

KABR310011992022



TITLE SHEET

***IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE & JUDICIAL MAGISTRATE
OF THE FIRST CLASS AT DEVANAHALLI***

**PRESENT : SRI KUMARA G. B.COM. LL.B.
PRINCIPAL SENIOR CIVIL JUDGE AND JMFC
DEVANAHALLI**

**ORIGINAL SUIT NO.968 OF 2022
DATED ON THIS 16TH DAY OF JANUARY, 2025**

PLAINTIFFS :

- 01. SRI B.L. YOGESH,
S/O B.S. LOKESH,
AGED ABOUT 20 YEARS.**
- 02. SMT SANGITHA,
D/O B.S. BASAVARAJU,
AGED ABOUT 30 YEARS.**
- 03. SMT ROHINI,
D/O B.S. BASAVARAJU,
AGED ABOUT 26 YEARS.**

**ALL ARE R/AT BETTAHALASURU VILLAGE,
JALA HOBLI,
YELAHANKA TALUK,
BANGALORE URBAN DISTRICT-562 157.**

(REPRESENTED BY SRI KM, ADVOCATE)

VERSUS

- DEFENDANTS : 01. SRI B.S. LOKESH,
S/O LATE SIDDARAMANNA,
AGED ABOUT 63 YEARS.**
- 02. SRI B.S. BASAVARAJ,
S/O LATE SIDDARAMANNA,
AGED ABOUT 59 YEARS.**
- 03. SRI B.L. PRAMOD,
S/O B.S. LOKESH,
AGED ABOUT 36 YEARS.**
- D-1 TO D-3 ARE R/AT
BETTAHALASURU VILLAGE,
JALA HOBLI, YELAHANKA TALUK,
BANGALORE URBAN DISTRICT-562 157.**
- 04. SMT GEETHA J. MALLI,
W/O JITENDRA MOHAN MALLI,
AGED ABOUT 53 YEARS,
R/AT NO.F-404, RAHEJA PARK,
AGRAHARA DASARAHALLI,
MAGADI ROAD,
BENGALURU-560 079.**
- 05. SRI CHINNAPPA,
S/O VENKATARAMANAPPA,
AGED ABOUT 58 YEARS,
R/AT NO.B-403,
SANGEETHA APARTMENTS,
8TH CROSS, MALLESHWARAM,
BENGALURU-560 003.**
- 06. SMT PREETHI A. SHETTY,
W/O ARAVIND SHETTY,
AGED ABOUT 52 YEARS,
R/AT NO.B-403,
SANGEETHA APARTMENTS,
8TH CROSS, MALLESHWARAM,
BENGALURU-560 003.**

- 07. SMT PAVANA J. HEDGE,
S/O JAYARAJ HEDGE,
AGED ABOUT 52 YEARS,
R/AT NO.36/2, N.T.I. LAYOUT,
BEHIND S.B.I., VIDYARANYAPURA,
BENGALURU-560 097.**
- 08. SRI V. BABU,
S/O VELAYUDHAN,
AGED ABOUT 47 YEARS,
R/AT NO.64, AMBEDKAR NAGAR,
3RD CROSS, 2ND MAIN ROAD,
GANGANAGAR,
BENGALURU-560 032.**
- 09. SRI PRASAD SHETTY,
S/O N. THIMMAPPA SHETTY,
AGED ABOUT 57 YEARS,
R/AT NO.F-3, PRAVIRS RESIDENCY
NO.30, 3RD CROSS, SULTHANPALYA,
BENGALURU-560 032.**
- 10. SMT KASTURI J. SHETTY,
W/O JAYANTH K. SHETTY,
AGED ABOUT 71 YEARS,
R/AT NO.F-3, PRAVIRS RESIDENCY
NO.30, 3RD CROSS, SULTHANPALYA,
BENGALURU-560 032.**
- 11. SRI P. VAIDYA,
S/O PITCHIYAPPA,
AGED ABOUT 58 YEARS,
R/AT NO.84, 'C' CROSS,
MUNESHWARA BLOCK,
MALLESHWARAM,
BENGALURU-560 003.**
- 12. SRI SAMPAT J. SHETTY,
S/O JAYANTH SHETTY,**

**AGED ABOUT 48 YEARS,
R/AT NO.F-3, PRAVIRS RESIDENCY
NO.30, 3RD CROSS, SULTHANPALYA,
BENGALURU-560 032.**

**13. SRI M. ASHOK SHETTY,
S/O LATE M.S. SHETTY,
AGED ABOUT 58 YEARS,
R/AT NO.9, KRISHNA KASTURI,
ASHWATHANAGAR,
SANJAY NAGAR MAIN ROAD,
BENGALURU-560 094.**

