

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C., AT: HUBBALLI.**

PRESENT

**SHRI. RAVI @ RAVINDRA D. ARI,
B.Com., LL.B. (Spl.),**

PRINCIPAL SENIOR CIVIL JUDGE AND JMFC., HUBBALLI.

ORIGINAL SUIT No.32 / 2021

Dated this the 14th day of February 2022

PLAINTIFF : Smt. Kusuma W/o. Ashok
Nagaraddi, Age: about 53 years,
Occupation: Household work,
resident of Savalubavi Galli, Hebsur,
Tq: Hubballi, Dist. Dharwad.

(By Shri A.V.Baligar, Advocate)

VERSUS

DEFENDANTS: 1. Shri. Ramangouda S/o.
Krishtagouda Patil @
Huchchangoudra, Age: about 63
years, Occupation: Agriculture,
resident of Nalavadi, Tal. Naval Gund,
Dist. Dharwad.

2. Smt. Nirmala W/o. Mahadevreddy
Ballarwad, Age: about 51 years,
Occupation: Household work,
resident of Belahode, Tal. Gadag.

3. Smt. Saraswati W/o. Krishtareddy
Morabaraddy, Age: about 48 years,
Occupation: Household work,
resident of Nagavi, Tq. & Dist.
Gadag.

4. Smt. Savitri W/o. Govindappa Maktum, Age: about 56 years, Occupation: Agriculture, resident of PWD Quarters, I.B. Compound, Near Mulagund Naka, Gadag, Tq. & Dist. Gadag.
5. Shri. Lokesh S/o. Basavaraj Gunjal, Age: about 43 years, Occupation: Agriculture, Jangli Peth, Hubballi, Dist. Dharwad.
6. Shri. Sadanand S/o. Basettappa Sajjanshettar, Age: about 57 years, Occupation: Agriculture, Shah Bajar, Bankapur, Tq: Shiggaon, Dist. Haveri.
7. Smt. Mamataj W/o. Sharifsab Sunkad, Age: about 52 years, Occupation: Household work, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
8. Shri. Mallikarjun S/o. Mallappa Madalli, Age: about 63 years, Occupation: Agriculture, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
9. Shri. Moulasab S/o. Imamsab Davalkhanavar, Age: about 65 years, Occupation: Agriculture, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
10. Smt. Manjula W/o. Basavaraj Shintalageri, Age: Major, Occupation: Agriculture, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.

11. Shri. Devanagouda S/o. Venkanagouda Patil, Age: about 55 years, Occupation: Agriculture, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
12. Shri. Sagar S/o. Gopal Mudaraddi, Age: about 37 years, Occupation: Agriculture, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
13. Shri. Tammappa S/o. Subhash Mantur, Age: about 45 years, Occupation: Agriculture, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
14. Shri. Hussainsab S/o. Davalsab Sunkad, Age: about 68 years, Occupation: Agriculture, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
15. Smt. Meharunnisa W/o. Hasansab Bullannavar, Age: about 47 years, Occupation: Household work, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
16. Smt. Raziabegum W/o. Hajaratali Samgati, Age: about 46 years, Occupation: Household work, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.
17. Shri. Mohammedsab S/o. Hajaresab Bullannavar, Age: about 48 years, Occupation: Agriculture, R/o. Nalavadi, Tq. Annigeri, Dist. Dharwad.

18. Shri. Pradeepgouda S/o.
Shankargouda Lenkinagoudar, Age:
about 60 years, Occupation:
Agriculture, R/o. Nalavadi, Tq.
Annigeri, Dist. Dharwad.

***(D-1 by P.H.Konaraddi, Advocate,
D-2, 3 & 10 – Ex-parte,
D-4 to 6 by Shri C.H.Sajjanshetkar,
Advocate,
D-7 to 9, 11 to 18
by Shri P.M.Chavaraddi, Advocate)***

PARTIES TO I.A.No.I

APPLICANT : Smt. Kusuma W/o. Ashok Nagaraddi.
PLAINTIFF

VERSUS

OPPONENTS : Shri Ramangouda S/o. Kristagouda
DEFENDANTS Patil @ Huchchangoudra and others.

PARTIES TO I.A.No.II

APPLICANT : Shri Ramanagouda S/o.
DEFT.No.1 Krishnagouda Patil @
Huchchannagoudra.

VERSUS

OPPONENT : Smt. Kusuma W/o. Ashok Nagaraddi.
PLAINTIFF

PARTIES TO I.A.No.III

APPLICANT : Shri Mahammadsab S/o. Hajaresab
DEFT.No.17
AND OTHER
DEFTS. Bullannavar.

VERSUS

OPPONENT : Smt. Kusuma W/o. Ashok Nagaraddi.
PLAINTIFF

COMMON ORDER ON I.A.No.I TO III

**(I.A.No.I FILED UNDER ORDER 39 RULE 1 AND 2 R/w. SEC.151 OF C.P.C.,
I.A.No.II AND III FILED UNDER ORDER 39 RULE 4 R/W. SEC.151 OF CPC)**

That the top noted I.A.No.I is filed by the plaintiff under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C., wherein prayed to restrain the defendants from alienating, creating charges over the suit schedule properties in any manner till disposal of the suit, for the reasons assigned in the accompanying affidavit.

