

KACD420015932022



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 20th DAY OF MARCH – 2023

ORIGINAL SUIT No. 233 / 2022

PLAINTIFFS : 1. **SMT. SHIVALINGAMMA** W/o Late.G.S.Chandrappa,
Aged about 80 years, Occ: Agriculturist,
2. **SMT. MANJULA** W/o Rudrappa,
D/o Late.G.S.Chandrappa, Occ: Agriculturist,
Aged about 58 years.
3. **ONKARAPPA** S/o Late.G.S.Chandrappa,
Aged about 55 years, Occ: Agriculturist,
All are R/o Shivapura Village,
Kasaba Hobli, Holalkere Taluk.
(BY PLEADER SRI.B.N.P)

-V/s-

DEFENDANTS : 1. **B.V. JAGADEESH** S/o Late.Veerabhadrapa,
Aged about 58 years, Occ: Agriculturist,
R/o Shivapura Village, Kasaba Hobli,
Holalkere Taluk,
2. **SMT. NALINA** W/o Late. B.V. Ravikumar,
Aged about 40 years, Occ: Agriculturist,
R/o Shivapura Village, Kasaba Hobli,
Holalkere Taluk,
3. **SHARANAPPA** S/o Late.Kundurappa,
Aged about 55 years, Occ: Coolie,
R/o Shivapura Village, Kasaba Hobli,
Holalkere Taluk.
(BY PLEADER SRI.RMO FOR DEFENDANTS No.1 & 2)
(BY PLEADER SRI.SVK FOR DEFENDANT No.3)

PARTIES TO I. A. NO. I

- APPLICANTS / PLAINTIFFS:**
- 1. SMT. SHIVALINGAMMA** W/o Late.G.S.Chandrappa,
Aged about 80 years, Occ: Agriculturist,
 - 2. SMT. MANJULA** W/o Rudrappa,
D/o Late.G.S.Chandrappa, Occ: Agriculturist,
Aged about 58 years.
 - 3. ONKARAPPA** S/o Late.G.S.Chandrappa,
Aged about 55 years, Occ: Agriculturist,
All are R/o Shivapura Village,
Kasaba Hobli, Holalkere Taluk.
(BY PLEADER SRI.B.N.P)

-V/s-

- OPPONENTS / DEFENDANTS:**
- 1. B.V. JAGADEESH** S/o Late Veerabhadrappa,
Aged about 58 years,
 - 2. SMT. NALINA** W/o Late B.V. Ravikumar,
Aged about 40 years,
Both are Agriculturists,
R/o Shivapura Village, Kasaba Hobli,
Holalkere Taluk.
 - 3. SHARANAPPA** S/o Late Kundurappa,
Aged about 55 years, Occ: Coolie,
R/o Shivapura Village, Kasaba Hobli,
Holalkere Taluk.
(BY PLEADER SRI.R.M.O. FOR DEFENDANT NO.1 & 2)
(BY PLEADER SRI.S.V.K., FOR DEFENDANT NO.3)

ORDERS ON I. A. NO. I

The Applicants / plaintiffs have filed IA No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to restrain the defendants, their men, agents, servants etc., from interfering or causing any kind of obstruction with the peaceful possession and enjoyment of the plaintiffs' over the suit property, in any manner, till disposal of the suit in the ends of justice.

