

KAHS310013792023



Presented on : 03-06-2023  
Registered on : 03-06-2023  
Decided on : 23-04-2024  
Duration : 00 year 10 months, 20 days

**IN THE COURT OF CIVIL JUDGE & JMFC  
AT ARKALAGUD**

**PRESENT : SMT. PREETI. L. MALAVALLI. , B.B.A., L.L.B.,  
Civil Judge & JMFC,  
Arkalagud.**

**O. S. No.318 / 2023**

**DATED THIS 23<sup>rd</sup> DAY OF APRIL, 2024**

**Plaintiffs** : 1. Tangyamma W/o Late Dharma @ Dharmegowda,  
Aged about 50 years,  
2. Arpitha W/o Chandrashekar  
(D/o Late Dharma @ Dharmegowda)  
Aged about 29 years,  
3. H.D. Harisha S/o Late Dharma @ Dharmegowda,  
Aged about 27 years,  
Petitioner No.1 to 3 are R/at  
Hanemaranahalli village,  
Doddamagge Hobli,  
Arakalagud Taluk,  
Hassan District.  
**(Sri. A.R.Janardhanaguptha for Plaintiff)**

Vs

**Defendants** : 1. Devaraja S/o Late Kalegowda,

Aged about 61 years,  
R/at Hanemaranahalli village,  
Doddamagge Hobli,  
Arakalagud Taluk,  
Hassan District.

:2. Rajamma W/o Manja  
(D/o Late Kalegowda)  
Aged about 43 years,  
Makavalli, Kasaba Hobli,  
Holenarasipura Taluk,  
Hassan District.

:3. Susheela W/o Revanna,  
(D/o Late Kalegowda)  
Aged about 41 years,  
R/at Dummi village,  
Doddamagge Hobli,  
Arakalagud Taluk,  
Hassan District.

**(Sri. H.R.Nanjundegowda., Advocate for defendants)**

**Parties to IA No. II**

**Applicant:** H.D. Harisha S/o Late Dharma @  
Dharmegowda, Aged about 27 years,  
Hanemaranahalli village,  
Doddamagge Hobli,  
Arakalagud Taluk,  
Hassan District.

-V/s-

**Opponent:** Devaraja S/o Late Kalegowda and others

1.	Provision under which application is filed	Order 39 rule 1 and 2
2.	Relief sought for	Temporary injunction
3.	The date on which the application is filed	02/06/2023
4.	Number of application	II
5.	The date on which the objections are filed by different opponents	13/12/2023
6.	The date on which the orders were passed on the said application.	23/04/2024.

**ORDERS ON IA NO. II FILED UNDER ORDER 39 RULES 1 AND 2 OF CODE OF CIVIL PROCEDURE**

It is the case of the plaintiffs that the suit schedule properties are ancestral and joint family properties of plaintiffs and defendants and that the plaintiffs and defendants are members of joint family and partition has not been effected in the family till date. The plaintiffs has further stated in the affidavit annexed to the application that the husband of plaintiff No.1 i.e., Dharma @ Dharmegowda and the defendants are children of late Kalegowda and that the suit schedule properties are standing in the name of said Kalegowda S/o Aiyannagowda and item No.2 is standing in the name of defendant No.1 and the same is being misused by the defendant and they are trying to alienate the suit schedule property in order to deprive the plaintiffs of their lawful share in the suit schedule properties. Hence, the present suit is filed

seeking the relief of partition and separate possession and present application is filed seeking an order of temporary injunction against the defendants to restrain them from alienating the suit schedule properties pending disposal of this suit.

2) Per contra the defendant No.1 has filed objection to the said application on the ground that the suit schedule properties no more joint family properties since there has already been oral partition that has been effected with respect to the suit schedule properties. It is further stated that, the father of Kalegowda i.e., Aiyannagowda had 4 children namely Agilegowda, Kalegowda, Dyavegowda and Gundegowda @ Devegowda. Among them, Dyavegowda died without being married and the 4 children of Aiyannagowda had got the joint family properties divided amongst themselves about 50 years ago and as such said Dyavegowda executed registered Will during his lifetime in favour of the husband of plaintiff No.1 Dharma @ Dharmegowda on 04/03/1989. Thereafter, the father of said Dharma @ Dharmegowda and the defendants effected partition with respect to joint family properties and in the said oral partition that took place about 20 years back, the properties that came from Dyavegowda through Will to the husband of plaintiff Dharma remained with him and the other properties that fell to the share of Kalegowda in oral partition

between his brothers, fell to the share of defendant No.1 and as such defendant No.1 is enjoying the share received by him in the said partition. That the son of Gundegowda @ Devegowda by name Chandregowda had filed a suit for partition in O.S.No.132/2010 before this Court and the suit came to be dismissed on 06/03/2015 and in the said suit the plaintiff No.1 and the defendant No.1 in the present suit were also parties and they have filed written statement by narrating all the aforesaid facts. As such, in the said suit the matter is finally decided and the suit schedule properties belonged to the defendants as the same has fallen to the share of defendant No.1 and as such the plaintiffs do not have any share in the suit schedule properties, since they have already got constructed house in 0-07  $\frac{1}{4}$  guntas of land that had fallen to their share in the partition that has been already effected. On these grounds, the defendant No.1 has prayed to dismiss the present application with costs.

