

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

Dated: 02nd Day of January 2024

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

II Addl Civil Judge & JMFC, Channagiri.

OS No.479/2022

BETWEEN :

C.H Srinivasa and others

...Plaintiffs

AND

R.K. Datta and others

...Defendants

I.A. No. I

BETWEEN :

C.H Srinivasa and others

...Applicants/Original Plaintiffs

AND

R.K. Datta and others

...Opponent/Original Defendants

1.	Provision under which the application is filed:	:	39 rule 1 and 2 R/w Sec.151 of CPC.,
2.	Relief sought for	:	Temporary Injunction
3.	Date on which the application	:	16-12-2022

	is filed		
4.	Number of the application	:	IA.No.I
5.	Date on which the objections are filed by different opponents:	:	20-02-2023
6.	The date on which the orders is passed:		02.01.2024

Date: 02.01.2024
Place: Channagiri.

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

ORDER ON I.A. No.I

The plaintiffs have filed instant application under order 39 rule 1 and 2 of CPC., seeking add interim temporary injunction against the defendants restraining them from interfering with the peaceful possession and enjoyment of the suit schedule property and also restraining the defendants not to alienate, mortgage gift, Will, create charge, ect., to anybody with respect to suit schedule property till disposal of the suit.

2. SUM AND SUBSTANCE OF THE AFFIDAVIT ARE AS UNDER:

The plaintiff No.1 has sworn an affidavit on behalf off plaintiff No.2 also stating that, the plaintiffs and defendants are relatives. One C.H. Krishnappa S/o Kariyappa was the grand father of plaintiffs and

defendants. The property bearing Sy.No.93/1 measuring 3 acres 25 guntas and 5 guntas of karab situated within the boundaries has specified in the plaint as well as in the application. The said C.H. Krishnappa retained the suit schedule property for himself to maintain his lively hood till his death. The plaintiffs and defendants have equal share in the application schedule property as the said C.H. Krishnappa has died without intestet. The suit property is enjoyed by the plaintiffs along with their father and defendants. After the death of C.H. Krishnappa there is no partition occurred in the suit schedule property between his legal heirs.

3. The plaintiffs further contended that, the suit schedule property is the joint family property of the plaintiff and defendants. After the death of C.H. Krishnappa the katha of the suit schedule property is entered into his 3 sons. As per the application made by the defendants before the Assistant Commissioner, Honnali vide RACR No.150/2021 and obtained orders behind the back of the plaintiffs. The defendants with an intention to defraud the legitimate rights of plaintiffs in the suit schedule property trying to alienate the suit property to the third persons. When this fact came to the knowledge of plaintiffs, they rushed into the enquiry of the documents. The plaintiffs demanded their shares in

the suit schedule property with the defendants on 05-11-2022 and defendants are refused to effect the partition. Therefore, the plaintiffs prays to restrain the defendants to alienate, gift or mortgage etc., in the interest of justice and equity by allowing this application. If this application is not allowed the intention to file this suit will not survive and the plaintiffs will suffer loss and injustice. Therefore, prays to allow this application.

4. In response to the suit summons the defendants filed the written statement as well as memo stating that the same has been considered as objections to IA.No.1. By denying all the plaint and affidavit averments has set up by the plaintiffs. The defendants have contended that, the plaintiffs are not entitled for the any of the reliefs sought for in the suit. The defendants admits that, the propositus of the family of plaintiffs and defendants was C.H. Krishnappa S/o C.H. Kariyappa and he is the grand father of plaintiffs and defendants. He had 3 sons namely C.R. Hobalidar @ C.R. Rangappa, C.H. Gopalappa and C.H. Venkatadasappa are denied. The defendants disputed the legitimacy of these 3 children of C.H. Krishnappa. The one C.H. Krishnappa had first son namely C.R. Hobalidar @ C.R. Rangappa died and represented by his wife by name Jayamma and her 7 children out of whom the first son Vasanthhoblidar is the

second plaintiff in this suit is admitted by the defendants and partly denied his right on the suit schedule property. The second son of C.H. Krishnappa is C.H. Gopalappa and his wife Smt. C.H. Parvathamma both are deceased and their 6 children and out of them Sri. C.H. Shinivasa is the first plaintiff is also admitted but denies the right to file the present suit and his right in the suit schedule property. The third son of C.H., Krishnappa is namely Sri. C.H. Venkatadasappa and his wife Smt. Sakamma both are deceased and their 2 children who are the defendants in the present suit. The defendants specifically contended that, the grand father of plaintiffs and defendants/C.H. Krishnappa during his life time had settled his properties amongst his 3 sons and his younger brother Dasappa through a registered settlement deed bearing SR.No.839/1958-59 dated 03-06-1958 and the schedule property retained by him for his livelihood are all denied by these defendants. The defendants also denied the joint possession of the suit property by the plaintiffs with them.

