

KAHS510014592018



Presented on : 21-12-2018
Registered on : 21-12-2018
I.A.No.II Decided on : 09-08-2023
Duration : 4 years, 7 months, 19 days

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT BELUR, HASSAN.**

Presided Over by PRASANNA KUMAR C., B.A.L., LL.B.
Civil Judge and JMFC, Belur.

Dated this the 9th day of August, 2023

O.S./332/2018

Between:

- 1. Sri.Shivaswamy @ Shivakumar S/o Thirumalaiah,**
Aged about 40 years,
R/at: Hagare Village,
Madihalli Hobli, Belur Taluk.
- 2. Smt.Poornima @ Annapurna W/o Nagaraj,**
R/at: Hiremagalur Village,
Chikkamagaluru Hobli, Taluk, and District.
- 3. Smt.Saganamma W/o Dyavaiah,**
Aged about 80 years,
R/at: Thirumalanahalli Village,
Madihalli Hobli, Belur Taluk.
- 4. Shri.Basavaraju S/o Mari doddaiah,**

Aged about 50 years,

5. Shri.Dharma S/o Maridoddaiah,

45 years,

Plaintiff No.4 and 5 are

R/at: Hadlegerepura Village,
Madihalli Hobli, Belur Taluk.

6. Smt.Chikkamma W/o Siddaiah,

67 years,

R/at: Halsabalu Village, Mallanahalli Hobli,
Chikkamagaluru Taluk.

..Plaintiffs

(Shri B.S.G.Swamy , Advocate for Plaintiffs)

And:

1. Sri. Nagaiah S/o Thimmaiah, 50 years,

2. Sri.Dasaiah S/o Thimmaiah, 48 years,

3. Shri.Somaiah S/o Thimmaiah, 46 years,

4. Sri.Saganaiah S/o Thimmaiah, 44 years,

5. Sri.Shivanna S/o Thimmaiah, 40 years,

Defendant No.1 to 5 are R/at:

Hagare Village, Madihalli Hobli, Belur Taluk.

6. Smt.Vanajakshi W/o Abbu, 37 years,

R/at: Shanthala nagara, Hagare, Madihalli Hobli,
Belur Taluk.

7. Smt.Nagarathna W/o Shivanna, 37 years,

R/at: Hagare Village,

Madihalli Hobli, Belur Taluk.

..Defendants

(Defendant No.1 to 7 by Shri.B.V. Nataraja, Advocate)

PARTIES TO THE APPLICATION IA NO. II

**Sri.Shivaswamy @ Shivakumar
and others**

.. Plaintiffs/Applicants

V/s

Sri.Nagaiah and others

..Defendants/Opponents

ORDERS ON I.A. No.II

This application is filed by the plaintiffs along with the suit under Order 39 Rule 1 and 2 of Civil Procedure Code seeking order of temporary injunction to restrain the defendants No.1, 6 and 7 from receiving compensation amount from the Special Land Acquisition Officer, Yethinahole Project in respect of Item No. 1 to 6 properties viz., 1) land bearing Sy.No.67/3 measuring 0-12 guntas, 2) land bearing Sy.No.67/4 measuring 0-28 guntas, 3) land bearing Sy.No.67/6 measuring 0-37 guntas, 4) land bearing Old Sy.No.79/7, new Sy.No.79/1 measuring 0.06 ½ guntas, 5) land bearing Old Sy.No. 79/8, new Sy.No.79/3 measuring 0.10 guntas, and 6) land bearing Sy.No.103/8 measuring 0.10 guntas, all the suit properties are situated at Hagare Village, Madihalli Hobli, Belur Taluk.

