

KACD420020512022



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 21st DAY OF APRIL - 2023

ORIGINAL SUIT No. 313 / 2022

PLAINTIFFS:

1. **SMT. SEETHAMMA** D/o Late.Sanjeevappa,
Aged about 70 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
2. **SMT. MEENAKSHAMMA** D/o Late.Sanjeevappa,
W/o Late.Thimmappa,
Aged about 50 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
3. **SMT. BASAMMA** D/o Sanjeevappa,
W/o Chandrappa,
Aged about 48 years, Occ:Agriculturist,
R/o Vaddarasiddamanahally Village,
Chitradurga Taluk & District.
(BY PLEADER SRI.K.S.N)

-V/s-

DEFENDANTS:

1. **CHIKKATHIMMAPPA** S/o Thimmappa,
Aged about 80 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
2. **SMT. SUMA H.** D/o Late Hanumanthappa,
W/o Hanumanthappa,
Aged about 38 years, Occ:Housewife,

- R/o Rangapur Village, Ramagiri Hobli,
Hosadurga Taluk.
3. **CHANDRASHEKHARA** S/o Late.Hanumanthappa,
Aged about 45 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
 4. **SMT. LAKKAMMA** W/o Late.Thimmappa,
Aged about 65 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
 5. **GOVINDASWAMY** S/o Late.Ramappa,
Aged about 40 years, Occ:Agriculturist &
Employee in Animal Husbandry Department,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
 6. **SMT. JAYAMMA** W/o Late.Ramappa,
Aged about 60 years,Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
 7. **SMT. RATHNAMMA** D/o Thimmappa,
W/o Dasappa,
Aged about 60 years, Occ:Housewife,
R/o Uganekatte Village,
Ramagiri Hobli, Holalkere Taluk,
 8. **SMT. KARIYAMMA** D/o Thimmanna,
W/o Giryappa,
Aged about 55 years, Occ:Housewife,
R/o Uganekatte Village,
Ramagiri Hobli, Holalkere Taluk,
 9. **SMT. JAYAMMA** D/o Late.Hanumappa,
W/o Ramappa,
Aged about 50 years, Occ:Housewife,
R/o Arebilachi Village, Bhadravathi Taluk,
Shivamogga District.
 10. **MANAJAPPA** S/o Late .Hanumappa,
Aged about 45 years, Occ:Agriculturist,
R/o Uganekatte Village,
Ramagiri Hobli, Holalkere Taluk.

(BY PLEADER SRLR.M.O.FOR DEFENDANTS)

PARTIES TO I. A. NO. 1

- APPLICANTS/ PLAINTIFFS:** 1. **SMT. SEETHAMMA** D/o Late.Sanjeevappa,
Aged about 70 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
2. **SMT. MEENAKSHAMMA** D/o Late.Sanjeevappa,
W/o Late.Thimmappa,
Aged about 50 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
3. **SMT. BASAMMA** D/o Sanjeevappa,
W/o Chandrappa,
Aged about 48 years, Occ:Agriculturist,
R/o Vaddarasiddamanahally Village,
Chitradurga Taluk & District.
(BY PLEADER SRI.K.S.N)

-V/s-

- OPPONENTS/DEFENDANTS:** 1. **CHIKKATHIMMAPPA** S/o Thimmappa,
Aged about 80 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
2. **SMT. SUMA H.** D/o Late Hanumanthappa,
W/o Hanumanthappa,
Aged about 38 years, Occ:Housewife,
R/o Rangapur Village, Ramagiri Hobli,
Hosadurga Taluk.
3. **CHANDRASHEKHARA** S/o Late.Hanumanthappa,
Aged about 45 years, Occ:Agriculturist,
R/o Uganekatte Vaddarahatty Village,
Ramagiri Hobli, Holalkere Taluk,
(BY PLEADER SRI.R.M.O.FOR DEFENDANTS)

ORDERS ON I. A. NO. 1

The Applicants / plaintiffs have filed IA No.1 under order XXXIX Rule 1 and
2 R/w Sec.151 of Civil Procedure Code praying to grant temporary injunction

restraining the defendant No.1 to 3, their authorized agents from alienating the suit schedule properties to anybody, in any manner, till disposal of the suit.