2. Similarly, I.A.No.II and III are filed by the applicants / defendant Nos.1 and also defendant Nos.7 to 9, 11 and 16 to 18 under Order 39 Rule 4 R/w. Section 151 of C.P.C. respectively, wherein they have prayed to vacate ad-interim temporary injunction order stating that the plaintiff has not complied the order as contemplated under Order 39 Rule 3A of C.P.C. after granting an ad-interim ex-parte temporary injunction order. Hence, prayed to allow I.A.No.II and III and prayed to reject I.A.No.I.

3. After filing the suit, the suit summons was issued to the defendants and also notice on I.A.No.I and the defendants have appeared through their respective counsels except the defendant No.2, 3 and 10, who have been placed ex-parte. Further, the defendant No.11 filed the written statement and it was adopted by the defendant No.7 to 9 and also defendant No.12 to 18 as their written statement and also further submitted another memo stating that the written statement may be treated as objections to I.A.No.I.

4. Similarly, the defendant No.1 has also filed written statement and also a memo stating that the written statement of the defendant No.1 may be treated as objections to I.A.No.I.

5. On the other hand, the plaintiff has not filed any objections to I.A.No.II and III.

(Whatever the reasons assigned by the plaintiff in her affidavit supporting to I.A.No.I and the contentions taken in the written statement by the said defendants would be discussed at the relevant part of the order, in order to avoid repetition of facts.)

6. Heard the respective counsels at length and perused the materials available on record.

7. On the basis of the pleadings of the respective parties, the following points that would arise for my consideration:

- (1) *Whether the applicant / plaintiff has made out a prima facie case to grant an interim injunction order?***
- (2) *Whether the balance of convenience lies in favour of the applicant / plaintiff?***
- (3) *Whether more hardship would be caused to the applicant / plaintiff if interim order is not made absolute?***
- (4) *Whether the defendant Nos.1 and defendant Nos.7 to 9, 11 to 18 have made out the grounds to allow I.A.No.II and III?***
- (5) *What order?***

8. My findings on the above points are as under:

- Point No.1** : ***In the affirmative.***
Point No.2 : ***In the affirmative.***
Point No.3 : ***In the affirmative.***
Point No.4 : ***In the negative.***
Point No.5 : ***As per final order,
for the following,***

REASONS

9. **POINT No.1 TO 4:** These four points are taken together for discussion in order to avoid repetition of facts and they are inter-linked with each other.

10. At the outset, the plaintiff has filed I.A.No.1 seeking the relief of temporary injunction restraining the defendants from alienating the suit schedule properties in any manner till disposal of this suit stating that the plaintiff and the defendant Nos.1 to 3 are brothers and sisters and the suit schedule properties are ancestral properties, which were succeeded by the propositus by name Krishtagouda Patil, and the said properties are the ancestral properties of the said propositus. The propositus was married with one Smt. Indrawwa and the said propositus was died on 09.04.1991 and his wife died on 02.09.2006 leaving behind the plaintiff and the defendant Nos.1 to 3. But, the name of the defendant No.1 only appeared in the Revenue Records and by taking undue advantage of the said name, which is entered in the records of the suit schedule properties, he has made some alienations in favour of the defendant Nos.4 to 18 behind the back and without the knowledge of the plaintiff. Hence, the plaintiff has

demanded her legitimate share after coming to know about the alleged alienations, for which the said defendants have refused to effect the partition. Hence, an occasion arose to the plaintiff to file the present suit.

11. On the other hand, it is the contention of the defendant No.1 is that the genealogy submitted by the plaintiff is not correct. But, it is true that said Krishtagouda patil was died on 09.04.1991 and his wife by name Smt. Indrawwa died on 02.09.2006. But, the plaintiff and the above referred Smt. Indrawwa, Ningamma W/o. Mahadevaraddi Billarwada and Laxmavva W/o. Krishnappa Morabaraddi have given a consent vardi to the Village Accountant of Shiraguppi and Nalavadi Villages, wherein they have clearly mentioned that the name of Krishtagouda is to be deleted from the property records and the name of the defendant No.1 may be entered to the property records. Accordingly, after giving consent vardi, the defendant No.1 has submitted an application and got his name entered to the property extract on 08.05.1991 and on 01.07.1991 and thereafter 'U' notice was served on all the successors of Krishtagouda and they have affixed their signatures and his mother affixed her LTM on the said notice and expressed their no objection for the entry of name of the defendant No.1 as per M.E.No.5478 dated 05.08.1991 and M.E.No.2603 dated 20.06.1991 were effected. Under such circumstances, the plaintiff has no right to claim the share over the suit schedule properties. Accordingly, prayed to dismiss the application.

