

KAHS610035392022



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT CHANNARAYAPATNA

Present:- DEEPU B.C., B.A.L., LL.B.,
Prl. Civil Judge & JMFC,
Channarayapatna.

Dated this the 21st day of February 2024

O.S. NO.946/2022

Plaintiff/s :-

Lakshamma,
D/o Late Nanjundegowda,
Aged about 66 years,
R/o Mullikorai village,
Farnaneel post,
The Neelagiries,
Udakamandalam,
Tamilunadu state.

(By Sri. K.N.S. Adv.)

V/s

Defendant/s:-

1. Jayamma W/o Late Jayaramu,
Aged about 55 years,
Door No.73/133,
Dr. Basavaiah Nagar,
Pudumand, Ooti,

Udakamandalam,
The Neelagiries,
Tamilunadu state-643007.
Mobile No. 948647611.

2. J.P.Ashok
S/o Puttaswamygowda,
Aged about 55 years,
Jinnenahalli village,
Hirisave hobli,
Channarayapatna taluk,
Hassan district.
3. Rangamma
W/o Late Krishnegowda.,
Aged about 70 years,
Machaboovanalli village,
Hirisave hobli,
Channarayapatna Taluk,
Hassan District.

(By Sri.C.S.D. Adv.)

PARTIES TO I.A. No.I

Applicant/s : Lakshamma.
(plaintiff)

-V/s-

Opponent/s : Jayamma & others
(defendants)

ORDERS ON I.A. No.I

The instant application is filed by the plaintiff against the defendants U/o.XXXIX Rule 1 and 2 of C.P.C on 16.11.2022 along with the suit, seeking an order of ad-interim temporary injunction, restraining the defendants from alienating the suit schedule properties by way of Sale, Mortgage, Gift, Will or change the khata or any other document till pending disposal of the suit.

2. In support of the application, affidavit is filed, wherein the plaintiff has sworn to fact that the defendant No. 1 is the daughter-in-law of her younger uncle Devashettygowda and wife of Jayaramu and also daughter of her husband Hucchegowda born through first wife Hombamma. Her grand father Bommarayigowda got 6 children namely Dyavamma, Nanjundegowda, Eregowda, Bommegowda, Dyavegowda and Devashettigowda @ Puttegowda. In pursuance to the partition held between them, the suit schedule properties allotted to her father Nanjundegowda. Her father Nanjundegowda got another wife by name Chikkamma and daughter Lakshamma. In pursuance to the partition, said Nanjundegowda was in possession and enjoyment of the suit schedule properties. After his

demise, being a sole legal heir, she has succeeded the suit schedule properties and she is in possession and enjoyment thereof as an absolute owner. Such being the case, since her father Nanjundegowda has no any male issues, in order to grab the suit schedule properties, the brother of Nanjundegowda by name Devashettygowda @ Puttegowda illegally got changed the Khata of item No. 1 property into his son name Jayaramu and also executed some documents in favour of defendant No. 2 and 3 in respect of item No. 2 and 3 properties. After demise of said Jayaramu, being his wife, the defendant No. 1 got changed the Khata of Item No. 1 property into her name. The defendants by taking advantage of illegal Khata, they caused interference to her possession and try to alienate the suit properties. Hence it would required to restrain them by way of injunction, accordingly they prayed to allow the application.

3. On the other hand, the defendants filed memo by adopting the written statement as an objection to I.A. No.1. In the written statement, the defendants have admitted the relationship with the plaintiff. Apart from that they denied other averments made in the plaint by contending that, during his life time, the father of the

plaintiff, Nanjundegowda was in possession of suit properties, since he has no male issues, as per his wish, his wife Chikkamma has adopted the Jayaram, who is the son of Devashettigowda under the Registered Adoption Deed dated 28.02.1962 and the plaintiff has also subscribed her signature to the said deed. During his life time said Jayaram has look after his mother Chikkamma and he was in possession and enjoyment of the suit schedule properties. Due to his legal necessities, the said Jayaram has sold item No. 2 property to the brother of defendant No. 2 P.Nandagopal under the Registered Sale deed dated 10.06.1996. After that said property was allotted to the share of defendant No. 2 through partition held between the said Nandagopala and their family members. Accordingly the defendant No. 2 is in possession of item No. 2 property. Further the said Jayaram has sold item No. 3 property in favour of husband of defendant No. 2 Krishnegowda under the Registered Sale deed dated 17.03.2006. After his demise, the defendant No. 3 and her children are in possession and enjoyment of item No. 3 property. The plaintiff is not in possession of suit schedule properties since 60 years. In spite of knowledge of the said facts, she has come up with this false suit. Hence, the plaintiff is not entitled for

any relief. Accordingly they prayed to reject the application.

