

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND J.M.F.C.,
CHALLAKERE**

Present: **Sri. GOWDA JAGADEESHA RUDRE.**
B.Com., L.L.B.
Prl. Civil Judge and JMFC., Challakere.

DATED ON THE 20th DAY OF DECEMBER-2023

O.S. No.51/2023

1. Naveenkumar.R and Others**PLAINTIFFS.**

V/S.

2. Parvathibai and others**DEFENDANTS.**

PARTIES IN I.A. No.1.

1. Naveenkumar.R S/o Ramanaika,
Aged about 32 years,
Occ: Agriculturist,
R/o Kereyagalhalli village,
Nayakanahatti Hobli,
Challakere Taluk and Others.

(By Sri.Y.T.S., Advocate)

APPLICANTS/PLAINTIFFS

V/S.

1) Parvathibai W/o Late Ramanaika,
Aged about 63 years,
Occ: Agriculturist,
R/o Kereyagalhalli village,
Nayakanahatti Hobli,
Challakere Taluk and others.

(def No.1 and 2 by Sri. D.R.R., Adv)

(def No.3 by Sri. S.B.R., Adv)

OPONENTS/ DEFENDANTS

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ORDER ON IA No.I

The plaintiffs have filed this application under order 39 R.1 and 2
R/w 151 of C.P.C seeking Temporary Injunction order against the

defendants, their agents, servants, relatives or any person claiming under them from alienating or disposition of the suit properties in favour of anybody till disposal of the suit.

2. The plaintiff No.1 has sworn to an affidavit for himself and also on behalf of plaintiff No.2 and 3 wherein, he stated that they and defendants are children of Ramanaika S/o Jayaramnaika and Parvathibai couples. Plaintiffs and defendants are members of the joint family and the suit schedule properties are the joint family property of plaintiffs and defendants. Plaintiffs and defendants are depend on suit schedule properties for their livelihood. Whereas, plaintiffs brother Rajesh Naika S/o Rama Nayka passed away on 17.05.2022, Item No.2 of the property is transferred in the name of the 1st defendant namely Parvathibai, who is the member of the joint family. The suit schedule properties are in the joint right, possession and enjoyment of plaintiffs and defendants.

3. However, in the second week of January 2023, the defendant No.1 and 3 intended to sell the Item No.2 of the suit schedule properties even though there is no need. He come to the know said fact from the villagers thus, plaintiffs have asked the defendant No.1 and 3 to give their separate shares in the suit schedule properties but, defendants did not heed their request. Plaintiffs have checked the relevant documents in related to the suit schedule item and came to know about the gift deed dated: 20.12.2016 in respect of Item No.1 of the

suit property measuring 1 acre in favour of defendant No.2 and the katha has been changed in the name of the defendant No.2. Since the plaintiffs also have a right to a legal share in the suit schedule properties, even the gift deed of the said registered plaintiffs is not binding on the right to share. The prima-facie case is in their favour. If the defendants are not restrained from alienating the suit properties, plaintiffs will be put to more hardship and injury than the defendants. **With these averments plaintiffs sought to allow the application.**

4. The defendant No.1 and 2 appeared through their advocate and filed their objection statements indicating therein that application is not maintainable either in law or facts. It is contended plaintiffs are having no prima-facie case in their favour. Further irreparable loss would be caused to them if injunction order is granted in their favour. **With these contentions defendant No.1 and 2 sought for rejection of the application with cost.**

5. The following Points arises for determination.

- 1) Whether the plaintiffs have made out a prima- facie case for trial?
- 2) In whose favour the balance of convenience lies?
- 3) Who will be put to irreparable loss?
- 4) What order?

6. I have perused the pleadings, documents available on record and heard the arguments on both sides.

7. My finding to the above points is as follows-

Point No.1 : In the affirmative.

Point No.2 : The balance of convenience lies in favour of plaintiffs.

Point No.3 : Comparative hardship is more to the plaintiffs.

Point No.4 : As per final order for the following-

REASONS

8. **POINT No.1 TO 3:-** These points are interlinked with each other. Hence, they are taken together for common discussion in order to avoid repetition of facts.

9. Argued on behalf of the plaintiffs is that suit properties are ancestral and joint family properties of themselves and defendants. Defendants by entering their names in the revenue documents are trying to alienate the same in favour of stranger to defraud in the legitimate share of the plaintiffs. Per contra learned advocate for the defendants submitted that plaintiffs are having no manner of right, title or interest over the subject matter of the suit to seek partition.

10. The learned advocate for the plaintiffs relied upon the documents such as RTC extracts pertaining to the suit property, Mutation extract, Gift deed dated:20.12.2016 and Xerox copy of the Lorry bearing Reg No.KA-16-D-2801 and Xerox copies of the death certificates of Rajanaika. On the other hand, the defendants did not produce any documents before the court. Court has given equal consideration to the

arguments and documents produced by the plaintiffs. Whether the suit properties are ancestral and joint family properties of the parties to the suit or not cannot be ascertained this stage without having a full-fledged trial. At this stage pleadings of the parties and documents clearly establishes that, the suit properties are which are landed property and Lorry belongs to joint family. Thereby, plaintiffs are having a prima-facie for trial. Admittedly, suit properties are standing in the name of defendant No.1 who is happened to be mother of parties to the suit. If the defendant no.1 is allowed to sell the suit properties in favour of the strangers then the plaintiffs will be put to hardship and also it will lead to multiplicity of proceedings. Therefore, it is better to keep the property intact until the controversy is decided. The validity of the gift deed pleaded by the plaintiffs cannot decided at this stage and for that purpose Court cannot old mini trial. By allowing the application the defendants will not put to any hardship or injury. Infact, it will protect the interest not only parties to the suit but also proposed purchaser of the suit property. Hence, Court is of the opinion that the plaintiffs have got prima-facie case for trial, balance of convenience in their favour and comparative hardship is more to the plaintiffs rather to the defendants. **With these observations, Court answer the points no.1 in the affirmative and point No.2 and 3 in favour of plaintiffs.**

11. POINT No.4:- In the result, Court proceed to pass the following:

ORDER

The I.A. No.1 filed by the plaintiffs Under Order 39 Rule 1 and 2 R/w 151 of CPC is allowed.

Thereby, defendants, their agents, servants, relatives and any person claiming under them are hereby restrained by way of permanent injunction from alienating or disposition of the suit property till disposal of the suit.

No order as to costs.

(Order dictated to the Stenographer, transcript revised, corrected and then pronounced by me in the open Court on 20th day of December-2023).

(Sri. GOWDA JAGADEESHA RUDRE)
Prl. Civil Judge & JMFC,
Challakere.