12. On the other hand, the defendant No.11 also filed written statement claiming that this defendant No.11 and the defendant No.7 to 9, 13 to 18 are the bonafide purchasers of the respective plots mentioned in suit schedule 'B' of the plaint. Further, the defendant No.1 in order to meet out his domestic necessities has alienated the suit schedule properties in favour of the said defendants. Hence, suit is not at all tenable.

13. Having heard the arguments of the respective counsels and looking to the genealogy submitted by the plaintiff in Annexure 'B', it discloses that said Krishtagouda Patil and Smt. Indrawwa are the parents of the plaintiff and the defendant Nos.1 to 3. As per the contention of the plaintiff, the suit schedule properties are their ancestral properties, wherein the plaintiff is also having share over the suit schedule properties.

14. In the light of the above said contentions taken by the plaintiff, it appears that there are prima facie materials in favour of the plaintiff to grant an interim order in her favour. Anyhow, as stated by the defendant No.1, his name was appeared only basing on the said questionable Vardi said to be given by the plaintiff and the defendant No.2 and others. Anyhow, the Revenue entries will not confer any title over the suit schedule properties in favour of the defendant No.1. If a registered partition deed was taken place and by virtue of the said registered partition deed if the name of the defendant No.1 is appeared and then it is proper to consider his title over the suit schedule properties. But, as admitted by the defendant No.1, who is none other than the brother of the plaintiff,

it can be inferred that his name came to be entered in the records of the suit schedule properties by virtue of the alleged questionable Vardi said to be given by the plaintiff and other family members. But, in order to adjudicate the rights of the respective parties and to prove the alleged fact that the suit schedule properties are ancestral properties of the plaintiff, trial is required. Before going to the trial, it is not justifiable to vacate an interim order.

15. As stated herein supra, the very defendant Nos.7 to 9, 11 to 18 have admitted the alleged fact that they got purchased the plots described in suit schedule 'B' of Annexure 'A' of the plaint and accordingly their names were appeared in the records pertaining to the respective properties. Under such circumstances, basing on the said entries if the said defendants alienated the said properties in favour of third parties, definitely it would lead to multiplicity of proceedings, which would cause more injustice to the plaintiff.

16. As stated herein supra, already the defendant No.1 has alienated the said suit schedule properties in favour of the above said defendants as stated supra and now the said properties are standing in the names of the said defendants. Under such circumstances, there is every chance of alienation of the said properties by the said defendants in favour of third parties and to substantiate the alleged fact that the said defendants have purchased the suit schedule properties, the plaintiff has got produced various sale deeds which are standing in the names of

the above said defendants. Under such circumstances, certainly much hardship would be caused to the plaintiff rather than the defendants if interim order is not made absolute.

17. On the other hand, it is the contention of the defendant No.1 and 17 is that, the plaintiff has not complied the provision of Order 39 Rule 3A of C.P.C. after getting ex-parte ad-interim temporary injunction order and therefore extension of interim order is not at all required since the plaintiff has failed to comply the provision as contemplated under Order 39 Rule 3A of C.P.C. But, the said contention is not a sole ground to vacate the interim order and as admitted by the said defendants, the plaintiff has sent the copy of interim application and affidavit to the defendants through Registered Post. But, only their contention is that, the plaintiff has not sent the copy of the plaint and list of documents along with the suit summons. But, the said sole ground is not sufficient for vacating the interim order. Apart from that, no other contentions are taken by the said defendants to vacate the interim order except the above said contention.

18. As stated herein supra, the said defendants have contended that they are bonafide purchasers of the portion of the suit schedule properties. Whether they are bonafide purchasers of the properties or not is a matter of trial and at this juncture, it is not justifiable to vacate the interim order which was granted in favour of the plaintiff.

19. Viewed from any angle, there are sufficient grounds and prima facie materials to make absolute the interim order till disposal of the top noted suit. Moreover, there are no grounds to vacate the interim order.

20. In view of the above said observation and looking to the hardship point and balance of convenience, which is lying in favour of the plaintiff, this Court inclined to allow the I.A.No.I filed by the plaintiff.

21. For the above said reasons and discussion, I answer the **Point Nos. 1 to 3 in the affirmative** and the **Point No.4 in the negative**.

22. **POINT No.5:** In view of the above said findings, this Court proceed to pass the following,

ORDER

I.A.No.I filed by the applicant / plaintiff under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C. is hereby allowed.

Consequently, hereby restrained the defendants and anybody claiming under them from alienating the suit schedule properties in any manner till disposal of the top noted suit.

Further, I.A.No.II and I.A.No.III filed by the applicant / defendant No.1 and the defendant No.7 to 9 and 11 to 18 respectively under Order 39 Rule 4 R/w. Section 151 of C.P.C. are hereby dismissed.

Looking to the facts and circumstances of the case,
the parties are directed to bear their own costs.

*(Dictated to the Stenographer, transcribed and computerized by him,
script corrected and then pronounced by me in the open court on this the **14th**
day of February 2022)*

(RAVI @ RAVINDRA D. ARI)
Prl. Senior Civil Judge and JMFC.,
Hubballi.*