

**IN THE COURT OF THE II ADDL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Dated: 30th Day of May 2024

PRESENT: **SMT. MAHALAKSHMI G M.A. L.L.B.,**

II Addl Civil Judge & JMFC, Channagiri.

OS No.39-2023

BETWEEN :

T.S. Rajappa

...Plaintiff

AND

T.H. Sannappa and others,

...Defendants

I.A. No.I

BETWEEN :

T.S. Rajappa

...Plaintiff

AND

T.H. Sannappa and others,

...Defendants

1.	Provision under which the application is filed:	:	U/O 39 rule 1 and 2 R/w Sec.151 of CPC.
2.	Relief sought for	:	Add interim exparte temporary injunction
3.	Date on which the application is filed	:	03-02-2023

4.	Number of the application	:	IA.No.I
5.	Date on which the objections are filed by different opponents:	:	01-12-2023
6.	The date on which the orders is passed:		30.05.2024

Date: 30.05.2024
Place: Channagiri.

(Smt.Mahalakshmi G)
II Addl Civil Judge And Jmfc.,
Channagiri.

ORDER ON No.I

This is an application filed by the plaintiff u/o 39 rule 1 and 2 R/w Sec. 151 of CPC., seeking the relief of interim temporary injunction against the defendants with respect to suit schedule property. This application though filed along with the suit as per the order sheet dated 21-12-2023 the learned counsel for plaintiff orally submitted before this court that IA No.1 may be considered along the merits of the suit until IA No.1 may be kept in absence. But on 27-05-2024 and 28-05-2024 he filed memo along with 2 photostat copies of registered sale deed dated 13-05-2024, G-Tree dated 17-11-2015 and objection filed before the revenue department by the plaintiff dated 18-05-2024 and another memo along with RTC's pertaining to the year 2019-2020 of Beemanere Village bearing Sy.No.57/Land mutation report.

2. When the case is posted for further chief of PW.1 the learned counsel for plaintiff submits that he intends to press the IA No.1. Accordingly, this court proceed to heard the arguments on IA No.1 from the both the parties.

3. Sum and substance of the affidavit as under :

The plaintiff has given the schedule of the property at the application and accordingly the land bearing Sy.No.57/b measuring 3 acres 31 guntas at assess Rs.5.00 and karab of Oa=15g total 4a=06g situated at Bemanere Village, Channagiri Taluk, within the boundaries as described in the suit schedule as well application schedule property.

4. The plaintiff has sworn an affidavit and stated that, he has filed the instant suit against the defendant for the relief of declaration and permanent injunction with respect of suit schedule property. The defendant No.1 is his father and defendant No.2 to 4 are his brothers and they are entered into the registered partition deed and as per the said partition, the suit schedule property was allotted to his share. On the basis of said registered partition deed the katha and pahani also accepted in his name and other defendants as per the share allotted in the registered partition deed. Since then he and defendants are residing separately and enjoying the respective shares of lands having its absolute possession and personal cultivation in the allotted properties.

5. The plaintiff further stated that, as per the said registered deed the suit schedule property i.e., in the pahani the name of village entered as Thanigere instead of entering Beemanere by typographical error and said mistake is came to his knowledge while he was submitted the documents before the bank to get loan scrutiny. After that he approached the concerned department for the rectification of the same but they did not come forward to make the changes. On second week of January

2023, the defendants disturbed his right, title and interest as well possession over the suit schedule property. Under such circumstances it is very difficult for him to resist the illegal and high handed acts of the defendants with out the aid of this court. He had got prima facie case to prove his lawful ownership, possession on records as well as on facts. If the application is not allowed, he will be put to great injustice and much inconvenience. The balance of convenience is also in his favour. Thus, he prays to allow the application.

6. The defendant No.1 and 4 as well D.No.3 appeared through their counsel and filed written statement as well memo to treat the same as objection to IA No.1.

The brief facts of the written statement filed by the defendant no.1 to 3 is as follows:

The defendants denied each and every contents of the affidavit filed in support of application and specifically contended that, the suit is not maintainable. They denies the allotment of suit property to the plaintiff as per the partition deed and his possession in and over the suit property. As the plaintiff in a suit for recovery of money filed by one A P C Sharanappa against the defendant No.1 in respect of mortgaged property in which the plaintiff impleaded himself and prays to the suit property belongs to him. His prayer was rejected by the defendant and the property vested in the name of defendant No.1. No appeal was preferred and the judgment and decree intact. By these set of contentions, the defendants prays to reject the application with cost.

7. Based on the rival contention raised by both parties the following points arises for consideration.

POINTS

1. Whether the Plaintiffs have made out a prima-facie case to grant TI order?

2. Whether the balance of convenience lies in favor of the plaintiff?

3. Whether the irreparable loss or injury will be caused to the plaintiff, if the application is not allowed ?

4. What order?

8. Heard the learned counsels from both parties.

9. My answers to the above points are as under.

POINTS

Point No.1 to 3: In the Negative.

Point No.4 : As per the final order

for the following.,

REASONS

10. Point No. 1:

In order to establish the prima facie case, the plaintiff produced notarized copy of registered partition deed dated 17-02-2004 entered between the plaintiff and defendant No.1 to 4 with respect to joint family properties. Attested copy of G-tree, computerized copy of RTC bearing Sy.No.57/B of Beemanere village for the year 2011-12 and 2004-05. The Attested copy of

mutation register extract bearing MR.No.20/2008-09 dated 15-05-2009. The copy of mutation register extract bearing MR No.4/2003-04 dated 09-06-2004. The copy of judgment and decree passed by the Prl. Civil Judge and JMFC., Channagiri in OS. No.235/2012 dated 12-07-2019. The documents filed on 24-05-2024 along with memo are the computerized copy of RTC for the year 2019-2020, 2023-24 bearing Sy.No.57/B measuring 5 acres 26 guntas, of Beemanere Village, the computerized copy of RTC for the year 2023-24 bearing Sy.No57/2 of Beemanere village, measuring 2 acres 34 guntas and the mutation report of Beemanere Village pertaining to Sy.No.57. The documents produced on 14-03-2024 which are 2 digital copy of sale agreement with out possession dated 01-02-2024. On 27-05-2024 the learned counsel for plaintiff also produced the copies of 2 registered sale deeds dated 13-05-2024, the G-tree dated 17-12-2017 and the 2 copies of objection filed by the plaintiff before revenue department on 18-05-2024.

