

KABK710028902021



O.S./120/2021

{CASE_CAUSE_TITLE}

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI**

PRESENT :

SRI ABDUL RAHIMAN. A. MULLA

B.A.L, LL.B. (Hons.)

**Prl. Civil Judge & JMFC,
Jamkhandi.**

Dated this 1st day of April- 2023

O. S. No.120/2021

- PLAINTIFFS :** 1. Shantavva W/o Dundappa Harijan
@ Hosamani, Age: 56 years,
Occ: Household work,
R/o House No.538, Bhimanagar,
Toravi, Tq and Dist: Vijayapur.
2. Bharati D/o Dundappa Harijan
@ Hosamani @ Bagayat
(Bharati W/o Huvappa Doddamani)
Age: 36 years, Occ: Household work,
R/o House No.538, Bhimanagar,
Toravi, Tq and Dist: Vijayapur.

(By Sri. I.H.A., Advocate)

Vs/-

- DEFENDANTS :** 1. Smt. Yamanavva W/o Dundappa
Harijan (claiming to be wife of
Dundappa) Age: 56 years,
Occ: Household work,
R/o Harijan Oni, Kokatanur,
Tq: Athani, Dist: Belagavi.
2. The Government of Karnataka
Rep. By Deputy Commissioner,
Bagalkot.
3. The Tahasildar, Jamkhandi,
Tq: Jamkhandi.
4. The Rehabilitation Officer,
Upper Krishna Project,
Alagur, Tq: Jamkhandi.
5. The Commissioner,
City Municipal council
Tq: Jamkhandi.

(Defendant No.1: Sri. A.C.N. Advocate)
(Defendant No.2 to 5 exparte)

I. A. No. II

1. Shantavva W/o Dundappa
Harijan @ Hosamani @ Bagayat
and another.

..... Applicants/Plaintiffs.

Vs.

1. Smt. Yamanavva W/o Dundappa Harijan @ Hosamani @ Bagayat and others.

.....Opponents/Defendants.

ORDERS ON I.A. No.II FILED BY PLAINTIFFS
UNDER ORDER 39 RULE 1 AND 2 OF C.P.C

This suit is filed by plaintiffs against defendants for the relief of declaration to declare them as legal heirs of deceased Dundappa Kallappa Harijan @ Hosamani @ Bhagayat and along with the suit, this application is filed by plaintiffs seeking order of temporary injunction restraining defendant No.1 from alienating or mortgaging suit schedule property till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff No.1 averred that they have filed this suit for the relief of declaration and defendant No.1 by

concocting documents has got entered her name to the suit schedule property, which has come to their knowledge after issuance of letter by UKP authorities. Now defendant No.1 by taking undue advantage of her name entered to the suit schedule property is attempting to alienate the same. If the same is done, the purpose of the suit will be defeated and amongst other grounds, prayed to allow the application.

3. After issuance of suit summons to defendants, learned AGP appeared on behalf of defendant No.2 and 3, whereas defendant No.1 appeared through his counsel. Learned AGP has chosen not to file any written statement, whereas defendant No.1 filed written statement and memo adopting the same as his objections to the application. It is contended that defendant No.1 is the

legally wedded wife of Dundappa Harijan @ Hosamani and their marriage took place about 45 years back in Alagur village. Thereafter they led their life in Kokatanur village in Athani Taluk. Defendant No.1 is the only legally wedded wife of Dundappa Harijan and plaintiffs are no way concerned to Dundappa Harijan and she has got entered her name on the capacity of sole surviving legal heir certificate issued by Tahsiladar, Athani and amongst other grounds, prayed to dismiss the application.

4. Heard, perused the records placed before the court.

5. The points that arise for my consideration is as under :

- 1) Whether prima-facie case and balance of convenience lies in favour of plaintiffs ?

2) To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same ?

3) What Order ?

6. My findings to the above points is as under :

Point No.1 In the Affirmative,

Point No.2.... To plaintiffs in case of refusing to grant temporary injunction,

Point No.3 As per final order for the following :

REASONS

7. **POINT No.1 AND 2**: For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

8. It is the specific case of plaintiffs that plaintiff No.1 is the wife and plaintiff No.2 is the daughter of deceased Dundappa Harijan and defendant No.1 by

concocting documents has got entered her name to the suit schedule property and now attempting to alienate the same.

9. In support of their contention, plaintiffs produced five documents i.e., Hakku Patra, surviving legal heirs certificate, death certificate of Dundappa, ration card and tax paid receipt.

10. On the contrary, it is the contention of defendant No.1 that she is the only wife of Dundappa Harijan and plaintiffs are no way concerned to him. She has got her name entered on the basis of surviving legal heir certificate. In support of her contention, defendant No.1 has not produced any documents.

11. On perusal of pleadings and documents produced by both parties, prima facie at this stage of

the case, it reveals that suit schedule property is standing in the name of deceased Dundappa. Whether plaintiffs or defendant No.1 are legal heirs of deceased Dundappa Harijan, same requires full fledged evidence and at this stage of the case, mini trial cannot be held to adjudicate the same. Prima facie only on the mere contention of defendant No.1 that she is the only wife of deceased Dundappa in absence of any supportive documents at this stage of the case cannot be believed.

12. In order to grant an order of temporary injunction, 3 essential ingredients have to be fulfilled. The documents produced by plaintiffs prima-facie goes to show that suit schedule property is standing in name of deceased Dundappa. As plaintiffs have made out prima-facie case, balance of convenience

also lies in their favour. If temporary injunction as prayed by plaintiffs is not granted, it would cause irreparable loss and injury to plaintiffs, rather than defendant No.1. Hence for the above said reasons, I answer point No.1 in the 'affirmative' and point No.2 as 'irreparable loss and injury would be caused to plaintiffs in case of refusing to grant temporary injunction'.

13. **POINT No.3:** For the reasonings and findings given to point No.1 and 2, I proceed to pass the following :

ORDER

I. A. No.II filed by plaintiffs under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

Defendant No.1 is hereby restrained by an order of

temporary injunction from
alienating or mortgaging the suit
schedule property till disposal of
the suit.

(Typed to my dictation by the Stenographer directly on
computer, then corrected, printout taken, signed by me and then
pronounced in the open court on this **1st day of April-2023**)

(Abdul Rahiman A. Mulla)
Prl. Civil Judge & JMFC,
Jamkhandi.