

KACD420019242022



IN THE COURT OF THE PRL. CIVIL JUDGE
AT HOLALKERE

Present: Sri.UMESHA, M.P., B.A.L., LL.B.
PRL. CIVIL JUDGE & JMFC,
HOLALKERE

DATED: ON THIS THE 15th DAY OF JUNE - 2023

ORIGINAL SUIT No. 289 / 2022

PLAINTIFFS:

1. **KASTURAPPA** S/o Late Siddappa,
Aged about 65 years,
R/o Dasikatte Village, Holalkere Taluk,
2. **SMT. GEETHA K.** W/o Siddappa,
D/o Kasturappa, Aged about 37 years,
Occ: Housewife, R/o Hanumanthapura,
Tumakuru Town,
(BY PLEADER SRI.C.O.M)

-V/s-

DEFENDANTS :

1. **D.G. PALAKSHAPPA** S/o Giryappa,
Aged about 60 years,
R/o Nallur village, Kasaba Hobli,
Channagiri Taluk, Davanagere District.
2. **THE TAHASILDAR,**
Holalkere Taluk, Holalkere,
Chitradurga District.
(BY PLEADER SRI.M.S FOR DEFENDANT NO.1)
(DEPENDENT NO.2 PLACED EXPARTE)

PARTIES TO I.A.NO.II

APPLICANTS/PLAINTIFFS:

1. **KASTURAPPA** S/o Late Siddappa,
Aged about 65 years,
R/o Dasikatte Village, Holalkere Taluk,

2. **SMT. GEETHA K.** W/o Siddappa,
D/o Kasturappa, Aged about 37 years,
Occ: Housewife, R/o Hanumanthapura,
Tumakuru Town,
(BY PLEADER SRI.C.O.M)

-V/s-

OPPONENT/

DEFENDANTS

- : 1. **D.G. PALAKSHAPPA** S/o Giriyappa,
Aged about 60 years,
R/o Nallur village, Kasaba Hobli,
Channagiri Taluk, Davanagere District.
2. **THE TAHASILDAR,**
Holalkere Taluk, Holalkere,
Chitradurga District.
(BY PLEADER SRI.M.S FOR DEFENDANT NO.1)
(DEPENDENT NO.2 PLACED EXPARTE)
3. **MALLESHAPPA** S/o Nagappa,
Aged about 57 years,
R/o Dasikatte Village, Ramagiri Hobli,
Holalkere Taluk, Chitradurga District,
4. **SANNA HANUMAPPA S/o** Bheemappa,
Aged about 73 years,
R/o Dasikatte Village, Ramagiri Hobli,
Holalkere Taluk, Chitradurga District,
5. **MANJAPPA S/o** Halasiddappa,
Aged about 32 years,
R/o Dasikatte Village, Ramagiri Hobli,
Holalkere Taluk, Chitradurga District.
(BY PLEADER SRI.M.S FOR DEFENDANT NO.1)
(DEPENDENT NO.2 PLACED EXPARTE)
(BY PLEADER SRI.M.S FOR DEFENDANT NO.3 TO 5)

ORDERS ON I. A. NO. II

The Applicants / plaintiffs have filed IA No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to restrain the defendant No.1 from alienating the Suit properties in any manner till disposal of the suit.

2. According to plaintiff No.2, in the accompanying affidavit it is sworn that, the plaintiffs have filed this suit against the defendants for declaration and permanent injunction with respect to the suit properties. It is further stated that, the plaintiff No.2 is the daughter of plaintiff No.1 and they are living in the joint family. It is further stated that, the suit property bearing Re.Sy.No.37/1 totally measuring 04 acres 30 guntas of Dasikatte Village, Holalkere Taluk and it was phoded as Re.Sy.No.37/7, measuring 01 acre 32 guntas, belongs to the grand father of the plaintiff No.1 by name Thimmappa S/o Giriyappa of Dasikatte Village who is no more. It is further stated that, after the death of Thimmappa S/o Giriyappa of Dasikatte Village, the father of the plaintiff No.1 by name Siddappa S/o Thimmappa has acquired the suit property as the successor and legal heir to the estate of the deceased Thimmappa S/o Giriyappa of Dasikatte Village. It is further stated that, the father of the plaintiff No.1 by name Siddappa S/o Thimmappa who is no more. It is further stated that, the plaintiff No.1 is only the grand son to his grand father by name Thimmappa S/o Giriyappa of Dasikatte Village. It is further stated that, the plaintiff No.1 is only successor and legal heir to the estate of the deceased Thimmappa S/o Giriyappa of Dasikatte Village. It is

