

IN THE COURT OF THE CIVIL JUDGE AND JMFC AT SRINGERI**PRESENT**

**Sri. Suryanarayana S., B.A.L., L.L.B.,
Civil Judge & JMFC., Sringeri.**

Dated: This the 15th day of June, 2018.

O.S.No.16/2016

Plaintiff: Sri. Mohammed Yousuff
S/o late Peeru Saheb,
Aged about 93 years,
R/o: Bhaktampura, Sringeri Village,
Sringeri Taluk, Chikkmagalur (D),
represented herein by his G.P.A. holder
Sri. Abdul Azeez S/o Mohammed Yousuff,
Aged about 44 years,
R/o: Bhaktampura, Sringeri Village,
Sringeri Taluk, Chikkmagalur (D).
(Represented by Sri. K.R.S., Adv..)

V/s

Defendants:

1. Smt. Haneefabi
W/o late Ibrahim Saheb,
Aged about 90 years,
R/o: Kinikini Hemmane,
(Masidi Gudde) Sringeri (V),
Sringeri Taluk.
2. Smt. Sharifabi
D/o late Ibrahim Saheb,
W/o late Hayath Saheb
Aged about 62 years,
R/o: Honnavalli, Belandooru (V),
Sringeri Taluk.
3. Smt. Maqbool @ Mallika
D/o late Ibrahim Saheb,

W/o Kutta Alam,
Aged about 53 years,
R/o: Kalmettlu,
Sringeri Town and Taluk.

4. Smt. Zareena
D/o late Ibrahim Saheb,
W/o late Adam Saheb,
Aged about 50 years,
R/o: Kinikini Hemmane,
(Masidi Gudde) Sringeri (V),
Sringeri Taluk.
5. Smt. Parveen
D/o late Ibrahim Saheb,
W/o Ameer Ahamed,
Aged about 49 years,
R/o: Kalkatte, Menase (V),
Sringeri Taluk.
6. Smt. Ameena
D/o late Ibrahim Saheb,
W/o late Peeru Saheb,
Aged about 39 years,
R/o: Bhaktampura Road,
Sringeri Village and Taluk.
7. Smt. Noorjahan
D/o late Ibrahim Saheb,
W/o Mohammed Rafeeq,
Aged about 37 years,
R/o: Kinikini Hemmane,
(Masidi Gudde) Sringeri (V),
Sringeri Taluk.
8. Sri. Munawar
S/o late Mohammed Mastan,
Aged about 54 years, Driver,
9. Sri. Riyaz
S/o late Mohammed Mastan,
Aged about 52 years,

D-8 & 9 are R/o: Salal Manzil,
Buddanagara, 3rd Cross,
Near Ganesh Rice Mill,
Shivamogga.

10. Smt. Zabeena

D/o late Mohammed Mastan,
W/o Mohammed Iqbal,
Aged about 50 years,
R/o: Tippu Nagar, 6th Cross,
Left side, Shivamogga.

11. Smt. Naseema

D/o late Mohammed Mastan,
W/o Abdul Basheer,
Aged about 48 years,
R/o: Sagar Manzil, Tippunagar,
4th Cross, Left side, Shivamogga.

12. Smt. Mubeena @ Rasheeda Banu,

D/o late Mohammed Mastan,
W/o Mohammed Azam,
Aged about 46 years,
R/o: Devaramane, Hariharapura,
Koppa Taluk.

13. Smt. Rihana @ Khatiza

D/o late Mohammed Mastan,
W/o late Fayaz Ahamed,
Aged about 45 years,

14. Smt. Parzana @ Khuteza

D/o late Mohammed Mastan,
W/o Abdul Abeed,
Aged about 45 years,

D-13 & 14 are R/o: Tippu Nagar,
5th Cross, Left side, Shivamogga.

(D-1 to 7 by Sri. H.R.U., Adv.,
D-8 to 14 exparte)

Parties to the I.A.No.3

Between	Rank in I.A	Rank in suit
Sri. Mohammed Yousuff by GPA holder Sri. Abdul Azeez V/s	Applicant	Plaintiff
Smt. Haneefabi and others	Opponent	Defendant

ORDERS ON I.A.NO.3

The Applicant/plaintiff has filed this application under Order 39 Rules 1 and 2 of CPC seeking temporary injunction against the defendant Nos.1 to 7 restraining them from selling or alienating or entering into the any contract to sell the suit schedule property or otherwise encumbering the suit schedule property in any manner till the disposal of the suit.

2. The applicant in support of his application filed the affidavit, wherein he stated that he is the son and also GPA holder of the plaintiff. One Smt. Kulsumbi is the mother of the plaintiff. The said Kulsumbi mother of the plaintiff had married one Imam Saheb, on account of their wedlock a son by name Ibrahim Saheb was born. After the death of Imam Saheb, mother of the plaintiff married one Peeru Saheb out of their wedlock, plaintiff i.e. Mohammad Yusuf and Mohamad Masthan were born. The mother of the plaintiff Smt. Kulsumbi had a house property in Kinikini Hemmane (Masidigudde) in Sringeri Village within the limits of Vidyaranyapura Village Panchayath which is more described in the suit schedule

property. During her life time Smt. Kulsumbi mother of the plaintiff has executed Will before notary public on 07/04/1997 bequeathed the suit schedule property jointly in favour of her three sons i.e. in favour of the plaintiff, Mohammad Masthan and Ibrahim Saheb.

