

**IN THE COURT OF SENIOR CIVIL JUDGE AND
JMFC, KALAGHATAGI**

PRESENT

**SRI. RAVINDRA L. HONOLE, B.A., LL.B. (Spl)
SENIOR CIVIL JUDGE & JMFC, KALAGHATAGI**

DATED THIS 24TH DAY OF MARCH 2025
O.S.No.53/2022

PLAINTIFFS : Kallappa S/o Gangappa
Neelannavar and others
(Sri. I.B.H., Adv)

Vs

DEFENDANTS:

Gangappa S/o Ningappa
Neelannavar and others.

(Sri. G.R.H., Adv)

PARTIES TO IA No.1

**APPLICANTS/
PLAINTIFFS :**

Kallappa S/o Gangappa
Neelannavar and others

Vs

**OPPONENTS /
DEFENDANTS:**

Gangappa S/o Ningappa
Neelannavar and others.

ORDERS ON I.A.1

The plaintiffs have filed this application u/o 39
rule 1 and 2 of CPC for grant of temporary injunction
restraining the defendant No.2 and 3 from alienating,

creating charge or transfer of the suit properties till disposal of the suit.

2. This application is supported by the affidavit sworn to by the plaintiff No.3 wherein it is contended that suit properties are ancestral joint family properties and they are in joint possession and enjoyment along with defendants. The defendant No.1 is innocent and uneducated person taking advantage of this the defendant No.2 and 3 have got compromised suit in O.S.No.59/2020 and compromised the suit representing false GPA of defendant No.1 to engulf his 1/3rd share in the properties. On the basis of compromise decree defendant No.2 and 3 got entered their name and trying to create charge over the property and loan. Therefore, it is necessary to grant temporary injunction against defendant No.2 and 3. The plaintiffs are having prima facie case and balance of convenience lies in their favour. The temporary injunction order is not granted plaintiffs will be put into untold hardship and loss which cannot be

compensated in terms of money. Therefore, prays for allowing the application.

3. The defendants have filed objections denying the contents of application as false, frivolous and created story. It is contended that plaintiff No.3 is not the wife and plaintiff No.1 and 2 are not the children of defendant No.1. It is submitted that after death of Bagodeppa, defendants brother 1. Neelappa, 2. Basappa, 3. Ningappa went to Goa for farming and out of their hard work purchased the property. The plaintiffs have no locus standi to claim share in the suit property. It is denied that defendant No.1 is addicted to bad habits. It is denied that suit properties are the ancestral joint family properties. It is contended that the plaintiff No.3 taking advantage of character of defendant No.1 to engulf the property has created false story that plaintiff No.1 and 2 born out of their wedlock. The caste of the plaintiffs and defendants are different. The plaintiff No.3 married to one Basappa Hosmani of Savanshi village, taluk

Kundgol. The plaintiffs without disclosing this fact have filed the present suit.

4. Further it is contended that the land bearing Sy.No.207/1 measuring 2 acre 4 guntas held by Bagodeppa which was given to him by his late brother Mallappa. After death of Bagodeppa, Mallappa was become the kartha of the defendants family. The defendants No.1 to 3 are the sons of elder brother of Mallappa. After death of Mallappa his daughter Laxmavva Kundgol sold said property to Yallappa Doddasannavar. The other properties Sy.No.197 measuring 6 acre 27 guntas and VPC No.40/1 and 41 have been purchased by Ningappa Basappa and Neelappa and said properties are their self acquired properties. The plaintiffs have obtained temporary injunction on the basis of old revenue records. The said number was not in existence at present. It is submitted that the marriage of plaintiff No.3 with Basappa Hosmani was registered. The suit of the plaintiff itself is not maintainable, therefore, interim application is liable to be dismissed. If the application

is allowed the defendants will be put into untold hardship and loss. Therefore, prays for dismissal of application with cost.

5. Heard the arguments.
6. The points arise for my consideration are:
 1. Whether the plaintiffs have made out prima-facie case?
 2. Whether the balance of convenience lies in favour of the plaintiffs?
 3. Whether the plaintiffs would be put to irreparable loss which cannot be compensated in terms of money, if the T.I., as prayed is not granted?
 4. What order ?
7. My findings on the above points are:

POINT No.1 to 3 : In the negative
POINT No.4 : As per the final order
for the following:

REASONS

8. **POINTS No.1 TO 3** : In order to avoid repetition of facts I have taken up these points for common discussion.