2. In the affidavit filed in support of the application, the

plaintiffs have contended that, the present suit is filed by them seeking for the relief of partition and separate possession. One Sri.Mudlaiah was having son by name Mudlaiah. The said Mudlaiah had two sons by name Thimmaiah and Rangaiah. The 1st son Thimmaiah and his wife Basamma are dead and hence their children are made as defendant No.1 to 5 in this suit. The 2nd son of Mudlaiah by name Shri.Rangaiah's children are the plaintiffs in this suit. The said Rangaiah has five children, out of them 1st daughter Smt.Saganamma and 2nd son Thirumalaiah are dead and the wife of Thirumalaiah by name Marulamma is also dead, leaving behind the plaintiff No.1 and 2 in this suit. The 3rd son Rangaiah and his wife Gowamma are also dead. Their daughter by name Smt.Vanajakshi is the 6th defendant in this suit, 4th daughter Smt.Dyavamma is dead and her children Basavaraju and Dharma are made as 4th and 5th plaintiff. One Smt.Chikkamma is the 6th plaintiff in this suit. Since the 6th defendant did not choose to sail with the plaintiff, she is made as defendant No.6 in the suit. One Smt.Nagarathna is the 7th defendant who is the purchaser. The plaintiffs and defendants are brothers and sisters and members of Hindu undivided joint family.

3. It is further contended by the plaintiffs that since the sons of Mudalaiah i.e., Thimmaiah and Rangaiah are dead, there was partition between them wherein they have divided the properties

bearing Sy.No.79/1(item No.4), Sy.No. 79/3 (item No.5), Sy.No.103 (item No.6). As such, the share allotted to Sri.Thimmaiah was entered in the name of Nagaiah in respect of Sy .No.79/1 (item No.4) measuring 10 guntas and Sy.No.103/1 measuring 20 guntas and khatha was effected vide ICR No.54/1992-93. On the death of Rangaiah, his sons Rangaiah and Thirumalaiah have got effected khatha in respect of Sy.No.79/1 measuring 6.08 guntas, in Sy.No.79/3 measuring 10 guntas and in Sy.No.103 measuring 10 guntas vide M.R. No.7/1988-89. After the death of Rangaiah and Thirumalaiah, the daughter of Rangaiah, i.e., the defendant No.6 Smt.Vanajakshi without allotting/reserving any share to the legal heirs of Thirumalaiah has cheated them and got the khatha of the said properties effected in her name alone vide M.R.No.20/2010-11 dated 28-02-2011. Subsequently in order to cheat the plaintiffs, defendant No.6 has also executed sale deed dated 22-07-2015 in favour of defendant No.7 in respect of the item No.4 and 5 of the suit properties. The same is not binding on the plaintiffs. As such, the plaintiffs are having 4/5th equal share in item No.4, 5 and 6 suit properties.

4. It is further contended that in respect of item No.1 to 3 properties, no partition is effected and they are presently standing in the name of Shri.Nagaiah. Since already partition was effected in respect of item No.4, 5 and 6 earlier, it is to be divided 4/5th share. Likewise, item No.1 to 3 property has to be

divided equally by half portion. Since the plaintiffs are under joint possession of suit properties, they have approached the defendants seeking to effect partition and allot their separate share. The defendant No.1 to 6 have refused to effect partition. Since the suit properties are acquired for the Yethinahole project, the defendant No.1, 6 and 7 taking advantage of their names entered in the revenue records are trying to receive the compensation from the said office. Hence, plaintiffs have filed this suit along with the instant application.

5. On service of notice/summons, the defendants have entered appearance through their counsel. The defendants have filed their written statement and adopted the same as objections to the instant application. At the outset, the defendants have denied that the plaintiffs and defendants are members of Hindu undivided joint family and denied the Genealogical tree produced by the plaintiffs. The defendants have also denied the right and share of the plaintiffs in the suit schedule properties.

6. It is the specific case of the defendants that earlier the suit properties were ancestral properties of both plaintiffs and defendants. The original propositus Thimma had sons by name Mudli and Rangaiah. The 1st son Mudli was having two sons by name Thimmaiah and Mudlaiah. The 2nd son Mudlaiah S/o Mudli has died without issues. The defendant No.1 to 5 are the

