

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., AT DEVANAHALLI.**

PRESENT

**Sri. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

**Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.**

Dated this day of 14th February, 2022.

O.S.No.313/2016

SMT. CHINNAMMA & OTHERS : **Plaintiffs**

(Plts. - By Sri. M.M.D.,
Advocate)

- V/s. -

SMT. KRISHNAMMA & OTHERS : **Defendants**

(D1 - By Sri. G.M.,
Advocate)
(D2 & D7 - -----)
(D3 - Exparte)
(D4 & D5 - By Sri.
A.R.K., Advocate)
(D6 - By Sri. N.M.V.S.,
Advocate)

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ORDER ON I.A. FILED UNDER ORDER 39 RULE 1 and 2
OF C.P.C.

The Plaintiffs have filed this instant application under order 39 Rule 1 & 2 of C.P.C. seeking to restrain the defendant No.7 and their heirs, representatives or any body acting under them from putting up of any construction or changing the nature of suit item No.1 property during pendency of suit.

2. **Facts of case are unfurled here under :**

It is pleaded by the Plaintiffs that they themselves and defendants No.1 to 4 constitute Hindu undivided joint family having common ancestor by name Muniyappa @ Hotteppa. According to them the said Muniyappa @ Hotteppa had two wives namely Gowramma and Chinnamma. The said Muniyappa @ Hotteppa and Gowramma had a son by name Chikkamuniyappa. The said Muniyappa @ Hotteppa had one son and one daughter through his second wife Chinnamma namely Munikrishnappa and Jayamma. The plaintiff No.1 Chinnamma is the second wife of said Muniyappa @ Hotteppa and plaintiff No.2 Jayamma is the daughter of said Muniyappa @ Hotteppa through said second wife. The sons of Muniyappa @ Hotteppa namely Chikkamuniyappa and Munikrishnappa died leaving behind their wife and children. The plaintiff No.3 to 5 are the wife and children of said Munikrishnappa. Similarly the defendants No.1 to 4 are the wife and children of said Chikkamuniyappa. Thus they themselves and defendants No.1 to 4 constitute Hindu undivided joint family. According to

them the suit properties were owned by said Muniyappa @ Hotteppa. The said Muniyappa @ Hotteppa died leaving behind two widows, two sons and one daughter. Subsequently, the brother of Muniyappa @ Hotteppa namely Doddapoovappa executed registered Release Deed on 25-02-1987 giving away the suit properties to the share of said Muniyappa in favour of his son Chikkamuniyappa. The said Chikkamuniyappa acquired the suit property on behalf of joint family. The said Muniyappa and his son Chikkamuniyappa died without alienating the suit properties. After the death of Chikkamuniyappa, the revenue entries changed in the name of defendant No.1. The defendants No.1 to 4 behind their back, without their knowledge and consent have had alienated 18 guntas in suit item No.1 property in favour of defendant No.6 by vide Sale Deed dated 10-02-1995. Similarly the said defendants No.1 to 3 alienated suit item No.2 property to an extent of 32 guntas in favour of defendants No.4 & 5 by vide Sale Deed dated 13-05-2002. The said Sale Deeds are not binding on them. They further pleaded that the defendants No.1 to 4 under the guise of executing Sale Deed in respect to suit property took them to Sub-Registrar office and got executed release deed on 17-03-2016. They paid a sum of Rs.5,00,000/- to plaintiffs No.1 & 2 and Rs.1,66,666/- to plaintiffs No.3 to 5 as value of their share over the said properties. Thereafter on 19-03-2016 the defendants No.1 to 4 executed Agreement of Sale in favour of defendant No.7 agreeing to convey suit item No.1 property to an extent of 1 acre 31 ½ guntas for total Sale Consideration of Rs.4,40,44,000/-. Therefore they come to know that the defendants No.1 to 4 by playing fraud, misrepresentation got executed the said release

deed by paying meager sum of Rs.6,66,666/-. Therefore they immediately approached them and requested them to part 1/3rd Sale Consideration which they received from defendant No.7 under Agreement of Sale dated 19-03-2016. They requested to divide suit item No.2 property. The defendants No.1 to 4 refused the said request. Hence they approached this court.