3. Plaintiff further submits that after the death of Smt Kulsumbi, plaintiff and his two brothers jointly succeeded to the suit schedule property. During the year 1998, plaintiff had applied to Vidyanayapura Grama Panchayath for change of khatha of the suit schedule property into the joint names of himself and his brothers. The Ibrahim Saheb i.e. son of the Kulsumbi from her first husband changed the khatha of the suit schedule land behind the back of the plaintiff. Now the said Ibrahim Saheb also died leaving defendant Nos.1 to 7 as his legal representatives. After his death the khatha of the schedule property changed into the name of 1st defendant, same also done behind the back of the plaintiff.

4. The plaintiff further submits that suit schedule property previously belong to his mother Kulsumbi and on account of her Will schedule property vested on her three sons in equal proposition and even in the absence of the Will on the death of the said Kulsumbi property vested on her three sons in equal propositions, hence in the presence or absence of the Will plaintiff entitled for 1/3 share in the suit schedule property. Facts being this, defendant Nos.1 to 7 are not having any

absolute any right to transfer or alienate the suit schedule property, they are trying to do so, as such plaintiff has issued a notification in Nagesh Pathrike Newspaper. In spite of the same defendant Nos.1 to 7 are negotiating the sale the suit schedule property to third person, in order to defeat the legitimate share of the plaintiff. The plaintiff also learned that one Manju, employee of Menase Grama Panchayath is attempting to purchase the same. In this respect plaintiff demanded the defendant Nos.1 to 7 for partition and separate possession of his share in suit schedule property. But defendants have refused to partition the schedule property and they are in hurry to sell the same to others. Hence, he has filed the present suit and came up with the present application. If application is not allowed plaintiff will be put to lot of hardship and inconvenience which cannot be compensated in terms of money. If I.A. is allowed no hardship will be caused to the defendants, on this ground plaintiff prays to allow the application.

5. After service of summons, the defendant Nos.1 to 7 appeared through their counsel before the court and filed their written statement, wherein, though defendant Nos.1 to 7 admitted the relationship as pleaded by the plaintiff but denied specifically all other allegation made in the plaint.

6. The defendant Nos.1 to 7 further contended that suit schedule property original belongs to Imam Saheb. During the wedlock of Imam Shaeb and Kulsumbi,

husband of the 1st defendant and father of the defendant Nos.2 to 7 Ibrahim Saheb was born. The said Ibrahim Saheb is the sole legatee of the said Ibrahim Saheb. After the death of said Imam Saheb, khatha has been transferred to the name of Kulsumbi, thereafter khatha of the suit schedule property transfer to the name of Ibrahim Saheb, who is the sole legatee of the said Ibrahim Saheb. The said facts are well known to the Kulsumbi and his two sons i.e. plaintiff and Mohammad Mastan, for this reason the said Kulsumbi and his two sons had not objected the peaceful possession of the said Ibrahim Saheb over suit schedule property from long time. Now plaintiff by creating GPA filed the present false suit. The defendants further submits that the plaintiff by showing his father as a plaintiff in the present case created a GPA and also forged the date of death of the Kulsumbi in his death certificate and try to canvas that the said Kulsumbi has executed a Will dated 07/04/1997 and on the said forged documents, the GPA holder of plaintiff filed application before Vidyanayapura Grama Panchayath for change of khatha of the suit schedule property into the name of plaintiff and one Mohammad Mastan. The suit schedule property originally belongs to Imam Saheb and the same is transferred into the name of Ibrahim Saheb as a sole legatee of the said Imam Saheb. The said Ibrahim Saheb during his life time is in peaceful possession and enjoyment over the suit schedule property without any interruption by said Kulsumbi and her two sons.

After the death of said Ibrahim Saheb, khatha of the suit schedule property changed to the name of 1st defendant and defendant Nos.2 to 7 are in the peaceful possession and enjoyment over the suit schedule property as a legal representatives of the said Ibrahim Saheb. The plaintiff nor the defendant Nos.8 to 14 having no any manner of right, title or interest over the suit schedule property. The GPA holder of the plaintiff only with an intention to grab the suit schedule property filed the present suit on false cause of action. The GPA holder of the plaintiff is not entitled for the relief as prayed in the application, if application is rejected no hardship will be caused to the plaintiff. On the other hand if application is allowed more hardship and injury will be caused to the defendants which cannot be compensated in terms of money. On this grounds the defendants prays to reject the application.

7. Heard arguments of both sides and perused the documents filed by the both counsel.

8. Upon hearing arguments and on perusal of materials placed on record the following points arises for consideration.

Points

1. Whether the plaintiff has established prima-facie case?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?

4. What order?

9. My findings to the above points are as under:

Point Nos.1 to 3 : In the Affirmative
Point. No.4 : As per final Order
for the following

REASONS

10. **Point Nos.1 to 3:-** Since these points are interrelated and inter linked with each other, these points are taken up together for discussion in order to avoid repetition of facts.

