

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND JMFC AT KADUR.**

PRESENT: Smt.Anitha, B.A.(Law) L.L.B.,
Prl.Civil Judge & JMFC., Kadur.

Dated this the 26th day of September 2016

O.S. No.165/2016

Plaintiff: Nagappa S/o Late Mudiappa,
Aged about 55 years, Agriculturist,
R/o Chowlahiriyuru village, Kadur
Taluk, Chikkamagalur District.

(By.Sri.B.M.L.G., Advocate)

V/s

Defendants: 1. Nanjundappa S/o Late Mudiappa,
Aged about 60 years,

2. Bavi Siddappa S/o Nanjundappa,
Aged about 35 years,

3. Mudlagiriyappa S/o Nanjundappa,
Aged about 33 years,
Warden : working at : Hosadurga.

4. Malleshappa S/o Jade Siddappa,
Aged about 60 years,

5. H.C.Mahendraiah,
S/o Late.R.Onkaraiah,
Aged about 47 years,

6. H.C.Bavi Siddaiah,
S/o Late.R.Onkaraiah,

Aged about 38 years,

7 H.C.Shivakumar,
S/o Late.R.Onkaraiah,
Aged about 36 years,

All are agriculturists,
R/o Chowlahiriyuru village,
Kadur Taluk, Chikmagalore District.

(By.D.1 to 3 Sri.H.N.S., Advocate)
(By.D.4 to 7 Sri.M.S.H., Advocate)

PARTIES ON I.A.NO.I

Applicants:- Nagappa.

V/S-

Opponents:- Nanjundappa & others.

PARTIES ON I.A.NO.II

Applicants:- Nanjundappa & others.

V/S-

Opponents:- Nagappa.

ORDERS PASSED ON I.A.NO.I AND II

The learned counsel for the plaintiff has filed I.A. No.I under Order 39 Rule 1 and 2 of Civil Procedure

Code, seeking the relief of temporary injunction restraining the defendants, their agents, servants or anybody on their behalf from alienating the suit schedule property or any bit of land in the suit schedule property pending disposal of the suit.

2. In support of the application, the plaintiff has sworn to an affidavit and stated that, himself and the 1st defendant are the members of Hindu Undivided joint family and the suit schedule property is the joint family property of himself and the 1st defendant. It is further stated that, the 1st defendant is the Manager and the suit schedule property has been acquired by inheritance. Being the kartha of the family, the 1st defendant got mutated the khata into his name. The plaintiff and the 1st defendant are enjoying the suit schedule property jointly as joint owners. Defendants No.1 to 3 have got no exclusive right over the suit schedule property. Due to domestic misunderstanding, defendants No.1 to 3 colluded with each other and not kept proper account for the management of the suit schedule property. The plaintiff approached the 1st defendant requesting and demanded for partition. But the 1st defendant refused to effect the partition. Defendants No.1 to 3

having no right, title or interest over the suit schedule property sold 38 guntas out of 2 acres 6 guntas in the suit schedule property infavour of the 4th defendant through a registered sale deed dated 16.03.2016 and also sold 1 acre 8 guntas of property infavour of defendants No.5 to 7 through the registered sale deed dated 16.03.2016 without the consent of the plaintiff. Defendants No.4 to 7 on the strength of the sale deeds, moved before the Revenue Authority and tried to change the khata into their name, the plaintiff filed the objections. The sale deeds executed infavour of defendants No.1 to 4 are not binding upon the share of the plaintiff. The plaintiff is having half share in the suit schedule property. Defendants No.4 to 7 are trying to alienate the suit schedule property to deceive the right of the plaintiff. Hence, prayed to allow the application.

3. After filing of the application, the learned counsel for defendants No.4 and 5 filed written statement and filed a memo to adopt the written statement as objection to I.A.No.1.

In the written statement, it is contended that, the suit is not maintainable under law or on facts. It is admitted that the, plaintiff and the 1st defendant

are the brothers to each other and also stated that, defendants No.2 and 3 are the children of the 1st defendant. It is further contended that, the plaintiff has not made his sisters by name Lakshamma, Nagarathamma and Chandamma as the parties to the suit. It is further contended that, the suit is bad for partial partition since the plaintiff not included all the properties standing in his name. It is further contended that, already there is a partition between the plaintiff and the 1st defendant. It is also contended that, the plaintiff has suppressed the material facts and contended that, there was a partition between his father and uncles by name Thimmappa and Siddappa. There was sale deed executed by Thimmappa in respect of property bearing Sy.No.37/2 in favour of Gavisiddappa. It is also contended that, the recitals in the sale deed goes to show that, there was already a partition in the joint family between the grandfather of the plaintiff, father of the plaintiff and his uncles. In the written statement defendants No.4 to 7 have narrated about the sale deeds in respect of 37 guntas of property. It is also contended that, the suit schedule item No.1 property has been allotted to the share of the 1st defendant and there is already