legal heirs of 1st son Thimmaiah. Likewise, the 2nd son of propositus Thimma by name Sri.Rangaiah had two sons by name Thirumalaiah and Rangaiah. Out of them, the first son Thirumalaiah had two wives by name Siddamma who had no issues and 2nd wife Marulamma and their children are the plaintiff No.1 and 2 of this suit. The plaintiff No.3 to 6 are the daughters. The 2nd son Rangaiah is having only one daughter i.e., defendant No.6 Smt.Vanajakshi. Since the ancestors of plaintiffs and defendants are dead, the 1st defendant Nagaiah being elder member of the family, there was panchayath palu parikath with the father of plaintiff No.1 and 2 by name Thirumalaiah and they have partitioned the suit properties and subsequently khatha was effected vide M.R.No.54/1982-83. The original palu parikath document is in the custody of plaintiff No.1. In the said partition, the father of plaintiff by name Thirumalaiah was allotted with lands bearing Sy.No.79/1 measuring 0.6.08 guntas, Sy.No.79/3 measuring 10 guntas, Sy.No.67/6 measuring 18.08 guntas, Sy.No.67/3 measuring 6 guntas, Sy.No.67/4 measuring 4 guntas and Sy.No.103 measuring 1 acre, all the properties are situated at Hagare village, Madihalli Hobli, Belur Taluk. Since then the said properties were under the possession of Thirumalaiah (father of plaintiff No.1) wherein the defendant No.1 to 5 have no any right or interest.

7. It is further contended that, likewise, the share of 1st son of Thimmaiah by name Mudlaih was allotted in the name of defendant No.1 Nagaiah and the properties allotted are Sy.No.79/1 measuring 0.6.08 guntas, Sy.No.79/3 measuring 10 guntas, Sy.No.67/6 measuring 18.08 guntas, Sy.No.67/3 measuring 6 guntas, Sy.No.67/4 measuring 4 guntas and Sy.No.103 measuring 1 acre, wherein neither the plaintiff nor defendant No.6 is having any right over the said properties. Hence, the defendant No.1 to 5 have been in separate possession of the properties allotted to them.

8. It is further contended by the defendants that the father of plaintiffs by name Shri.Thirumalaiah assuming that he has to allot half share to his brother Rangaiah has intentionally not got the order of effecting mutation and hence, he has postponed the same without changing the revenue documents. However, the sole daughter of Rangaiah i.e., defendant No.6 Smt.Vanajakshi due to her ill-health and for the purpose of getting surgery of her uterus without which it was danger for her life as per advice of doctors, she had got the khatha effected in her name in respect of the properties allotted to her father i.e., Sy.No.79/7 measuring 0.6.08 guntas, Sy.No.79/3 measuring 10 guntas and Sy.No.103 measuring 10 guntas for which she has sought permission from the defendants for which they have agreed and accordingly, khatha was effected in the name of defendant No.6 and as such

in order to meet the said expenses, the defendant No.6 has sold lands bearing Sy.No.79/7 and 79/8 in favour of defendant No.7. As such, the defendant No.7 is enjoying her independent right and possession over the said two suit properties. The said fact is within the knowledge of plaintiff since the date of execution of sale deed. In spite of that with an ulterior motive in order to humiliate and harass the defendants, the plaintiffs have filed this suit. Likewise, still the properties which have to be given to the share of Shri.Thirumalaiah has to be allotted to the share of defendant No.6. Previously itself, the said Mudlaiah and Rangaiah have got the properties divided in accordance with the value of the property. Basing on the said partition, the defendant No.1 has got effected the khatha in his name for the year 1982-83 itself without objection from anybody else. That apart, the plaintiffs, their father Thirumalaiah have already sold the properties which were allotted to the share of Rangaiah. But suppressing the said fact, the plaintiffs have filed this suit.

9. It is further contended by the defendants that now the Government has proposed for formation of Channel in the properties allotted to the share of defendant No.1 and the said lands were acquired and when the Government has proposed to release compensation amount, the plaintiffs in order to defraud the defendants from receiving the said compensation amount have filed this suit without there being any right, interest or

share in the suit property. Hence, the defendants have sought for dismissal of the suit as well as the instant application.

10. Basing on the application, affidavit, written statement of Defendants adopted as objections to the instant application, the following points would arise for consideration of this court.

POINTS

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

11. Heard arguments of both sides. On the basis of Application, affidavit, written statement averments of defendants adopted as objection statement to the application, pleadings and also all the materials available on record, answer of this court to the above points is 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

12 **Point No.1 to 3:** Since all these three points are interconnected and interlinked with each other they are taken up together for discussion in order to avoid repetition of facts.

