

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J M F C.
HOSAKOTE**

Present : Sri. Girisha R.B.,
B.A.L., LL.B.,
Addl Civil Judge & JMFC, Hosakote.

Dated: This, the 12th day of June 2019

O.S. No.63/2019

Plaintiffs: Smt. K. Rathnamma and others

- V/s -

Defendants: Sri. P.B. Krishnappa and others

I.A.NO.I

Applicants : Smt. K. Rathnamma and others

V/s

Opponent: Sri. P.B. Krishnappa and others

**ORDER ON IA FILED BY THE PLAINTIFFS UNDER
ORDER XXXIX RULE 1 AND 2 OF CPC.**

Present application is filed by the plaintiff praying for a temporary injunction order restraining the defendants their men and servants, agents etc., from putting up any construction in any portion of the suit schedule property till disposal of the present suit.

2. The applicant/plaintiff has contended that she has ancestral property inherited by her father in law Nandi Byrappa. Nandi Byrappa married to Ramakka, Nandi Byrappa and his five children had constituted a Hindu Undivided Joint famiy. It is further contended that the Sy. No.20/1 of Mallasandra Village, totally measuring on extent of 03 Acre 01 guntas was purchased by his father in law Nandi Byrappa through a registered sale deed dated 06.06.1986. The same was subjected to the partition of Sy. No.20/1 was divided into five shares. Remaining 61 guntas of land was allotted to the share of Nandi Byrappa. Nandi Byrappa was died on 8.1.2001 till the death of Nandi Byrappa he is in possession and enjoyment of the 34 guntas in Sy. No.20/1. Nandi Byrappa has not executed any documents in favour of the any family members. Defendant No.4 has illegally changed the khatha. Taking advantage of the revenue records standing in his name. He is trying to put up constraction by way digging to land to put foundation. But the defendants have refused to effect partition and to allot their share. On the said grounds the plaintiff has prayed for allowing his application.

3. The defendants had filed memo to adopt the the written statement as objection to these applications.

4. Considering the application, plaint averments and on perusal of the records following points arose for my consideration for proper adjudication of the present application:

1. Whether the plaintiff has made out a prima-facie case in his favor?
2. Whether the balance of convenience leans in favor of the plaintiff?
3. Whether the plaintiff suffers irreparable loss and damage, if the temporary injunction as sought for is not granted?
4. What order?

5. Having heard arguments on the above application and also after considering the application, plaint averments and documents available on record, my answer to the above points are 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 the final order

for the Following:

REASONS

6. **Point No.1 to 3**: Since these points are interlinked together, I take up these points for consideration together to avoid repetition.

7. The present suit is filed for the relief of Partition. While dealing with these kinds of the application the court has to consider the following classical ingredients.

- 1) There are prima- facie case
- 2) Balance of convenience
- 3) In reparable loss or injury
- 4) Other factors.

8. The plaintiff has filed the present IA along with suit. Praying a temporary injunction order the defendant No.4 their men and servants, agents etc., from not to put up any construction in any portion of the suit schedule property.

9. There is no dispute regarding the nature of suit. It is the specific case of the plaintiff that one proposter named Late Nandi Byrappa has purchased the suit schedule property on 6.6.1986 through registered sale deed further on 4.6.1988 there was partition took place between the said Nandi Byrappa and his children's after that he retain the 34 guntas in the said Sy. No. 20/1 Mallasandra Village and further contended that the said portion not at all partitioned among the family members till today.

10. When matter stood like this the 4th defendant in order to defeat the rights of the plaintiffs has obtained the revenue documents in his name by

collusion with the revenue officials. On above said grounds plaintiff have sought the relief accordingly.

11. On the other hand the 4th defendant has filed written statement and strongly contended that as per partition deed dated 4.6.1986 the 2nd defendant has got 15 guntas of land in Sy .No.20/1, the husband of the 1st plaintiff has got 10 guntas of land in Sy.No.20/1, the 4th defendant has acquired 25 guntas. Father in law of the 1st defendant has sold 16 guntas of land in favour of Eswarappa, further mother of the defendant No.3 has purchased 10 guntas land from the family members of Nandi Byrappa and delivered the possession to the mother of defendant No.3. Thus, the Nandi Byrappa has not retained any portion of the land in Sy. No.20/1.

12. He further contended that the 4th defendant has formed revenue layout in is portion and sold the sites to different person. The purchasers are possession and enjoyment over the same. Accordingly prayed to the dismissed the present IA.

13. Learned counsel for the plaintiff has strongly relied upon the RTC's and partition deed dated 4.6.1988 and encumbrance certificate to show that the said Nandi Byrappa was acquired the alleged 34 guntas and till toady the parties have not entered in to any partition over the same. At this point of the time it is better to grow to the IA No.1. In the said IA the prayer

was sought only to the extent of 29 guntas for the alleged Survey Number. Subsequently the plaintiffs have filed memo and sought to withdraw the IA No. 1. Accordingly, this court has permitted to withdraw the same. Thereafter the plaintiffs have filed another IA. No. 2 to extent of 34 guntas of land in Sy. No.20/1. Thus, it is clear that the plaintiffs themselves have got Ambiguity on their claim.

14. During the course of argument learned counsel for the defendant No.4 has vehemently argued that the 4th defendant has already sold sites to the deferent persons and the purchasers are in possession of same. The plaintiffs have not made the purchasers as parties in the present suit. On this count prayed to dismiss the present IA. To support the arguments of the 4th defendant, the learned counsel for the 4th defendant has strongly relied upon registered sale deed dated 1.2.2012, tax paid receipt and electricity bill.

15. On perusal of the documents produced by the 4th defendant it prima-facie discloses that he has sold the property to one Madusudan and said Madusudan has paid tax and obtain electricity connection. On perusal of the photo produced by the parties it could be seen that considerable construction has been taken place. Under these circumstances this court is of opinion that without hearing the subsequent purchaser, it is not

worth to considered the present inter-im application. Whether the said deceased Nandi Byrappa has retained the alleged 34 guntas are not needs to be decided at full pledged trial. Therefore, having regard to the facts and circumstances of the case, this court is of opinion that the plaintiff has not made-out prima-facie case and other factors to considered the present application. Accordingly, I answered point no. 1 to 3 in the **Negative.**

16. **Point No. 4:** In view of my above findings on point No. 1 to 3, I proceed to pass the following

ORDER

IA filed by the plaintiff under order XXXIX Rule 1 and 2 of CPC is hereby dismissed.

In the facts and circumstances of the case there is no order as to costs.

(Directed to the stenographer directly on the computer and after correction pronounced by me in the open court on this the 12th day of June 2019)

Addl. Civil Judge & JMFC.,
Hosakote.

**[Order pronounced in the open court
vide separate sheet]**

ORDER

IA filed by the plaintiff under order XXXIX Rule 1 and 2 of CPC is hereby dismissed.

In the facts and circumstances of the case there is no order as to costs.

Addl Civil Judge & JMFC.,
Hoskote.

