



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 18th day of August 2025

O.S. No.113/2024

Smt. Basavva W/o Ningappa Unkal and others

...Plaintiff/s

-Versus -

Sri. Chayangouda S/o Shivangouda Patil and others

.....Defendant/s

:: IA.No.I ::

Basavva W/o Ningappa Unkal and others

Applicant /Plaintiff

-V/s -

Chayangouda S/o Shivangouda Patil and others

Opponents/Defendants



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

The present I.A. is filed by the counsel for plaintiffs for the relief of ad interim injunction to restrain defendant No.1 to 13 from alienating the suit schedule properties till disposal of the suit.

2. In the affidavit annexed to the IA, it is prayed to read plaint averments as part and parcel of the I.A. hence, plaint averments are taken into consideration. It is averred that one Shivangouda Basangouda Patil is propositus of plaintiffs and defendants. That one Savathravva, @ Savakka is first wife and one Maratangevva is second wife of said Shivangouda Chayangouda Patil. That the defendant No.1, one Shankargouda i.e. the husband of defendant No.2 and father of defendant No.3 to 6 and one Rayangouda and 3 daughters are children born to said Shivangouda from his first wife. Out of the said 3 sons, Rayangouda had gone in



adoption to one Adivveppagouda Patil. That the defendant No.7 to 13 are purchasers of suit schedule properties and the defendant No.14 is the Land Acquisition Officer. That said, Shivangouda Chayangouda Patil died on 28.01.1999 leaving behind the plaintiffs defendant No.1 to 6 as his legal heirs. That said first wife by name Savathravva @ Savakka died in the year 2014 and his second wife Maratangevva died on 16.11.2019. That the suit schedule properties are ancestral and purchased properties by said Shivangouda Chayangouda Patil. After the death of said Shivangouda Chayangouda Patil, the defendant No.1 and husband of defendant No.2 and father of defendant No.3 to 6 by name Shankargouda got mutated the names of children of first wife in revenue record in respect of suit schedule property and they have not included the names of children of second wife. That the sisters of said defendant No.1, husband of defendant No.2 and 3 to 6 having given their share and their names have been deleted and only the names of defendant No.1 and



deceased Shankargouda have been mutated in the revenue records. That the suit schedule properties are joint family properties and in joint possession and occupation of the plaintiffs and defendants. That there is no partition in respect of the suit schedule properties. That many a times the defendants requested the plaintiff to effect partition and allotted their legitimate share which was postponed by the defendants on one or other pretext. At the defendants without the knowledge and consent of plaintiffs, defendant No.1 and one Shankaragouda Patil and their mother and 3 sisters have executed sale deed in respect of 05 acres 10 guntas of land in Block No. 4/2 in favour of defendant No.7 on 20-01-2001. That the said sale deed is not binding on the share of the plaintiffs. That the Special Land Acquisition Officer has acquired 04 acres 31 guntas of land in Block No.4/2 measuring 05 acres 10 guntas and has awarded Rs.3,71,79,281/- and the same has been received by the defendant No.7 behind the back of the plaintiffs. That the



plaintiffs are having half share in said compensation amount.

3. That defendant No.1 behind the back and without the consent of the plaintiff sold 01 acre 20 guntas of land in Block No.120/1 measuring 01 acre 20 guntas in favour of defendant No.8 to 11 through sale deed dated 04.08.2022. The said sale deed is also not binding on the share of the plaintiffs. That one Shankargouda Patil has executed sale deed in respect of Block No.109 measuring 07 acres 33 guntas of land in favour of defendant No.12 to 13 on 30.08.2010. The said sale deed is not binding in favour of plaintiff.

4. In the affidavit it is further sworn that the since the suit schedule properties are ancestral properties, the plaintiffs are having half share in same. That the defendants No.1 to 13 are making hectic efforts to alienate the suit schedule properties and if they succeed in alienating the



same, the plaintiffs will be put to hardship and loss. Hence prayed to allow the application.

5. The counsel for defendants No.1 to 6 has filed memo to treat written statement as objection to I.A. No.1 hence, same is taken into consideration. In the written statement, it is denied that the plaintiffs are wife and children of deceased Shivangouda Chayangouda Patil. It is contended that one Savanthravva is the wife of said Shivangouda Chayangouda Patil and one Basavannevva W/o Shankarappa Kurugunda, Smt. Shankarava, W/o Shankarappa Metti, Smt. Kamalavva W/o Shankarappa Annigeri are three daughters and one Chayangouda Shivangouda Patil and Shankargouda Shivangouda Patil are sons of said Shivangouda Chayangouda Patil and they are the legal heirs. That one of the son of said Shivangouda Chayangouda Patil by name Rayanhouda has gone in adoption to one Adviveppagouda Ningangouda Patil. That the daughters of Shivangouda Chayangouda Patil are not made



as parties to the suit. Hence, the suit is not maintainable and hit by Order I Rule 9 of CPC.