2. According to plaintiffs, the plaintiffs and the defendants were living under common nucleus under Mithakshara School of law among the Hindus. It is further stated that, they are the members of the joint family and the suit schedule properties are their joint family properties. It is further stated that, previously the said properties were belonged to one Thimmappa @ Thimmappa S/o Sanjeevappa @ Sanjeevanna of Uganekatte Vaddarahatty village, Ramagiri Hobli, Holakere Taluk and he was the absolute owner in possession and enjoyment of the said properties. It is further stated that, the said Thimmappa acquired the said properties through his ancestors. It is further stated that, the said Thimmappa sold the suit item No.1 & 2 properties out the suit properties under the nominal Regd. Sale Deed dated: 10.07.1969 without possession in favour of one N.R.Basappa S/o Narshappara Rangappa of N.G.Hally village, Ramagiri Hobli, Hoalkere Taluk. It is further stated that, the said N.R. Basappa has sold the said item No.1 & 2 properties in favour of Chikkathimmanna - the defendant No.1 in this case under Regd.Sale Deed dated:16.02.1976. It is further stated that, since the said Thimmappa @ Thimmappa was sold the said properties in favour of N.R. Basappa without possession of said properties, which are still in the family of the plaintiffs and defendants as the same are ancestral and joint family properties of plaintiffs and defendants. It is further stated that, the said

defendant No.1 has sold the suit schedule item No.1 property among the above said joint family properties in favour of defendant No.2 & 3 under the Regd. Sale Deed dated: 30.06.2021 illegally and high handedly though the said property is also the ancestral and joint family property of the plaintiffs and defendant No.4 to 10 and in that properties the plaintiffs and defendants have also got right and share over the said properties. It is further stated that, the defendant No.2 & 3, on the guise of the khatha of the suit properties were standing in his name of defendant No.1, they played fraud upon him with respect o suit item No.1 property and the khatha of the suit item No.2 property is still standing in the name of defendant No.1 and further the khatha of the item No.3 property is still standing in the name of propositor of the family by name Thimmanna S/o Sanjeevanna. It is further stated that, the defendant No.1 is too aged and he is not in a position to understand the things properly and by taking this undue advantage, the defendant No.2 & 3 have obtained the alleged Regd. Sale Deed dated:30.06.2021 from the defendant No.1 illegally for which the defendant No.2 & 3 do not have any right to do so. It is further stated that, the defendants No.2 & 3 are making serious and hectic efforts to alienate the suit schedule item No.1 property to third party, illegally by taking the undue advantage that, the khatha of the said property is standing in their names in order to defeat and defraud the plaintiffs valuable right over the said property by denying the title of the plaintiffs over the said property when confronted, for which the defendant No.2 & 3 have no

right to do so. Hence, the plaintiffs asked the defendants No.2 & 3 and demanded their legitimate share in the suit schedule properties for which the defendant No.2 & 3 are postponing the same and ultimately refused to give the share to the plaintiffs. It is further stated that, the defendants No.1, 4 to 10 have also got right and share over the suit properties as they are also the members of joint family. Hence, they have been made as the parties to the suit. It is further stated that, the acts of the defendant No.2 & 3 are highly illegal and high handed which cannot be prevented without the assistance of this Court. It is further stated that, the plaintiffs have advised the defendants No.2&3 for not to continue with their illegal activities about the suit schedule item No.1 property, but their efforts are went in vain. Hence, this suit is for Declaration, partition and separate possession with respect to the suit properties. It is further contended that, the defendants No.1 to 3 are trying to sell the suit properties. It is further contended that, the defendants No.1 to 3 have no right, title and interest over the suit properties. So it is just and necessary to restrain the defendants No.1 to 3 from alienating the suit properties in any manner till the rights of the parties to the suit is to be adjudicated. If the defendants No.1 to 3 are succeeding in their act, the plaintiffs will put into great loss and injustice. Hence prayed to allow the application.