13. This suit is filed by the plaintiff against the defendants seeking relief of partition and separate possession in respect of the suit property. It is the case of the plaintiffs that the plaintiffs and defendants are brothers and sisters and members of Hindu undivided joint family. Since the sons of Mudalaiah i.e., Thimmaiah and Rangaiah are dead, there was partition between them wherein they have divided the properties bearing Sy.No.79/1(item No.4), Sy.No. 79/3 (item No.5), Sy.No.103 (item No.6). As such, the share allotted to Sri.Thimmaiah was entered in the name of Nagaiah in respect of Sy.No.79/1 (item No.4) measuring 10 guntas and Sy.No.103/1 measuring 20 guntas and khatha was effected vide ICR No.54/1992-93.

14. On the death of Rangaiah, his sons Rangaiah and Thirumalaiah have got effected khatha in respect of Sy.No.79/1 measuring 6.08 guntas, in Sy.No.79/3 measuring 10 guntas and in Sy.No.103 measuring 10 guntas (Item Nos.4 to 6) vide M.R. No.7/1988-89. After the death of Rangaiah and

Thirumalaiah, the daughter of Rangaiah, i.e., the defendant No.6 Smt.Vanajakshi without reserving any share to the legal heirs of Thirumalaiah has cheated them and got the khatha of the said properties effected in her name alone vide M.R.No.20/2010-11 dated 28-02-2011. Subsequently in order to cheat the plaintiffs, defendant No.6 has also executed sale deed dated 22-07-2015 in favour of defendant No.7 in respect of the item No.4 and 5 of the suit properties. The same is not binding on the plaintiffs.

15. The plaintiff has produced the Genealogical tree, RTC extract of Sy.No.67/3 (item No.1) measuring 0.12 guntas standing in the name of defendant No.1. RTC extract of Sy.No.67/4 (item No.2) measuring 0.28 guntas standing in the name of defendant No.1, RTC extract of Sy.No.67/6 (item No.3) measuring 0.37 guntas standing in the name of defendant No.1, RTC extract of Sy.No.79/7 (item No.4) measuring 0.06 ½ guntas standing in the name of defendant No.7 as per sale deed executed by defendant No.6 and khatha effected vide M.R.No.H3/2015-16. The plaintiffs have produced RTC extract of Sy.No. 79/8 (item No.5) measuring 10 guntas standing in the name of defendant No.7 as per sale deed dated 01.09.2015 executed by defendant No.6, RTC extract of Sy.No.103/8 (Item No.6) measuring 10 guntas standing in the name of defendant No.6 vide M.R.No.20/2010-11 as per pavathi khatha. The plaintiffs have also produced the mutation order vide M.R.No.7/1988-89 wherein there was partition in respect of land

bearing Sy.No.79/1, 79/3 and 103P i.e., item No.4, 5 and 6 properties in between Thirumalaiah and Rangaiah, both sons of Rangaiah. The plaintiffs have also produced the M.R.No.20/2010-11 presently standing in the name of defendant No.6 having effected her name based on inheritance. The plaintiffs have also produced mutation order in M.R.No.H3/2015-16 and the death certificate of Marulamma, endorsement issued by the Tahsildar, Belur regarding non availability of Records of Rights in respect of Sy.No.79/7 and 79/8 and also mutation orders vide M.R.No.54/1992-93. As already stated above, the plaintiffs have produced the sale deed in respect of item No.4, Sy.No.79/7 and item No.5 Sy.No. 79/8. The plaintiffs have also produced the Records of Rights of Sy.No.67/3 (item No.1) and Sy.No.79/1 (Item No.4). Likewise, the plaintiffs have also produced the Index of Lands of these two properties.