2. According to plaintiffs, in the accompanying affidavit it is sworn that, the plaintiffs have filed this suit against the defendants for Declaration & permanent injunction with respect to the suit property. It is further stated that, the plaintiff No.1 is his mother and plaintiff No.2 is his sister and they are all the legal heirs of one late G.S.Chandrappa S/o Dummi Shivalingappa of Shivapura village, Kasaba Honli, Holalkere Taluk. It is further stated that, the suit schedule property is the joint family property of plaintiffs. It is further stated that, the revenue entries still stands in the name of defendants No.1 and 2. It is further stated that, earlier late G.S.Chandrappa who is the husband of 1st plaintiff and father of plaintiff No.2 and 3, had purchased the suit schedule property from one Kundurappa, Nagendrappa and Rudrappa sons of Talavar Hanumanthappa of Shivapura village, Holalkere through a Regd.Sale Deed dated:17.12.1979. It is further stated that, after the said Sale Deed, the said G.S.Chandrappa was put into possession and he was enjoying the suit schedule property along with his family members. It is further stated that, though the suit schedule property was transferred in the name of Chandrappa due to the mistake committed by the Revenue authorities the khatha of the suit schedule property was merged with another land that belonged to defendant No.1 & 2 in Re.Sy.No.16/4. It is further stated that, the said Chandrappa did not make any effort to get the khatha changed in his name and nevertheless he was in peaceful possession and enjoyment of the suit schedule property. It is further stated that, the said G.S.Chandrappa died recently leaving behind the plaintiffs as his legal heirs and also the suit schedule property. It is further

stated that, after the death of G.S.Chandrappa, the plaintiffs have inherited the suit schedule property and they are in peaceful possession and enjoyment of the same without any interference from any body, but the khatha of the land still stands in the name of defendant No.1 & 2. It is further stated that, they had approached the defendants No.1 & 2 in the 1st week January - 2022 requesting them to give their consent for the change of khatha in the name of plaintiffs as the suit schedule property was tagged with the land of the defendants No.1& 2 in Re.Sy.No.16/4 measuring 02 acres 13 guntas, but the actual land possessed by the defendant No.1& 2 was 01 acre 13 guntas. It is further stated that, the defendant No.1& 2 had assured these plaintiffs that they would give their consent for the change of khatha in their names, but the defendants No.1 & 2 went on postponing the same on one pretext or the other but did not come forward to give their consent for the change of khatha in the name of plaintiffs in respect of the suit schedule property. It is further stated that, defendant No.1 & 2 have denied the right and ownership of these plaintiffs in the suit schedule property and further have refused to give their consent to change the kathha in the name of the plaintiffs. It is further stated that, the defendant No.3 is a stranger to the suit schedule property and he has no right, title, or possession over the suit schedule property and he is unnecessarily trying to interfere with the peaceful possession and enjoyment of the plaintiffs in the suit schedule property. It is further stated that, the defendant No.3 without having any right has filed a suit in O.S.No.15/2022 dated: 07.01.2022 on the file of the Prl.Civil Judge and JMFC, Holalkere

against some persons including defendants No.1 & 2 seeking declaration and permanent injunction in respect of a land in Re.Sy.No.16/4 totally measuring 02 acres 13 guntas. It is further stated that, it has come to the knowledge of the plaintiffs that, the defendant No.3 by taking advantage of the pending suit is unnecessarily trying to interfere with the plaintiffs possession in the suit schedule property and the plaintiffs had advised him several times but he has not cared for the same. It is further stated that, the act of defendant No.3 in trying to interfere with their peaceful possession and enjoyment in the suit schedule property is highly mischievous and high handed. It is further stated that, the defendant No.1 & 2 have denied their ownership and right over the suit schedule property and unnecessary interference made by the defendant No.3. Hence, the plaintiffs having no other alternative way, have approached this court of law seeking for the relief of declaration and permanent injunction. It is further stated that, they have got prima-facie case and balance of convenience lies in their favour. Hence, prayed to allow this application.

3. Per Contra, the defendants No.1&2 have contended that, the plaintiffs have filed the above suit against the defendants claiming that they are the owners of a acre land in Re.Sy.No.16/4 out of 02 acres 13 guntas situated at Shivapura Village, Holalkere Taluk. It is further contended that, the defendant No.1 & 2 are the owners of 01 acre 13 guntas of land in Re.Sy.No.16/4 of Shivapura Village, Holalkere Taluk. It is further contended that, the land of the plaintiffs ie., 01 acre has been not mutated in the names of plaintiffs due to mistake committed by the revenue authorities and the said 01

acre of land is still continue in the name of defendants No.1 & 2. It is further contended that, these defendants on 1 acre of land is for the plaintiffs to claim declaration on 01 acre of land in Re.Sy No.16/4 and further these defendants have no objection to the plaintiffs to get their names mutated in the revenue records pertaining to 01 acre of land as per the Regd. Sale Deed dated:17.12.1979. It is further contended that, the defendants No.1&2 have admitted the peaceful possession and enjoyment of 01 acre of land by the plaintiffs in Re.Sy.16/4 of Shivapura Village, Holalkere Taluk. Hence, he prayed to dispose off the suit of the plaintiffs in accordance with law.

