

**IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC., HUBBALLI.**

DATED THIS THE 02nd DAY OF AUGUST 2023

Present by:

Sri. RAGHAVENDRA.R,
B.A.L, L.L.B.
II Additional Senior Civil Judge and J.M.F.C,
Hubballi.

O.S. No.333/2022

PLAINTIFF : 1. Smt. Yallavva W/o Basavanneppa
@ Sannabasappa Karjagi
Before marriage
Yallavva D/o Bhimappa Mulagund
Age: 65 years,
Occ: Household work,
R/o: Tajnagar, Unkal, Hubballi

V/S

DEFENDANTS : 1. Sri. Gurusiddappa S/o Bhimappa
Mulagund, Age: 68 years,
Occ: Agriculture, R/o: Huvishigli,
Tq: Savanur, Dist: Haveri
and others

PARTIES TO I.A.NO.II

APPLICANT
(Ori. Plff.) : 1. Smt. Yallavva W/o Basavanneppa
@ Sannabasappa Karjagi

(By Sri. S.N. Bhairappanavar, Adv.)

V/S

OPPONENT
(Ori. Deft.)

1. Sri. Gurusiddappa S/o Bhimappa
Mulagund and others.

(By Sri. R.G. Kodli, Adv.)

ORDERS ON I.A.NO.II

This order arises out of interlocutory application No.II filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendant No.1 to 3, 10 to 14 or any one claiming through them from alienating and creating charge of third party interest in and over the suit properties till disposal of the suit.

2. The brief facts of the affidavit annexed to application is that, the suit properties are ancestral properties of plaintiff and defendants. The defendants No.1 to 3, 10 to 14 are trying to dispose off the suit schedule properties by taking undue advantage of their names appeared in revenue records. If the defendants are alienated the suit properties, more harm would be caused to plaintiff. Hence, the plaintiff filed this suit for partition and interim application for supra relief.

3. The defendant No.2, 3, 10 and 11 have resisted the application by filling the memo to considered the written statement as objections to the application. The defendants have denied all the

allegations made in the plaint. They pleaded that, the plaintiff herein was the fifth defendant in O.S.No.309/1988. The said suit has been compromised between the parties and the plaintiff herein has given plot No.7 and 40 in survey No.197C. The plaintiff has not include these properties in this suit. Survey No.750/1 of Unkal Village measuring three acres 17 guntas have been reserved for Lord Hanumanth worship. Bhimappa and his brother Ramappa were doing the worship in the said temple. The defendant's father was in possession over in one acre 28 guntas of survey No.750/1 by doing worship in the temple. The defendant No.2,3, 10 and 11 are in possession of that extent by doing worship to God in the temple. The defendant No.2 and 3 have purchased the properties in Govanala, Lakshmeshwar Taluk and Huvinashigli Village, Savanur Taluk viz schedule A, B. C. So, these properties are self acquired property of the 2nd defendant. The properties of Govanala and Huvinashigli properties have partitioned in the year 1992-93. These things have within knowledge of plaintiff. The defendant No.1 to 3 have acquired the Survey No.200/1C and 200/1A of Huvinashigali Village from their own income through registered sale deed dated 02.11.1989. Likewise the defendant No.1 to 3 have purchased survey No.176 of Govanala village from their own income which was derived from the sale of their plots in Hubballi. The property bearing No.122 of Huvinashigli Village are self acquired property of defendant No.2 and 3. The 2nd defendant has been gifted three acres of Huvinashigli Village in favour of his wife by name Kamalavva on 31.10.2020 as a

token of love and affection. The 3rd defendant has executed gift deed in favour of his son by name Sainath in respect to survey No.199/2 on 28.02.2018. The plaintiff has already obtained her share in the year of 1988 and the defendants are in possession over the suit schedule properties. Hence, the defendants Mo.2, 3, 10 and 11 prayed to dismiss the suit as well as interim application.

4. I have heard the arguments canvassed by learned counsel for plaintiff and defendants.

5. The following points are for my consideration.

Point No.1:- Whether the plaintiffs has made out a prima facie case in their favour?

Point No.2:- Whether balance of convenience lies in favour of the plaintiffs?

Point No.3:- Whether the plaintiffs would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by them in interim application?

Point No.4:- What order?