16. On the contrary, the defendants have also produced the Genealogical Tree which is completely different compared to that of the Genealogical Tree produced by the plaintiffs. In the Genealogical Tree produced by the defendants, the names of plaintiff No.2 to 6 is not appearing. Further there are discrepancies in the names while mentioning the name of wife of Rangaiah. The defendants have also produced the RTC extracts of suit properties as that of plaintiffs. The main document relied

on by the defendants is that as per M.R. vide ICR No.37/1981-82, there was partition in between the legal heirs of Mudlaiah. It is specifically mentioned that “ ಪೌತಿ ಖಾತೆಧಾರ ಮೂಡಲಯ್ಯ ಎಂಬುವವರಿಗೆ ರಂಗಯ್ಯ ಮತ್ತು ಮಗ ಮತ್ತು ಮಗ ತಿಮ್ಮಯ್ಯ ಎಂಬುವವರಿಡ್ದು ತಮ್ಮ ರಂಗಯ್ಯ ಪೌತಿಯಾಗಿರುತ್ತಾರೆ. ಹಾಗೂ ಮಗ ತಿಮ್ಮಯ್ಯನೂ ಸಹ ಪೌತಿಯಾಗಿರುತ್ತಾರೆ. ಮೂಲ ಪುರಷ ಪೌತಿ ಮೂಡಲಯ್ಯನವರ ತಮ್ಮನ ಮಗ ಹೆಚ್.ಆರ್. ತಿರುಮಲಯ್ಯ ಮತ್ತು ಮಗನ ಮಗನಾಗಯ್ಯ ನವರುಗಳಿಗೆ ಪಂಚಾಯ್ತಿ ಪಾಲು ಪರಿಕತ್ತು ಪ್ರಕಾರ ಖಾತೆಯಾಗಬಹುದಾಗಿ ಅರಿಕೆ ”.

17. Basing on the same, khatha was effected in the names of defendant No.1 Nagaiah and father of plaintiff No.1 and 2 Shri.Thirumalaiah in respect of Sy.No.79/1 measuring 0.6 ½ guntas each, Sy.No.79/3 measuring 10 guntas each, Sy.No.67/6 measuring 0.18 ½ guntas each, Sy.No.67/4 measuring 0.14 guntas each, Sy.No.67/3 measuring 0.06 guntas each, Sy.No.103p measuring 1 acre each. In the said partition, mutation was effected in the name of defendant No.1 Nagaiah in respect of 6 items on behalf of the family of Thimmaiah S/o Mudlaiah. Likewise, in respect of other 6 items, the mutation was effected in respect of Shri.Thirumalaiah S/o Rangaiah (father of plaintiff No.1 and 2) on behalf of his father Rangaiah wherein it is clear that the brother of Thirumalaiah by name

Rangaiah S/o Rangaiah is also having share. Accordingly, basing on the said mutation in ICR No.37/1981-82 produced by the defendants and also subsequent mutation vide M.R.No.7/1988-89 as produced by the plaintiffs, the properties were partitioned. Accordingly, the item No.1 to 3 properties are presently standing in the name of defendant No.1 who represents the family of Thimmaiah S/o Mudlaiah. Likewise, item No.4 to 6 properties were allotted to both Thirumalaiah (father of plaintiff No.1 and 2) and his brother Rangaiah (father of defendant No.6). Therefore, at this point of time itself this court opines that in so far as item No.1 to 3 properties are concerned, prima facie there was already partition and the said item No.1 to 3 properties were allotted to the branch of Mudlaiah and item No.4 to 6 properties were allotted to the branch of Rangaiah - grandfather of plaintiffs and defendant No.6. Accordingly, this court is of the view that the name of the plaintiff and defendant No.6 is established in respect of item No.4 to 6 properties.

18. The item No.4 property is land bearing Sy.No.79/7 measuring 0.6 ½ guntas was changed in the name of defendant No.6, likewise in respect of item No.5, the land bearing Sy.No.79/3 measuring 10 guntas, the khatha was changed in the name of defendant No.6. Thereafter, defendant No.6 has sold both item No.4 and 5 properties in favour of defendant No.7 and it is clear that the defendant No.6 has neglected the right and

