



IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C. HUBBALLI

Present:- Smt.Deepa G Manerkar, B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C., Hubballi.

Dated this the 11th day of July 2025

O.S. No.237/2025

Smt. Nagavva W/o Ningappa Hosur

...Plaintiff/s

-Versus -

Shantavva W/o Shivappa Ugnikeri and another

.....Defendant/s

:: IA.No.I ::

Smt. Nagavva W/o Ningappa Hosur

Applicant /Plaintiff

-V/s -

Shantavva W/o Shivappa Ugnikeri and another

Opponents/Defendants



:: ORDERS ON IA.NO.I FILED U/O 39 RULE 1 AND 2
R/W 151 OF CPC ::

The present I.A.No.1 is filed by the counsel for the plaintiff to restrain the defendants from alienating the suit schedule properties.

2. In the affidavit accompanying the IA, the plaintiff has sworn to read the plaint averments as part and parcel of the IA. Hence, same is taken into consideration. In the plaint, it is averred that the suit properties are originally ownership of one Ningappa Basappa Ugargol. That one Basavva is his wife. The said Ningappa and Basavva had only daughter by name Yallavva. The said Yallavva was given in marriage to Basappa Babji. That said Ningappa Ugargol died leaving behind said Basavva and his daughter Yallavva as his legal heirs. That the plaintiff and defendants are children of said Yallavva and Basappa Babji. That after the death of Ningappa Ugargol, his wife Basavva and daughter Yallavva



succeeded to the suit properties. However, Yallavva and Basavva died intestate on 26.11.2014 and 18.11.2015 respectively. After the death of Basappa, the plaintiff and defendants being children of Yallavva succeeded to the suit schedule properties and are in joint possession of the same. The names of plaintiff and defendants are mutated in the revenue records. That the plaintiff is having 1/3rd share in the suit properties as the suit schedule properties have come from maternal grand mother of the plaintiff. There is no partition in respect of suit properties between the plaintiff and defendants.

3. That the defendant No.2 being addicted to bad voices, attempting to dispose of suit properties during the year 2025 without effecting any partition between him, the plaintiff and defendants. That defendant No.2 is illegally trying to sell the red soil mud in the suit properties to third parties behind the back of the plaintiff.



4. In the affidavit it is further sworn that the plaintiff has made out a prima facie case for grant of ad interim injunction. The balance of convenience also lies in her favour. In case if the ad interim injunction is not granted, material injury or hardship will be caused to the plaintiff. Hence prayed to allow the application.

5. The defendants have filed memo to treat written statement as part and parcel of the I.A. hence, same is taken into consideration. In the written statement filed by defendant No.2 it is contented that the suit is false, frivolous and vexatious. The description of suit property is not proper and correct. It is contended that one Ningappa Sannabasappa Ugargol was absolute owner of suit properties. During his lifetime he executed registered Will dated 31.05.1996 bequeathing the suit schedule properties in favour of defendant No.2 and his mother. He died long back and even the mother of defendant by name Yallavva



also died. That the plaintiff had already filed O.S.No.256/2018 on the file of Prl. Civil Judge and JMFC Hubballi for the relief of partition and separate possession. The said suit was dismissed on 11.02.2019 against which the plaintiff preferred R.A. No.44/2019 before Principal Civil Judge, Senior Division, Hubballi and the said appeal also came to be dismissed on 28.01.2022. Being aggrieved by the said judgment, the plaintiff preferred R.S.A. No.100743/2022 before Hon'ble High Court of Karnataka and same is also pending. Therefore the fresh suit filed with respect of same subject matter is barred and not maintainable. The plaintiff is not entitled for any interim relief as he has suppressed material facts. Hence prayed for rejecting the IA.

6. Based on above, the points that would arise for my consideration is as under :

POINTS

1. Whether plaintiff has made out a prima facie case?



2. Whether balance of convenience lies in favour of plaintiff ?
3. Whether the plaintiff will be put to irreparable loss and injury in case if the injunction is not granted ?
4. What order ?
7. Heard the arguments, perused records.
8. My findings to the aforesaid points is as under :
Point Nos.1 to 3 : In the Negative
Point No.4 : As per final order for the following

REASONS

9. **Point No.1 to 3:** Since these points are interlinked, they are taken up together for common discussion to avoid repetition of facts and reasoning.

10. As per the plaintiff and defendants, the suit properties are originally ownership of one Ningappa Basappa Ugargol. That one Basavva is his wife. The said Ningappa and Basavva had only



daughter by name Yallavva. The said Yallavva was given in marriage to Basappa Babji. That said Ningappa Ugargol died leaving behind said Basavva and his daughter Yallavva as his legal heirs. That the plaintiff and defendants are children of said Yallavva and Basappa Babji. That after the death of Ningappa Ugargol, his wife Basavva and daughter Yallavva succeeded to the suit properties. However, Yallavva and Basavva died intestate on 26.11.2014 and 18.11.2015 respectively. After the death of Basappa, the plaintiff and defendants being children of Yallavva succeeded to the suit schedule properties and are in joint possession of the same. The names of plaintiff and defendants are mutated in the revenue records. That the plaintiff is having 1/3rd share in the suit properties as the suit schedule properties have come from maternal grand mother of the plaintiff. There is no partition in respect of suit properties between the plaintiff and defendants. That the defendant No.2 being addicted to bad voices, attempting to dispose of suit properties during the year



2025 without effecting any partition between him, the plaintiff and defendants. That defendant No.2 is illegally trying to sell the red soil mud in the suit properties to third parties behind the back of the plaintiff.

11. In support of case of plaintiff, the plaintiff has relied upon Ex.P.1 to 7 documents. Ex.P.3 RTC pertaining to Block No.108 for the year 2022-23 standing in the name of defendant No.2. That on perusal of Ex.P.4 it can be gathered that the said suit was filed by the very plaintiff herein against the present defendants for the relief of partition and separate possession. On going through the properties in present suit as well as in O.S.No.526/2018 both are one and the same. That the said suit in O.S.No. 526/2018 has been dismissed by the Prl. Civil Judge (Jr. Dn) on 11.02.2019. The plaintiff herein has produced Ex.P.7 which is the certified copy of judgment passed in R.A.No.44/2019 dated 28.01.2022 which was preferred by the plaintiff herein against the same defendants. Being aggrieved by the judgment



and decree passed in O.S.No.526/2018. That the said appeal is also dismissed and the Judgment and decree passed in O.S.No.526/2018 dated 11.02.2019 is confirmed. However, on going through the entire plaint averments, there is no whisper about the said proceedings in the plaint. It appears that the plaintiff has come up with second round of litigation and in respect of same properties. That in order to grant equitable relief of temporary injunction, the party must not only to fulfill the three parameters required for grant of equitable relief of injunction but must approach the court with clean hands and its hand should not be tainted with fraud. However, the plaintiff has suppressed about the filing of O.S.No.526/2018 and dismissal of the same as well as dismissal of R.A.No.44/2019 in respect of the suit schedule properties. Therefore the plaintiff is not at all entitled for equitable relief of injunction. As such, above points are answered in the **Negative**.



12. **Point No.4:-** In view of my findings on points No.1 to 3, I proceed to pass the following:

~:: ORDER ::~

I.A. No.I filed by the plaintiff U/o 39
Rule 1 and 2 R/w Sec.151 of C.P.C is hereby
rejected.

(Dictated on AI , corrected by her, verified by me, and then pronounced in the open court on this the 11th day of July 2025.)

Sd/-
(Smt. Deepa G. Manerakar)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.