4. Per Contra, the defendant No.3 has contended that, the application filed by the plaintiffs is not maintainable in law and the contents of the affidavit are all false and frivolous. It is further contended that, this application is not maintainable in law and prayed to dismiss the application. It is further contended that, he is the absolute and rightful owner in peaceful possession of the suit property since 45 years. It is further contended that, he himself and his family members were /are using and enjoying the same as owners without any interruption. It is further contended that, one Hanumanthappa S/o Bheemappa is the propositus of the 3rd defendant's family and he had acquired the suit property through a registered Exchange deed dated:18.10.1976 by giving his land bearing Sy.No.29/1P3,situated at Hulemalali Village, Kasaba Hobli, Holalkere Tq to the family of the defendants No.1&2. It is further contended that, since then, he was using and enjoying the same as an absolute owner. It is further contended that, the said

Hanumanthappa S/o Bheemappa has not changed the khatha of the suit property in his name, as per the said Registered Exchange Deed. It is further stated that, after the death of the said Hanumanthappa S/o Bheemappa, his children were partitioned the family properties, at that time, the suit property was fallen to the share of Kundurapa S/o Hanumanthappa and he developed the suit property by growing coconut saplings. It is further contended that, since then, the said Kundurapa S/o Hanumanthappa was also enjoying the suit property, without anybody interference and without changing the khatha of the same in his name. It is further contended that, by taking advantage of the same, the family members of the defendants No.1& 2 by colluding with each other have got changed the khatha in the name of the mother of the defendant No.1 and anut of the defendant No.2 by name Smt.Rathnamma W/o Veerabhadrappa. It is further contended that, the said fact is known to the family of the defendants No.1&2 by giving false statement to the revenue authorities and created MR No.H38/2011-2012. It is further contended that, after the death of the said Smt.Rathnamma W/o Veerabhadrappa, the defendant No.1&2 have changed the khatha of the same. It is further contended that, the said fact is known to the defendants No.1&2 by giving false statement to the revenue authorities and created MR No.H13/2020-2021. It is further contended that, the defendant No.3 filed a suit in O.S.No.15/2022 on the file of the Prl.Civil Judge and JMFC, Holalkere against some persons including defendants No.1 & 2 seeking declaration and permanent injunction in respect of suit land in Re.Sy.No.16/4 totally measuring 02 acres 13 guntas.

It is further contended that, there is no prima-facie case and balance of convenience do not lies in favour of the plaintiffs. As against this, the defendant No.3 has got prima-facie case and balance of convenience in his favour. If the temporary injunction is granted, great injustice and illegal injury will caused to the defendant No.3. On all these grounds, they prayed to reject to IA No.1.

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

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

1. *Whether the plaintiffs have established prima-facie case to allow the IA No.1?*
2. *Whether the balance of convenience lies in favour of plaintiffs to allow the IA No.1?*
3. *Whether irreparable loss or hardship will be caused to the plaintiffs if injunction is not granted?*
4. *What order?*

7. My answer for the above points are as under because of my below-discussed reasons:

Point No.1 - In the NEGATIVE

Point No.2 - In the NEGATIVE

Point No.3 - In the NEGATIVE

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

REASONS

POINT NO.1:

8. The plaintiff has filed the suit against the defendants seeking relief of declaration and permanent injunction pertaining to the suit property. The

plaintiffs have filed this present application seeking temporary injunction as against the defendants.