**3.** Heard the arguments of learned counsel for plaintiffs Sri. A.R.Janardhanguptha and learned counsel for defendant Sri H.R.Nanjundegowda

**4.** Based on the contentions taken by plaintiffs and defendant No.1, the following points arise for my consideration:

1. Whether the plaintiffs have made out prima-facie case for grant of temporary injunction as sought for ?
2. Whether balance of convenience lies in favour of the plaintiffs to grant temporary injunction against the defendants ?
3. Whether irreparable loss or injury would be caused to the plaintiffs if temporary injunction is not granted ?
4. What order?
5. My answer to 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**

**6. Point No. 1 :** It is the case of the plaintiffs that themselves and defendants constitute a joint hindu family and the suit schedule properties are ancestral and joint family properties of plaintiffs and defendants and no partition has been effected with respect to suit schedule properties and that the plaintiffs and defendants are in joint possession and enjoyment over the suit schedule properties and they are also entitled to a lawful share in the suit schedule properties. As such, the plaintiffs have filed the

present application seeking the order of temporary injunction against the defendants in order to restrain them from alienating the suit schedule properties, since the suit schedule properties are standing in the name of defendant No.1 and his father Kalegowda.

7. Per contra, the defendant No.1 has filed detailed objection to the said application and the main contention of defendant No.1 is that partition has already been effected in the joint family orally about 20 years ago and the plaintiffs and defendants are in possession of their respective shares that have been received by them in the said oral partition. The defendant No.1 has also contended that, there was already a suit being filed for partition in O.S.No.132/2010 by one of the sons of Kalegowda I.e.. Chandregowda against the plaintiffs and defendants in this case with respect to the same suit schedule properties and the said suit came to be dismissed on the ground that there has already been a partition with respect to suit schedule properties and the husband of plaintiff No.1 i.e., Dharma @ Dharmegowda has received share in the joint family property by virtue of oral partition. It is further stated by defendant No.1 in his objection that in the said oral partition it was agreed that the share received by the husband of plaintiff No.1 Dharma by virtue of Will executed by his uncle Dyavegowda will be enjoyed by Dharma and the share received by Kalegowda in the oral partition that took

place between him and his brothers, will be taken by defendant No.1.

8. The learned counsel for defendant No.1 has also filed his written arguments and he has reiterated the contents of the objection statement in the course of said written arguments.

9. In support of his contention defendant No.1 has produced the copies of plaint, written statement, evidence recorded and the judgment in O.S.No.132/2010. The said documents prima-facie reveal that it was a suit for partition in which the subject matter of the present suit was itself the subject matter and also the parties to the said suit are the parties to the present suit. The suit schedule properties in the said earlier suit in O.S.No.132/2010 are also the same as the suit schedule properties in the present suit. The plain reading of the judgment in O.S.No.132/2010 clearly reveals that in respect of the same suit schedule properties, this Court has already delivered judgment by holding that there has already been a oral partition between the members of joint family and the said oral partition has been acted upon. It is also held in the earlier suit that by virtue of the said oral partition, the plaintiffs and defendants in the present suit are enjoying their respective shares received by them in the said oral partition and as such the properties received by the husband of plaintiff No.1 through Will executed by

his uncle Dyavegowda are in possession of the husband of plaintiff No.1 and the defendant No.1 is in possession of his share received in the said oral partition. As such, it appears that the matter in dispute has attained finality in the earlier suit and the remedy that was available for the plaintiffs, if at all they are aggrieved by the said judgment, was by way of appeal and not by this fresh suit for partition again, since the plaintiffs herein were also parties to the earlier suit. Hence, in the present suit it has to be decided as to whether the present suit is maintainable or whether it is hit by the principles of res-judicata. Since, there is doubt regarding maintainability of present case in view of observation made above, this Court is of the opinion that the plaintiffs have not made out a prima-facie case at this stage for grant of temporary injunction in their favour.

10. It is also pertinent to note that in the said earlier suit in O.S.No.132/2010, the plaintiff No.1 in the present suit was defendant No.7 in O.S.No.132/2010 and she has filed her written statement in the said suit by contending that her husband has received share in joint family property by virtue of Will executed by his uncle Dyavegowda and that the suit schedule properties are no more joint family properties since there has already been a partition in the family with respect to their ancestral and joint family properties. All these aspects gives rise to doubt that there has already been a partition effected with respect to suit schedule

properties and hence at this stage the plaintiffs have not made out prima-facie case. Therefore, **I answer point No.1 in the Negative.**

11. **Point No.2 and 3** : These points are taken together in order to avoid repetition of facts and discussion. Since, the plaintiffs have failed to establish prima-facie case in their favour, the question of ascertaining balance of convenience and irreparable loss and injury do not arise for consideration. Even otherwise on perusal of the documents produced by defendant No.1 with respect to the earlier suit between the same parties in O.S.No.132/2010, it appears that there has already been a partition with respect to suit schedule properties and if the order of temporary injunction is granted at this stage in favour of plaintiffs, then it is the defendants who would suffer irreparable loss and injury and as such balance convenience lies in favour of defendants. Therefore, the plaintiffs have failed to prove that balance of convenience lies in their favour and further that irreparable loss and injury would be suffered by plaintiffs if the order of temporary injunction is refused. Accordingly, **point No.2 and 3 are answered in the Negative.**

12. **Point No. 4:-** For the above discussed reasons to point No. 1 to 3, I proceed to pass the following :-

**: O R D E R :**

The interim application i.e.,  
I.A.No.II filed by Plaintiffs/applicants  
against the defendants under Order  
39 Rule 1 and 2 of CPC is hereby  
dismissed.

For issues 22/06/2024.

(Dictated to the stenographer directly on computer, revised by me and after corrections pronounced in the open court on this the 23<sup>rd</sup> day April 2024)

**(SMT. PREETI.L.MALAVALL )**  
**Civil Judge & J.M.F.C.,**  
**Arakalgud.**