3. In response of suit summons, the defendants appeared before this Court through their counsel and the defendant No.1 to 3 filed their written

statement along with counter claim by denying the entire plaint averments. It is further contended that, there was a partition in the family of the plaintiffs and other defendants in the year 1968. It is further contended that, the said Thimmappa was the owner of the suit item No.1 & 2 properties. It is further contended that, the said Thimmappa had sold the suit item No.1 & 2 properties to one N.R.Basappa vide Regd. Sale Deed dated: 10.07.1969. It is further contended that, the said N.R.Basappa had sold the said item No.1 & 2 properties in favour of Chikkathimmanna - the defendant No.1 in this case vide Regd. Sale Deed dated: 16.02.1976. It is further contended that, the suit item No.1 & 2 properties are the self acquired property of the defendant No.1. It is further contended that, the defendant No.1 had sold the suit item No.1 & 2 properties to the defendant No.2 & 3 vide Regd. Sale Deed dated: 30.06.2021. It is further contended that, since the date of purchase of suit item No.1 & 2 properties, the defendant No.2 & 3 are in possession and enjoyment of the same. It is further contended that, the plaintiffs have no right, title or interest over the same. It is further contended that, suit is bad for non-joinder of parties. It is further contended that, the suit of the plaintiffs is barred by Law of Limitation. It is further contended that, the court fee paid by the plaintiffs is insufficient. On these grounds, the defendant No.1 to 3 prayed to dismiss the IA No.1 with costs.

4. I have heard the arguments of learned counsel for the plaintiffs and defendants on IA No.1. 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 plaintiff if injunction is not granted?*
5. *What order?*

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

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, partition and separate possession with respect to the suit properties. The plaintiffs have filed this present application seeking restraining the defendants from alienate the suit against the defendants No.1 to 3.

8. The Applicants / plaintiffs have filed IA No.1 under order XXXIX Rule 1 and 2 R/w Sec.151 of Civil Procedure Code praying to grant temporary injunction restraining the defendant No.1 to 3, their authorized agents from alienating the suit schedule properties to anybody, 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, the plaintiffs and the defendants were living under common nucleus under Mithakshara School of law among the Hindus. It is further stated that, they are the members of the joint family and the suit schedule properties are their joint family properties. It is further stated that, previously the said properties were belonged to one Thimmappa @ Thimmappa S/o Sanjeevappa @ Sanjeevanna of Uganekatte Vaddarahatty village, Ramagiri Hobli, Holakere Taluk and he was the absolute owner in possession and enjoyment of the said properties. It is further stated that, the said Thimmappa acquired the said properties through his ancestors. It is further stated that, the said Thimmappa sold the suit item No.1 & 2 properties out the suit properties under the nominal Regd. Sale Deed dated: 10.07.1969 without possession in favour of one N.R.Basappa S/o Narshappara Rangappa of N.G.Hally village, Ramagiri Hobli, Hoalkere Taluk. It is further stated that, the said N.R. Basappa has sold the said item No.1 & 2 properties

in favour of Chikkathimmanna - the defendant No.1 in this case under Regd.Sale Deed dated:16.02.1976. It is further stated that, since the said Thimmappa @ Thimmappa was sold the said properties in favour of N.R. Basappa without possession of said properties, which are still in the family of the plaintiffs and defendants as the same are ancestral and joint family properties of plaintiffs and defendants. It is further stated that, the said defendant No.1 has sold the suit schedule item No.1 property among the above said joint family properties in favour of defendant No.2 & 3 under the Regd. Sale Deed dated: 30.06.2021 illegally and high handedly though the said property is also the ancestral and joint family property of the plaintiffs and defendant No.4 to 10 and in that properties the plaintiffs and defendants have also got right and share over the said properties. It is further stated that, the defendant No.2 & 3, on the guise of the khatha of the suit properties were standing in his name of defendant No.1, they played fraud upon him with respect o suit item No.1 property and the khatha of the suit item No.2 property is still standing in the name of defendant No.1 and further the khatha of the item No.3 property is still standing in the name of propositor of the family by name Thimmanna S/o Sanjeevanna. It is further stated that, the defendant No.1 is too aged and he is not in a position to understand the things properly and by taking this undue advantage, the defendant No.2 & 3 have obtained the alleged Regd. Sale Deed dated:30.06.2021 from the defendant No.1 illegally for which the defendant No.2 & 3 do not have any right to do