9. In order to get temporary injunction the plaintiffs have to show that prima facie case is in their favour. They have also show that balance of convenience is in their favour. If injunction order is not

granted they will be put into untold hardship which cannot compensated in terms of money.

10. Learned counsel for plaintiffs argued that the plaintiffs have filed suit for partition and separate possession. The plaintiff No.3 is the wife and plaintiff No.1 and 2 are the childrens of defendant No.1. The plaintiffs and defendants are the members of the family. The defendant No.2 and 3 are wise persons taking advantage of innocence of defendant No.1 have got compromised the suit without allotting share and alleged that they have paid money to him. No money has been paid to defendant No.1 and the said decree is fraudulent to defeat the right of defendant No.1. The suit properties are the ancestral joint family properties and document produced by the plaintiffs establishes the same. The disposal of case will take time and the defendant No.2 and 3 are trying to create charge over the properties, therefore, it is necessary to grant temporary injunction order till disposal of suit. In support of his case relied the following decisions of Hon'ble High Court of Karnataka and Patna. 1. 2019

(5) KCCR 349, 2. AIR 2024 Patna 124, 3. AIR 2024 Karnataka 33, 4. AIR 2024 Karnataka 157, 5. HCR 2023 Karnataka 708.

11. Per contra, learned counsel for defendants argued that the plaintiff No.3 is not the wife and plaintiff No.1 and 2 are not the children of defendant No.1. The plaintiff No.3 is the wife of one Basappa Hosmani and her name was appearing in the ration card, voter list of Savanshi village, Kundgol taluk. The plaintiff No.3 taking advantage of innocence of defendant No.1 and to engulf the property has created false story that she is the wife and plaintiff No.1 and 2 are the children. The defendant No.1 has not married. The defendant No.2 and 3 have taken care. The suit properties are not the ancestral joint family properties and plaintiffs cannot claim right over said properties. The suit properties are the family properties of defendants and plaintiffs have no right over suit properties. The documents placed by the defendants shows that plaintiffs are no way concern to the family of defendants. Taking advantage of false and created

documents the suit has been filed. The plaintiffs at the time of filing suit have filed old documents and by misguiding the court have obtained temporary injunction and on the basis of that creating hurdles for obtaining loan from the banks. If the injunction order is granted the defendants will be put into great hardship and loss. On the other hand, no hardship or loss would be caused to the plaintiffs, therefore, prays for dismissal of application with cost. In support of his arguments relied the decision of Hon'ble Supreme Court reported in (2017) AIR (SC) 4161.

12. The plaintiffs have filed the suit for partition and separate possession over the suit properties. There was dispute between parties in respect of relationship. The defendants have denied that plaintiff No.3 is not the wife and plaintiff No.1 and 2 are not the children of defendant No.1. I have gone through the documents produced by the plaintiffs, the birth certificate of plaintiff No.1 and 2 wherein name of the mother is written as Shobha Neelannavar and father name is written as Gangappa Neelannavar. The plaintiffs have

also produced school certificate of plaintiffs which shows that plaintiff No.1 and 2 are the sons of defendant No.1. The contrary material documents produced by defendants that plaintiff No.3 get entered her name in voter list of Bagadageri village is deleted and her name was appearing in Saunshi village voter list and ration card etc., cannot be taken into consideration. It requires detailed trial. The dispute with regard to paternity of plaintiff No.1 and 2 and the relationship of plaintiff No.3 with defendant No.1 is required to be considered at the time of full pledged trial. At this pretrial stage if any opinion on merits of the case will prejudice the minds of parties, therefore, I do not want to express opinion on merits of the case.