further stated that, the plaintiffs are in possession and enjoyment of the same till today. It is further stated that, the defendant No.1 has played fraud upon the plaintiffs and somehow they were got changed the khatha of the suit property in his name though they do not have any right to do so. It is further stated that, the khatha of the suit is standing in the name of defendant No.1. It is further stated that, the fraud committed by the defendant No.1 is recently came to know by the plaintiffs in the last week of Sept-2021. It is further stated that, any amount of advice rendered by the elders in the village to the defendant No.1 is highly illegal and high handed which cannot be prevented without the assistance of this Hon'ble Court. It is further stated that, the plaintiffs got advised the defendant No.1 for not to continue their illegal activities about the suit schedule property. It is further stated that, in the locality it is heard that, the defendant No.1 on the guise of above illegal revenue documents he is seriously trying to alienate the same to third party in order to deceive and defraud the plaintiffs for which the defendant No.1 do not have any right to do so. Hence, this suit is for declaration and permanent injunction and other reliefs with respect to the suit property. It is further contended that, the defendant No.1 is trying to sell the suit property. It is further stated that, the defendant No.1 has no right, title and interest over the suit property. So it is just and necessary to restrain the defendant No.1 from alienating the Suit property in any manner till the rights of the parties to the suit is to be adjudicated. If the

defendant No.1 is succeeding in his act, the plaintiffs will put into great loss and injustice. Hence prayed to allow the application.

3. Per contra, the defendants have taken the contention that, the defendant No.1 is the absolute owner and exclusive owner of the suit property. It is further contended that, the plaintiffs are not the owners and in possession of the suit property. It is further contended that, the court fee paid and valuation made by the plaintiffs is insufficient and incorrect. It is further contended that, the alleged cause of action is imaginary. On all these grounds, the defendants prayed to dismiss the IA No.2.

4. I have heard the arguments of learned counsel for the plaintiffs and learned counsel for the defendants. Perused the documents on record.

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

1. ***Whether the 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 the plaintiffs if injunction is not granted?***
 4. ***What order?***
6. 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
 - Point No.4 - As per order for the following:-

REASONS**POINT NO.1:**

7. The plaintiffs have filed the suit against the defendants seeking relief of declaration and permanent injunction and other reliefs with respect to the suit property. The plaintiffs have filed this present application seeking temporary injunction as against the defendant No.1.

8. The Applicants/plaintiffs have filed IA No.2 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to restrain the defendant No.1 from alienating the SUT property in any manner till disposal of the suit.

9. As per the provisions of Order 39 Rule 1 of CPC, where in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

10. Admittedly, granting or refusing injunction is a discretionary in nature. It is well settled position of law that the following preposition are to be established in order to invoke the jurisdiction of the Court to get an order of injunction under the provisions of Order 39 Rule 1 and 2 of CPC. 1) the plaintiff has to establish the prima-facie case, 2) the balance of inconvenience is in favour of the plaintiff and 3) that the plaintiff will suffer irreparable loss and injury if injunction is refused.

11. Therefore the ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima-facie case in favour of the party seeking order. It is no part of Court's duty or function at this stage of litigation to try to resolve difficult questions of facts and law which require elaborate evaluation of the evidence to be recorded at the trial. Now keeping the above said provisions of law and also principles in mind, let us consider as to whether the plaintiff could able to establish prima-facie case for grant of temporary injunction.

12. It is specific case of the plaintiffs that, they have filed this suit against the defendants for declaration and permanent injunction and other reliefs with respect to the suit property. It is further stated that, the plaintiff No.2 is the daughter of plaintiff No.1 and they are living in the joint family. It is further stated that, the suit property bearing Re.Sy.No.37/1 totally measuring 04 acres 30 guntas