so. It is further stated that, the defendants No.2 & 3 are making serious and hectic efforts to alienate the suit schedule item No.1 property to third party, illegally by taking the undue advantage that, the khatha of the said property is standing in their names in order to defeat and defraud the plaintiffs valuable right over the said property by denying the title of the plaintiffs over the said property when confronted, for which the defendant No.2 & 3 have no right to do so. Hence, the plaintiffs asked the defendants No.2 & 3 and demanded their legitimate share in the suit schedule properties for which the defendant No.2 & 3 are postponing the same and ultimately refused to give the share to the plaintiffs. It is further stated that, the defendants No.1, 4 to 10 have also got right and share over the suit properties as they are also the members of joint family. Hence, they have been made as the parties to the suit. It is further stated that, the acts of the defendant No.2 & 3 are highly illegal and high handed which cannot be prevented without the assistance of this Court. It is further stated that, the plaintiffs have advised the defendants No.2&3 for not to continue with their illegal activities about the suit schedule item No.1 property, but their efforts are went in vain. Hence, this suit is for Declaration, partition and separate possession with respect to the suit properties. It is further stated that, the defendants No.1 to 3 are trying to sell the suit properties. So it is just and necessary to restrain the defendants No.1 to 3 from alienating the suit properties, in any manner till the rights of the parties to the suit is to be adjudicated. If the defendants No.1 to 3 are

succeeding in their act, the plaintiffs will put into great loss and injustice. It is stated that if the present interim application is not allowed, the plaintiffs will be put to heavy loss. On the other hand, if the application is allowed, no harm or inconvenience will be caused to the other side. Therefore, prayed to allow the present interim application and grant temporary injunction as prayed.

13. In the supporting affidavit, the plaintiff No.2 sworn to an affidavit that, the plaintiffs and the defendants were living under common nucleus under Mithakshara School of law among the Hindus. It is further stated that, they are the members of the joint family and the suit schedule properties are their joint family properties. It is further stated that, previously the said properties were belonged to one Thimmappa @ Thimmappa S/o Sanjeevappa @ Sanjeevanna of Uganekatte Vaddarahatty village, Ramagiri Hobli, Holakere Taluk and he was the absolute owner in possession and enjoyment of the said properties. It is further stated that, the said Thimmappa acquired the said properties through his ancestors. It is further stated that, the said Thimmappa sold the suit item No.1 & 2 properties out the suit properties under the nominal Regd. Sale Deed dated: 10.07.1969 without possession in favour of one N.R.Basappa S/o Narshappara Rangappa of N.G.Hally village, Ramagiri Hobli, Hoalkere Taluk. It is further stated that, the said N.R. Basappa has sold the said item No.1 & 2 properties in favour of Chikkathimman - the defendant No.1 in this case under Regd.Sale Deed dated:16.02.1976. It is further stated that, since the said Thimmappa @ Thimmappa was sold the

said properties in favour of N.R. Basappa without possession of said properties, which are still in the family of the plaintiffs and defendants as the same are ancestral and joint family properties of plaintiffs and defendants. It is further stated that, the said defendant No.1 has sold the suit schedule item No.1 property among the above said joint family properties in favour of defendant No.2 & 3 under the Regd. Sale Deed dated: 30.06.2021 illegally and high handedly though the said property is also the ancestral and joint family property of the plaintiffs and defendant No.4 to 10 and in that properties the plaintiffs and defendants have also got right and share over the said properties. It is further stated that, the defendant No.2 & 3, on the guise of the khatha of the suit properties were standing in his name of defendant No.1, they played fraud upon him with respect o suit item No.1 property and the khatha of the suit item No.2 property is still standing in the name of defendant No.1 and further the khatha of the item No.3 property is still standing in the name of propositor of the family by name Thimmanna S/o Sanjeevanna. It is further stated that, the defendant No.1 is too aged and he is not in a position to understand the things properly and by taking this undue advantage, the defendant No.2 & 3 have obtained the alleged Regd. Sale Deed dated:30.06.2021 from the defendant No.1 illegally for which the defendant No.2 & 3 do not have any right to do so. It is further stated that, the defendants No.2 & 3 are making serious and hectic efforts to alienate the suit schedule item No.1 property to third party, illegally by taking the undue