3. The defendants No.1, 4 to 6 & 7 appeared through their counsel. The defendants No.4 & 5 filed their joint Written Statement. The defendants No.6 & 7 filed their independent Written Statement. The defendants No.4, 5, 6 & 7 denied the right title and interest of plaintiffs over suit property. According to defendants No.4 & 5, the suit properties were owned by husband of defendant No.1 Chikkamuniyappa who died leaving behind defendants No.1 to 4 to succeed the said properties. The defendant No.1 to meet her family necessity alienated suit item No.2 property to an extent of 32 guntas to them under registered Sale Deed dated 13-05-2002. Since then they are in possession of said property. Therefore they seek to dismiss the suit. Similarly the defendant No.6 has also contended that the said property mentioned at item No.1 was owned by husband of defendant No.1 Chikkamuniyappa. The defendant No.1 and her children alienated 18 guntas of land in the said suit item No.1 property. Therefore he claimed that he is in possession of said property to the said extent under registered Sale Deed dated 10-02-1995. Hence he seeks to dismiss the suit.

4. The defendant No.7 filed Written Statement by denying the claim of plaintiffs over suit property. According to the defendant No.7, the plaintiff No.1 Chinnamma and her son Munikrishnappa (husband of plaintiff No.3 and father of plaintiffs No.4 & 5) have executed registered release deed in favour of Muniyappa @ Hotteppa and his son Chikkamuniyappa vide registered Release Deed dated 21-03-1984 releasing all their rights in favour of Muniyappa @ Hotteppa and Chikkamuniyappa. Thus the plaintiffs separated from the family of said Muniyappa @ Hotteppa way back in the year 1984 itself. Further the suit properties have been acquired by Chikkamuniyappa under registered release deed dated 25-02-1987. The said Chikkamuniyappa died leaving behind defendants No.1 to 4 to succeed the said property. Accordingly they succeeded the property. Furthermore the defendants No.1 to 3 got divided the properties under registered Partition Deed dated 24-10-2008. The plaintiffs themselves executed registered release deed in favour of defendant No. 1 to 4 on 17-03-2016. The plaintiffs have not challenged the registered release deed dated 29-03-1984. Therefore the suit is barred by law of limitation. Furthermore the defendants No.1 to 4 conveyed the suit property in their favour by vide registered Sale Deed dated 08-03-2017. They got converted the property from agricultural use to Non-agricultural use. They got approved the development plan from various authorities to develop the property. Therefore they contended that they have invested huge money in purchasing and developing the property. Therefore the plaintiffs are not entitled for any relief from this court. Hence they seek to dismiss the suit.

5. As indicated above, the plaintiffs have filed this instant application seeking to restrain the defendant No.7 from putting up of construction and changing the nature of suit item No.1 property pending disposal of suit. They reiterated entire averment of plaint in their affidavit annexed to instant application. Similarly, the defendant No.7 filed objections by taking same stand as taken in the Written Statement. Heard counsel for plaintiffs and defendant No.7.

6. Having heard the counsel for plaintiffs and defendant No.7 and having perused the material on record, the following points would arise for my consideration :

1. Whether the Plaintiffs made out prima-facie case in issuing injunction?
2. Whether the Plaintiffs prove that, the balance of convenience lies in their favour?
3. Whether the Plaintiffs prove that, if injunction is refused they would be put to irreparable loss which cannot be compensated in terms of money?
4. What order?

7. Having heard the counsel on record, my findings to above points is as under :

Points Nos.1 to 3 : **In the Negative,**

Point No.4 : **As per final Order for the following :**

REASONS

8. **Point Nos.1 to 3** : In order to avoid the repetition of facts, these points are taken together for common consideration. It is the assertion of Plaintiffs that one Muniyappa @ Hotteppa died leaving behind two widows, two sons and one daughter. The plaintiff No.1 is one of the widow and plaintiff No.2 is one of the daughter of said Muniyappa @ Hotteppa. The plaintiffs No.3 to 5 and defendants No.1 to 4 are the wives and children of sons of said Muniyappa @ Hotteppa namely Munikrishnappa and Chikkamuniyappa. Thus they claimed existence of joint family in between themselves and defendants No.1 to 4. According to them the suit properties were owned by said Muniyappa @ Hotteppa. After his death the said properties were allotted to Chikkamuniyappa on behalf of joint family by vide registered release deed dated 25-02-1987. After the death of said Chikkamuniyappa Khatha was changed in the name of defendant No.1. The defendant No.1 and her children alienated part of suit item No.1 property in favour of defendant No.6. Similarly the defendants No.1 to 3 alienated suit item No.2 property in favour of defendants No.4 & 5. They further