11. On perusal of the pleading of the parties, the plaintiff filed the present suit against the defendants for the relief of partition and separate possession of his legitimate share in the suit schedule property. The plaintiff pleaded that suit schedule property belongs to one Kulsumbi, who is non other than the mother of the plaintiff. The said Kulsumbi during her life time executed a Will with respect to suit schedule property and directed that suit schedule property will be equally partition between their three sons. But Ibrahim Saheb son of the said Kulsumbi from her first husband, behind the back of the plaintiff changed the khatha of the suit schedule property into his name. After the death of the said Ibrahim Saheb, now Khatha has been changed the name of the 1st defendant. Defendant Nos.1 to 7 now are trying to sell away the suit schedule property in order to defeat the legitimate share of the

plaintiff over suit schedule property. The plaintiff on the account of Will or in the absence of the Will entitled to the 1/3 share in the suit schedule property and demanded his share to defendants. But defendants rejected to give his share and are trying to sell away the suit schedule property. Hence, the plaintiff filed the present suit and come with the present application for the aforesaid relief.

12. Per contra the defendant Nos.1 to 7 submits that suit schedule property is exclusively belongs to the Imam Saheb, who is non other then the first husband of the said Kulsumbi. During their wedlock Ibrahim Saheb was born. After the death of said Imam Saheb, khatha only changed into the name of the Kulsumbi as Pouthi Khatha, thereafter khatha has been changed into name of Ibrahim Saheb, who is the sole legatee of the Iama Saheb. The Ibrahim Saheb was the sole son of said Imam Saheb only got right over the suit schedule property. After the death of the said Ibrahim Saheb, being legal representatives of the said Ibrahim Saheb, defendant Nos.1 to 7 are in peaceful possession and enjoyment over the same. Neither the said Kulsumbi nor her sons having no any right over the said property. Now plaintiff son being a GPA holder of the plaintiff has forged and created documents in their favour and in the support of said forged documents, he claiming false right over the suit schedule property. The defendants counsel further argued that after the filing of the present suit the plaintiff produce the khatha extracts of the suit schedule property

which clearly shows that name of the Kulsumbi over written in the said documents. The said documents is a forged documents and what are all documents produced by the plaintiff are all created and forged one. Hence, prays to dismiss the application.

13. On perusal of the rival pleadings and documents produced by the both parties it reveals that, admittedly there is no dispute regarding the relationship of the plaintiff and defendants.

14. In Muslim Law, inheritance opens only after the death of a Muslim. The concept of joint family or of coparcener property as recognized under Hindu law is not known to Muslims. Whenever a Muslims dies his properties devolve on his heirs in definite share of which each heir becomes an absolute owner. Subsequently upon the death of such heir, his properties are inherited by his legal heirs and this process continues. Further in Muslim law males and female are equal rights of inheritance, but normally the share of a male is in double to the share of a female. Muslim Law recognize two type of heirs firstly sharers the ones who are entitled to certain share in the deceased property and secondly Residuaries, the ones who would take up the share in the property i.e. left over after the sharer have taken their part.

15. On the back ground of this principle, looking into the present facts and circumstances of the case. There is no dispute regarding property originally belongs

to the Imam Saheb. After the death of Imam Saheb inheritance is open, as per law of inheritance under Muslim law the said Kulsumbi has definite share in the suit schedule property, whether the said Kulsumbi has got share as sharer or residuary same should be decided after full fledged trail. Hence, plaintiff being the son of the said Kulsumbi has got right over the suit schedule property, whether the said right only restrain to the definite share got by said Kulsumbi or as pleaded by the plaintiff in the plaint is to be decided by full fledged trial. Hence at this stage the plaintiff established Prima-facie case, the balance of convenience is in favor of the plaintiff. If injunction is not granted, if defendant create any charge over the suit properties, it would not only to lead to multiplicity of proceedings, but would also cause irreparable injury to the plaintiffs, since plaintiffs in the event of succeeding in the suit, they would not be entitled to enjoy the fruits of the decree. Considering all these aspects of the case and totality of circumstances. It is clear that the plaintiff has made out prima-facie grounds and balance of convenience is in his favour and if injunction is not granted hardship and injury will be caused to the plaintiff, which cannot be compensated in terms of the money. Hence, I answer point Nos.1 to 3 in the affirmative.

16. **Point No.4:** In view of discussion and findings on point Nos.1 to 3, I proceed to pass the following.

ORDER

I.A.No.3 filed by the plaintiff under Order 39 Rules 1 and 2 of CPC is hereby allowed.

The defendant Nos.1 to 7 are hereby restrained from alienating, sale or create any charge over the schedule property till the disposal of the suit.

Under the facts and circumstances of the case. No order as to cost.

(Dictated to the stenographer directly on computer, typed by her, then corrected and pronounced by me in the open court, on this the 15th day of June, 2018)

Sd/-
(Suryanarayana S.)
Civil Judge & JMFC.,
Sringeri.