

KACM020032532022



IN THE COURT OF PRL. SENIOR CIVIL JUDGE & CJM
CHIKKAMAGALURU

Present: SRI NANDEESHA.R.P.,
B.A. (Law), LL.M.,
Prl. Sr. Civil Judge and CJM,
Chikkamagaluru
O.S. No.183/2022

Dated 5th day of July 2023

- Plaintiff :
1. Smt. Parvathamma
W/o Veerabhdarappa,
aged about 70 years,
Housewife,
R/o Mallenahalli and post,
Chikkamagaluru Taluk.
 - 2: Sri.Revanna
S/o Late Channabasappa
aged about 55 years
Housewife
R/o Mallenahalli and post
Chikkamagaluru Taluk.
 - 3: Sri. Girish.M.
S/o Late Hemavathi
aged about 33 years
Housewife
R/o Mallenahalli and post
Chikkamagaluru Taluk

KACM020032532022



(By Sri J.K.Somashekhar, Advocate.)

VERSUS

- Defendent: 1. Sri. Basavaraju
S/o Late Channabasappa,
aged about 65 years,
R/o Bhaktharahalli Village,
Mallenahalli Post,
Chikkamagaluru Taluk.
- 2: Sri. Nirvanappa
S/o Late Channabasappa
aged about 59 years
R/o Bhaktharahalli Village
Mallenahalli Post
Chikkamagaluru Taluk
- 3: Smt. Renuka
D/o Late Channabasappa
aged about 58 years
Housewife
R/o Guddabeeranalli
Borgenahalli Post
Tarikere Taluk.
- 4: Sri. Suresh
S/o Late Channabasappa
aged about 49 years
Agriculturist
R/o. Bommenahalli Village
Mallenahalli Post
Chikkamagaluru Taluk

KACM020032532022



5: Sri. Sathish.S.N.
S/o Nirvanappa.C. Agriculturist
R/o Suraguppe Village
Mallenahalli Post
Chikkamagaluru Taluk

6: Sri. T.K. Parvathegowda
S/o T.P. Krishnegowda
aged about 33 years
R/o Kaimara Village and Post
Chikkamagaluru Taluk.

7: Sri.T.K.Raghavendra
S/o T.P. Krishnegowda
aged about 31 years
R/o Kaimara Village and Post
Chikkamagaluru Talu

(D.1,3,4,5 By Sri T.K.N., Advocate)

(D.6 & 7 By Sri H.C.J., Advocate)

(D.2 - Exparte)

PARTIES TO I.A.No.I

Applicant/

plaintiffs: Smt.Parvathamma and 2 others

V/s

Opponent/

defendants : Basavaraju and 6 others

* * * * *

KACM020032532022

ORDERS ON I.A.NO.I

The plaintiffs have filed this application under Order XXXIX Rule 1 and 2 of C.P.C., seeking an order of Temporary Injunction against the defendants to restrain them from alienating the plaint schedule properties, pending disposal of the suit.

7. In support of this application, the plaintiff No.1 has filed affidavit deposing that they have filed the suit for partition and separate possession and declaration, the defendants are making hurried attempts to alienate the application schedule properties in order to deprive the rights of the plaintiffs over the suit schedule properties, if they succeed in their attempts, the plaintiffs would be put to irreparable loss and injury. They submit that they have got prima facie case and balance of convenience lies in their favour. On these grounds, the plaintiffs prayed to issue an order of temporary

KACM020032532022



injunction.

3. On the other hand, the defendants No.1, 6 and 7 have filed written statement and adopted the same as objection of the application. In the written statement the defendant No.1 has submitted that the plaintiffs No.2 wanted to go out fo the family, hence he has received sum of Rs.21,075/- in the year 1986 from defendants No.1 to 4 towards his share, thereafter the defendants No.1 to 4 have got partitioned the suit schedule properties under registered partition deed. He submits that item No.11 and 12 were granted in favour of defendants No.1, therefore, they are his self acquired properties, there is no existence of joint family. He further contended that he has sold item No.2 and 5 of the plaint schedule properties to the defendant No.6 and 7.

4. The defendants No.6 and 7 have contended in their written statement that they have purchased item

KACM020032532022



No.2, 5 and 12 of the suit schedule properties from defendants No.1 to 4 under registered sale deeds after partition among the defendants No.1 to 4, they have purchased these properties after thorough enquiry, therefore, they are the bonafide purchasers. They submit that they are the absolute owners of item No.2, 5, and 12 of the suit schedule properties. On these grounds, they prayed to dismiss the suit.

