

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT
CHALLAKERE**

:- P R E S E N T :-

Smt. Reshma Kalakappa Goni, BA.,LLM.,

Senior Civil Judge & JMFC
Challakere.

Dated this the 8th day of April 2024

O.S.No.73/2023

PLAINTIFFS:- Sri. K. Basavaraja & Others.

//Versus//

DEFENDANTS:- Smt. Shivagangamma @ M. Gangamma
and others.

I.A.No.3

Applicants/Defendants:- Smt. Shivagangamma @ M.
Gangamma W/o T. Mahalingappa,
Aged about 47 years, R/o
Doddachelluru Village,
Parashurampura Hobli, Challakere
Taluk, Chitradurga District & Others.
(By Sri U. Thippeswamy, Advocate.)

//Versus//

Opponents/Plaintiffs:- Sri. K. Basavaraja S/o Late Kenchappa,
Aged about 59 years, Agriculturist,
R/o Doddachelluru Village, Now R/o
Pillekerenahally Village, Chitradurga
Taluk & District & Others.
(By Sri D. Jayaseela Reddy, Advocate.)

ORDER ON I.A.NO.3

The defendants filed I.A.No.3 U/o 39 Rule 4 R/w Sec.151 of CPC,
praying to dismiss the order an application U/Or.39 Rule 1 and 2 of

CPC passed on I.A. dated:21.03.2023.

2. In support of I.A.No.3 along with affidavit of defendant no.5 contended that, on the last date of hearing the Hon'ble Court passed an ex parte order on I.A.No.1 on 21.03.2023 and issued temporary injunction restraining them from alienating or disposition of the suit properties in any manner in favour of anybody till next date of hearing. Thereafter they have filed their written statement, objection along with necessary documents. After death of Shanthappa, subsequently his 2nd son Ramalingappa was also died leaving behind his daughters Kalyanamma and Eswaramma and Doddalingappa. Thereafter, the 1st son of Shanthappa i.e., Doddalingappa and 3rd son Bhyranna had entered into registered partition deed on 28.01.1969 with knowledge of Kalyanamma and Eswaramma. Thereafter the Bhyranna had taken his share of properties and came out of joint family. The husband of Eswaramma i.e., N. Thippeswamy had purchased properties came to the share of Doddalingappa. But due to disputes in the family of Kalyanamma and Eswaramma, a registered partition deed on 10.07.1970 had entered into between them where Doddalingappa who was living with family of Eswaramma had also consented to said deed of partition. Kalyanamma had got "A" schedule properties in the said partition deed and sold certain properties come to her share to one N. Thippeswamy on 24.08.1972. Thereafter, Eswaramma had filed a

suit in O.S.No.562/1990 which subsequently numbered as O.S.No.50/1994 against Bhyramma and Kalyanamma for partition and separate possession of her legitimate share in properties which are amicably settled living with Eswaramma and her sons and the properties comes to share of Bhyranna under registered partition deed dated: 28.01.1969 were also jointly enjoying by the Bhyranna with the family of Eswaramma and her sons. Subsequently Bhyranna and his wife Bhramaramba died leaving behind Eswaramma and her sons as their only legal heirs. Thereafter one Ravindra S/o Nidugappa on the basis of concocted documents viz., Power of Attorney and Will alleged to be executed by Bhyranna managed to transfer the khata of properties comes to share of Bhyranna. In meanwhile Eswaramma was also died, then her sons filed a suit against Ravindra S/o Nidugappa in Revenue Courts No.151/2008 before Addl. Civil Judge (Jr.Dvn) at Challakere against Ravindra S/o Nidugappa, where suit had decreed against Ravindra S/o Nidugappa. Thereafter Ravindra S/o Nidugappa had challenged the judgment and decree passed in O.S.No.151/2008 before appellate courts in Mis.Petition No.2/2010, M.A.No.7/2011 and Cr.R.P.No.214/2012 which were all dismissed. Thereafter subsequently the mother of plaintiff filed a suit in O.S.No.106/2013 against defendants before the Civil Judge and JMFC at Challakere for partition and separate possession which was withdrawn by her as

she already taken her share in a registered partition deed in 10.07.1970. Thereafter once again colluded with mother of plaintiff, Ravindra S/o Nidugappa filed a suit in O.S.No.29/2015 before this court which was also dismissed on 25-01-2023 and plaintiff also filed suit against the defendant in O.S.No.65/2015 pending before Addl. Civil Judge and J.M.F.C., at Challakere and also filed IA No.7 under Order 1 Rule 10 R/w 151 of CPC to implead defendants which was also dismissed on 30-05-2023. As per the Judgment and Decree passed in O.S.No.151/2008 before Addl. Civil Judge (Jr.Dvn) against Ravindra S/o Nidumadappa. The defendant is in lawful owner, possession and enjoyment of suit schedule properties without disturbing anybody till today. The plaintiffs have no manner of title, possession and enjoyment of suit schedule property at any point of time. Hence the plaintiffs are never claim any shares over the suit schedule properties against the defendants. The suit is misconceived for the relief of partition and separate possession of plaintiffs half share in suit schedule properties thereby the suit is liable to be dismissed. The application is false, frivolous, plaintiff knowingly and purposefully made a misleading statements and obtained the orders on 1A No.1 of exparte temporary injunction against them. If application is not allowed, they will be put to irreparable loss and inconvenience. No harm, loss, hardship, injustice will caused to the plaintiff if the application is allowed. Hence, prayed to allow the

application.

3. On the other hand plaintiffs have not filed any objection to I.A.No.3.

4. I have perused the application filed by the defendants

5. The plaintiffs has filed this suit against the defendants for the relief of partition and separate possession in respect of suit property. The defendants filed present I.A.No.3 U/Or.39 Rule 4 R/w 151 of CPC praying to dismiss the order an application U/Or.39 Rule 1 and 2 of CPC passed on I.A. dated:21.03.2023.

6. But in this case this court has already discussed I.A.No.1 filed by the plaintiffs U/O 39 Rule 1 and 2 R/w 151 of CPC, I have perused the application filed by the plaintiffs and objection filed by the defendants and also perused the documents produced by the both parties in respect of suit schedule properties and the said I.A.No.1 after hearing both side same is allowed and consider order passed today and it is ordered that, defendants are hereby temporarily restrained from alienating the suit schedule properties by way of sale, gift, lease, mortgage etc and other any transactions till the disposal of the suit. Hence, in view of finding given on I.A.No.1, this I.A.No.3 filed by the defendants U/Or.39 Rule 4 R/w Sec.151 of CPC does not survive for consideration. Hence, I proceed to pass the following :

ORDER

I.A.No.3 filed by the defendants U/Or.39 Rule 4 R/w

Sec.151 of CPC is hereby rejected.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open court on this the 8th day of April 2024)

**(Smt. Reshma Kalakappa Goni)
Senior Civil Judge & JMFC,
Challakere.**