6. My findings to the above points are as under.

Point No.1:- In the Negative

Point No.2:- In the Negative

Point No.3:- In the Negative

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

REASONS

7. **Point No.1 to 3:-** These points are interlinked each other, as such I considered these points together to avoid repetition of facts of the case and for common discussion. The plaintiff produced the order sheet of O.S.No.166/2021 and plaint of same suit. The plaintiff has got withdrawn the above suit with liberty to file fresh suit on same cause of action. The family settlement deed dated 01.01.2000 produced by the plaintiff indicates that, the B schedule properties fallen to the share of the defendant No.1, survey No.200/1, 200/1D, 200/1A, 200/1C and Survey No.199 have fallen to the share of defendant No.2 and 3. The plaintiff have taken a contention that, there was no partition effected between the parties and the defendants have created the documents to deprive the legitimate share of the plaintiff over the suit schedule properties.

8. It is the specific case of the defendant No.2, 3, 10 and 11 that, Survey No.750/1 of Unkal Village measuring three acres 17 guntas have been reserved for Lord Hanumanth worship. Bhimappa and his brother Ramappa were doing the worship in the said temple. The defendant's father was in possession over in one acre 28 guntas of survey No.750/1 by doing worship in the temple. The defendant No.2,3, 10 and 11 are in possession of that extent by doing worship to God in the temple. The defendant No.2 and 3 have purchased the

properties in Govanala, Lakshmeshwar Taluk and Huvinashigli Village, Savanur Taluk viz schedule A, B. C. So, these properties are self acquired property of the 2nd defendant. The properties of Govanala and Huvinashigli properties have partitioned in the year 1992-93. These things have within knowledge of plaintiff. The defendant No.1 to 3 have acquired the Survey No.200/1C and 200/1A of Huvinashigali Village from their own income through registered sale deed dated 02.11.1989. Likewise the defendant No.1 to 3 have purchased survey No.176 of Govanala village from their own income which was derived from the sale of their plots in Hubballi. The property bearing No.122 of Huvinashigli Village are self acquired property of defendant No.2 and 3. The 2nd defendant has been gifted three acres of Huvinashigli Village in favour of his wife by name Kamalavva on 31.10.2020 as a token of love and affection. The 3rd defendant has executed gift deed in favour of his son by name Sainath in respect to survey No.199/2 on 28.02.2018. The plaintiff has already obtained her share in the year of 1988 and the defendants are in possession over the suit schedule properties.

9. By considering pleadings on record, it is appears to Court that, both the parties have pleaded specific case in their respective pleadings. At this juncture it is very difficulty to give specific finding on the rival contentions of the parties and it needs full fledged trial. Burden of proving the alleged facts as pleaded in the plaint as well as in the written statement is on shoulders of respective parties. The

defendants have produced the order sheet of OS No.309-1988 and compromise petition filed in the same suit. On perusal of this document, the above suit is filed by one Maruthi Bheemappa Mulagund against the Bhimappa, Gurushiddappa, Nijaguni, Nagavva and Yellavva in respect to survey No.197/C plot No.5, 7 to 9, 11, 19, 37, 38, 40, 53 to 56 and 58. The plaintiff has pleaded about O.S.No.309/1988 but no specific pleadings about the comprise and its contents. The documents relied by the defendants are clearly indicates that, the plaintiff have suppressing material facts before the Court or in other words the plaintiff have not approached the Court with clean hands.

10. It is well settled principle of Law that, the discretion of the Court is exercised to grant a temporary injunction only when the plaintiffs have made out existence of prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; when the need for protection of the defendant's right is compared with or weighed against the need for protection of the defendants rights, the balance of convenience tilting in favour of the plaintiffs and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction order is not granted. The facility to Principles Governing Grant of Injunction is at the discretion from the Court. This foresight, however, should be exercised reasonably, judiciously as well as on sound lawful principles. Injunction must not be lightly granted mainly because it

adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his right in a suit or any other proceeding.

11. Therefore, the Court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunction restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. The entire written statement of the defendants does not depict that, the defendants are in hurried manner to dispose off the suit schedule properties. It is true that, If the acts of the defendants have been postponed some time, no harm would be caused to defendants but injunction can not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. Further as I mentioned above, the plaintiffs have not approached the Court with clean hands to get equitable relief from the Court. By considering the all the materials on record it is appears to Court that, it is not necessary to issue prohibitory order against the defendants as prayed by the plaintiff in

this application. In other words, the plaintiffs have failed to establish the prima facie case and balance of convenience to get relief as prayed in the application. Hence, I answer point No.1 to 3 in the Negative.

12. **Point No.4:-** As per following:

ORDER

Interlocutory Application No.II filed by the plaintiff under Order XXXIX rules 1 and 2 of Code of Civil Procedure is here by dismissed with costs.

Ad Interim order passed by this Court is here by vacated.

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the 02nd day of August 2023.)

(Raghavendra. R)
II Additional Senior Civil Judge and
JMFC, Hubballi.