6. It is further contended that during the lifetime of Rayangouda adoptive father Devangouda Patil, he had inherited properties from his adoptive father out of properties so inherited, he relinquished his 1/8th share in respect of Block No.120 and Block No.142 in favour of defendant No.1. In the similar way said Rayangouda A/F Adivappagouda has also relinquished his share in Block No.109 in favour of his brother Shankaragouda Shivangouda Patil. In this regard, mutation entry No.2327 has been sanctioned. That the sister of said Rayangouda A/F Adivappagouda Patil by name Smt. Devakka W/o Halappa Akki had filed O.S.No.97/2009 on the file of III Addl. Civil Judge Junior Division, Hubballi for the relief of partition. That in the said suit the defendants got compromised the matter as per the said compromise decree Block No.141 measuring 13 acres 6 gunta, Block No.142 measuring 36 gunta out of which 18 guntas of land and in



Block No.122/3, 01 acre 38 guntas of land and a house bearing HDMC No.152 in Ward No.35, bearing No.154A/18/1+2+3/154/B and backyard had fallen to the share of Rayangouda A/F Adivveppagouda Patil. Similarly 03 acres 20 guntas of land in Block No.120 has fallen to the share of Rayangouda Shivangouda Patil as per compromise decree in O.S.No.97/2009. In the similar way, 03 acres 36 guntas and 8 anas of land in Block No.109 had fallen to the share of deceased Shankargouda S/o Shivangoud Patil in said compromise. Therefore the suit Schedule A, Sl.No.3 and 4 properties i.e. Block No.102/1 measuring 02 acres 07 guntas and Block No.120/3 measuring 01 acre 20 guntas are the acquired properties of defendant No.1 and therein his possession and enjoyment. As such, the said properties are not acquired by defendant No.1 from his father. As such, the plaintiffs cannot claim any share in the same.

7. In view of the partition arrived in O.S.No.95/2009, the suit schedule Sl.No.3 to 5 properties



are the self acquired properties of the said Rayangouda, defendant No.1 and deceased Shankargouda Shivangouda Patil. As such, they have been falsely included in the present suit. Block No.4/2 measuring 4 acres measuring 01 acre and Block No.4/5 measuring 19 guntas of land pertain to original Block No. 4/2 measuring 6 acres 10 guntas of Gokul Village. The said properties are self acquired properties of Shivangouda Chayangouda Patil. During the lifetime of said Shivangouda, he has executed agreement of sale in respect of said properties in favour of one Madhura Developers Private Limited on 26.11.1996. However, before executing sale deed the said Shivangouda Chayangouda Patil died on 28.01.1999. Thereafter the defendant No.1 and deceased Shankargouda ShivangoudaPatil together have sold 05 acres 10 guntas of land in Block No.4/2 measuring 6 acres 10 guntas in favour of defendant No.7 on 20-01-2001. Out of the said sale consideration amount received by them they paid Rs.7,00,000/- to Madura Developers Private Limited.



The alienation has taken place prior to coming into force of Hindu Succession Act, 2005, the said alienation cannot be challenged and plaintiffs hence suit is not at all maintainable.

8. That the defendant No.1 has executed sale deed in respect of 01 acre 20 guntas of land in Block No.120/1 in favour of defendant No.8 to 11 on 04.08.2022, the plaintiff self acquired property of defendant No.1. As such, the plaintiffs have no right to challenge the said sale deed. That the deceased Shankaragouda Shivangouda Patil has executed sale deed in respect of 02 acres of land in Sy No. 109 in favour of defendant No.12 to 13 through registered sale deed dated 20.08.2010. The said property being his self acquired property, hence the plaintiffs cannot challenge the said sale deed. Since suit schedule B properties are self acquired properties of deceased Shivangouda Chayangouda Patil. The defendants are having share in the same. Whereas the plaintiffs do not have any share in the said properties.