registered sale deed infavour of the 4th defendant dated 10.07.1986. It is further contended that, inspite of the said sale deed, the mutation has not been entered in the name of the 4th defendant. Hence, again on the request of the defendants No.4 to 7, defendants No.1 to 3 executed fresh sale deeds of the year 2016. It is further contended that, the plaintiff has filed frivolous suit in collusion with the other defendants. The plaintiff has got no right, title or interest over the suit schedule property. Since the sale deeds were dated 22.05.1975 and 10.07.1986. Hence, prayed to dismiss the application on exemplary costs.

4. On the contrary, the learned counsel for defendants No.4 to 7 has filed I.A.No.II under Order 39 Rule 4 R/w Section 151 of CPC, seeking the relief of temporary injunction restraining the plaintiff, his agents, his family members from obstructing, interfering or dispossessing defendants No.4 to 7 from the suit schedule property pending disposal of the suit.

5. In respect of the application, the 4th defendant has sworn to an affidavit and stated that, the 1st defendant is the elder member of the family of

the plaintiff and he was managing the affairs of joint family. Since, the 1st defendant was the elder brother of the plaintiff, got executed sale deed infavour of defendants No.4 to 7. It is further contended that, the uncle of the plaintiff by name Y.Thimmappa and Siddappa have also executed the sale deed in respect of 1 acre 9 guntas of property. The plaintiff has not sought for cancellation of the said sale deed and only challenged the present sale deeds. There is no joint family in existence since 1975. It is further contended that, defendants No.4 to 7 are the absolute owners of the suit schedule property and the plaintiff is not in possession of the same. The revenue records also goes to show that, there is already partition between the plaintiff and his brothers. In order to defeat the right of defendants No.4 to 7, the plaintiff has filed this false suit. Defendants No.4 to 7 have made out a prima-facie case and balance of convenience lies in their favour. If an order of temporary injunction is not granted, they will be put to great hardship. Hence, prayed to allow the application.

6. Per contra the learned counsel for the plaintiff filed objection, on the same contention as

mentioned in the affidavit filed in support of I.A.No.1 and prayed to dismiss the application with costs.

7. Thereafter, heard arguments advanced by learned counsel for the plaintiff and the defendants and perused the entire case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiff has made out a prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted, which cannot be compensated in terms of money?
4. Whether defendants No.4 to 7 have made out a prima-facie case?
5. Whether the balance of convenience lies in favour of defendants No.4 to 7?
6. Whether defendants No. 4 to 7 will be put to irreparable loss and injury if temporary injunction is not

granted, which cannot be compensated in terms of money?

7. What order?

8. The findings on the above points are as hereunder:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

Point No.4: In the Affirmative

Point No.5: In the Affirmative

Point No.6: In the Affirmative

Point No.7: As per the final order
for the following:

REASONS

9. **POINT NO.1 to 6:** For the sake of convenience and to avoid repetition of facts, this court would like to take up these points together for discussion.

10. The plaintiff has filed the suit against the defendants for the relief of partition and separate possession of the plaintiff's half share in the suit schedule property. The plaintiff has also sought for declaration that, the suit schedule property is the ancestral and joint family property of himself and the 1st defendant. He has also sought for declaration that,

the sale deeds dated 16.03.2016 in respect of 38 guntas of property and 1 acre 8 guntas of properties are null and void and not binding upon the plaintiff. He has further sought for permanent injunction restraining the defendants, their agents, servants or anybody from alienating any bit of land in favour of anybody in any manner. The suit schedule property is situated at E.Thimmapura village, Chowlahiriyuru Hobli, Kadur Taluk bearing Sy.No.37/2 measuring 2 acres 6 guntas bounded on the East by - Chowlahiriyuru boundary, West by - Log.No.36, North by - Log Hissa & Block No.1 and South by - Block No.1.

11. The plaintiff has stated that, himself and the 1st defendant are the children of late Mudlappa. Defendants No.2 and 3 are the children of the 1st defendant. There is no dispute with regard to the relationship of the plaintiff with the defendants No.1 to 3. Admittedly, the defendants No.4 to 7 are the purchasers of the suit schedule property in portion. It is the contention of the plaintiff that, the 4th defendant purchased an extent of 37 guntas and defendants No.5 to 7 have purchased an extent of 1 acre 8 guntas. It is the case of the plaintiff that, the

suit schedule property is the joint family property of himself and the 1st defendant and it has been acquired by them under inheritance after the death of their father Mudlappa. It is further stated that, since the 1st defendant is the eldest member of the family, the suit schedule property has been mutated in his name as per I.H.C.No.7/1983-84. It is also his specific case is that, himself and the 1st defendant are the joint owners and enjoying the suit schedule property jointly and there is no partition between them. Such being the case, defendants No.1 to 3 without having any exclusive right sold the suit schedule property in portion infavour of defendants No.4 to 7 under two registered sale deeds dated 16.03.2016. It is alleged that, the said sale deeds are not binding upon the plaintiff and they are declared to be null and void. He got half share in the suit schedule property and upon his demand the 1st defendant refused to effect the partition.

