statement cum counter claim. Earlier the defendants No.2 & 3 had

filed I.A.No.VI against defendant No.4 only. Now they have filed this application against the plaintiffs as well as the defendant No.4. Therefore the present application filed by the defendants No.2 & 3 is not in accordance with observation made in aforesaid MFA No. 102016/2021. As such, the aforesaid application is not maintainable.

3.1 The plaintiffs have further submitted that, during the pendency of the suit, the defendant No.2 issued legal notice through her counsel to one Shrishail Maigur resident of Gote village alleging that, "he obtained her signature on blank stamp paper worth of Rs.200/-." Further she has also given threat to said Shrishail Maigur stating that, he shall not involve in the family matter of deceased Channayya. The said Shrishail Maigur has also given reply to said legal notice through his counsel by name Shri.A.P.Kulkarni advocate Jamkhandi. The plaintiffs further submitted that, the defendant No.2 & 3 have not made out prima facie case for grant of temporary injunction & the balance of convenience does not tilts in their favour. Under such circumstances, if temporary injunction is granted as sought

in the application, they would be put to hardship and there is chance of misusing the order of this court by the defendants No.2 & 3. With this, the plaintiffs have prayed for rejection of above application.

4. The defendant No.4 filed a memo stating that, he adopts the objections filed by the plaintiffs to I.A.No.X.
5. Heard both side. Perused the written arguments, pleadings, documents, decisions & all other materials placed on record, upon going through the same, the following points arise for consideration:

POINTS

1. Whether the defendants No.2 & 3 have made out prima facie case for grant of temporary injunction as sought for ?
2. Whether the balance of convenience tilts in favour of defendant No.2 & 3 ?
3. Whether the defendant No.2 & 3 will be put to hardship, if temporary injunction is not granted ?
4. What order ?

6. Having heard arguments canvassed by both the counsels and after going through the materials on record, this court answers to above points as under:

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:

: R E A S O N S :

7. **Point No.1 to 3:** These points are taken up together for common discussion to avoid repetition of the facts. The plaint reveals that, the plaintiffs have filed this suit for the relief of partition & separate possession claiming 1/5th share in the suit schedule properties and for other equitable reliefs. It is averred in the plaint that, one Channayya died leaving behind his spouse i.e., plaintiff No.1 & his children plaintiff No.2, defendant No.1 to 3 as his legal heirs. The defendant No.4 is the son of plaintiff No.2. It is further averred in the plaint that, the deceased Channayya, the plaintiffs and defendants No.1 to 3 constituted the joint family. The suit schedule properties are ancestral & joint family properties of deceased Channayya. Therefore all the

schedule properties are standing in the name of deceased Channayya except the suit schedule property bearing R.S.No.447/2/1 measuring 9 acres 29 guntas situated at Gote village. In fact the said suit schedule property was purchased by said deceased Channayya in the name of his wife i.e., plaintiff No.1, out of joint family funds. It is further averred in the plaint that, deceased Channayya was running provisional shop in VPC No.192 of Gote village. It is alleged by the plaintiffs that, the defendant No.4 had clandestinely got transferred the license of said shop in his name, thus he has been arrayed as defendant No.4 in the present suit. It is further averred in the plaint that, no partition has taken place among the plaintiffs & defendants No.1 to 3 in respect of suit schedule properties. The plaintiffs & defendants No.1 to 3 are in joint possession & enjoyment of suit schedule properties. It is further averred in the plaint that, after demise of said Channayya, the defendants No.1 to 3 have started obstruction to the plaintiffs' joint possession & enjoyment of the suit schedule properties. It is further averred in the plaint that, the defendants No.1 to 3 have got

transferred money in their names stating that, they are only legal heirs of deceased Channayya. Now the said defendants are not ready for division of suit schedule properties. Hence the plaintiffs are constrained to file this suit.