The plaintiffs are falsely claiming that they are children of deceased Shivangouda Chayangouda Patil. That the plaintiffs have not included property bearing No.145/62/1+2+3 PID No.172686 in the present suit. The plaintiffs have also not impleaded the daughters of Shivangouda Patil by name Basavannevva W/o Shankarappa Kurugunda, Smt. Shankarava W/o Shankarappa Metti, Smt. Kamalavva W/o Shankarappa Annigeri in the present suit. As such, the suit is bad for non-joinder of necessary parties and all the family properties. Hence prayed for dismissal of I.A.

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

POINTS

1. Whether plaintiffs have made out a prima facie case?
2. Whether balance of convenience lies in favour of plaintiffs ?
3. Whether the plaintiffs will be put to irreparable loss and injury in case if the injunction is not granted ?
4. What order ?



10. Heard the arguments, perused records.

11. My findings to the aforesaid points is as under :

Point Nos.1 to 3 : Partly in the affirmative

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

REASONS

12. **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.

It is the claim of plaintiffs that the suit schedule properties are ancestral properties inherited from ancestor by name Shivangouda Chayangouda Patil. On perusal of the mutation entry No.2327 produced by the defendants herein, it can be gathered that the brother of defendant No.1 and deceased Shankargouda by name Rayangouda A/F Adivveppagouda Patil has relinquished his joint share in respect of Sy No.120 and 142 in favour of defendant No.1 herein. Similarly the said



Rayangouda A/F Adivappagouda Patil has also relinquished his share in said Block No.109 in favour of his brother by name Shankargouda Shivangouda Patil. Therefore, in view of the same, the said properties have been acquired by defendant No.1 and deceased Shankargowda Patil from their brother by name Rayangouda who had already gone in adoption to one Adivappagouda Patil. Therefore, the plaintiffs being the children of second wife of propositus by name Chayangouda Patil cannot claim that the said properties are ancestral property or joint family properties in their hand. Therefore at present the plaintiffs have not made out any grounds for the relief of grant of injunction in respect of suit schedule A Sl.No.3 to 5 properties.

13. So far as suit schedule Sl.No.1 and 2 properties are concerned, as can be seen from the RTC at Ex.P.1 the names of deceased Shankargouda Shivangouda Patil, the name of defendant No.1 and the name of defendant No.2, the name of one Dinesh Hegde is shown in the owners and occupiers column. In at Ex.P.2 the name of defendant No.7 is appearing as owner and



occupier. On perusal of Ex.P.3 RTC, the name of defendant No.1 is appearing. On perusal of RTC at Ex.P.6 pertaining to the year 1973 to 1987 the said property i.e. Sy.No.4/2 totally measuring 6 acres 10 guntas was earlier standing in the name of Shivangouda Chayangouda Patil i.e. the original propositus to whom the plaintiffs claims to be their father. However, on going through the sale deed produced by the plaintiffs at Ex.P.9 executed by Chayangouda Shivangouda Patil i.e. defendant No.1 and deceased Shankargouda Shivangouda Patil, the said sale deed has been executed in favour of defendant No.7 way back in the year 28.09.1999. On perusal of the same the said document alienation is made prior to coming into force of Hindu Succession Amendment Act, 2005. In view of proviso to Sec.6 of Hindu Succession Act, whether the plaintiff No.1 and 3 can get any share in the said property is a matter of trial. Therefore the plaintiffs are not entitled for any relief or injunction in respect of 05 acres 10 gunta land in Block No.4/2 i.e., suit schedule 1 and 2 properties.



14. So far as suit schedule K property is concerned, the defendant No.1 to 6, in the written statement at para No.20, have contended that the suit Schedule B property is the self acquired property of deceased Shivangouda Chayangouda Patil. This being so though the plaintiffs claims to be the children born from second wife by name Maritangevva to said Shivangouda Chayangouda Patil, in the self acquired property the plaintiffs are entitled for share. However to what share they are entitled has to be decided only during full fledged trial. Therefore the plaintiffs have made out prima case case for grant of relief of injunction in respect of only suit schedule K property i.e., is Municipal No.154/18/1+2+3 bearing PID No. 172736 situated at Gokul gram as such, the above points are answered **partly in the affirmative.**

15. **Point No.4:-** In view of my findings on points No.1 to 3, this court proceeds to pass the following:



~:: ORDER ::~

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

The defendant No.1 to 13 are hereby restrained by way of temporary injunction from alienating, suit schedule Sl.No.1 property i.e., Block No.4/2 measuring 01 acre and suit schedule B house property till further orders.

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