12. On the other hand, the defendants No.1 to 3 appeared through their counsel but, not chosen to file the written statement. On the other hand, the defendants No.4 to 7, who are purchasers of the suit

schedule property have appeared before the court and filed their common written statement.

13. The defendants No.4 to 7 have putforth their case that, the plaintiff has not made all the members as parties to the suit and the plaintiff has not included all the properties standing in his name as well as in the name of the 1st defendant. It is alleged by defendants No.4 to 7 that, the suit is bad for partial partition. In addition to this defence it is contended by defendants No.4 to 7 that, there is no joint family in existence between the plaintiff and the 1st defendant since from the year 1975 itself. It is their specific case that, in the year 1975 itself i.e., on 22.05.1975, the uncles of the plaintiff along with the 1st defendant got sold an extant of 37 guntas in the suit schedule infavour of the father of the 4th defendant. It is further contended that, already there is a sale deed dated 10.07.1986, wherein in the 1st defendant along with the father of the 4th defendant got sold 1 acre 9 guntas of property infavour of defendants No.5 to 7.

14. In the present case, it is suppressing to note that, inspite of having two sale deeds of the year 1975 and 1986, the defendants No.1 to 3 again sold the same property infavour of defendants No.4 to 7 under two registered sale deeds dated 16.03.2016. The learned counsel for the defendants No.4 to 7 has vehemently argued that, on the instigation of defendants No.1 to 3 and the plaintiff, they were forced to get the present sale deeds in their favour. It is also contended that, upon their application for effecting the mutation in their name as per earlier sale deeds, which was refused by the revenue authorities and they were forced to get the sale deeds in their name. In support of the case, the plaintiff has produced one RTC of the suit schedule property to an extent of 2 acres 6 guntas for the year 2015-16. As per this document, it is mentioned at coloumn No.10 that, as per INH No.7/1983-84 the name of the 1st defendant has been effected in the revenue records.

15. On the other hand, the plaintiff at para No.4 of the plaint, has made reference to IHC 7/1983-84. But the plaintiff failed to produce either the entry found in coloumn No.10 of the RTC or proceedings

mentioned at page No.4 of his plaint. Except this document, the plaintiff also produced two sale deeds dated 16.03.2016 executed by the defendants No.1 to 3 infavour of the 4th defendant to an extent of 38 guntas and another sale deed of the same date executed by the defendants No.1 to 3 infavour of the defendants No.5 to 7 to an extent of 1 acre 8 guntas. Except these documents, there are no other documents produced by the plaintiff in respect of his case.

16. On the other hand, the learned counsel for defendants No.4 to 7 has produced several RTC as well as sale deeds, which goes to show that, there are several properties standing in the name of the plaintiff. The plaintiff has not made all the said properties in the present suit. It is also necessary to note that, as per the recitals made in the sale deeds produced by the defendants No.4 to 7, it clearly goes to show that, there was already partition between the plaintiff and the 1st defendant. Originally, sale deeds dated 16.03.2016 and the certified copy of the sale deeds dated 10.07.1986 and 22.05.1975 have been produced before the court. Therefore, this court comes to the conclusion that, the plaintiff has not

made out prima-facie case and balance of convenience does not lie infavour of the plaintiff and he is not entitled for temporary injunction as sought for. Accordingly, Point No.1 to 3 are answered in the **Negative** and Point No.4 to 6 are answered in the **Affirmative**.

17. **Point No.7:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code is hereby rejected with costs of Rs.300/-.

I.A.No.II filed by defendants No.4 to 7 under Order XXXIX Rule 1 and 2 R/w Section 151 of Civil Procedure Code is hereby allowed with costs of Rs.300/-.

Consequently, the plaintiff, his agents or his family members or anybody on his behalf are hereby restrained by an order of temporary injunction from trespassing, obstructing,

interfering and dispossessing defendants No.4 to 7 from the suit schedule property pending disposal of the suit.

(Dictated to the Stenographer, transcribed and computerized by her, transcript corrected and pronounced by me in the open court on this the 26th day of September 2016.)

Sd/-

(ANITHA)

Prl. Civil Judge and JMFC.,
Kadur.