5. The defendants specifically contended that, the suit schedule property is not the joint family property and it was a property exclusively belonging

to the father of the defendants by late C.H. Venkatadasappa. Hence, the plaintiffs not have any right, title, interest or share in the suit schedule property. The land in the suit schedule property is originally belongs to one Sri. Govindappa adopted son of Gopalanaika of Channagiri Town and he had no issues. After the death of Govindappa since he was taken care of his life time and his post death ceremonies conducted by the father of defendants namely C.H. Venkatadasappa, the youngest son of Sri. C.H. Krishnappa of the said Govindappa. Though the father of the said C.H. Venkatadasappa namely C.H. Krishnappa had left and given the suit property and other properties to the said C.H. Venkatadasappa. C.H. Krishnappa is also aware of the said fact and he had executed a registered settlement deed dated 03-06-1958 bearing SRO No.839/1958-59 where in he has specifically narrated all these fact that the special interest, care taken by the father of defendants to his uncle Sri. Govindappa, adopted son of Gopalanaika and he has mentioned and settled that the landed and house properties of Sri. Govindappa which had devolved upon him and which were in his possession and enjoyment and

katha also entered in the name of C.H. Venkatadasappa and he has settled those property in his favour. The other two sons of late C.H. Krishnappa namely C.R. Hobalidar and C.H. Gopalappa, father of plaintiff No.1 and 2 also very well aware of all these facts including the settlement of the properties of late Sri.Govindappa infavour of the father of the defendants/Sri. C.H. Venkatadasappa. The said Venkatadasappa working was as an Executive Engineer in PWD department, Government of Karnataka and he passed away on 31-08-2002. During his life time although he was looking after the properties which had devolved upon him from his father's uncle Sri. Govindappa under the aforesaid registered settlement deed dated 03-06-1958. He was not very particularly has he was working out side the Channagiri for a long time . After the death of their parents the defendant No.1 and 2 who are working out side Channagiri wanted to improve the said land in RS.No.93/1 of Busenahalli measuring 3.25 acres and they approached recently concerned Revenue Department and obtained RTC extract. At that time they came to know that, other two elder brothers of Sri. C.H. Venkatadasappa, Sri.

Hoblidar and Sri. C.H. Gopalappa had no right in the suit schedule property by taking undue advantage of the situation, that the defendant father residing and working out side Channagiri got the katha of the said property and mutated into their joint names including the property of Sri. C.H. Venkatadasappa has if they also have a share in the said property.

6. The defendants further contended that, has per the recitals of the registered settlement deed dated 03-06-1958, it is crystal clear that except the father of defendant Sri. C.H. Venkatadasappa no one else including his two elder brother had no any sought of right, title and interest of what so ever nature over the suit properties of the deceased Sri. Govindappa. It is further submitted that, even the grand father of these defendants Sri. C.H. Krishnappa was the kathedar of the said property he himself admitted the properties of his uncle Sri. Govindappa shall go to his last son Sri. C.H. Ventakadasappa. Hence, upon the said settlement deed itself, the father of the defendants became the absolute owner of the said property of Sri. Govindappa and especially after the death of C.H.

Krishanappa who died on 25-03-1963 and all though his two elder son Sri. C.R. Hobalidar and Gopalappa have fully knowledge of these facts changed the katha of the same into their joint names illegally in the revenue records of the Tashildar Channagiri. The said entries will not bind or effect the rights of the said Sri. C.H. Ventakadasappa or the defendant No.1 and 2 being his legal heirs. After the demise of Venkatadasappa when the defendants approached and obtained the RTC extract of the suit property and they came to know that the names of their elder uncles were entered illegally and with out any right or authority or interest entered in the owners and cultivators column of the RTC. Soon after noticing the same when the defendants approached the concerned authority, it is came to the knowledge of the defendants that the present plaintiffs obtained illegal order from Revenue Department for mutating the katha of the suit schedule property into the joint names of the father of the defendant and his 2 elder brothers. Who are C.R. Hobalidar and C.H. Gopalappa. The defendant further contended that, the existing entries in the RTC in respect of the suit schedule property is illegal and hence, sought for