9. The Applicants / plaintiffs have filed IA No.1 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to restrain the defendants, their men, agents, servants etc., from interfering or causing any kind of obstruction with the peaceful possession and enjoyment of the plaintiffs' over the suit property, in any manner, till disposal of the suit in the ends of justice.

10. 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 a 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.

11. 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.

12. 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.

13. It is specific case of the plaintiffs that, they have filed this suit against the defendant for the relief of declaration and permanent injunction pertaining to the suit property. It is further stated that, the plaintiff No.1 is his mother and plaintiff No.2 is his sister and they are all the legal heirs of one late G.S.Chandrappa S/o Dummi Shivalingappa of Shivapura village, Kasaba Honli, Holalkere Taluk. It is further stated that, the suit schedule property is the joint family property of plaintiffs. It is further stated that, the revenue entries still stands in the name of defendants No.1 and 2. It is further stated

that, earlier late G.S.Chandrappa who is the husband of 1st plaintiff and father of plaintiff No.2 and 3, had purchased the suit schedule property from one Kundurappa, Nagendrappa and Rudrappa sons of Talavar Hanumanthappa of Shivapura village, Holalkere through a Regd.Sale Deed dated:17.12.1979. It is further stated that, after the said Sale Deed, the said G.S.Chandrappa was put into possession and he was enjoying the suit schedule property along with his family members. It is further stated that, though the suit schedule property was transferred in the name of Chandrappa due to the mistake committed by the Revenue authorities the khatha of the suit schedule property was merged with another land that belonged to defendant No.1 & 2 in Re.Sy.No.16/4. It is further stated that, the said Chandrappa did not make any effort to get the khatha changed in his name and nevertheless he was in peaceful possession and enjoyment of the suit schedule property. It is further stated that,the said G.S.Chandrappa died recently leaving behind the plaintiffs as his legal heirs and also the suit schedule property. It is further stated that, after the death of G.S.Chandrappa, the plaintiffs have inherited the suit schedule property and they are in peaceful possession and enjoyment of the same without any interference from any body, but the khatha of the land still stands in the name of defendant No.1 & 2. It is further stated that, they had approached the defendants No.1 & 2 in the 1st week January - 2022 requesting them to give their consent for the change of khatha in the name of plaintiffs as the suit schedule property was tagged with the land of the defendants No.1& 2 in Re.Sy.No.16/4 measuring 02 acres 13 guntas, but the actual land possessed by

the defendant No.1& 2 was 01 acre 13 guntas. It is further stated that, the defendant No.1& 2 had assured these plaintiffs that they would give their consent for the change of khatha in their names, but the defendants No.1 & 2 went on postponing the same on one pretext or the other but did not come forward to give their consent for the change of khatha in the name of plaintiffs in respect of the suit schedule property. It is further stated that, defendant No.1 & 2 have denied the right and ownership of these plaintiffs in the suit schedule property and further have refused to give their consent to change the kathha in the name of the plaintiffs. It is further stated that, the defendant No.3 is a stranger to the suit schedule property and he has no right, title, or possession over the suit schedule property and he is unnecessarily trying to interfere with the peaceful possession and enjoyment of us in the suit schedule property. It is further stated that, the defendant No.3 without having any right has filed a suit in O.S.No.15/2022 dated: 07.01.2022 on the file of the Prl.Civil Judge and JMFC, Holalkere against some persons including defendants No.1 & 2 seeking declaration and permanent injunction in respect of a land in Re.Sy.No.16/4 totally measuring 02 acres 13 guntas. It is further stated that, it has come to the knowledge of the plaintiffs that, the defendant No.3 by taking advantage of the pending suit is unnecessarily trying to interfere with the plaintiffs possession in the suit schedule property and the plaintiffs had advised him several times but he has not cared for the same. It is further stated that, the act of defendant No.3 in trying to interfere with their peaceful possession and enjoyment in the suit schedule property is highly mischievous

and high handed. It is further stated that, the defendant No.1 & 2 have denied their ownership and right over the suit schedule property and unnecessary interference made by the defendant No.3. Hence, the plaintiffs having no other alternative way, have approached this court of law seeking for the relief of declaration and permanent injunction. It is further stated that, they have got prima-facie case and balance of convenience lies in their favour and more hardship will be caused to them, if the temporary injunction is not granted. If the application is allowed, no hardship will be caused to the other side. Hence the plaintiff prayed to allow the application.