advantage that, the khatha of the said property is standing in their names in order to defeat and defraud the plaintiffs valuable right over the said property by denying the title of the plaintiffs over the said property when confronted, for which the defendant No.2 & 3 have no right to do so. Hence, the plaintiffs asked the defendants No.2 & 3 and demanded their legitimate share in the suit schedule properties for which the defendant No.2 & 3 are postponing the same and ultimately refused to give the share to the plaintiffs. It is further stated that, the defendants No.1, 4 to 10 have also got right and share over the suit properties as they are also the members of joint family. Hence, they have been made as the parties to the suit. It is further stated that, the acts of the defendant No.2 & 3 are highly illegal and high handed which cannot be prevented without the assistance of this Court. It is further stated that, the plaintiffs have advised the defendants No.2&3 for not to continue with their illegal activities about the suit schedule item No.1 property, but their efforts are went in vain. Hence, this suit is for Declaration, partition and separate possession with respect to the suit properties. It is further stated that, the defendants No.1 to 3 are trying to sell the suit properties. So it is just and necessary to restrain the defendants No.1 to 3 from alienating the suit properties, in any manner till the rights of the parties to the suit is to be adjudicated. If the defendants No.1 to 3 are succeeding in their act, the plaintiffs will put into great loss and injustice. It is 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.

14. The Plaintiffs have placed the copy of RTC extract with respect to Sy.No. 63/13 for the year 1965-1966, copy of RTC extract with respect to Sy.No.63/13 for the period from 1975-1976 to 1979-1980, copy of RTC extract with respect to Sy.No.63/13 for the year 2019-2020, copy of RTC extract with respect to Sy.No.63/13 for the year 2022-2023, certified copy of the Village Form No.II / RTC extract with respect to Sy.No.64/13 for the period from 1971-1972 to 1974-75, copy of the Village Form No.II / RTC extract with respect to Sy.No.64/2 for the period from 1971-1972 to 1974-1975, copy of RTC extract with respect to Sy.No.64/2 for the year 1965 - 1966, copy of RTC extract with respect to Sy.No.64/2 for the year 2017 - 2018, copy of the Village Form No.II / RTC extract with respect to Sy.No.64/5 for the period from 1971- 1972 to 1974-75, copy of RTC extract with respect to Sy.No.64/5, copy of RTC extract with respect to Sy.No.64/5 for the year 1978-1979 to 1979-80, copy of RTC extract with respect to Sy.No.64/5 for the year 2022-2023, G-tree of the family of the plaintiffs, copy of M.R.No.H1/2021-2022 with respect to Sy.No.63/13, copy of M.R. No.7/2001-02, copy of Sale Deed dated:16.02.1973, copy of the Regd.Sale Deed dated:30.06.2021, copy of the Sale Deed dated:10.07.1969.

15. It is specific case of the defendants No.1 to 3 that, there was a partition in the family of the plaintiffs and other defendants in the year 1968. It is further contended that, the said Thimmappa was the owner of the suit item No.1 & 2 properties. It is further contended that, the said Thimmappa had sold the suit item No.1 & 2 properties to one N.R.Basappa vide Regd. Sale Deed dated: 10.07.1969. It is further contended that, the said N.R.Basappa had sold the said item No.1 & 2 properties in favour of Chikkathimmanna - the defendant No.1 in this case vide Regd. Sale Deed dated: 16.02.1976. It is further contended that, the suit item No.1 & 2 properties are the self acquired property of the defendant No.1. It is further contended that, the defendant No.1 had sold the suit item No.1& 2 properties to the defendant No.2 & 3 vide Regd. Sale Deed dated:30.06.2021. It is further contended that, since the date of purchase of suit item No.1 & 2 properties, the defendant No.2 & 3 are in possession and enjoyment of the same. It is further contended that, the plaintiffs have no right, title or interest over the same. It is further contended that, suit is bad for non-joinder of parties. It is further contended that, the suit of the plaintiffs is barred by Law of Limitation. It is further contended that, the court fee paid by the plaintiffs is insufficient. On these grounds, the defendant No.1 to 3 prayed to dismiss the IA No.1 with costs.

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 No.1 to 3 that will leads to unnecessary complications and multiplicity of suit. Further, the acquisition of the suit properties and nature of the suit properties is disputed by the defendants No.1 to 3. Hence it is shown that, balance of convenience lies in favour of plaintiffs. Taking in consideration of nature of suit and rights of parties to be decided in present suit in respect of suit properties, if ad-interim temporary injunction as prayed for not granted, the plaintiffs will be put to hardship and injury. On the other hand no hardship or injury would be caused to defendants No.1 to 3 if temporary injunction as prayed for is granted. The plaint averments, affidavit annexed to I.A No. 1 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 No.1 to 3. 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 No.1 to 3. 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.1 filed by the plaintiffs under order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant No. 1 to 3 are 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 21st day of APRIL -2023)

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