of Dasikatte Village, Holalkere Taluk and it was phoded as Re.Sy.No.37/7, measuring 01 acre 32 guntas, belongs to the grand father of the plaintiff No.1 by name Thimmappa S/o Giriyappa of Dasikatte Village who is no more. It is further stated that, after the death of Thimmappa S/o Giriyappa of Dasikatte Village, the father of the plaintiff No.1 by name Siddappa S/o Thimmappa has acquired the suit property as the successor and legal heir to the estate of the deceased Thimmappa S/o Giriyappa of Dasikatte Village. It is further stated that, the father of the plaintiff No.1 by name Siddappa S/o Thimmappa who is no more. It is further stated that, the plaintiff No.1 is only the grand son to his grand father by name Thimmappa S/o Giriyappa of Dasikatte Village. It is further stated that, the plaintiff No.1 is only successor and legal heir to the estate of the deceased Thimmappa S/o Giriyappa of Dasikatte Village. It is further stated that, the plaintiffs are in possession and enjoyment of the same till today. It is further stated that, the defendant No.1 has played fraud upon the plaintiffs and somehow they were got changed the khatha of the suit property in his name though they do not have any right to do so. It is further stated that, the khatha of the suit is standing in the name of defendant No.1. It is further stated that, the fraud committed by the defendant No.1 is recently came to know by the plaintiffs in the last week of Sept-2021. It is further stated that, any amount of advice rendered by the elders in the village to the defendant No.1 is highly illegal and high handed which cannot be prevented without the assistance of this Hon'ble Court. It is

further stated that, the plaintiffs got advised the defendant No.1 for not to continue their illegal activities about the suit schedule property. It is further stated that, in the locality it is heard that, the defendant No.1 on the guise of above illegal revenue documents he is seriously trying to alienate the same to third party in order to deceive and defraud the plaintiffs for which the defendant No.1 do not have any right to do so. Hence, this suit is for declaration and permanent injunction and other reliefs with respect to the suit property. It is further contended that, the defendant No.1 is trying to sell the suit property. It is further stated that, the defendant No.1 has no right, title and interest over the suit property. So it is just and necessary to restrain the defendant No.1 from alienating the Suit property in any manner till the rights of the parties to the suit is to be adjudicated. If the defendant No.1 is succeeding in his act, the plaintiffs will put into great loss and injustice. Hence prayed to allow the application.

13. In the supporting affidavit, the plaintiff No.2 sworn that, they have filed this suit against the defendants for declaration and permanent injunction and other reliefs with respect to the suit property. It is further stated that, the plaintiff No.2 is the daughter of plaintiff No.1 and they are living in the joint family. It is further stated that, the suit property bearing Re.Sy.No.37/1 totally measuring 04 acres 30 guntas of Dasikatte Village, Holalkere Taluk and it was phoded as Re.Sy.No.37/7, measuring 01 acre 32 guntas, belongs to the grand father of the plaintiff No.1 by name Thimmappa S/o Goriyappa of Dasikatte Village who is no more. It is further

stated that, after the death of Thimmappa S/o Giriyappa of Dasikatte Village, the father of the plaintiff No.1 by name Siddappa S/o Thimmappa has acquired the suit property as the successor and legal heir to the estate of the deceased Thimmappa S/o Giriyappa of Dasikatte Village. It is further stated that, the father of the plaintiff No.1 by name Siddappa S/o Thimmappa who is no more. It is further stated that, the plaintiff No.1 is only the grand son to his grand father by name Thimmappa S/o Giriyappa of Dasikatte Village. It is further stated that, the plaintiff No.1 is only successor and legal heir to the estate of the deceased Thimmappa S/o Giriyappa of Dasikatte Village. It is further stated that, the plaintiffs are in possession and enjoyment of the same till today. It is further stated that, the defendant No.1 has played fraud upon the plaintiffs and somehow they were got changed the khatha of the suit property in his name though they do not have any right to do so. It is further stated that, the khatha of the suit is standing in the name of defendant No.1. It is further stated that, the fraud committed by the defendant No.1 is recently came to know by the plaintiffs in the last week of Sept-2021. It is further stated that, any amount of advice rendered by the elders in the village to the defendant No.1 is highly illegal and high handed which cannot be prevented without the assistance of this Hon'ble Court. It is further stated that, the plaintiffs got advised the defendant No.1 for not to continue their illegal activities about the suit schedule property. It is further stated that, in the locality it is heard that, the defendant No.1 on the guise of above illegal

revenue documents he is seriously trying to alienate the same to third party in order to deceive and defraud the plaintiffs for which the defendant No.1 do not have any right to do so. Hence, this suit is for declaration and permanent injunction and other reliefs with respect to the suit property. It is further contended that, the defendant No.1 is trying to sell the suit property. It is further stated that, the defendant No.1 has no right, title and interest over the suit property. So it is just and necessary to restrain the defendant No.1 from alienating the Suit property in any manner till the rights of the parties to the suit is to be adjudicated. If the defendant No.1 is succeeding in his act, the plaintiffs will put into great loss and injustice. Hence prayed to allow the application.