14. In the supporting affidavit, the plaintiff No.3 sworn that, they have filed this suit against the defendants for the relief of declaration and permanent injunction pertaining to the suit property. It is further stated that, the plaintiff No.1 is his mother and plaintiff No.2 is his sister and they are all the legal heirs of one late G.S.Chandrappa S/o Dummi Shivalingappa of Shivapura village, Kasaba Honli, Holalkere Taluk. It is further stated that, the suit schedule property is the joint family property of plaintiffs. It is further stated that, the revenue entries still stands in the name of defendants No.1 and 2. It is further stated that, earlier late G.S.Chandrappa who is the husband of 1st plaintiff and father of plaintiff No.2 and 3, had purchased the suit schedule property from one Kundurappa, Nagendrappa and Rudrappa sons of Talavar Hanumanthappa of Shivapura village, Holalkere through a Regd.Sale Deed dated:17.12.1979. It is further stated that, after the said Sale Deed, the said G.S.Chandrappa was put into possession and he was enjoying the suit

schedule property along with his family members. It is further stated that, though the suit schedule property was transferred in the name of Chandrappa due to the mistake committed by the Revenue authorities the khatha of the suit schedule property was merged with another land that belonged to defendant No.1 & 2 in Re.Sy.No.16/4. It is further stated that, the said Chandrappa did not make any effort to get the khatha changed in his name and nevertheless he was in peaceful possession and enjoyment of the suit schedule property. It is further stated that, the said G.S.Chandrappa died recently leaving behind the plaintiffs as his legal heirs and also the suit schedule property. It is further stated that, after the death of G.S.Chandrappa, the plaintiffs have inherited the suit schedule property and they are in peaceful possession and enjoyment of the same without any interference from any body, but the khatha of the land still stands in the name of defendant No.1 & 2. It is further stated that, they had approached the defendants No.1 & 2 in the 1st week January - 2022 requesting them to give their consent for the change of khatha in the name of plaintiffs as the suit schedule property was tagged with the land of the defendants No.1& 2 in Re.Sy.No.16/4 measuring 02 acres 13 guntas, but the actual land possessed by the defendant No.1& 2 was 01 acre 13 guntas. It is further stated that, the defendant No.1& 2 had assured these plaintiffs that they would give their consent for the change of khatha in their names, but the defendants No.1 & 2 went on postponing the same on one pretext or the other but did not come forward to give their consent for the change of khatha in the name of plaintiffs in respect of the suit schedule property. It is further stated

that, defendant No.1 & 2 have denied the right and ownership of these plaintiffs in the suit schedule property and further have refused to give their consent to change the kathha in the name of the plaintiffs. It is further stated that, the defendant No.3 is a stranger to the suit schedule property and he has no right, title, or possession over the suit schedule property and he is unnecessarily trying to interfere with the peaceful possession and enjoyment of us in the suit schedule property. It is further stated that, the defendant No.3 without having any right has filed a suit in O.S.No.15/2022 dated: 07.01.2022 on the file of the Prl.Civil Judge and JMFC, Holalkere against some persons including defendants No.1 & 2 seeking declaration and permanent injunction in respect of a land in Re.Sy.No.16/4 totally measuring 02 acres 13 guntas. It is further stated that, it has come to the knowledge of the plaintiffs that, the defendant No.3 by taking advantage of the pending suit is unnecessarily trying to interfere with the plaintiffs possession in the suit schedule property and the plaintiffs had advised him several times but he has not cared for the same. It is further stated that, the act of defendant No.3 in trying to interfere with their peaceful possession and enjoyment in the suit schedule property is highly mischievous and high handed. It is further stated that, the defendant No.1 & 2 have denied their ownership and right over the suit schedule property and unnecessary interference made by the defendant No.3. Hence, the plaintiffs having no other alternative way, have approached this court of law seeking for the relief of declaration and permanent injunction. It is further stated that, they have got prima-facie case and balance of convenience lies in their favour and

