

IN THE COURT OF THE ADDITIONAL CIVIL JUDGE, AND
JUDICIAL MAGISTRATE FIRST CLASS AT HONNALI.

PRESENT :Smt. Archana K. Unnithan B.E.; LL.B

Additional Civil Judge and JMFC.Honnali.

.OS No. 180/2016

Dated this day of 9th October 2019

PLAINTIFF		DEFENDANT
Thirumala H. N. S/o narasappa, aged about 42 years,	V/S	1. Narasappa S/o Doddappa, aged about 73 years,
2. Anjaneya S/o Hanumanthappa, aged about 19 years,		2. Sharadamma W/o Rajappa, aged about 50 years,
Both are R/o: Soratur vilalge, Honnali taluk.		3. Kusuma W/o Hanumanthappa, aged about 45 years,
(Rep. By Sri.HGS Advocate)		4. Huchappa S/o hanumanthappa, aged about 45 years,
		5. Sheela W/o hanumanthappa, aged about 35 years,
		6. Chandrappa S/o Govindappa, aged about 40 years,
		7. Hanumanthappa S/o Doddappa, aged about 50

	years, All are R/o: Soratur village, Honnali taluk. 8. H. Rangappa S/o Hanumanthappa, aged about 50 years, R/o: Soratur village, Honnali taluk. (D1 Rep. By UK advocate, D2, 3,5,6 Rep. By ABJ advocate, D4 Rep. By DRS., D7 exparte, D8 Rep. By sri. HMS advocate)
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Parties to IA no. 6

PLAINTIFF/applicant	DEFENDANT/opponent
1. Thirumala H. N. S/o narasappa, aged about 42 years,	1. Narasappa S/o Doddappa, aged about 73 years,
2. Anjaneya S/o Hanuamanthappa, aged about 19 years,	2. Sharadamma W/o Rajappa, aged about 50 years,
Both are R/o: Soratur vilalge, Honnali taluk.	3. Kusuma W/o Hanumanthappa, aged about 45 years,
	4. Huchappa S/o hanumanthappa, aged

	about 45 years,
	5. Sheela W/o hanumanthappa, aged about 35 years,
	6. Chandrappa S/o Govindappa, aged about 40 years,
	7. Hanumanthappa S/o Doddappa, aged about 50 years,
	All are R/o: Soratur village, Honnali taluk.
	8. H. Rangappa S/o Hanumanthappa, aged about 50 years, R/o: Soratur village, Honnali taluk.

Order on I.A. No. 6

The plaintiff has filed this I.A no.6 u/o 39 R. 1 and 2 of CPC praying to grant a status quo till pending disposal of the case over the schedule property by allowing this application.

SCHEDULE

East : Hanumanthappa S.o Bsappa's land.

West : Thungameladande

North : M. Parameshwarappa S/o Basappa's land.

South : Hanumanthappa S/o Chikkappa's land.

2. The plaintiff has filed this IA no.6 along with affidavit stating that, he has filed this suit against the defendants for partition. The suit schedule properties are agricultural lands, bearing sy.no. 90 to an extent of 1 acre 14 guntas and sy.,no. 60/P5 to extent of 1 acre 5 guntas of lands, situated at Soratur village, Honnali taluk , It is contended that, originally suit schedule property belonged to joint family of plaintiff and defendant no.1 to 7 and there was no partition among the joint family members. Plaintiff is the son of defendant no.1 and the plaintiff no.2 is son of 7th defendant. The defendant no.1 and 7 are own brother, they are members of undivided hindu joint family.

3. Further contended that, the khata and pahani stands in the name of the 1st defendant , taking advantage of the khata standing in his name of 1st defendant to tried to alienate the suit schedule property to defendant no.2 to 6 so they are made parties in this suit, there is no good relationship between himself and defendant , he has lived separately but enjoyment of the suit lands jointly but

kandaya is paid by the defendant no.1 since one year there has been misunderstandings between himself and defendant , the defendant without knowledge and consent of plaintiff to began to sell certain items of the schedule mentioned properties situated at Soratur village, Honnali taluk. , When he questioned about it, the defendant threatened that he would dispose of the remaining properties. Further it is learnt that defendant clandestinely bargaining to sell away some of the proportion mentioned in the schedule here under with the intention to deprive plaintiff's legitimate share therein, the plaintiff contends that, the defendant having no manner of right to alienate any of the properties mentioned in the schedule here .