13. The material documents placed on record by the plaintiffs i.e., revenue records of suit property for the year 2007-08, 2015-16 to 2021-22 are standing in the name of defendant No.1 to 3 and Mallavva W/o Ningappa Neelannavar the mother of defendant No.1 to 3. The plaintiffs have also produced mutation register pertaining to suit properties wherein the defendants

got entered their name. The copy of sale deed dated 12.07.1970 discloses that one Neelappa Bagodeppa Neelannavar had purchased Sy.No.197 measuring 6 acre 27 guntas from its original owner Krishnaji Bhimaji Kulkarni under registered sale deed. Another sale deed pertaining to house and open site has been purchased by Neelappa Bagodeppa Neelannavar. The said Neelappa is brother of defendants father. The plaintiffs have also produced another sale deed pertaining to house and open space properties purchased by Neelappa, Basappa, Ningappa, Mallappa sons of Bagodeppa Neelannavar. The mutation registers pertaining to suit properties discloses that as per sale deed name of the purchasers have been entered in the respective properties.

14. The plaintiffs have also produced the death certificate of Ningappa and Mallavva the father and mother of defendants. The death certificate of Basappa S/o Bagodeppa Neelannavar are also produced. The genealogy certificate issued by the village accountant

reveals that the defendants are the heirs of deceased Ningappa.

15. The material documents produced by the plaintiffs itself shows that originally the land bearing Sy.No.197 has been purchased by Neelappa Neelannavar the uncle of defendants. On the other hand, the defendants have produced the Will deed dated 25.04.1981 executed by Ningappa Bagodeppa Neelannavar in favour of defendants pertaining to Sy.No.207/1, 197 of Bagadageri village. By virtue of Will deed name of defendants has been mutated in the revenue records as owners and possessors. As on the date of filing of suit name of the defendants were appearing in the revenue records of suit properties.

16. It is argued on behalf of defendant that the plaintiffs under the guise of injunction order restraining the defendants from raising loan from the banks which causing hurdles for their agricultural activities. The brother of defendant No.1 daughter studying engineering and they are in need of money for payment of school fees of his daughter. Due to

injunction order the bank authority is not ready to give loan and thereby defendants are suffered loss which cannot be compensated in terms of money. If the defendants are restrained from raising loans from bank, definitely defendants would be put into hardship and loss which cannot be compensated in terms of money. On the other hand, no loss or injury would be caused to the plaintiffs. Liability of raising loans is on person who raised loan from the bank.

17. I have gone through the decisions relied by learned counsel for plaintiffs. The facts of the present case on hand and above relied decisions are differs from facts and they are not helpful to the case of the plaintiffs. Learned counsel for defendants relied decision of Hon'ble Supreme Court in respect of legality and validity of Adhar card. The entries in the Adhar card cannot be decided at this pre-trial stage. Therefore, the decision relied by Learned counsel for defendants is not helpful to the case of defendants. The plaintiffs have to establish their right over the

properties by adducing cogent and convenient evidence.

18. It is pertinent to note that the plaintiffs at the time of filing suit have produced RTCs of the year 2007-08 jointly standing in the name of defendants. The plaintiffs have not approached court with clean hands. As on the date of filing suit name of the defendant No.1 was not appearing in the revenue records since there was compromise took place between defendants as per compromise took place in O.S.No.59/2020. The defendant No.1 has given up his share to his brother by receiving Rs.1,00,000/- cash in favour of defendant No.2 and 3. It is alleged that the partition effected between defendants is collusive to dupe the valuable right of plaintiffs. It is submitted that the defendant No.1 has not participated and on his behalf his GPA holder appeared and received the D.D. of Rs.1,00,000/- which is mis-used by defendant No.2 and 3 who are interested to grab the properties. The legality and validity of compromise decree passed in O.S.No.59/2020 and right of the parties is to be

decided in the suit which requires evidence. Therefore, considering the material documents placed on record court come to a conclusion that the plaintiffs have failed to make out prima facie case. The balance of convenience also not in favour of plaintiffs. More loss than the plaintiffs would be caused to the defendants in case injunction order has been granted. On the other hand, no loss or injury would be caused to the plaintiffs. In view of my above discussion, I have answered point No.1 to 3 in the negative.

19. **POINT No.4:** As discussed above, I proceed to pass the following:

ORDER

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

The interim injunction granted on I.A.No.1 extended by time to time till further orders dated 07.09.2022 is hereby vacated.

No order as to costs.

(Dictated to stenographer directly on computer, computerized by him, printed, then corrected and pronounced by me in the open court on this **24th day of March, 2025**)

(R.L.HONOLE)
SR. CIVIL JUDGE AND JMFC,
KALAGHATAGI