8. On the contrary, the defendant No.2 & 3 have filed written statement with counter claim by taking various contentions but in the counter claim they have prayed to allot their 1/5th share in the counter claim schedule properties. For better understanding of the case of defendants No.2 & 3, the prayer sought in the counter claim is reproduced as under:

7) ಪ್ರಾರ್ಥನೆ : ಇದರಲ್ಲಿ 2, 3 ನೇ ಪ್ರತಿವಾದಿಯರು ಮಾನ್ಯ ಕೋರ್ಟಿಗೆ

ಈ ಕೆಳಗೆ ಕಾಣಿಸಿದ ಪ್ರಕಾರ ಪ್ರಾರ್ಥಿಸಿಕೊಳ್ಳುತ್ತಾರೆ-

A) ಮಾನ್ಯ ಕೋರ್ಟಿನವರು 2 ನೇ ಪ್ರತಿವಾದಿಗೆ ವಿರುದ್ಧ ಮಾಗಣಿಯಲ್ಲಿ ಕಾಣಿಸಿದ ಸ್ಥಾವರ ಆಸ್ತಿಗಳಲ್ಲಿ 1/5th ಕಾನೂನುಬದ್ಧವಾದ ಹಿಸ್ಸೆಯನ್ನು ಮಾಡಿ ಪ್ರತ್ಯೇಕಿಸಿ ಕೊಡಬೇಕು ಹಾಗೂ ಉಳಿದ ಜಂಗಮ ಆಸ್ತಿಗಳಾದ ಬಂಗಾರ ಬೆಳ್ಳಿ ವ ಹಣವನ್ನು ಕಾನೂನುಬದ್ಧವಾಗಿ ಬರತಕ್ಕ ಹಿಸ್ಸೆಯನ್ನು ಕೊಡಿಸಬೇಕು.

B) ಮಾನ್ಯ ಕೋರ್ಟಿಗೆ ಸೂಕ್ತವೆನಿಸಿದ ಇತರೆ ಪರಿಹಾರಗಳಿಗೆ ಅನುವು ಇರಬೇಕು.

C) ಮಾನ್ಯ ಕೋರ್ಟಿಗೆ ಸಂದರ್ಭಾನುಸಾರವಾಗಿ ಅವಶ್ಯ ಅಂತಾ ಕಂಡು ಬಂದಲ್ಲಿ ವಿರುದ್ಧ ಮಾಗಣೆಯ ದಾವೆಯ ತಿದ್ದುಪಡಿಗೇ ಅನುಮತಿ ಇರಬೇಕು.

D) ವಾದಿಯರಿಂದ 2 ನೇ ಪ್ರತಿವಾದಿಗೆ ವಿರುದ್ಧ ಮಾಗಣೆಯ ದಾವೆಯ ಖರ್ಚು ಕೊಡಿಸಬೇಕು.

ಈ ಪ್ರಕಾರ ಮಾನ್ಯ ಕೋರ್ಟಿನವರು ನ್ಯಾಯಾಜ್ಞೆ (Decree) ಮಾಡೋಣವಾಗಬೇಕು ಅಂತಾ ವಿನಂತಿ.

9. In written statement cum counter claim, at paragraph No.4, the defendant No.2 has unequivocally admitted that all the suit schedule properties as shown in the plaint schedule are ancestral and joint family properties of plaintiffs and defendants No.1 to 3. For better understanding of the plea taken up by the defendants No.2 & 3, the paragraph No.4 of the written statement cum counter claim is reproduced as under :

4) ಅದೇ ಪ್ರಕಾರ ಅಸಲರ್ಜಿಯ 5 ನೇ ಪ್ಯಾರಾದಲ್ಲಿ ಬರೆದಂತೆ -ಸದರಿ ದಾವೆಯ ಪರಿಚ್ಛೇದದಲ್ಲಿ ಕಾಣಿಸಿದ ಆಸ್ತಿಗಳು ಪೋತಿ ಚೆನ್ನಯ್ ಪೂರ್ವಜರ (Ancestral Joint family properties) ಸಾಮೂಹಿಕ ಆಸ್ತಿಗಳು ಅಂತಾ ಬರೆದಿದ್ದು ಸರಿ. ಬಾಕಿ ಉಳಿದ ವಿಷಯಗಳು ನಿಜವಿರುತ್ತವೆ.

