

THE COURT OF IV ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., DHARWAD

Present: SRI. AMOL.JAYAKUAR.HIRIKUDE
B.A. L.L.B.,
IV Addl. Senior Civil Judge
& J.M.F.C., Dharwad.

OS No.111/2022

Dated : 13th day of July 2023

Plaintiff/s: Laxmi W/o Veeresh Shettar and another.

(R/by Sri.P.S.U Adv)

V/s.

Defendant/s: Shaila W/o Late Nagappa Mithari and others.

(D1 to 6 R/by Sri.S.N.P, Adv)
(D7 to 10 & 14 Exparte)
(D11 to 13 R/ by ADGP)

PARTIES TO IA NO.II

Applicant/s: Laxmi W/o Veeresh Shettar and another.
(Ori.Plffs)

V/s.

Opponent/s: Shaila W/o Late Nagappa Mithari and others.
(Ori.Defs)

ORDER ON I.A.No.II

This is an application filed by the plaintiffs seeking temporary injunction against the defendants No.1 to 10 from alienating the suit properties or creating charge or lien or mortgaging or hypothecating or borrowing loan on the suit properties till the

disposal of this suit.

2. This is the suit filed by the plaintiffs against the defendants seeking declaration that, the father of plaintiff No.1 has attained civil death and the plaintiffs have sought for partition of their 1/5th share in the suit properties by meets and bounds. The defendant No.1 to 6 are the family members of the plaintiffs. The defendant No.7 to 10 are the purchaser of suit item No.5 of schedule A and defendant No.11 to 14 are the government authorities.

3. In support of the application, the plaintiff No.1 has sworn to an affidavit, wherein it is stated that, the suit properties are the joint family properties of themselves and defendant No.1 to 6 and the plaintiffs have got their 1/5th share in the suit properties. It is further alleged that the defendant No.1 to 6 are intending to sell the suit properties by taking undue advantage of appearance of their names in the revenue records of the suit properties. Further the defendant No.1 to 6 have already sold the suit item No.5 of 'A' schedule in favour of defendant No.7 to 10 without consent of the plaintiffs, therefore the plaintiffs have

prayed to restrain the defendant No.1 to 10 from alienating the suit properties in favour of anybody or creating any kind of charge thereon till the disposal of this suit.

4. The defendant No.7 to 10 not appeared before this court, hence they have been placed exparte. The defendant No.1 to 6 have filed objections to the application contending that, the application is false, frivolous and the same is not maintainable. It is further contended that the plaintiffs have suppressed the execution of or existence of registered partition deed dated 01-12-2010 and defendant No.1 to 6 are said to be in possession and enjoyment of the suit properties as per the registered partition deed dated 01-12-2010 and developed the suit properties by investing their money and they have already mortgaged some of the suit properties with bank. It is further contended in the objection that, the plaintiffs have filed this application to harass the defendant No.1 to 6 and it is further contended that the plaintiffs have already taken their respective share in the suit properties and the apprehension of plaintiffs that the defendants are

intending to sell the suit properties is baseless apprehension and if the application is allowed and the defendants No.1 to 6 are restrained from borrowing loan etc., on the suit lands, then they will suffer from irreparable loss and more hardship will be caused to them. Hence, the defendants No.1 to 6 have prayed to dismiss the application.

5. I have heard both side on IA No.II and perused the material available on record.

6. Now the following points arise for my consideration.

1.	<i>Whether the plaintiffs have made out prima facie case ?</i>
2.	<i>Whether the balance of convenience lies in favour the plaintiffs ?</i>
3.	<i>Whether irreparable loss would be caused to the plaintiffs if the instant interlocutory application is not allowed ?</i>
4.	<i>What order ?</i>

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

<i>Point No.1 to 3:</i>	<i>Partly Affirmative.</i>
<i>Point No.4:</i>	<i>As per the final order for the following:</i>

REASONS

8. **Point No.1 to 3:-** These points are interconnected with each other, as such in order to avoid repetition of facts, they are discussed together.

