

**IN THE COURT OF PRL.SENIOR CIVIL JUDGE AND
CJM, GADAG**

PRESENT

**SRI. G.R. SHETTAR., B.com. LL.B (Spl)
PRL.SENIOR CIVIL JUDGE AND CJM, GADAG**

DATED THIS 18TH DAY OF JUNE 2024

O.S.No.221/2024

PLAINTIFFS:

1. Indirabai @ Indira S/o Somesh Rathod,
Age : 49 years, Occ : Household work,
R/o Singatarayanakeri Tanda,
Tq : Mundargi, Dist: Gadag.
2. Parshuram S/o Somasingh Rathod,
Age: 40 years, Occ: Agriculture,
R/o Kurla, Mumbai.
3. Meenbai @ Meenaz W/o Abdul Shaikh,
Age: 38 years, Occ: Household work,
R/o Kurla, Mumbai.
4. Sangeeta W/o Jalpesh Veghala,
Age: 35 years, Occ: Household work,
R/o Rajkot, Gujarat State.
5. Geeta D/o Somasingh Rathod,
Age: 33 years, Occ: Household wok,
R/o Kurla, Mumbai @ Zoya kihem.
6. Kavita @ Zoya W/o Asif Khan,
Age: 31 years, Occ: Household work,
R/o Kurla, Mumbai

(By Sri.B.M.S., Advocate)

Vs

DEFENDANTS:

1. Somavva W/o Gurunath Lamani,
Age: 85 years, Occ: Household work,
R/o Singatarayanakeri Tanda,
Tq : Mundargi, Dist: Gadag.
2. Meerabai @ Meera W/o Dheeraj Nayak,
Age: 47 years, Occ: Household work,
R/o Vidyanagar, near Purandhar Math,
Dharwad, Tq & Dist: Dharwad.
3. Ravindra S/o Mukundalal Toshanival,
Age: 50 years, Occ: Business,
R/o Gadag, Tq & Dist: Gadag.
Mob. No.9448341683.
4. Krishna S/o Manik Toshanival,
Age: 33 years, Occ: Business,
R/o Vijayapur, Near Ashraya Hospital,
Vakil Chal, Tq & Dist: Vijayapur.
Mob. No.9986570784.
5. Mahesh S/o Sharanappa Kampagoudra,
Age: 56 years, Occ: Business,
R/o Panchakshari Nagar, 2nd cross,
Gadag Tq & Dist: Gadag.
Mob. No.9164537495.
6. Shantappa S/o Adivappa Mulawad,
Age: 60 years, Occ: Business,
R/o Gadag Tq & Dist: Gadag.
Mob. No.9880851022.

(Dfts. No.1&2 -R/ by Sri. M.S.R, Advocate)
(Dfts. No.3 to 6 -R/ by Sri. K.R.C, Advocate)

PARTIES to I.A. No.2**APPLICANTS:**

Indirabai @ Indira S/o Somesh Rathod
& Another

- Vs -

OPPONENTS:

Somavva W/o Gurunath Lamani
& Others.

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**ORDER ON I.A No.2 UNDER ORDER 39 RULE 1 R/w
Sec.151 OF CPC**

Plaintiffs have filed this application praying for restraining the defendants No.3 to 6 from alienating, creating third party encumbrance over the suit property R.S.No.23/1 of Kalasapur village till disposal of the suit.

2. Application is supported by the affidavit sworn to by the plaintiff No.2 wherein it is contended that they have filed the suit for partition and separate possession in respect of the suit properties, they and Defendants No.1 and 2 are in joint possession and jointly cultivating as joint owners and coparceners, earlier suit property was in the name of Chandubai, plaintiff No.1, defendants No.1 & 2 as Legal heirs of propositus –

Gurunath Lamani but defendants No.1 & 2 fraudulently created partition letter dated: 29/01/2024, by misguiding the plaintiffs as they are going to make separate divisions but the plaintiffs came to know that contents have been falsely mentioned as entire property allotted defendant No.1 and amount of Rs.2,00,000/- has been allotted to Chandubai, plaintiff No.1 and Defendant No.2 common. It is totally in-equitable and thumb impression of Chandubai and plaintiff No.1 were taken fraudulently, immediately got entered name of Defendant No.1 and executed sale deed on 01/03/2024 in favour of defendants No.3 to 6 and taken huge amount of Rs.72,00,000/- as sale deed , just to gulp and grab the share of plaintiffs. It is further contended that the defendants No.3 to 6 on the basis of illegal documents entered their names in R of R are trying to convert the land to non-agriculture land and trying to alienate the same, plaintiffs have made out prima-facie case and balance of convenience is in their favour. If the defendants alienate the suit property to any third party,

the plaintiffs will be put irreparable loss and hardship. Hence, the plaintiffs have constrained to file the application.