4. Heard the arguments on both sides and perused the materials on record.

5. The points that arise for consideration of this court are as under :

1. Whether the plaintiffs have made out prima-facie case?
2. Whether the balance of convenience lies in favor of plaintiffs?
3. Whether the plaintiffs are suffers irreparable loss and injury if the T.I. is refused?
4. What Order?

6. Based on the materials placed on record, this court answers the above points are as under :

Point No. 1 :- **In the Affirmative**

Point No. 2 :- **In the Affirmative**

Point No. 3 :- **In the Affirmative**

Point No. 4 :- As per final order.

For the following :

:: REASONS ::

7. Point No 1 to 3 :- As these points are interconnected with each other, they are taken together for common discussion in order to avoid repetition of facts and circumstances.

8. As could be seen from the record, the instant suit has been filed by the plaintiffs against the defendants for the relief of Declaration of title and permanent injunction. Along with the suit, the plaintiff has maintained I.A. No.1 U/o.39 Rule 1 & 2 of CPC. In pursuance to the same, suit summons and emergent notice were issued. In response to the same, the defendants appeared through their counsel and filed their written statement.

9. As could be seen from the rival pleadings of both parties, the relationship between the parties is not in dispute. Further, it is not in dispute that the suit schedule properties originally belonged to plaintiff's father Nanjundegowda. But the only crux of the dispute between the parties is that, as per the plaintiff, after demise of her father, being sole legal heir, she has succeeded the suit schedule properties and she is in

possession and enjoyment thereof, but the defendants have created some documents and got changed the Khata into their names and tried to sold the suit properties. On the other hand, as per the defendants, since the plaintiff's father has no male issues, as per his wish, his wife Chikkamma has adopted the Jayaramu, the husband of defendant No. 1 under the Registered Adoption Deed dated 28.02.1962. In pursuance to the same, the said Jayaramu became absolute owner in possession of suit properties. Due to his legal necessities, he has sold item No. 2 property in favour of brother of defendant No. 2 and also sold item No. 3 property in favour of husband of defendant No. 3. Accordingly the defendant No. 2 and 3 are in possession of item No. 2 and 3 properties respectively. After demise of her husband Jayaramu, the defendant No. 1 got changed the Khata of item No. 1 property into her name and she is in possession and enjoyment of suit item No. 1 property. The plaintiff is not in possession of suit schedule properties.

10. On careful perusal of the revenue documents produced by the plaintiff, it prima facie appears that the Khata of item No. 1 property is standing in the name of

defendant No. 1, the Khata of item No. 2 and 3 is standing in the name of defendant No. 2 and 3. But the defendants have not produced any piece of document to substantiate their defence taken in their written statement. Since the Khata of suit schedule properties are standing in the name of defendants, if they are not restrain from alienating the suit properties, they would have sold the same in favour of others. So such being the purpose of the suit will be defeated. The plaintiff may be put irreparable loss and injury and it cannot be compensated in terms of money. On the other hand no injury or loss would cause to the defendants if an order of temporary injunction is granted. So, under these circumstances, in order to protect the subject matter of the properties and to avoid the multiplicity of the proceedings, it would require to restrain the defendants by way of temporary injunction. Hence, this court is of humble opinion that the plaintiff has a prima facie case, balance of convenience in her favor and if at all the defendants are not restrain, they may alienate the suit schedule properties and same is caused irreparable loss and injury to the plaintiff. Thus, **point No.1 to 3 are answered in the Affirmative.**

11. Point No. 4 : In the light of above discussion, this court proceeds to pass the following:

:: ORDER ::

I.A.No.I filed by the plaintiff under order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendants are hereby restrained from alienating the suit schedule properties by way of Sale, Mortgage, Gift, Will or any through other documents till pending disposal of the suit

No order as to costs.

(Dictated to the steno, transcribed and typed by her, corrected signed & then pronounced by me in the open Court on this **21st day of February 2023.**)

(DEEPU B.C.)
Prl. C.J. and JMFC,
Channarayapatna.