8(a). The propositus of the family of the plaintiffs and defendants No.1 to 6 is one Basappa, he had four sons namely Nagappa, Mallikarjun, Yallappa and Shivappa. The said propositus died leaving behind his wife Ambavva and four sons mentioned above. The first son of propositus namely Nagappa is no more and defendant No.1 to 3 are his wife and children. The second son of the propositus namely Mallikarjun is unheard of several years and plaintiff No.1 and 2 are his daughter and wife respectively. The defendant No.4 & 5 are the other two sons of propositus and the defendant No.6 is the wife of propositus. This being the relationship of the parties, it is alleged in the plaint that the suit schedule 'A' lands and suit schedule 'B' house properties are the joint family properties of the plaintiffs and defendant No.1 to 6 and they are in possession and enjoyment of the same. It is further alleged in the plaint that, the father of plaintiff No.1

and husband of plaintiff No.2 namely Mallikarjun is unheard of since last 27 years and despite best efforts of plaintiffs and other family members of the family of the plaintiffs, they could not trace the said Mallikarjun till date. Therefore, taking undue advantage of the situation, the defendant No.1 to 6 got their only names entered in the revenue records of the suit properties and they alleged to have sold the suit item No.5 of schedule 'A' in favour of defendant No.7 to 10 without the knowledge or consent of the plaintiffs and it is further alleged in the plaint that the defendant No.1 to 6 by colluding with each other by misrepresenting plaintiff No.2 have got executed a partition deed illegally before Sub-registrar and the said partition deed said to be null and void and as such not binding on the plaintiffs. It is further alleged that the said partition deed is also void, as all the family properties of the family of plaintiffs and defendants No.1 to 6 have not been included in the said partition deed. Therefore, the plaintiffs apart from seeking their 1/5th share in the suit properties, have also filed IA No.2 for restraining the defendant No.1 to 10 from alienating

the suit properties in favour of anybody or creating any sort of charge over the same till the disposal of this suit.

8(b). It is pertinent to mention here that, the defendant No.1 to 6 have not denied the relationship of the plaintiffs with them as shown in the genealogy by the plaintiffs. But they contended that there has already been registered partition deed executed in between the defendant No.1 to 6, plaintiff No.2 on 01-12-2010 and the plaintiff No.2 has contended to have executed many relinquishment deeds by receiving money with respect to the suit properties. Therefore, the defendants apart from praying to dismiss the suit, have also filed counter claim seeking relief of declaration that the relinquishment deed bearing No.5983 dated 18-09-2015 and registered partition deed dated 01-12-2010 are legal and valid documents and binding upon the plaintiffs herein.

8(c). In this case, the defendant No.1 to 6 have not disputed the nature of the suit properties. They only contended that there has already been partition entered into in respect of the suit properties in

between the plaintiff No.2 and defendant No.1 to 6 and they also contend about alleged execution of relinquishment deed by the plaintiff No.2 in respect of the suit properties. The said contention will have to be proved by the defendant No.1 to 6 at the trial by leading cogent documentary and oral evidence. But at this stage, as the defendants have admitted the relationship of the plaintiffs and the nature of the suit properties, it is necessary to keep the suit properties intact till the disposal of this suit, in order to ascertain the entitlement of the share of the plaintiffs over the suit properties. But at the same time, the defendant No.1 to 10 cannot be restrained from creating charge or borrowing loan or making encumbrance over the suit properties. Because they have to maintain the suit properties and thereby to make necessary arrangements to cultivate the suit lands etc., therefore if the defendant No.1 to 10 are restrained from alienating the suit properties in favour of anybody till the disposal of this suit, then the apprehension of the plaintiffs can be very well protected and it will also not cause much hardship to the defendant No.1 to 10 as

they can avail loan on the suit properties to maintain them. Hence to the above extent, I am of the opinion that the plaintiffs have made out prima facie case and balance of convenience is also lies in their favour and they will be put to irreparable loss if the temporary injunction as sought under IA no.II partly not granted. Hence, I have answered **point No.1 to 3 “ in Partly Affirmative”** .

9. **Point No.4:-** For the reasons stated while discussing **point No.1 to 3**, I proceed to pass the following:-

ORDER

The I.A.No.II filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed partly.

The defendant No.1 to 10 are hereby restrained from alienating the suit properties standing in their names in favour of anybody till the disposal of this suit.

No order as to costs.

(Dictated to stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on **13th day of July 2023**)

(Amol Jaykumar Hirikude)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

For order
13-07-2023

(Order pronounced in the open Court vide separate order)

ORDER

The I.A.No.II filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed partly.

The defendant No.1 to 10 are hereby restrained from alienating the suit properties standing in their names in favour of anybody till the disposal of this suit.

No order as to costs.

(Amol Jaykumar Hirikude)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.