10. Before going to giving findings on the present application it is just and proper to state about the previous application filed by the defendants No.2 & 3. The defendant No.2 had filed similar application i.e., IA-VI U/o. XXXIX Rule 1 and 2 of CPC seeking to restrain the defendant No.4 from interfering into her possession and enjoyment over the suit schedule property bearing R.S.No.233/1 measuring 10 acres 08 guntas and also restrain the said defendant from interfering into third defendant's possession and enjoyment of the suit schedule property bearing R.S.No.447/2/1, measuring 09 acres 20 guntas both situated at Gote village. This court had rejected said application on merits by considering the avarements of written statement cum counter claim of defendant No.2 & 3 and on other legal & factual aspects. After rejection of above application, the said defendants have got amended their written statement cum counter claim, wherein they have taken a contention that as per the alleged partition dated :11.08.2020, the defendant No.2 has got suit schedule property R.S.No.233/1 and the defendant No.3 has got the suit schedule property

R.S.No.447/2/1 as their shares and they have been cultivating said lands since the date of partition deed. Whereas, in the present application the defendant No.2 has stated that, the partition deed dated : 11.08.2020 is a memorandum of temporary arrangement (settlement). It shows that, the plaintiffs and defendants No.1 to 3 have not got divided all their family properties. However, in support of said contentions, the defendants No.2 & 3 have produced photo copy of alleged partition deed dated : 11.08.2020. Its nomenclature is as "ಅಪಸಾತ ಪಾಲು ವಾಟ್ನಿ ಪತ್ರ" (Apasaath Palu Watni Patra). On the contrary the plaintiffs have denied the contentions of the said defendants and seriously disputed the genuinity of said document. Further they have submitted that, the unregistered photo copy of alleged partition deed is not at all admissible in evidence.

11. It is to note here that, during the course of arguments, learned counsel for the defendant No.2 & 3 has urged that the original partition deed dated : 11.08.2020 is with the plaintiffs. The defendant No.2 and 3 have retained the photo copy of the same. The plaintiffs have ought to produce said

document. He further urged that the registration of document is not mandatory in view of the decision of the Hon'ble Supreme Court of India (From Karnataka) (D.B.) Thulishidhar and another V/S Narayanappa and others. Wherein the Hon'ble Supreme Court of India has held that even if the family settlement was not registered it would operate as complete estoppel against original plaintiff who was party to such family settlement. It is further held that written document of family arrangement/settlement can be used as corroborative evidence as explaining the arrangement made there under and conduct of the parties. The counsel further urged that, in view of above decision, the defendants No.2 and 3 have made out prima facie case to get the interim relief of injunction as sought in the application.

12. On the contrary counsel for the plaintiff has urged in his arguments that the photo copy of document produced by the defendants No.2 and 3 is not at all admissible in evidence and it cannot be looked into at this juncture. He further urged that, in the decision of the Hon'ble Supreme Court of

India reported in 2004(4) KCCR 2145 K.G. Shivalingappa (Deceased) by LR's and others V/S G.S. Eshwarappa and others, it is held that though partition amongst the Hindu's may be effected orally, but if the parties reduce it in writing to a formal document which is intended to be evidence of partition, it would have the effect of declaring the exclusive title of co-parcener to whom a particular property was allotted in partition and thus the document would be required to be compulsorily registered U/sec.17(1)(b) of Registration Act. However if the document did not evidence any partition by meets and bounds, it would be outside the per view of Sec.17(1)(b) of Indian Registration Act.

13. As discussed above the defendants No.2 & 3 have filed the present application seeking interim injunction before commencement of trial on the basis of sole unregistered photo copy of alleged partition deed dated : 11.08.2020. Apart from that document, no such cogent materials placed on record which show and substantiate the possession of the defendants No.2 & 3 over aforesaid suit schedule properties. As stated supra the trial is not yet began. At this

pre-trial stage of the suit, it is too early to give findings upon the contentions urged by both the parties with regard to admissibility of aforesaid unregistered photo copy of partition deed. Further it is to note here that, while deciding the present application which filed U/o.XXXIX Rule 1 and 2 of CPC, this court is not suppose to hold a mini trial at this pre-trial stage of the suit. It is well settled principle of law that, while deciding an application filed U/o. XXXIX Rule 1 and 2 of CPC, the court shall have to consider the points that, a) Whether the party seeking an injunction is able to make out prima facie case ?, b) In whose favour the balance of convenience lies ? And c) Who will be put to hardship if the relief of interim injunction is granted or declined ?. In view of above principles, the question of admissibility of alleged partition deed will be considered during the course of trial not at this pre-trial stage of the suit.