division in the names of their elder uncles/Hoblidar and Gopalappa and sought for changing the name into their joint names only. Though the defendants produced the records before the concerned revenue officers but refused to enter the names of defendant in respect of the said landed properties in Re-Sy.No.93/1 of Busenahalli Village by issuing an endorsement bearing No. RRT/CR/242/2021-22 dated 10-08-2021. By challenging the alleged mutation entries as per MR No.2/1993-94, the plaintiffs by taking undue advantage of the said revenue entries was causing great hardship loss and legal injury to the defendants. The defendants to seek redressal of their grievance constrained to prefer appeal vide RA/CR-2021 which is pending for consideration and the present plaintiffs also appeared as respondent No.11 and 4 respectively. The said appeal had to be heard and decided on merits. In view of the establishment of the court of Assistant Commissioner at Honnali, the said appeal was transferred to the said court. The said Assistant Commissioner, and the present plaintiffs received the notices of the said appeal and appeared through a counsel and have participated willingly in the

proceedings of the said case and later appeal of the present defendants allowed as per the order dated 03-10-2022 and the name of the present defendants are ordered and entered in the revenue records by making necessary changes in the said entries. Therefore, the present suit without exhausting the remedy disclosed these facts well within the knowledge of plaintiffs is patently hit by the provisions of **Land Revenue Act-1954**.

7. The defendants further contended that, the orders passed in RA.No.151/2021 dated 3-10-2022 by Assistant Commissioner Honnali, the necessary entries made in the revenue records maintained by the Tashildar, Channagiri and names of the defendants had been entered in the RTC. Hence, from that date on-wards the defendant continued to be the absolute owners in possession and enjoyment of the suit schedule property over which neither the plaintiffs nor any other persons have got any sought of right title and interest in the suit schedule property. The defendants also sold the property to defendant No.4 by way of registered sale deed bearing No.5465/2022-23 and on the date of the sale itself

the purchaser was put in possession over the suit property. Hence, these defendants are noting to do with the suit schedule property and hence they are not answerable to the claim of the plaintiffs in any manner. Though the plaintiffs having knowledge of all these proceedings they have intentionally not made those brothers and sisters has parties to the present suit. Hence the suit filed by the plaintiffs is bad for non-joinder of necessary parties. The defendants further contended that, the plaintiffs have not approached the court with clean hands by suppressing the previous proceedings held on the alleged suit property. Hence they are not entitled for the relief of injunction as the said relief is equitable relief. By these set of facts the defendants prays to dismiss the suit as well as application by imposing exemplary cost of Rs.25,000/-.

8. On the basis of rival contentions this court formulate to following points for consideration.

POINTS

1. Whether the Plaintiff has 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?

9. Heard learned counsels appearing for the plaintiffs and defendants. Perused the records and on perusal of the same, my findings to above said points are as under .

POINTS

Point No.1: In the Negative

Point No.2: In the Negative

Point No.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 plaintiffs produced RTC for the year 2022-23 bearing MR No.T16/2022-23 of suit schedule property standing in the name of defendant No.1 and

2 in column No.9 and 12 and C/c of mutation register extract dated 10-08-2021 bearing MR No.P16/2022-23 with respect to suit schedule property. The computerized copy of RTC for the year 2010-11 pertaining to suit schedule property standing in the name of C.R. Hobalidar, Gopalappa, C.H. Venkatadasappa S/o C.H. Krishnappa standing in the joint possession of these parties. The C/c of Registered settlement deed dated 03-06-1958 and the declaration of geological tree.

11. On the other hand, the defendants produced copy of Registered settlement deed bearing dated 28-05-1958 bearing No.938/1958-59, the C/c of mutation register extract bearing MR No.2/1993-94 dated 26-07-1993, the computerized copy of RTC for the year 2010-2011 bearing Sl.No.93/1 standing in the name of C.R. Hobalidar, Gopalappa and C..H. Venkatadasappa, C.H. Krishanappa jointly and copy of endorsement dated 10-08-2021 issued by Tahasildar Office, Channagiri. C/c of orders passed by Assistant Commissioner, Honnali in RACR No.150/2021-22 dated 03-10-2022 and C/c of order sheet pertaining to RACR No.150/2021. The C/c of objection filed by the

present plaintiff in RACR No.150/2021 and written arguments and computerized copy of mutation register extract dated 10-08-2021 vide MR No.T/16/2022-23 pertaining to suit schedule property. The C/c of RTC for the year 2022-23 pertaining to suit schedule property standing in the name of present defendants. The copy of Registered sale deed dated 28-11-2022 entered between present defendant No.1 and 2 with the defendant No.3 with respect to suit schedule property. Computerized copy of mutation registered extract dated 28-11-2022 bearing MR No.H11/2022-23 and computerized copy of RTC bearing Sy.No.93/1 for the year 2022-23 standing in the name of defendant No.3.