3. After service of summons, the defendant No.6 has filed written statement denying the averments made in the application and affidavit annexed to the application as false and baseless. It is further contended that there was actual partition took place between the prima-facie No.1 , defendants No.1 &2 and late Chandubai through registered partition deed dtd: 21/01/2024 in presence of witnesses, accordingly name of defendant No.1 was mutated to revenue records of suit property, then she sold the suit property to defendants No.3 to6 for valid consideration of Rs.72,00,000/- and executed registered sale deed on 01/03/2024, the plaintiff No.1 and Late Chandubai have signed to the sale deed as consented witnesses , as per the registered sale deed names of defendants No.3 to 6 have been mutated to RTC of suit property and they are in possession and enjoyment of suit property as

absolute owners. This being the fact the plaintiffs without having any right over the suit property have filed the false suit. Hence prayed for dismissal of the suit and I.A with cost. Defendant No.6 has filed memo adopting the written statement as objection to I.A. defendants No.3 to 5 have filed the memo adopting the written statement filed by defendant No.6.

4. Heard the arguments.

5. The points arise for my consideration is:

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, if the T.I., as prayed is not granted?
4. What order ?

6. My findings on the above points are:

POINT No.1 : In the Negative

POINT No.2 : In the Negative

POINT No.3 : In the Negative

POINT No.4 : As per the final order,
for the following:

REASONS

7. **POINTS No.1 to 3** : Plaintiffs have filed the suit for partition and separate possession in respect of the suit property and filed this application contending that the defendants No.1 and 2 colluding with defendants No.3 to 6 created partition deed and obtained signatures of plaintiff No.1 and Chandubai misguiding that divisions will be made in suit property but in the partition deed it is mentioned as suit property is allotted to defendant No.1 and Rs.2,00,000 /- allotted to plaintiff No.1, defendant No.1 and Chandubai, commonly, it is in-equitable, then got entered name of defendant No.1 and within short time sale deed has been executed in favour of defendants No.3 to 6 for huge amount Rs.72,00,000/- , now the defendants No.3 to 6 by getting their names to suit property are trying to convert the land to Non agriculture and also trying to alienate the same.

8. Per contra, defendants No.3 to 6 have denied the plaint averments and contended that actual partition

took place through registered partition deed, after partition deed name of defendant No.1 was entered to RTC on suit property ,then the defendant No.1 has sold the suit property to defendants No.3 to 6 through Registered sale deed 01/03/2024 for a valid consideration of Rs 72,00,000/- , even the plaintiff No.1 and Late Chandubai have put their signatures to the sale deed as consent witnesses but filed this suit by suppressing the material facts.

9. I have gone through the entire material carefully. Plaintiffs have contended that the defendants have fraudulently taken the signatures of plaintiff No.1 & late Chandubai on the partition deed by misguiding them as division will be made in the property and then created false sale deed. It is pertinent to note that both the partition deed and sale deed are the registered documents having presumptive value in the eye of law. Further it could be seen that plaintiff No.1 and late Chandubai have put their signatures to the sale deed as

consent witnesses. It shows that both the documents have made with knowledge of the plaintiff No.1 & late Chandubai. Learned counsel for plaintiffs has argued that defendants have played fraud, even the Sub-Registrar Authority have not informed the plaintiff No.1 and Late Chandubai about the contents of the document while taking their signatures. If it is that case the question will arise what action the plaintiffs have taken against the defendants and concerned authority but no material is produced at this stage.

10. Granting of temporary injunction is a harbinger to the main relief, for granting temporary injunction there must be prima facie case, prima facie case includes maintainability of suit. Purpose of granting passing interim order is to maintain the things as exists today till disposal of the matter in controversy. Learned counsel for plaintiffs has argued that to decide the dispute between the parties full pledged trial is required, till then the state of things must be maintained as on

the date of suit. But on going through the material produced at this stage, there is a serious question about prima-facie case and maintainability of suit, it is settled law that no interim injunction order can be granted in doubtful cases. Therefore, I am of the considered opinions that because of the reasons discussed above plaintiffs have not made out prima-facie case and the balance of convenience is also not in favour of the plaintiffs and if the application is allowed the defendants No.3 to 6 would be put to hardship than the plaintiffs. Hence, I answer the Points No.1 to 3 in the Negative.

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

ORDER

I.A.No.2 filed by the plaintiffs U/o 39 Rule 1
R/w Sec.151 of CPC is dismissed.
No order as to cost.

Dictated to stenographer, transcribed and typed by him,
printed, then corrected and pronounced by me in the open
court on this **18th day of June, 2024**)

Sd/- 18/06/2024
(G.R. SHETTAR)
Prl. Senior Civil Judge & CJM.,
GADAG