more hardship will be caused to them, if the temporary injunction is not granted. If the application is allowed, no hardship will be caused to the other side. It is further stated that, the defendants without having any sought of right, title and interest over the suit property, they are trying to obstruct them from their peaceful possession use and enjoyment of suit property. Further it is stated that, the acts of the defendants are infringing their legal right, so also dangerous to their possession over the suit property. If the defendants are allowed to do the same, they will be put into untold hardship. It is further stated that, if the present interim application is not allowed, the plaintiffs will be put to heavy loss. If the application is allowed no injury would cause to the other side, if application is not allowed they would put to untold hardship. They have made prima-facie case and balance of convenience lies in their favour.

15. The plaintiffs have placed the copy G-tree, certified copy of Sale Deed Dated:17.12.1979, RTC extract bearing Sy.No.16/4 for the year 2021-2022, RTC extract bearing Sy.No.16/4 for the year 2020-2021, copy of death certificate of Chandrappa G.S, certified copy of orders on IA No.1 & 4 passed in OS No.15/2023, certified copy of IA No.1 filed by the defendant No.3 in OS No.15/2023.

16. Per Contra, the defendants No.1&2 have contended that, the plaintiffs have filed the above suit against the defendants claiming that they are the owners of a acre land in Re.Sy.No.16/4 out of 02 acres 13 guntas situated at Shivapura Village, Holalkere Taluk. It is further contended that, the

defendant No.1 & 2 are the owners of 01 acre 13 guntas of land in Re.Sy.No.16/4 of Shivapura Village, Holalkere Taluk. It is further contended that, the land of the plaintiffs ie., 01 acre has been not mutated in the names of plaintiffs due to mistake committed by the revenue authorities and the said 01 acre of land is still continue in the name of defendants No.1 & 2. It is further contended that, these defendants on 1 acre of land is for the plaintiffs to claim declaration on 01 acre of land in Re.Sy No.16/4 and further these defendants have no objection to the plaintiffs to get their names mutated in the revenue records pertaining to 01 acre of land as per the Regd. Sale Deed dated:17.12.1979. It is further contended that, the defendants No.1&2 have admitted the peaceful possession and enjoyment of 01 acre of land by the plaintiffs in Re.Sy.16/4 of Shivapura Village, Holalkere Taluk. Hence, he prayed to dispose off the suit of the plaintiffs in accordance with law.

17. It is specific case of the defendant No.3 that, the suit filed by the plaintiffs is not tenable, misconceived and not maintainable and is liable to be dismiss with costs. The plaintiffs have sought for decree for the relief of declaration and permanent injunction pertaining to the suit property. It is further contended that, the acquisition of suit property and nature of suit property is disputed by the defendant No.3. It is further contended that, the defendants have denied the entire contents of the plaint averments. It is further contended that, the defendant No.3 is owner in possession and enjoyment of the suit schedule property. It is further contended that, the application filed by the plaintiffs is not maintainable in law and the contents of the affidavit are all

false and frivolous. It is further contended that, this application is not maintainable in law and prayed to dismiss the application. It is further contended that, he is the absolute and rightful owner in peaceful possession of the suit property since 45 years. It is further contended that, he himself and his family members were /are using and enjoying the same as owners without any interruption. It is further contended that, one Hanumanthappa S/o Bheemappa is the propositus of the 3rd defendant's family and he had acquired the suit property through a registered Exchange deed dated:18.10.1976 by giving his land bearing Sy.No.29/1P3,situated at Hulemalali Village, Kasaba Hobli, Holalkere Tq to the family of the defendants No.1&2. It is further contended that, since then, he was using and enjoying the same as an absolute owner. It is further contended that, the said Hanumanthappa S/o Bheemappa has not changed the khatha of the suit property in his name, as per the said Registered Exchange Deed. It is further stated that, after the death of the said Hanumanthappa S/o Bheemappa, his children were partitioned the family properties, at that time, the suit property was fallen to the share of Kundurapa S/o Hanumanthappa and he developed the suit property by growing coconut saplings. It is further contended that, since then, the said Kundurapa S/o Hanumanthappa was also enjoying the suit property, without anybody interference and without changing the khatha of the same in his name. It is further contended that, by taking advantage of the same, the family members of the defendants No.1& 2 by colluding with each other have got changed the khatha in the name of the mother of the defendant No.1 and anut of the