5. Heard the arguments of learned counsel for the plaintiffs and the learned counsels for the defendants.

6. Now the points for arises for my consideration are:

1. Whether the plaintiffs proved that they have got prima-facie case in their favour?
2. Whether the balance of convenience lies in favour of plaintiffs?
3. Whether plaintiffs proved that they will be put to irreparable loss and injury if temporary injunction is not granted?

KACM020032532022



4. What order?

7. My answers to the above said points are as follows:

Point No.1 : In the negative

Point No.2 : In the negative

Point No.3 : In the negative

Point No.4 : As per final order

for the following:

REASONS

8. **Point No.1 to 3:-** These points have been taken up together for common discussion in order to avoid repetition of facts.

9. Case of the plaintiffs is that the plaintiffs and defendant No.1 to 5 are members of Hindu joint family, the suit schedule properties are ancestral properties of plaintiffs and defendant No.1 to 5, after the death of late Channabasappa who was the progenitor of the family, the defendant No.1 got transferred the khata of the suit

KACM020032532022



schedule properties into his name and sold portion of the joint family properties to the defendant No.6 and 7 without informing the plaintiffs and their consent. They further contended that the plaintiffs are having 3/5th share in the suit schedule properties, but the defendant No.1 refused to effect the partition. On the other hand the defendant No.1 has contended that the plaintiff No.2 had taken Rs.21,075/- in the year 1986 from the defendants in lieu of share of his father and went out of the family and he has purchased a land, thereby the joint family was disrupted in the year 1986 itself, item No.11 and 12 of suit schedule properties are granted lands to defendant No.4, item No.2 and 5 are purchased by the defendant No.6 and 7, therefore the suit is not maintainable. The defendant No.1 further contended that the defendant No.1 to 4 got partitioned the family properties under a registered partition deed dated

KACM020032532022



07/11/1994. The defendant No.6 and 7 contended that they have purchased item No.2, 5 and 12 after the partition in the family of plaintiffs and defendant No.1 to 5 and they are bonafide purchaser hence the suit is liable to be dismissed. The plaintiffs have filed the present application seeking temporary injunction to restrain the defendants from alienating the application/suit schedule properties. In order to show that the plaintiffs are having prima-facie case in their favour, the plaintiffs have produced RTC extracts pertaining to the suit schedule properties. A perusal of RTC extracts make it clear that khata of item No.1 is in the name of defendant No.4, khata of item No.2 is in the name of defendant No.7, khata of item No.3 is in the name of defendant No.3, khata of item No.4 is in the name of defendant No.4, khata of item No.5 is in the name of defendant No.6 and 7, khata of item No.6 is in

KACM020032532022



the name of defendant No.5, khata of item No.7 is in the name of defendant No.3, khata of item No.8 is in the name of defendant No.4 and 5, khata of item No.9 is in the name of defendant No.3, khata of item No.10 is in the name of father of defendant No.5, khata of item No.11 is in the name of defendant No.1, khata of item No.12 is in the name of defendant No.4. It is to be noted that there is no dispute about the relationship of plaintiffs and defendant No.1 to 5. But contention of the defendants is that the plaintiffs have taken Rs.21,075/- in lieu of their share, therefore the plaintiffs are not entitled for share. The defendant No.6 and 7 contended that they are bonafide purchaser as they have purchased item No.2, 5 and 12 after the partition. The contents of RTC extracts makes it clear that the khata of the plaint schedule properties transferred into the names of defendant No.1 to 5 on the basis of partition in

KACM020032532022



the year 2016-17 itself and partition was taken place on 04.04.2017. The RTC extracts of item No.2, 5 and 7 prima facie show that the defendant No.6 and 7 have purchased the properties on 22.06.2012, 14.02.2012 and the khata was changed in the year 2012 itself. Admittedly, the plaintiffs and defendants are residents of the same village, therefore they must know about the sale of the properties and transfer of khata of the suit schedule properties. But the suit has been filed after lapse of more than 10 years, which prima facie shows that the plaintiffs have accepted the amount of 21,075/- towards their share. Therefore, the plaintiffs have no prima facie case in their favour. If the defendants alienate the suit properties as contended by the plaintiffs, it amounts to lis-pedense therefore, question of irreparable loss and injury does not arise. Thus, the balance convenience also not in favour of the plaintiffs.

KACM020032532022



Therefore, the plaintiffs are not entitled for an order of Temporary Injunction as prayed for. Hence, Point No.1 to 3 are answered in the Negative.

10. **Point No.4:** - For the reasons given and discussion made above, I proceed to pass the following:

ORDER

IA NO.I filed by the plaintiffs under Order XXXIX Rules 1 and 2 of C.P.C., is hereby dismissed.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 5th day of July 2023).

sd/-

(NANDEESHA.R.P)
PRL.SR.CIVIL JUDGE & C.J.M.,
CHIKKAMAGALURU.

*mvp/-