**14. SRI ANJANEYA REDDY,
S/O THIRUMALAPPA,
AGED ABOUT 51 YEARS,
R/AT PATHAKOTA,
LAKSHMIPURA POST,
SREENIVASAPURA TALUK,
KOLARA DISTRICT.**

**(D-4 TO D-14 ARE REPRESENTED BY SRI KPH,
ADVOCATE & D-1 TO D-3 ARE PLACED EX-
PARTE)**

PROVISION UNDER WHICH THE APPLICATIONS ARE FILED	ORDER XXXIX, RULES 1 & 2 R/W SECTION 151 OF CPC
RELIEFS SOUGHT FOR	TEMPORARY INJUNCTION
DATE OF FILING APPLICATIONS	16-08-2022
NUMBER OF APPLICATIONS	IA NO.I
DATE OF FILING OBJECTION	OBJECTION NOT FILED
DATE OF PRONOUNCEMENT OF ORDER	16-01-2025

ORDER ON IA NO.I

The applicants/plaintiffs have filed IA No.I under Order XXXIX, Rules 1 and 2 read with section 151 of Civil Procedure Code, 1908 for temporary

injunction for restraining the defendants No.4 to 14 from alienating the suit land or creating any sort of charges over the same during pendency of the suit.

02. The agricultural lands bearing survey No.259/21 (present survey No.259), measuring 02-00 acres out of total extent 187.18 acres, situated at Bettahalasuru Village, Jala Hobli, Yelahanka Taluk is the subject-matter of the suit.

03. IA No.I is supported with affidavit duly sworn by the applicant-plaintiff No.1. It is stated in the affidavit that the plaintiffs have instituted the instant suit against the defendants for partition and separate possession in the suit lands and allotment of their share by metes and bounds; for declaration that 11 Registered Sale Deeds alleged to have been executed by defendants No.1 to 3 in favour of defendants No.4 to 14 on 07-11-2006 are not binding on their share and consequential relief of permanent injunction. Sri Siddaramanna is the common proposer of the family of plaintiffs and defendants No.1 to 3. The defendants No.1 and 2 are the children of late Sri Siddaramanna. The plaintiff No.1 and defendant No.3 are the children of defendant No.1. The plaintiffs No.2 and 3 are the children of defendant No.2. Suit land was granted in favour of Sri Siddaramanna on 27-06-1969 and katha was mutated in his name and he was in possession and enjoyment of the suit

land with plaintiffs and defendants No.1 to 3. After the death of Sri Siddaramanna on 27-10-2005, katha of the suit land has been mutated in the name of his wife Smt Channamma. The suit land is the ancestral and joint family property of plaintiffs and defendants No.1 to 3; all are in joint possession and enjoyment of the same along with their ancestors; all are having undivided interest therein and partition is not taken place among them. Facts being so, during the minority of the plaintiffs, the defendants No.1 to 3 and Smt Channamma have executed 11 Registered Sale Deeds on 07-11-2006 in favour of defendants No.4 to 14 and the alienations are not for the welfare and benefit of the minor members of the family and therefore they are not binding on their shares. The plaintiffs have requested the defendants No.1 to 3 to make partition in the suit land allot shares by metes and bounds, for which defendants No.1 to 3 have refused. As the defendants have acted detrimental to their interest, the plaintiffs have instituted the suit. The defendants No.4 to 14 are trying to further alienate the suit land to third parties and also trying to create charges or encumbrance over the same and hence they have instituted the suit along with IA No.1. It is further sworn that plaintiffs have made out prima facie case and balance of convenience lies in their favour. It is further stated that if the defendants have not restrained by an order of temporary injunction, they will alienate or transfer the suit land

and they will create charges or encumbrance over the same and in that event it multiplies the litigation and it will also cause great hardship and inconvenience to the plaintiffs. For the above said reasons the plaintiffs have prayed to allow the application.

04. In spite of service of suit summons, the defendants No.1 to 3 have not appeared before this court on the day fixed for their appearance. Hence the defendant No.1 to 3 have been placed ex-parte.