12. Learned counsel for plaintiff vehemently argued that the suit schedule property is ancestral and joint family property of plaintiffs and defendant No.1 and 2. The plaintiffs and defendants are co-brothers in relation. The original propositus of plaintiffs and defendants is C.H. Krishnappa and the suit property is ancestral and joint family property. He also placed registered settlement deed and RTC entries and mutation entries pertaining to suit

schedule property. The learned counsel for plaintiff prays to allow the application on these grounds.

13. The leaned counsel for defendants also vehemence his arguments at length. He also argued that, the plaintiffs is surprised that the material facts before this court with respect to not disclosing the revenue proceedings held on suit schedule property. The plaintiffs also not made necessary parties to the suit. Hence, the suit is also bad for non inclusion of necessary parties. The suit schedule property is not ancestral and joint family property of predecessors of plaintiffs. The application filed by the plaintiff is not maintainable as per the Sec.23 of **Karnataka Civil rules of Practice-1967** has the plaintiffs seeking two reliefs in singal IA. The plaintiffs has not sought injunction relief against defendant No.3 has he has not made as party to the proceedings. The plaintiffs has not made out prima facie case and balance of convenience and irreparable loss factors as the suit is bad from legal lacunas. Therefore, the application filed by the plaintiffs is not accordance with law. Therefore, prays to dismiss the application with cost.

14. Having taken note of prima facie materials placed by both the plaintiffs and defendants, it appears that, the grand father by name C.H. Krishnappa is the original propositus of plaintiffs and defendants is admitted by the both parties. By looking into the registered settlement deed dated 28-05-1958 produced by both parties which is entered between the C.H. Krishnappa and his brothers wherein the said document clearly clarifies the subsisting rights over the suit schedule property. The father of the defendant Sri. C.H. Venkatadasappa become the absolute owner of the said property of the Govindappa and especially after the death of Sri. C.H. Krishnappa. The prima facie perusal of these Registered settlement deed which is executed during 1958 which is also 30 years old document and has presumptive value as per **Sec.90 of Indian Evidence Act-1872** and the other revenue documents which are RTC's and mutation register extract for the year 2022-23 which is standing in the name of present defendants and these revenue records also have presumptive value until the subsisting right rebutted by the other parties successfully. To rebut the said entries, the plaintiffs

have not produced any documents. Moreover, the plaintiffs also not pleaded any thing about the proceedings held before the revenue authority on the suit schedule property and the sale transaction entered between the defendant No.1 and 2 with defendant No.3 which is subject matter of the suit property. These fact itself shows the plaintiffs have suppressed the material facts before this court.

15. Therefore, the plaintiffs have failed to made out prima facie case to grant temporary injunction on the suit schedule property. Moreover the application filed by the plaintiffs is also not maintainable has per the **Rule 23 of Karnataka Civil Rules of Practice as the plaintiffs is seeking two prayers which is not to interfere and not to alienate** in singal application. Hence, on this ground also the application filed by the plaintiff is not maintainable.

16. Further it is also noticed that, after filling of the written statement the plaintiffs have sought the amendment in the cause title of the plaint by impleading proposed defendant No.3 but he has not made any effort to amend the relief as sought in this application with respect to interim relief and against defendant No.3 also. Therefore, to consider the

contentions of the plaintiffs and the nature of suit schedule property is joint family property of plaintiffs and defendants it needs full pledge trail. Thus, the same needs to be put into box for trial. Therefore, in my considered opinion unless and until full pledged trial is concluded in the matter it is not possible to hold the existence of alleged nature of suit property and existence of right of the plaintiffs in the suit schedule property. Thus, in my considered opinion at this stage the plaintiffs have not made out prima facie case to grant the add interim temporary injunction against the defendants. Therefore, the **point No.1 held in the Negative.**

17. 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 plaintiffs have to prove the said aspect at first by placing prima facie materials too. The balance of convenience and irreparable injuries are always fall in line with prima facie case. In the case on hand, the plaintiffs have failed to prove the

very existence of prima facie case and therefore, the balance of convenience, irreparable injury would also not in favour of plaintiffs. Thus, the **point No.2 and 3 held in the Negative.**

18. **Point No.4:** As a result,I proceed to pass the following:

ORDER

**The IA No.1 filed by the plaintiffs under order 39 rule 1 and 2 R/w Sec.151 of CPC., is hereby rejected.
No order as to cost.**

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 02nd day of January 2024.)

**Date: 02.01.2024
Place: Channagiri.**

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