11. On the other hand the defendants except written statement have not filed any documents to support their contention.

12. Having taken note of prima facie materials placed by the plaintiff, it appears that the plaintiff and defendant No. 1 to 4 have entered into the registered partition deed dated 17-02-2004 based on which the plaintiff has filed this suit alleging the suit schedule property is fallen to his share. On perusal of 2nd schedule of the said registered partition deed it is clear that the

property bearing Sy.No.57/b measuring 3 acres 21 guntas karab 0.15 guntas in total measuring 4 acres 6 guntas situated at Tanigere Village, Santhebennuru Hobli Channagiri Taluk bounded by East: Land of T. Nagarajappa, West: Property of Kandagal Rudrappa and his family, North: Share allotted to the T.S. Mahantesh, South: Land of Mayappara Siddappa Savakka and Siddappa and the property bearing Sy.no.57/B measuring 3 acres 31 guntas karab 15 guntas totally measuring 4 acres 6 guntas situated at Tanigere village, Santhebennuru Taluk, bounded by East: Land of T. Nagarajappa, West: Property of Kandagal Rudrappa and his family, North: Road, and land of Sannappa, South: Share of T.S. Mahantesh are the properties fallen to the share of present plaintiff.

13. On comparative reading of the entries of suit schedule property with the entries of 2nd schedule of the registered partition deed it is clear that the property mentioned in the registered partition deed is situated at Tanigere. Wherein the plaintiff is claiming the possession of the property which is situated in the Bheemanere village. According to the plaintiff due to typographical error the name of the village, was wrongly entered in the partitioned deed as Bheemanere instead of mentioning Tanigere. If such being the case the parties who are entered into the said registered partition deed have to seek the rectification of the said mistake. But in the present suit, the plaintiff only seeking the relief of rectification. On the prima facie perusal of materials placed by the plaintiff, this court cannot form an opinion

that the said mistake is typographical error at this initial Stage. to consider the same it needs full pledged trail.

14. The plaintiff pressing this IA when the case is posted for further chief of PW.1 by placing the 2 registered sale deeds executed by defendant No.1,2 and 4 infavour of Murari Beemappa Herekodi and Vasappa S/o Bagannara Shekappa with respect to Sy.No.57/2 measuring 2 acres 34 guntas and the measurement as well as the boundaries mentioned in the said registered sale deed is not consonance with the present suit schedule property. The plaintiff claiming his possession over the said sold property by the defendant No.1,2 and 4 then he has to establish the Sy.No.57/2 and Sy.No.57/B properties are the same properties which he claiming in the present suit. To establish the same the plaintiff has not produced any relevant document to show the extent and its boundaries. To establish the Sy.No.57/2 and Sy.No.57/B are the same properties which he had possession. To consider the same it requires full pledged trail. The RTC's and mutation entries produced by the plaintiff is also not in consonance with the pleadings of the plaintiff. Under such circumstance, the prima facie materials placed on record are not in consonance with the claim of the plaintiff. Moreover, the plaintiff has described the suit schedule property as per the partition deed, and has per the 2nd schedule of the said partition deed the suit property is allotted to his share. but the boundaries mentioned in the said registered partition deed is also mentioned in the share allotted to the

defendant No.1 which is mentioned in the 1st schedule of the partition deed. Hence, the claim of the plaintiff cannot be considered at this initial stage. Thus, the same needs to be put into box for trial. Therefore, in my opinion unless and until full pledged trial is concluded in the matter, it is not possible to hold that the property situated in the Bheemanere is the same property which is wrongly entered the name of the village as Tanigere. Thus, in my considered opinion, at this stage the plaintiff has not made out prima facie case to grant the add-interim temporary injunction against the defendants. As such the point **no.1 held in the Negative.**

15. **Point No.2 and 3:** These two points are interconnected. As such are taken at once for discussion.

The existence of prima facie case is fundamental for grant of ad interim temporary injunction. The plaintiff has to prove the said aspect at first by placing prima facie materials too. The balance of convenience and irreparable injury are always fall in line with prima facie case. In the case on hand the plaintiff has failed to prove the very existence of prima facie case on hand. Therefore, the balance of convenience, irreparable injury would also not in favour of plaintiff. Thus, the **point No.2 and 3** are held **in the Negative.**

16. **Point No.4:** As a result, this court proceed to pass the following:

Order

**The IA No.I filed by the plaintiff
U/o 39 rule 1 and 2 of CPC., is here**

**by rejected without cost.
For further chief of PW.1
Call On:07-06-2024.**

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 30th day of May 2024.)

**Date:30.05.2024
Place: Channagiri.**

**(Smt.Mahalakshmi G)
II Addl Civil Judge And Jmfc.
Channagiri.**

(vide separate order pronounced in the
open court)

Order

**The IA No.I filed by the
plaintiff U/o 39 rule 1 and 2 of
CPC., is here by rejected
without cost.**

For further chief of PW.1

Call On:07-06-2024..

**Il Addl Civil Judge And Jmfc.
Channagiri.**