defendant No.2 by name Smt.Rathnamma W/o Veerabhadrappa. It is further contended that, the said fact is known to the family of the defendants No.1&2 by giving false statement to the revenue authorities and created MR No.H38/2011-2012. It is further contended that, after the death of the said Smt.Rathnamma W/o Veerabhadrappa, the defendant No.1&2 have changed the khatha of the same. It is further contended that, the said fact is known to the defendants No.1&2 by giving false statement to the revenue authorities and created MR No.H13/2020-2021. It is further contended that, the defendant No.3 filed a suit in O.S.No.15/2022 on the file of the Prl.Civil Judge and JMFC, Holalkere against some persons including defendants No.1 & 2 seeking declaration and permanent injunction in respect of suit land in Re.Sy.No.16/4 totally measuring 02 acres 13 guntas. It is further contended that, there is no prima-facie case and balance of convenience do not lies in favour of the plaintiffs. As against this, the defendant No.3 has got prima-facie case and balance of convenience in his favour. If the temporary injunction is granted, great injustice and illegal injury will caused to the defendant No.3. It is further contended that, the defendants are the absolute owners in possession and enjoyment of the suit schedule property and also having right, title and interest in the suit schedule property. It is further contended that, although the plaintiffs are aware of all the above facts, they have brought a false suit against the defendant No.3 with bad intention to cause trouble to the defendant No.3. If the plaintiffs' suit is not dismissed, the defendant No.3 will be put to great loss loss and injustice. Hence, he prayed to dismiss the suit of

the plaintiffs with exemplary costs in the interest of justice. On all these grounds, he prayed to reject to IA No.1. It is further contended that, the suit of the plaintiffs against the defendant No. 3 with respect to the suit property is not tenable and the suit of the plaintiffs is bad for non-joinder of the necessary parties. It is further contended that, the plaintiffs have not approached the court with clean hands. It is further contended that, the plaintiffs are not entitled for any reliefs much less as prayed for. Hence the plaintiffs have not made out any case much less prima-facie case and balance of convenience does not lies in their favour. Hence, he prayed to dismiss the IA No.I with compensatory costs.

18. 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.

19. It is to be noted that, the right of parties in suit property is to be decided after conclusion of trial. Further, the acquisition of suit property and nature of suit property is disputed by the defendant No.3. Further, the possession of the suit property is also disputed by the defendant No.3. Therefore, it can be safely held that, the plaintiffs have not made out prima-facie case and balance of convenience do not lies in their favour for grant of temporary injunction. Hence I answer point No.1 in the Negative.

POINTS NO.2 & 3:

20. 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. Under these circumstance, the balance of convenience is do not lies in favour of the plaintiffs and in favour of the defendants. Therefore for the reasons discussed above, this Court is of the considered view that the balance of convenience do not lies in favour of the plaintiffs and irreparable loss and injury would not be caused to plaintiffs if a temporary injunction is refused. Hence I answer points No.2 and 3 in the Negative.

POINT No.4:

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

ORDER

I.A.No.I filed by the plaintiffs under order 39
Rule 1 and 2 R/w Sec.151 of CPC is hereby dismissed.

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

(Dictated to the Stenographer directly on Computer, typed by her, order corrected and signed by me, then pronounced by me in the Open Court on this the 20th day of March – 2023)

(UMESHA M.P)
Prl. Civil Judge & JMFC
Holalkere