05. In pursuance of service of suit summons, the defendant No.4 to 14 have appeared before this court through advocate. Defendant No.9 has filed written statement and the same has been adopted by defendants No.4 to 8 and 10 to 14 by filing memo. The Defendants No.4 to 14 have also filed another memo for adopting written statement as objection to IA No.1. It is specifically contended by the defendants in the written statement that the suit filed by the plaintiffs in the present form is not maintainable either in law or facts. The defendants No.4 to 14 have purchased the suit land from their previous owners Smt Channamma and defendants No.1 to 3 for valuable consideration and the plaintiffs are aware about the alienations. It is further contended that the plaintiffs also enjoyed the sale proceedings derived out of alienation of suit land through Registered Sale Deeds. It is further contended

that the plaintiffs have filed the present suit in collusion with defendants No.1 to 3. It is further contended that the plaintiffs are having knowledge about the alienations since from the alienation and therefore they are estopped from claiming the rights over the suit land. It is further contended that the suit of the plaintiffs is not maintainable for non-joinder of the proper and necessary parties. It is further contended that the plaintiffs have filed the present suit after lapse of more than 17 years from the date of alienation and therefore the suit is barred by limitation. It is further contended that the alienation for the welfare of the joint family and therefore the alienations are binding on the plaintiffs also. It is further contended that there is no cause of action for the plaintiffs to institute the present suit and therefore the suit of the plaintiffs itself is not maintainable. For the above said reasons, the defendants No.4 to 14 have prayed for dismissal of the suit and also prayed for rejection of IA No.1 with exemplary costs.

06. Heard the arguments advanced by Sri KM, the learned counsel for plaintiffs and Sri KPH, the learned counsel for the defendant No.4 to 14 on IA No.I.

07. Perused the application, affidavit filed in support of application, pleadings and documents placed on record from both sides.

08. Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration;

1. Whether plaintiffs have established prima facie case?

2. Whether the balance of convenience lies in favour of plaintiffs?

3. Whether irreparable loss or hardship will be caused to plaintiffs, if injunction is not granted?

4. What order?

09. Upon hearing the arguments and on perusal of materials placed on record, my findings to the above points are as under;

Point No.1 :- In the Affirmative,
Point No.2 :- In the Affirmative,
Point No.3 :- In the Affirmative and
Point No.4 :- As per order for the following;

REASONS

10. POINT NO.01: - In order to show the prima-facie case, the plaintiffs have produced notarized affidavit relating to Genealogy of the family. The plaintiffs also produced the certified and computerized Record of Rights and certified and computerized Mutation Registers relating to suit land. The plaintiffs also produced the Grant Certificate relating to suit land and also Death Certificate of Sri Siddaramanna and Smt Channamma. The plaintiffs also produced copies of 11 Registered Sale Deeds dated 07-11-2006.

11. The notarized affidavit relating to Genealogy of the family prima facie shows that Sri Siddaramanna is the common propositor of plaintiffs and defendants No.1 to 3. It also prima facie shows that defendants No.1 and 2 are the children of Sri Siddaramanna and his wife Smt Channamma. It also prima facie shows that plaintiff No.1 and defendant No.3 are the children of defendant No.1. It also prima facie shows that plaintiffs No.2 and 3 are the children of defendant No.2. There is no dispute among the parties as to relationship among plaintiffs and defendants No.1 to 3 and also with their ancestors. Hence at this stage, it can be safely concluded that defendants No.1 and 2 are the children of late Sri Siddaramanna; plaintiff No.1 and defendant No.3 are the children of defendant No.1 and plaintiffs No.2 and 3 are the children of defendant No.2.

12. Certified copy of Grant Certificate and Official Memorandum issued by Deputy Commissioner, Bangalore Rural District placed on record from the plaintiffs side prima facie shows that suit land was granted in the name of Sri Siddaramanna by the Tahsildar, Devanahalli and Grant Certificate in Form No.1 have been issued in his favour on 27-06-1969. The RR, Index of Lands and Records of Rights also ex-facie shows that name of late Sri Siddaramanna was entered in the revenue records as per the grant and suit land was standing in his name till his death and after his death

pouthi katha was mutated in the name of his wife Smt Channamma and her name was appearing in the revenue records. Copies of 11 Registered Sale Deeds dated 07-11-2006, prima facie shows that Smt Channamma and defendants No.1 to 3 have sold the entire extent of suit land in favour of defendants No.4 to 14 through Registered Sale Deeds for valuable consideration and accordingly names of defendants No.4 to 14 have been substituted in the revenue records and their names are appearing in both column No.9 and 12 of Records of Rights as possessor and cultivator.

