

**IN THE COURT OF THE III ADDL. SENIOR CIVIL JUDGE
AND C.J.M., DHARWAD**

: PRESENT :

Sri. Mahesh Chandrakanth B.A., LL.M.
III Addl. Senior Civil Judge & C.J.M.,
Dharwad

Dated this the 1st day of June, 2023

OS. No. 56/2021

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Plaintiffs : Shivabasappa S/o Sankrappa Manasur
and others.

(By Sri. G.S.Savadatti, Adv.,)

V/s

Defendants: Lakshappa S/o Basappa Yarihakkal and
others

**(By Sri. D-1 to 4, 6, 34, 35, 37 to 43 by
Sri.H.R.B-Adv.,**

D-5 by Sri. A.L.N. Adv.,

**D-10, 16 to 18, 20, 21, 22, 24 to 28 by
Sri. R.G.N. Adv.,**

D.15 by Sri. J.K.L. Adv.,

**D-8, 9, 12, 29, 32, 36, 35, 37(a) to (d)
placed exparte)**

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PARTIES TO I.A. No.II

Applicants : Shivabasappa S/o Sankrappa Manasur and
plaintiffs others.

V/s

Opponents : Lakshappa S/o Basappa Yarihakkal and
Defendants others.

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ORDERS ON IA NO.II

This application is filed by the plaintiffs under Order XXXIX Rule 1 & 2 R/w section 151 of CPC, seeking temporary injunction to restrain the defendants from alienating the suit schedule properties in any manner till disposal of the suit.

2. In the accompanying affidavit it is stated that the plaintiffs have filed the present suit for partition and separate possession of suit properties and suit properties are their ancestral joint family properties. Further it is stated that the defendants are trying to alienate the suit properties to one Anil Suraya who is the partner of Surya Developers, Bangalore. If they alienates the suit properties it will cause irreparable loss and injury to them. Hence, they prayed to allow the application.

3. The defendants filed their written statement and they denied the plaint allegations and contended that the suit properties are not the joint family properties of the plaintiffs, rather, the suit properties are separate properties of defendants by virtue of grant made by the Land Tribunal. They adopted their written statement contents as objections to present application and they prayed to reject the application.

4. The defendant No.20 filed counter-claim and sought for partition in other properties also.

5. Heard the arguments of both side and perused the material placed on record.

6. The following points arise for my consideration:-

- 1) Whether the plaintiffs prove that there is prima facie case in their favour?
- 2) Whether the plaintiffs prove that balance of convenience lies in their favour?
- 3) Whether the plaintiffs prove that if the temporary injunction is not granted it will cause irreparable loss and injury to them?
- 4) What order?

7. My answers to the above Points are as under:

Point No.1 to 3 : Partly in the affirmative

**Point No.4 : As per final order,
for the following:**

: R E A S O N S :

8. **Points No.1 to 3** : These points are interconnected to each other. Hence, to avoid the repetition of fact and discussion these points taken together for common discussion.

9. The plaintiffs have filed the present suit for partition

seeking $\frac{1}{2}$ share in the suit properties. It is the case of the plaintiffs that one Basappa was the propositus and he had 2 sons namely Bheemarayappa and Lakshappa. The defendants No.1 to 4 and plaintiffs are the legal heirs of Lakshappa's branch and the defendants No.7 to 33 are the legal heirs of Bheemarayappa's branch and remaining defendants are the purchasers of the suit properties and other owners of the suit properties. It is their further case that the suit properties are their joint family properties and till today there is no partition by metes and bounds and the defendants are trying to alienate the suit properties. Thus, they prayed to grant temporary injunction order.

10. On perusal of the RTCs produced by the plaintiffs with regard to suit schedule-A properties i.e., Survey No.36 of Manasur + Sanna Somapur village, it reveals that the said property is already divided between the defendants by virtue of Land Tribunal order and specific extent of land has been granted to the concerned applicants. It reveals from said RTC that the names of plaintiffs' branch family members have been shown as owners and possessors of land to an extent of 33 guntas only. The remaining landed property is shown in the

names of different persons with their specific extent. Thus, it reveals that the plaintiffs and their branch family members are having right over the land to an extent of 33 guntas only.

11. Further it is clear from the Land Tribunal order produced by the defendants that 33 guntas of land has been allotted to the plaintiffs and defendants No.1 to 5's branch. So, it reveals that they together entitled to get share of 33 guntas of land only in the entire suit property. But the plaintiffs are claiming temporary injunction order with regard to entire suit property i.e., to an extent of 16 acre 31 guntas. As per the RTCs and Land Tribunal order prima facie it reveals that the plaintiffs are having right title and interest over 33 guntas land only i.e., part of the suit property. They have no right and they have not produced any cogent material to prove that their right with regard to remaining property. Hence, prima facie it reveals that they are having right over 33 guntas of land only in suit schedule-A property.

12. The plaintiffs have sought for temporary injunction order with regard to suit schedule Item No.2 property also. The suit schedule Item No.2 property is Survey No.49 of Manasur +

Sanna Somapur village. On perusal of RTC produced by the plaintiffs it reveals that this property is standing in the names of plaintiff No.1 and defendants No.1 to 5. So it is clear that this property belongs to the branch of Lakshappa. Hence, the plaintiffs are having right title and interest over this property.

13. The plaintiffs on oath have stated that the defendants are trying to alienate the suit property to one Surya Developer. There is no partition between the plaintiffs and defendants No.1 to 5 in the suit schedule Item No.2 property and in the suit schedule Item No.1 property to an extent of 33 guntas as shown in the Land Tribunal order. Hence, the defendants No.1 to 5 have no right to alienate the said properties without the consent of the plaintiffs. The plaintiffs' right title and interest is involved in these properties. Hence, if the defendants No.1 to 5 alienate the suit properties, that may cause irreparable loss and injury to the plaintiffs. Hence, to save their rights and protect the property of Lakshappa's branch, it is just and proper to restrain the defendants No.1 to 5 from alienating the suit schedule Item No.2 property and suit schedule Item No.1 property to an extent of 33 guntas as shown in the RTCs. There is no material against remaining defendants to prove that

they are alienating the suit properties. Thus, it is just and proper to grant the temporary injunction order only as against the defendants No.1 to 5 as discussed above. Thus, I answer **points No.1 to 3 partly in the affirmative.**

14. **Point No. 4:** In view of the above discussion, I proceed to pass the following:

ORDER

I.A No.II filed by the plaintiffs under Order XXXIX Rules 1 & 2 R/w section 151 of CPC, is hereby partly allowed.

Temporary injunction order is granted against the defendants No.1 to 5.

The defendants No.1 to 5 are hereby restrained from alienating the suit schedule Item No.2 property and suit schedule Item No.1 property to an extent of 33 guntas as shown in the RTC till disposal of this suit.

*(Dictated to the Stenographer, typed by him, corrected and signed by me and then order is pronounced by me in the open court on this 1st day of **June, 2023**)*

(Mahesh Chandrakanth)
III Addl. Sr. Civil Judge & C.J.M.,
Dharwad