share of the plaintiffs wherein prima facie they are also having specific share in item No.4 and 5 properties. In so far as item No.6 Sy.No.103/8 measuring 10 guntas is concerned, the defendant no.6 has got effected khatha in her name through her father basing on inheritance wherein the plaintiffs are having equal rights. Therefore, the alleged sale deed executed by defendant No.6 in favour of defendant No.7 is by over looking the legitimate right of the plaintiffs and defendant No.1 to 5 are not concerned with the said properties. The said Shri.Thirumalaiah father of both plaintiffs No.1, 2 and Defendant No.6 are representing the branch of Rangaiah S/o Thimmaiah and basing on the mutation vide M.R. ICR No.37/1981-82, both Thirumalaiah father of plaintiff No.1 and 2 and Rangaiah defendant No.6 had half equal share in the item No.4 to 6 properties. The defendant No.6 in the written statement contended that since she had to undergo uterus surgery, she had sold the item No.4 and 5 properties in favour of defendant No.7. But the defendant No.6 had no exclusive right to sell the suit properties and also to change the khatha of the said properties without the consent of plaintiffs.

19. It is further contended by the plaintiffs that in respect of item No.1 to 3 properties, no partition is effected and they are presently standing in the name of Defendant No.1 Shri.Nagaiah. Since already partition was effected in respect of item No.4, 5

and 6 earlier, it is to be divided 4/5th share. Likewise, item No.1 to 3 property has to be divided equally by half portion. Since the plaintiffs are under joint possession of suit properties, they have approached the defendants seeking to effect partition and allot their separate share. The defendant No.1 to 6 have refused to effect partition. Since the suit properties are acquired for the Yethinahole project, the defendant No.1, 6 and 7 taking advantage of their names entered in the revenue records are trying to receive the compensation from the said office. But to the surprise, neither the plaintiffs nor the defendants have produced any document to show that the suit properties are acquired by the Land Acquisition Officer. Further no documents are produced by either parties to show that under what Project the suit properties were acquired and what is the award amount and in whose favour the award was passed, in order to come to the conclusion by this court to pass necessary orders on I.A.No.2.

20. The plaintiffs have sought for restraining the defendant No.1, 6 and 7 from receiving compensation from the Special Land Acquisition Officer in respect of suit properties. As per observations made, prima facie the plaintiffs have no any right, share or interest over item No.1 to 3 is concerned. Even though the plaintiffs are having right over item No.4 to 6 properties, due to non production of the alleged award and its particulars, this

court would not incline to pass any blank order without the complete details, particulars to that effect. As such, the plaintiffs have not established prima facie case in so far as the relief claimed by them in the application is concerned. Hence, the balance of convenience is not lying in favor of plaintiffs.

21. This suit is of the year 2018 and the parties have not proceeded to press this application at the earliest point of time. Now 5 years have been expired. Further no ad interim exparte order of temporary injunction was passed by this court as on the date of institution of the suit. Considering all these aspects, if this court proceeds to pass any order on I.A.No.2 without the actual proceedings which was held before the Special Land Acquisition officer, the same may intervene in the steps already taken by the Special Land Acquisition Officer in respect of alleged acquisition of the suit properties. Therefore, if this court declines to pass any order of temporary injunction, at this juncture, the same would cause irreparable loss, injury and hardship to the defendants and also the proceedings held by the Special Land Acquisition Officer if any. Hence, the application is liable to be dismissed. That apart, the plaintiffs have not made out case for grant of equitable relief of order of temporary injunction and also that the plaintiffs have not put forth at this stage before this court that the suit properties are in danger of being wasted by the act of defendants. Thus the plaintiffs have not made out the ingredients to consider the instant application

to pass any restraint order against the defendants. Therefore, the application deserves to be dismissed for having failed to establish the prime factors. Accordingly, this court answered Point Nos.1 to 3 in the **Negative.**

22. **Point No.4:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

:: ORDER ::

- I.A.No.II filed by the plaintiffs Under Order 39 Rule 1 and 2 of Civil Procedure Code is hereby dismissed.
- No order as to costs.

(Dictated to the stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court, on this the 09th day of August, 2023)

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**

(Order on I.A. No.II signed and pronounced in the open court vide separate order)

:: ORDER ::

- I.A.No.II filed by the plaintiffs Under Order 39 Rule 1 and 2 of Civil Procedure Code is hereby dismissed.
- No order as to costs.
- For Issues by: **25.10.2023**

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**