13. The pleadings coupled with the documents placed on record prima facie shows that suit land was granted in the name of Sri Siddaramanna by the Government in the year 1960 and Grant Certificate was issued in his name. They also prima facie shows that during his lifetime, Sri Siddaramanna was in possession and enjoyment of the suit land and his name was appearing in the revenue records as possessor and cultivator. They also prima facie shows that after the death of Sri Siddaramanna pouthi katha was been mutated in the name of his wife Smt Channamma. They also ex-facie shows that defendants No.1 to 3 and Smt Channamma have executed Registered Sale Deeds in favour of defendants No.4 to 14 on 07-11-2006 and received sale consideration. The plaintiffs are not the signatories to the said 11 Registered Sale Deeds. Nowhere in the sale

deeds, it is mentioned that alienations are also for and on behalf of minor plaintiffs and also for their welfare. When such being the case, it cannot be said at this stage that the alienations are also for the welfare of the minor members of the family and therefore the alienations are also binding on their shares.

14. It is well settled that all the members of the joint family are presumed to be the members of Hindu Undivided joint family. It is also well settled that joint family presumed to be exist unless and until the contrary is proved to the effect that joint family is severed. Similarly, it is also presumed that all the members of the joint family are presumed to be in joint possession and enjoyment of family unless and until the contrary is proved to the effect that partition is taken place among all the members of joint family by metes and bounds in accordance with law.

15. As I already stated, in the present case on hand, the plaintiffs are not the signatories to the sale deeds not and also they are not the executants of the sale deeds. It is true that sale deeds have been executed during minority of the plaintiffs, but the said sale deeds have not executed either by their next friend or natural guardian for and on behalf of minor plaintiffs. When such being the case naturally the sale deeds are not

binding on the family members who are not the parties to the sale deeds. By looking to the age mentioned in the cause title, it appears that the suit of the plaintiffs No.2 and 3 is not filed within the period of limitation after they attaining majority. But the suit filed by the plaintiff No.1 is well within the period of limitation from the date of his attaining majority and therefore under these facts and circumstances of the case, I am of the opinion that the plaintiff No.1 has made out prima facie case as the suit land was inherited to him, other plaintiffs and defendants No.1 to 3 from his grandfather. At this stage I am also of the opinion that question of limitation is a mixed question of law and fact and also question of alienation for the welfare of the joint family properties are the mixed questions of law and fact and therefore finding cannot be given without the trial and findings cannot be given at this stage. Thus, I am of concluding that the plaintiff No.1 is able to make out prima facie case. Hence, I am answering ***Point No.1 in the affirmative.***

16. POINTS NO.2 & 3:- I am already given finding to Point No.1 in the affirmative holding that the plaintiff No.1 is able to make out prima facie case which requires detailed trial and there is every chance or possibility that the plaintiff No.1 may succeed in the suit. I am also observed while giving finding to point No.1 that question of maintainability of the suit pertaining to limitation and also question relating to the alienations of suit

land for the welfare of the family are the mixed questions of law and fact and therefore, they have to be decided in the regular trial. So also, in order to give findings relating to question of payment of court fee and mis-joinder or non-joinder of the parties, regular trial is required. The apprehension of the plaintiffs is that if the defendant No.4 to 14 have alienated or further alienated the suit land or if they have created any type of charges or encumbrance over the any portion, it multiplies the proceedings. It is true that during pendency of the suit, if the suit land is alienated or any type of charges or encumbrance is created during pendency of the suit and if the plaintiffs have succeeded in the suit, it will difficult for the plaintiffs to get their shares and they would not be in a position to enjoy the fruits of the decree. So also, it multiplies the litigation. Under such circumstances, naturally it causes hardship and inconvenience of the plaintiffs. So also, by looking to the facts and circumstances of the case, the balance of convenience is lies in favour of the plaintiffs compared to the defendants No.4 to 14. Hence, I am also answering to ***Points No.2 and 3 in the affirmative*** holding that balance of convenience lies in favour of plaintiffs and in the event of refusal to grant temporary injunction as sought in IA No.1, hardship and inconvenience will be caused to the defendants.

17. POINT No.4:- In view of findings to Points No.1 to 3 and for the discussion made above and reasons assigned, I proceed to pass the following:

ORDER

IA No.I filed by applicants-plaintiffs under Order XXXIX, Rules 1 and 2 of Civil Procedure Code, 1908 is hereby allowed with costs.

Consequently, the defendants No.4 to 14 are hereby restrained from alienating the suit land or creating any type of charges or encumbrance over the same during pendency of the suit.

(Directly to the stenographer, transcribed and typed by her, corrected, then signed and pronounced by me in the open court on this 16th day of January, 2025)

**(KUMARA G.)
PRINCIPAL SENIOR CIVIL JUDGE &
JMFC, DEVANAHALLI.**