4. The defendant no.1 has filed his objection and contending that, the application schedule property in sy.no. 90 to an extent of 1 acre 14 guntas of Soraturu village is the absolute property of this defendant. He has acquired right over the same by virtue of grant under regularization of unauthorized cultivation of lands schedule of government of Karnataka . The grant is made in the month of October 2003, the defendant is aged about 72 years, he suffering from old age deceases, neither plaintiffs nor any defendants are taking his care properly, as such he has to depend on others for his

livelihood , further he has lost his wife . Even after her death nobody is taking his care. Having no other way this defendant has inevitably sold his above absolute property. Hence has entered into an agreement of sale and has sold sy.no. 90 to an extent of 1 acre 14 guntas, infavour of one Giriyappa S/o; Hanumanthappa and received the entire sale consideration of Rs. 79,000/- . As there was some impediment to execute proper registered sale deed, this defendant has only executed agreement of sale on 26-03-2012 . The plaintiff knowing this fact has come up with this false suit, with an intention cause obstruction to conveyance of the above property. Because of this said Giriyappa S/o: hanumanthappa has filed this Hon'ble court in OS No. 116/2019

5. Further contended that, the plaintiff has no locus standi to file this application , It is reliably learnt, plaintiff is trying to obtain an order of status quo and use the same against the bonafide purchaser of item no.1 of suit schedule property. Hence, this application is liable to be dismissed in liminea.

6. Heard both sides, perused materials on record. The following points arises for the consideration of this court .

1. *Whether the plaintiff has made out prima facie case?*
2. *Whether the balance of convenience is lies in favour of plaintiff?*
3. *Whether the plaintiff will put great hardship and loss if injunction is not granted?*
4. *What order?*

7. My findings to the above points are 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 the final order for the following :

REASONS

8. **Point no.1 to 3:** These points are taken together for consideration to avoid the repetitions.

It is admitted fact that, plaintiff is son of defendant no.1 and 2nd plaintiff is son of 7th defendant . It is the contention of the defendant that, the IA schedule property was granted under regularization of unauthorized cultivation of land scheme of government of karnataka in the month of October 2003. The defendant has also produced form no.7 in support of the same. It is his contention that, due to his old age he has entered into a

agreement of sale of the schedule property in favour of Giryappa S/o Hanumanthappa on 26-03-2012 .

9. The defendants have filed following documents on their behalf, general power of attorney, saguvali chit certificate issued by Tahasildar, Honnali dated 30-10-2013, property description, mutation register extract bearing MR No. 40/2003-04, RTC extract bearing sy.no. 90 standing in the name of 1st defendant for the year 2018-19, certified copy of order sheet in OS no. 116/2019, certified copy of plaint in OS no. 116/2009 .

10. The plaintiff has produced a G. Tree, photographs, CD and RTCs to show that, properties are standing in the name of defendants. The G. Tree produced goes to shows that, the plaintiff and defendants constitute a hindu joint family. The law presumes that every hindu family is a joint family until the status is severed.

11. On perusal of the document produced by defendant , it is observed that, the property was granted in favour of D1 by the government and the RTC entries also reflect the same. However, whether the suit schedule

property falls in the ambit of joint family property or not by virtue of the grant cannot be ascertained at this stage. The certified copy of order sheet and plaint produced by defendant goes to show that, a suit for specific performance filed against the 1st defendant by one Giryappa S/o Hanumanthappa . The same cannot be considered at this stage. Further, it is important to note that, the grant of status quo will protect the interest of both parties to the suit . The photographs produced by the plaintiff show that, there is some construction likely to take place in the suit schedule property. The identity of the property has not been disputed. Accordingly, this court is of the opinion that, the plaintiff has established that, he is a member of hindu joint family, and a grant was made in favour of his father. The only dispute which remains is whether the said grant is in the name of individual or enures to the benefit of family, the same cannot be ascertained at this stage. Hence, the plaintiff has made out a prima facie case, as a member of undivided hindu joint family having joint family property, if the property is sold before the conclusion of the suit. In the event of him succeeding he will have nothing to claim thus, balance of convenience and irreparable loss and injury also tilts in favour of plaintiff. Hence, this court

proceeds to pass the following:

//ORDER//

The IA no.6 filed by the plaintiffs U/o
39 R 1 and 2 of CPC is hereby allowed.

The plaintiffs and defendants are
directed to maintain status quo until
disposal of the case.

No order as to cost.

Addl. C.J & JMFC., Honnali.