contended that the said deeds are not binding on them. They also contended that the defendants No.1 to 4 got executed alleged release deed by playing fraud. The defendants No.1 to 4 alienated suit item No.1 property in favour of defendant No.7 for huge Sale Consideration. Therefore they seek to effect partition and separate possession of their share over the suit property which was turn down by defendants. The defendants No.4 to 7 objected the suit claim of plaintiffs by contending that the said plaintiff No.1 and her son Munikrishnappa have executed registered release deed in favour of Muniyappa @ Hotteppa and Chikkamuniyappa way back in the year 1984. Therefore they are not entitled for share over the suit property. Moreover they themselves executed release deed in favour of defendants No.1 to 4 by way of registered release deed dated 17-03-2016. Hence they seek to dismiss the suit.

9. Based on rival contentions of parties, the following undisputed facts can be culled out here under :

1. It is not in dispute that the said Muniyappa @ Hotteppa had two wives namely Gowramma and Chinnamma.
2. It is also not in dispute that the said Gowramma had a son by name Chikkamuniyappa who died leaving behind defendants No.1 to 4 as his heirs. Similarly the plaintiff No.1 is the second wife of said Muniyappa @ Hotteppa. The said Muniyappa @ Hotteppa and plaintiff No.1 Chinnamma

had a son by name Munikrishnappa who died leaving behind plaintiffs No.3 to 5 as his heirs. It is also not in dispute that the plaintiff No.2 is the daughter of said Muniyappa @ Hotteppa through plaintiff No.1 Chinnamma.

3. It is also not in dispute that the under registered release deed dated 25-02-1987 the said Chikkamuniyappa acquired the suit properties. It is also not in dispute that the said release deed itself indicate division of properties under Panchayath Palupatti dated 29-09-1979.
4. It is also not in dispute that the revenue records changed in the name of defendant No.1 after the death of said Chikkamuniyappa.
5. It is also not in dispute that the plaintiffs have executed registered release deed on 17-03-2016 in favour of defendants No.1 to 4 by releasing their rights over the suit property.
6. The only dispute between the parties is in regard to the allegation of misrepresentation, fraud in getting execution of said release deed.

10. It is well settled law that the grant of temporary injunction the three factors have to be satisfied which are prima-facie case, balance of convenience and irreparable loss. The Hon'ble Apex Court in the case of **Dalpat Kumar V/s. Pralhad Singh reported in A.I.R. 1993 S.C. 276** has explained the three factors as under :

1. There is a serious disputed question to be tried in the court and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for.
2. The court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or danger would ensure before the legal right would be established at trail.
3. The comparative hardship on mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to acted from the grating it.

11. Therefore keeping in mind the settled legal position, I proceed to examine the claim of plaintiffs against defendant No.7. The plaintiffs assert that the defendants No.1 to 4 under the guise of executing Sale Deed took them to Sub-Registrar office on 17-03-2016 and obtained release deed by paying meager sum of Rs.6,66,666/- whereas they executed agreement of Sale in favour of defendant No.7 for

Rs.4,40,44,000/- immediately after getting execution of release deed. Therefore they contend that the defendants No.1 to 4 have paid disproportionate Sale Consideration to them under the said release deed. Therefore they called the said deed as outcome of misrepresentation and fraud.

