

**IN THE COURT OF THE PRL., CIVIL JUDGE  
& J M FC., HOSAKOTE.**

**PRESENT**

**Sri. Onkaramurthy, H. B.Com, LLB.,  
Prl.,Civil Judge & JMFC.Hoskote.**

**Dated this the 24<sup>th</sup> day of January, 2018.**

**O.S.NO 468/14 .**

**Plaintiff/s:- Smt. Venkateshamma and others**

**(By Sri. N.M. Advocate)**

**/vs/**

**Defendant/s: 1. Sri. Kadirappa and others.**

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**ORDERA on IA.I.**

Plaintiffshas filed present IA.No.I., under order 39 rule 1 and 2 r/w sec. 151 of CPC., praying to restrain defendant No.5 and 10 not to alienate the suit schedule property from alienating the suit schedule property pending disposal of the suit.

2. In the annexed affidavit, it is stated that she and other plaintiffs are sons and daughters of late Chikkamuniyappa s/o. late Dasappa. The Dasappa died long back and after the death of Dasappa the elder so Kodeppa had succeeded the estate of late Dasappa as a Kartha of joint family under Hindu Law. The suit schedule properties i.e. item No.1 and 2 are ancestral property of Kodeppa . The Kodeppa acquired the landed property item No.1 through grant granted by the Govt., Both are cultivating the joint family properties as jointly.

During the life time of Kodppa and Chikkamuniyappa they are not partitioned the suit schedule properties. After the death of Kodppa and Chikkamuniyappa himself and other plaintiffs and defendants jointly cultivating the same as a joint family properties. The suit schedule property item No.2 already disposed by the 5<sup>th</sup> defendant in favour of defendant No.9 and they are also claiming  $\frac{1}{2}$  share in the entire suit schedule properties. Hence, this application.

3. Inter alia, defendant filed Memo to treat the contents of written statement as objection to present application. It is the case of the defendants that the application is not maintainable and plaintiff has created and concocted documents and has filed present suit. Thus defendants prays for its rejection.

4. Heard. Perused the materials available on record and also perused the citation.

5. On the basis of the rival contentions, the following points would arise for my consideration;

1. Whether the plaintiff has made out prima facie case?
2. In Whose favour balance of convenience lies?
3. Whether plaintiff in the event of rejection of this IA. Will be put to hardship and injury?
4. What order?
5. My answer to the above points are as under:-

Point No.1 to 3:- In the negative

Point No.4:- As per final order

For the following:-

### **REASONS**

8. **Point No.1 to 3:-** As these points are interconnected with each other, they are taken up together for common discussion, in order to avoid the repetition of facts.

In support of their contention taken up in the application, plaintiffs have produced Sale deed, Mutation extract, RTC etc., The present suit is filed by the plaintiff seeking relief of specific performance of contract against defendants. The facts pleaded by the plaintiff that the defendants are the absolute owners in peaceful possession and enjoyment of the suit schedule property is not in dispute. But however, it is the specific contention of the plaintiff that the defendants had executed registered sale deed in his favour in respect of suit schedule property. No doubt, any registered sale deed can be looked into, since it has got value. Further it is the contention of the plaintiff that he came to know through real estate agents that defendants are trying to sell the suit schedule property in favour of third parties. Under the circumstances, I am of the considered opinion that plaintiff has utterly failed to substantiate the contentions taken up in the application. As such, he has failed to prove prima facie case, balance convenience and

irreparable loss injury caused to him. Hence, I answer point No.1 to 3 in the **negative**.

**10. Point No.4:-** In the light of foregoing discussions, I proceed to pass the following:-

**ORDER**

IA.No.I filed by the plaintiff  
under order 39 rule 1 and 2 CPC., is  
hereby rejected with costs.`

(Dictated to the stenographer directly on computer, after computerized by her, corrected signed and then pronounced by me in the open court this the 24th day of January, 2018).

(Onkaramurthy H.)  
Prl., Civil Judge & J.M.F.C.,  
HOSKOTE.