

KACM200003862024



IN THE COURT OF SENIOR CIVIL JUDGE,
AT: KADUR

Present:- Sri. IRFAN.

B.A., LL.B.,
Senior Civil Judge & JMFC,
Kadur, Chikkamagaluru District.

Dated: this the 30th November – 2024

O.S.No.104/2024

Plaintiffs:-

1. Sri. Lokesh,
S/o Late Chandramma,
Aged about 32 years,
Agriculturist,
2. Smt. Champaka,
D/o Late Chandramma,
W/o Jayanna,
Aged about 32 years,
House wife,

Plaintiffs No.1 and 2 are
R/o Hulehalli Village,
Birur Hobli, Kadur Taluk,
Chikkamagaluru District.

(By: Sri. Hareesh H, Advocate)



V/s

Defendants:-

1. Sri. Thimmappa @
Thimmanna,
S/o Late Obalappa,
Aged about 74 years,
2. Sri. Sureshkumar H.T.,
S/o Thimmappa @
Thimmanna,
Aged about 52 years,
3. Sri. T. Narasimhaiah,
S/o Thimmappa @
Thimmanna,
Aged about 48 years,
Defendants No.1 to 3 are
Agriculturists and
R/o Hulehalli Village,
Birur Hobli, Kadur Taluk,
Chikkamagaluru District.

(Defendants No.1 and 2 by: Sri. K.R. Umashankar,
Advocate).

(Defendant No.3 by: Sri. H. Thippesh, Advocate)

RANK OF THE PARTIES ON I.A.NO.I

Applicants/
plaintiffs

: Sri. Lokesh and another.

V/s

Opponent/
Defendants: Sri. Thimmappa @
Thimmanna & others.



<i>i</i>	<i>Provision under which the application is filed</i>	<i>U/O 39 Rule 1 and 2 R/w Sec. 151 CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Temporary Injunction.</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>05.08.2024.</i>
<i>iv</i>	<i>Number of the application</i>	<i>1</i>
<i>v</i>	<i>The date on which the objections are filed by different opponent</i>	<i>03.09.2024 (By the 3rd defendant)</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>30.11.2024.</i>

ORDERS ON I.A.I

This interim application has been filed by the plaintiffs under Order 39 Rule 1 and 2 R/w Sec.151 of CPC seeking for an order of temporary injunction to restrain the defendants, their men, agents, servants or anybody else claiming through them from alienating or creating any third party rights over the suit schedule properties, till the final adjudication.

2. This application is accompanied by an affidavit filed by the 1st plaintiff for himself and on behalf of 2nd plaintiff. It is the specific contentions of the plaintiffs that the 1st defendant is the propositus of



the joint family of plaintiffs and defendants. The defendants No.1, 2 and late Chandramma, the plaintiffs mother are the children of 1st defendant and the suit schedule properties are their ancestral and joint family properties. It is contended that since the defendants have started to mismanage the joint family income, the plaintiffs have demanded for partition and upon refusal, the present suit is filed. Under this application by apprehending that the defendants under whose name the revenue entries are existence are making hectic efforts to alienate and create the 3rd party rights over the suit schedule properties in order to defeat the valuable rights of the plaintiffs over the same. Hence, until final adjudication it is sought to restrain the defendants as sought.

3. The 3rd defendant has filed objections and denied the alleged rights of plaintiffs over the suit schedule properties. He claim that in a partition effected between the defendants under OS No.144/2013, the properties described therein which



are part of the suit have been divided as per the compromise and in view of the same the suit schedule properties are fallen to the share of 3rd defendant and revenue entries are mutated accordingly. Thus, the 3rd defendant claims himself to be the absolute owner of the properties fallen to his share under the aforesaid partition and accordingly, sought to dismiss the application.

4. Heard both side.

5. The points that arise for consideration are as follows:

1. Whether the plaintiffs have made out prima-facie case in their favour ?
2. Whether the plaintiffs have made out balance of convenience in their favour?
3. Whether the plaintiffs would suffer irreparable loss



and injuries, if the injunction is not granted?

4. What order?

6. With reference to the material made available on record the above points answered as follows:-

Point No.1 - In the Affirmative;

Point No.2 - In the Affirmative;

Point No.3 - In the Affirmative;

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

R E A S O N S

7. **Point No.1 to 3:-** These points are taken up together for common discussion.

The plaintiffs have instituted this suit seeking for the relief of partition and separate possession with respect to the suit schedule properties. It is their case that the 1st defendant is the propositus of their joint family. The 1st defendant - Thimmappa has three children namely Sureshkumar (D-2), Narasimahaiah (D-3) and late Chandramma. The plaintiffs are the



daughters of said Chandramma and the defendants have admitted the relationship of plaintiff as narrated in the plaint. However, the 3rd defendant has denied the alleged rights of plaintiffs over the suit schedule properties by specifically asserting that said Chandramma married long-back and died on 10.07.2007 and in view of compromise decree in OS No.144/2014 on the file of Prl. Civil Judge and JMFC, Kadur, the plaintiffs have no right whatsoever since there has already been partition effected. It is specifically asserted that the plaintiffs have no coparcenary rights in the suit schedule properties.

8. On reference to the rival pleadings, the relationship is admitted and it is a matter of record that as per the revenue entries, the suit schedule item No.1, 2 and 16 properties are existing in the names of defendants No.2 and 3, suit schedule item No.3, 5, 8 and 10 are existing in the name of 2nd defendant and suit schedule item NO.11 to 18 properties are existing in the name of 1st defendant. Admittedly, neither



Chandramma nor the plaintiffs are the parties to the suit proceedings under OS No.144/2014 and in consideration of the same, a triable case is made out and at this stage, if the defendants by taking advantage of revenue entries proceeds to dispose of or create third party rights over the suit schedule properties, same would lead to multiplicity of proceedings and in consideration of the facts and circumstances of the suit on hand, the plaintiffs have made out a prima-face case for the grant of temporary injunction as sought. If an order of temporary injunction is not granted same would cause undue hardship and irreparable loss and injury to the plaintiffs and on the other hand granting of temporary injunction would not in any way affect the rights of the defendants until the suit is adjudicated on merits and accordingly, **the points No.1 to 3 under consideration are answered in the Affirmative.**

9. **Point No.4** :- In view of findings in the foregoing points, the following;



ORDER

I.A.I filed by the plaintiffs under order XXXIX Rule 1 and 2 R/w Sec.151 of CPC is allowed.

The defendants or anybody else acting on their behalf are temporarily restrained from alienating or creating any third party rights over the suit schedule properties, till the final adjudication.

No order as to costs.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 30th day of November, 2024)

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.