12. The plaintiffs buttress their case by placing reliance on Genealogical tree, copy of I.L. and R.R., copy of registered release deed dated 25-02-1987, record of rights, copies of Sale Deeds dated 10-02-1995 and 13-05-2002, copies of release deed dated 17-03-2016, copy of Agreement of Sale executed in favour of defendant No.7 by defendants No.1 to 4. Per contra the defendant No.7 buttress his case by placing reliance on copy of release deed dated 29-03-1984 executed by plaintiff No.1 and her son Munikrishnappa in favour of Muniyappa @ Hotteppa and his son Chikkamuniyappa. They also placed reliance on copy of release deed dated 25-02-1987, Partition Deed dated 24-10-2008 and release deed dated 17-03-2016. They also placed reliance on copy of Agreement of Sale, copy of Sale Deed dated 08-03-2017, copy of conversion order, Board resolution, power of attorney. The copy of Sale Deed produced by defendant No.7 indicates that the defendants No.1 to 4 have conveyed the suit item No.1 property in favour of defendant No.7 on 08-03-2017 through their power of attorney who is defendant No.7. The part of suit item No.1 property to an extent of 29 guntas has been converted from agricultural use to non-agricultural use. The defendant No.7 placed more reliance on copy of release deed dated 29-03-1984 executed by plaintiff No.1 and her son in favour of Muniyappa @ Hotteppa and his son Chikkamuniyappa

wherein they have released all their rights in respect of immovable properties held by Muniyappa @ Hotteppa in favour of said Muniyappa @ Hotteppa and his son Chikkamuniyappa. Therefore according to defendant No.7, the plaintiff No.1 and her son Munikrishnappa themselves released their rights and separated from the said Muniyappa @ Hotteppa. Therefore they have no right over the said properties acquired by Chikkamuniyappa by virtue of release deed dated 25-02-1987.

13. The learned counsel for plaintiffs vehemently submits that the said release deed dated 29-03-1984 did not indicate any specific property. More over the plaintiff No.2 being a daughter of Muniyappa @ Hotteppa is not party to the said release deed. Furthermore even if the said release deed is taken into consideration it would only binds to the plaintiff No.1, her son and Muniyappa @ Hotteppa till the death of said Muniyappa. After the death of said Muniyappa @ Hotteppa again the property has to be devolve on all the heirs of said Muniyappa @ Hotteppa including the plaintiffs herein. Therefore the said release deed does not take away the right of succeeding the property after the death of Muniyappa @ Hotteppa. Therefore he would contend that the said release deed dated 29-03-1984 did not take away the right of inheritance of property from the said Muniyappa @ Hotteppa after his death.

14. Admittedly the plaintiffs did not whisper about the execution of said release deed in favour of said Muniyappa @ Hotteppa and his son Chikkamuniyappa in their plaint. They have suppressed the said material facts. Nevertheless the claim

of succession of property after the death of said Muniyappa @ Hotteppa needs to be considered in trial. The recital of release deed dated 17-03-2016 indicates recognition of rights of plaintiffs over the suit properties. Therefore the release deed dated 17-03-2016 indicates rights of plaintiffs over the suit property. Therefore the said release deed dated 17-03-2016 came to be executed by the plaintiffs in favour of defendants No.1 to 4. The plaintiffs did not dispute the execution of said deeds. They inter-alia contend that the defendants No.1 to 4 by playing fraud and misrepresentation got executed the said deeds by paying meager sum of Rs.6,66,666/- to them. According to them the said defendants No.1 to 4 alienated the said property in favour of defendant No.7 for Rs.4,40,44,000/- on 19-03-2016 i.e., immediately after two days of execution of release deeds. Therefore the grievance of plaintiffs is not on the execution of release deed, the grievance is on the quantum of consideration paid to them in the release deed.

15. The pleading pleaded in plaint more particularly para No.17 indicates allegation of fraud and misrepresentation in getting execution of release deeds. The cause for saying the said fraud and misrepresentation is purely based on the Sale Consideration shown in the Agreement of Sale executed in favour of defendant No.7. According to the plaintiffs the defendants No.1 to 4 have alienated the said property to defendant No.7 for huge consideration of Rs.4,40,44,000/- whereas they paid Rs.6,66,666/- as the value of their share. Therefore they contended about fraud and misrepresentation committed on them by the defendants No.1 to 4. The grievance

of plaintiffs is against defendants No.1 to 4. The grievance of plaintiffs is not on the execution of release deed. It is on the consideration shown in release deed when it compared to the consideration shown in Agreement of Sale. The plaintiffs themselves mentioned in para No.17 that they demanded the defendants No.1 to 4 to part 1/3rd share in the Sale Consideration received from defendant No.7. The said request has been denied by the defendants No.1 to 4. The said para No.17 is exacted hereunder :