14. The Plaintiffs have placed the copy of RTC extract with respect to Sy.No. 37/P1 for the year 2001-2002, copy of RTC extract with respect to Sy.No.37/1 for the year 2015-2016, copy of RTC extract with respect to Sy.No.37/7 for the year 2022-2023, copy of RTC extract with respect to Sy.No.37/9 for the year 2022-23, copy of MR No.T55/2021-2022 with respect to the suit properties, copy of MR No.H8/ 2021-2022 with respect to the suit properties, copy of the 11e sketch with respect to suit property.

15. It is specific case of the defendants that, the defendant No.1 is the absolute owner and exclusive owner of the suit property. It is further contended that, the plaintiffs are not the owners and in possession of the suit property. It is

further contended that, the court fee paid and valuation made by the plaintiffs is insufficient and incorrect. It is further contended that, the alleged cause of action is imaginary. On all these grounds, the defendants prayed to dismiss the IA No.2.

16. *In this connection it is relevant to extract the provisions of Sec.41 of Specific Relief Act, 1963 – Injunction when refused:-*

“An injunction cannot be granted:-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not sub-ordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;

- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
- (i) when the conduct of the plaintiff or his agent has been such as to dis-entitle him to be the assistance of the Court;
- (j) when the plaintiff has no personal interest in the matter.

17. It is to be noted that, the right of parties in suit properties to be decided after conclusion of trial. If during pendency of suit any subject property of suit alienated by the defendants that will leads to un-necessary complications and multiplicity of suit. Hence it is shown that, balance of convenience lies in favour of plaintiffs. Taking in consideration of nature of suit and rights of plaintiffs to be decided in present suit in respect of suit property, if ad-interim temporary injunction as prayed for not granted, plaintiffs will be put to hardship and injury. On the other hand no hardship or injury would be caused to defendants if temporary injunction as prayed for is granted. The plaint averments, affidavit annexed to I.A No.2 is very much consistent and in conformity with documents placed on record. There are no reasons to disbelieve or to doubt the documents produced by the plaintiffs at this stage of litigation. Therefore based on these

documents, it can be safely held that the plaintiffs have got prima-facie case for grant of temporary injunction. Hence I answer point No.1 in the affirmative.

POINTS NO. 2 & 3:

18. These two points are taken up together for common discussion, for the sake of convenience, clarity and also to avoid repetition of facts. In considering the question of balance of convenience, the Court has to consider the comparative mischief or inconvenience of both the parties or otherwise it is necessary or proper to maintain the status quo until the disputes are finally decided. Further, in considering the question of irreparable loss and injury, the Court has to see that the plaintiffs will sustain such injury which cannot possibly and adequately be remedied by way of damage and the damage would be inadequate in case of success of plaintiffs.

19. Whether the plaintiffs have got right or not is a matter of trial. Under these circumstance, the balance of convenience is lies in favour of the plaintiffs and not in favour of the defendants. Under these circumstance, there is every likely would of causing injury to the plaintiffs in relation to the properties in question. In weighing the risk of injustice which granting or refusing injunction would entitled there appearance to me that there is justification in granting order of temporary injunction now sought by the plaintiffs. Therefore if the injunction is refused, it is who the plaintiffs would be put to irreparable loss and injury and not the defendants. Therefore for the reasons discussed above, this Court is of the

considered view that, the balance of convenience also lies in favour of the plaintiffs and irreparable loss and injury would be caused to plaintiffs if a temporary injunction is refused. Hence I answer points No.2 and 3 in the affirmative.

POINT NO. 4

20. In view of my findings on Points No.1 to 3, I proceed to pass the following order:

ORDER

I.A.No.2 filed by the plaintiffs under order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant No. 1 is hereby restrained by way of temporary injunction from alienating the suit properties, in any manner till disposal of the suit.

The cost of this application shall follow the result of the suit.

(Directly dictated to Stenographer on computer, typed by her, corrected by me, signed and then pronounced in open court on the 15th day of JUNE – 2023)

(UMESHA M.P)
Prl. Civil Judge,
Holalkere

