

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.290/2021

Dated : 7th day of July 2023

Plaintiff/s: Bheemasingh T. Hulagennavar and others.

(R/by Sri.S.B.N, Adv)

V/s.

Defendant/s: Mahadevappa K. Bogur and another.

(R/ by Sri.T.P.H,Adv)

PARTIES TO IA NO.I

Applicant/s: Bheemasingh T. Hulagennavar and others.

V/s.

Opponent/s: Mahadevappa K. Bogur and another.

ORDER ON I.A.No.I

This is an application filed by the counsel for plaintiffs seeking temporary injunction against the defendants restraining them from alienating, encumbering or otherwise dealing with and creating charge on the suit properties till the disposal of this suit.

2. The suit properties have been described by the plaintiffs in the plaint as schedule A and B and which are as under:

SCHEDULE – A

1. The agricultural land bearing Block No.1/2+1B measuring 10 acres 39 guntas assessed at Rs.25.02 paise situated at Ramapur, Hobli Alanavar, Tq & Dist:Dharwad and the boundaries are shown below:

To the East:	Property of Ganjimarad
To the West:	Ramapur village
To the North:	Boundary of Veerapur village
To the South:	Land of Nagappa Mane and Ningappa Hadapad.

2. The agricultural land bearing Block No.19/2A+2B/1 measuring 4 acres 21 guntas assessed at Rs.8.46 paise situated at Ramapur, Hobli Alanavar, Tq & Dist:Dharwad and the boundaries are shown below:

To the East:	Property of Virupaxi Nagappa Badiger
To the West:	Property of Sahadev Bheemappa Sheegihalli.
To the North:	Property of Ramappa Nagappa Badiger

To the South:	Property of Chandrappa Siddappa Chippalkatti.

SCHEDULE – B

3. The open space bearing VPC No.10 situated at Ward No.1 of Ramapur village, Tq & Dist:Dharwad bounded by the following boundaries:

To the East:	Remaining portion of suit property
To the West:	Land of Maddeppa M Hadapad
To the North:	Land of Channappa Mullaravi
To the South:	Land of Maddeppa Hadapad.

4. The VPC No.138 situated at Ramapur village, Tq & Dist:Dharwad bounded by the following boundaries:

To the East:	Property of Ningappa Ambli.
To the West:	Property of Channappa Yallappa Aralikatti.
To the North:	Property of Channappa Yallappa Aralikatti.
To the South:	Government road.

3. The propositus of the family of the plaintiffs

and defendants is one Kareppa Ningappa Bogur, he had two sons and three daughters namely Mahadevappa, Maruteppa, Ningavva, Shamalavva and Yallavva. The sons of propositus are defendant No.1 and 2 herein. The first daughter of propositus Ningavva is no more and the plaintiffs are the descendants of the said Ningavva. Further, the other two daughters of propositus are also no more and they have no issues. This being the relationship of the parties, it is alleged in the plaint that the suit properties are the joint family properties consisting of plaintiffs and defendants No.1 and 2 and there has been no partition in between them in respect of the suit properties. It is further alleged in the plaint that the defendants by colluding with each other and without arraying the plaintiffs as parties, have filed OS No.442/2010 seeking partition and separate possession and compromised said case behind the back of the plaintiffs and without their knowledge. The said decree passed in OS No.442/2010 is not binding on the plaintiffs. Further the defendants had also filed another suit bearing OS No.688/1988 for declaration

that, the order passed by Assistant Commissioner, Dharwad in RTS No.89/1988 dated 21-11-1988 is void and not binding upon them. Recently the plaintiffs came to know about the alleged illegal proceedings initiated by the defendants mentioned above, therefore they sought their share in the suit properties with the defendants. But the defendants refused to heed to the request of the plaintiffs, therefore plaintiffs are constrained to file this suit, so also the plaintiffs have filed present application seeking the relief mentioned above to protect the suit properties from being alienated in favour of strangers.

4. In support of IA No.I, the plaintiff No.1 has sworn to an affidavit, wherein it is stated that the defendants may alienate the suit properties in favour of others by taking undue advantage of their names appearing in the revenue records of the suit properties. Therefore, the plaintiffs have prayed to allow IA No.I.

5. The defendant No.1 has filed written statement and the same has been adopted by the defendant No.2 by filing memo. It is further stated in the memo that, the contents of the written statement

may be treated as objection to IA No.I. In the written statement, defendant No.1 by denying the averments made in the plaint has contended that during the lifetime of the propositus, the defendant No.1 and 2 have given sufficient gold, money to their sisters and the defendants have further contended that in view of death of propositus before 2005, the plaintiffs and defendants have got equal share in the 1/6th share of propositus. Hence, amongst other grounds, the defendants No.1 and 2 have prayed to dismiss the suit as well as IA No.I.

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

7. 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>

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

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

REASONS

9. **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.

9(a). It is pertinent to mention here that, the defendants have not denied the relationship of the plaintiffs with them and so also the defendants have not denied nature of the suit properties as alleged by the plaintiffs. The only contention of the defendants is that, the propositus having died prior to 2005, under such circumstances the plaintiffs are entitled to have their share in the 1/6th share of propositus and not more than that. Whether the plaintiffs are entitled to their share as sought by them or as contended by defendant No.1 and 2 will have to be seen after the conclusion of trial and at this stage it cannot be certainly said that as to what is the share of the plaintiffs in the suit properties. In view of admitting of

the relationship of the plaintiffs with the defendants and also in view of admitting of the nature of the suit properties as the joint family properties of the plaintiffs and defendants, under such circumstances, it is necessary to keep the suit properties intact till the disposal of this suit so as to avoid causing loss to the plaintiffs in getting their share if any in the suit properties. Hence for the above stated reasons, 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 suffer irreparable loss if the temporary injunction is not granted as sought under IA No.I. Hence, for the above stated reasons, I have answered **point No.1 to 3** **"in Affirmative"** .

10. **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.I filed under Order 39 Rule 1 & 2 of CPC by the plaintiffs is hereby allowed as under.

The defendant No.1 & 2 are hereby restrained from alienating the suit

properties in favor 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 **7th day of July 2023**)

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

For order
07-07-2023

(Order pronounced in the open Court vide separate order)

ORDER

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

The defendant No.1 & 2 are hereby restrained from alienating the suit properties in favor 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.

For issues, Call on **21-07-2023**.