“....17 - It is submitted that by misrepresentation and fraud a disproportionate was given to the plaintiffs out of Sale Consideration of the schedule property item No.1. Similarly to the earlier Sale Deeds to the plaintiffs are not parties and same is not binding on them. Disproportionate distribution and non partition of the properties warranted to file this suit for relief of partition to declare 1/3rd share into the schedule properties by declaring the release deeds executed are null and void and to declare Sale Deeds and Agreement of Sale are not binding on the plaintiffs. After releasing the misrepresentation and fraud by the defendants No.1 to 4, the plaintiffs approached to defendants No.1 to 4 to part 1/3rd share of the Sale Consideration under the Sale agreement dated 19-03-2016 and to divide the schedule property item No.2 into 1/3rd share as Sale Deeds are not binding on them. The defendants out rightly rejected demand by the plaintiffs. Despite

knowing the misrepresentation fraud by them in distributing the disproportional share to the plaintiffs, the defendants are adamant in discharging with equal share of the 1/3rd of the price and property."

16. Therefore the allegation of fraud and misrepresentation have been leveled against defendants No.1 to 4 in not giving the proper consideration received from defendant No.7. Therefore the grievance of plaintiffs about playing fraud and misrepresentation over suit item No.1 property is purely based on the Sale Consideration mentioned in the Agreement of Sale. They did not mention in their plaint as to how the fraud has been committed on them in getting execution of release deeds. The terms of release deeds are legitimate till the execution of Agreement of Sale by defendants No.1 to 4 in favour of defendant No.7. When the defendants No.1 to 4 agreed to sell the property for huge consideration of Rs.4,40,44,000/- then the plaintiffs came to know about fraud and misrepresentation. Therefore the entire case of plaintiffs is based on the alleged act of fraud and misrepresentation played by the defendants No.1 to 4 in calculating their share and paying away the consideration. Therefore the grievance of plaintiffs is not against defendant No.7 and in fact it is against defendants No.1 to 4. Therefore they are at liberty to prove the said allegation against defendants No.1 to 4 in the trial. In the event if they succeeded in proving the said issue, they would certainly entitle to recover the value of said shares from defendants No.1 to 4 as demanded by them in para No.17. Therefore they cannot

seek injunction restraining the defendant No.7 from carrying out the development work over the suit item No.1 property under the guise of fraud and misrepresentation played by defendants No.1 to 4.

17. Admittedly the photographs produced by plaintiffs indicates that the defendant No.7 has started digging the property for the purpose of construction. The learned counsel for plaintiffs vehemently submits that if the defendant No.7 allowed to put up construction over the suit property it may cause hardship to the plaintiffs in agitating their rights over the suit property. The defendant No.7 may obtain financial assistance from various financial institutions which may create equitable interest over suit property. Therefore it may cause hindrance to the plaintiffs in getting fruits of the decree that may be passed in their favour. The said submission cannot be accepted for the simple reason that the plaintiffs themselves requested the defendants No.1 to 4 to part 1/3rd Sale Consideration which they received from defendant No.7. Therefore it would indicate that their main grievance is on the Sale Consideration received from defendant No.7 by the defendants No.1 to 4. Therefore they have not made out any prima-facie case against defendant No.7. The balance of convenience and comparative hardship also does not lie in favour of plaintiffs. On the other hand the balance of convenience and comparative hardship tilt in favour of defendant No.7 as he has already paid huge Sale Consideration and developing the property. The hardship which claimed by the plaintiffs could be considered by directing the defendants No.1 to

4 to part Sale Consideration in terms of share of plaintiffs if they succeeds in the suit. **Hence I hold above points in the Negative.**

18. **Point No.4** : In the light of aforesaid finding on the above said point, I proceed to pass the following :

O R D E R

The application filed by Plaintiffs at I.A.No.10/2021 under order 39 Rule 1 & 2 of C.P.C is seeking to restrain the defendant No.7 from changing the nature of property and putting up of construction is hereby rejected.

Call on : 15-03-2022 for Issues.

(Dictated to the Typist directly on computer, same is corrected and then pronounced by me in the open court on this the 14th day of February, 2022).

**(PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**