14. The contents of RTC of suit schedule property item No.1 bearing R.S. No.447/2/1, measuring 09 acres 20 guntas disclose that, said land is standing in the name of plaintiff No.1. Further the contents of RTC of suit schedule property

item No.5 bearing R.S.No.233/1, measuring 10 acres 08 guntas disclose that, said land is standing in the name deceased Channayya. It is significant note here that, the defendant No.2 and 3 have not produced any single cogent document issued by the competent authority to show their possession over the aforesaid suit schedule properties. As per the documents available on record, no mutation was effected in pursuance of the alleged partition deed dated : 11.08.2020. Considering all these aspects, this court is of opinion that, the defendant No.2 & 3 have failed to show their exclusive possession over aforesaid suit schedule properties at this juncture.

15. Further the plaintiffs have submitted that the application filed by the defendant No.2 & 3 U/o.XXXIX Rule 1 and 2 of CPC is legally not maintainable. In support of the assertion, they have relied upon decisions reported in **2006(2) KCCR 1220 – B. Laxminarayan V/S The corporation of City of Bengaluru & another** and on the decision reported in **2015(4) KCCR 3811 - M. Krishnappa V/S K.T. Shrinivas & others**. In the first decision the Hon'ble High Court of

Karnataka has held that, the defendant cannot maintain an application U/o.XXXIX Rule 1(c) of CPC. In the case on hand the defendant No.2 & 3 have sought the relief enumerated U/o. XXXIX Rule 1(c) of CPC which is available to the plaintiff only not to the defendants. As such, in view of the order XXXIX Rule 1(c) of CPC and in the light of decision of the Hon'ble High Court of Karnataka stated supra the defendant No.2 is not entitled for the relief as sought for. In the second decision the Hon'ble High Court of Karnataka has held that (1) prima facie case, (2) balance of convenience, (3) irreparable loss & injury. These three ingredients are necessarily required to be considered, examine and adjudicated by the courts while considering an application for grant of temporary injunction.

16. It is worthy to note here that, in the decision reported in **ILR 2014 Karnataka 6025 (Full Bench) - Smt. Shakuntamma and others V/S Kantamma and others**, wherein the Hon'ble High Court of Karnataka has held that, an application filed U/o. XXXIX Rule 1(c) of CPC by the defendant is not maintainable. In the case on hand, the

defendants No.2 & 3 have sought counter claim with respect to the properties other than the suit schedule properties more particularly the plaint schedule properties and the counter claim schedule properties are different with each other. In this scenario, the defendants No.2 & 3 cannot seek the relief provided U/o XXXIX Rule 1 (c) of CPC. Having regard to the above discussed factual as well as legal aspects, this court is of opinion that, the defendants No.2 & 3 have not made out prima facie case to obtain the interim injunction order as sought in the above application. Further, considering the pleadings and the documents stated supra, it is further opined that, the balance of convenience does not tilt in favour of defendant No.2 & 3. Under these circumstances, the question of granting temporary injunction does not arise. If at all the temporary injunction is granted, the plaintiffs will be put to hardship & injury rather than the defendants No.2 & 3. Accordingly, Point No.1 to 3 are answered in the Negative.

17. **Point No.4:** In view of above findings, the following order is passed:

: O R D E R :

IA No.X filed U/o XXXIX Rule 1 & 2
R/w Sec. 151 of CPC dated : 30.11.2022 by
the defendant No. 2 is hereby rejected.

No order as to costs.

*(Dictated to the stenographer directly on computer, typed by her,
transcript corrected and signed by me, and then pronounced in the open
Court on 17th day of June, 2023)*

Sd/-

(Sri. Rajashekhar S. Harsoor)
Addl. Senior Civil Judge,
Jamkhandi