



IN THE COURT OF THE CIVIL JUDGE AND
JMFC, AT: BYADGI

Present: **Sri Suresh Wagganavar, BA. LL.B., (Spl)**
Civil Judge & JMFC, Byadgi.

Dated this the 04th day of November-2024

Original Suit No.246/2024

Sumangala W/o Nagappa Uppar
R/o: Kummur, Tq: Byadgi, Dist: Haveri.

(By Sri.M.M.M., Advocate)
.....PLAINTIFF

V/S

1. Puttavva W/o Hanumantappa Byagavadi
and others.

(By Sri.M.K.K., Advocate for D-1 & 3)
(By Sri.R.N.P.,Advocate for D-2)
(Defendant No.4 placed exparte)

.... DEFENDANTS



PARTIES TO THE IA NO.I

Sumangala W/o Nagappa Uppar
Age: 54 years, Occ: Household work,
R/o: Kummur, Tq: Byadgi, Dist: Haveri.

.... Applicant/Plaintiff

VS

1. Puttavva W/o Hanumantappa Byagavadi
R/o: Kummur, Tq: Byadgi, Dist: Haveri.

.... Opponents/Defendants

ORDER ON IA.NO.I

1. The plaintiff has filed interim application U/O XXXIX Rule 1 and 3 of Civil Procedure Code., by seeking prayer to grant pass ad-interim temporary injunction by restraining the defendant No.1 and any such persons for alienating and change the khata over the suit property till the disposal of suit.

2. In the accompanying affidavit of the interim application, plaintiff has stated that, the propositus Hanumantappa



Byagavadi died on 25.07.2007 and his wife by name Puttavva and propositus Hanumantappa got begotten plaintiff, defendant No.2 to 5 and another son Annappa Byagavadi. Plaintiff is the legal heirs of propositus Hanumantappa. The Annappa Byagavadi died on 17.08.2024 and he was not married and plaintiff and defendant No.1 to 4 are the legal heirs of Annappa Byagavadi. The suit schedule properties belongs to Annappa Byagavadi. After the death of Annappa, the plaintiff and defendant No.1 to 4 are the use and enjoyment over the suit property. There is no partition in between plaintiff and defendants till today. The defendant No.1 was created gift deed in her name. The said gift deed is not binding upon the plaintiff. Hence, prays to allow the application.

3. Per contra the defendant No.1 to 3 have appeared through their counsel. The counsel for defendant No.1 has filed written statement along with memo. Wherein it is contended that, the suit of the plaintiff is not maintainable.



There was a partition in between plaintiff and defendant No.1 to 4 and the father of plaintiff in OS.No.134/1995. In the said suit, the plaintiff had received gold and amount from the defendant No.1 to 3 and relinquished her share infavour of defendant No.1 to 6. Therefore, the plaintiff has no right, title or share in the suit property. The defendant No.1 and 3 are look after the deceased Annappa. After the partition the deceased Annappa S/o Hanumanthappa Byagavadi was the owner and in possession of the suit property. Thereafter, the said Annappa was executed the gift deed infavour of defendant No.1 with love and affection towards his mother. Thereafter, again the plaintiff has filed suit for partition and separate possession in OS.No.18/2011. The said suit was also dismissed. Thereafter the plaintiff has filed this suit with malafide intention. Hence, prays to reject the application.

4. Heard the arguments of plaintiff and defendant No.1. In view of the material placed before me and the contention raised by the parties, the following points have arisen for my consideration;-



P O I N T S

1. Whether the applicant/plaintiff has made out a prime facie case for the grant of the TI as prayed?
 2. Whether the balance of convenience lies in favor of plaintiff?
 3. Whether irreparable loss would be caused to the applicant/plaintiff. If the instant interlocutory application is not allowed?
 4. What order?
5. My answer to the above points are as under;

Point No.1	:	In the Negative,
Point No.2	:	In the Negative,
Point No.3	:	In the Negative and
Point No.4	:	As per final order, for the following;



REASONS

6. Point No.1 to 3:- These points are taken together for common discussions and to avoid the repetition of facts.

Note:- It is made clear that, at this stage any observation made herein and opinion expressed are only for the purpose of disposal of this interim application. These observations shall not carry any weight in the final disposal of the suit. The whole facts of the IA is already narrated at the inception of this order. Therefore, repetition of the same avoided here.

7. Heard the arguments from both side. So the plaintiff has alleged that, the suit properties are the joint family properties of plaintiff and defendant No.1. The defendant No.1 taking undue advantage name entered in the record of rights she has trying to alienate the suit property. To prove the prima facie case the plaintiff has produced record of right of RS.No.79/5. On perusal of above said documents, it prima facie shows that earlier the suit property RS.No.79/5 was standing in the name of Annappa S/o Hanumanthappa



Byagavadi. Thereafter, as per the gift deed the suit property RS.No.79/5 is standing in the name of defendant No.1. The Panchayat No.142, 150A/2B of Kummur village is standing in the name of Annappa S/o Hanumanthappa Byagavadi.

8. Per contra, the defendant No.1 has contended that as per the partition in OS.No.134/1995 the present plaintiff had taken gold and amount from the defendant No.1 to 3 and relinquished her share on the suit property infavour of defendant No.1 to 6 in above said suit. Thereafter again the plaintiff has filed suit for partition and separate possession against the defendants in OS.No.18/2011. The said suit was also dismissed. Thereafter the plaintiff has filed RA.No.35/2018. The said appeal was also dismissed. It is pertinent to note here that the above said fact is not denied by the plaintiff. The defendant No.1 has produced compromise petition and decree in OS.No.134/1995. On perusal of above said documents, it reveals that the plaintiff had received amount and gold from the defendant No.1 to 3 and relinquished her share on the suit property infavour of



defendant No.1 to 6 in above said suit. Therefore, the suit properties are the self and individual property of deceased Annappa S/o Hanumanthappa Byagavadi. The deceased Annappa S/o Hanumanthappa Byagavadi was executed a gift deed infavour of defendant No.1 who is mother of deceased Annappa. On perusal of above said gift deed, it prima facie shows that the deceased Annappa was executed the gift deed infavour infavour of defendant No.1 on suit property RS.No.79/5 and gave possession infavour of defendant No.1. Therefore, the suit property RS.No.79/5 of Kummur village is the self and individual property of said defendant No.1. At this juncture, I quoted below provisions as follows:

Hindu Succession Act, Section.14. **Property of a female Hindu to be her absolute property.** —(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.



Therefore, the above said provision is clear that any property possessed by a female Hindu is her absolute property. In this case, admittedly, the suit property RS.No.79/5 of Kummur village is standing in the name of defendant No.1. Therefore, the defendant No.1 is every right to disposed her property as per her dream and fancy. The plaintiff has no right to question the above said property and not claim any temporary injunction against the above said property.

9. It is pertinent to note here that as per Hindu Succession Act, schedule-1 the below persons are the Class-I Legal heirs. Son ; daughter ; widow ; mother ; son of pre-deceased son ; daughter of a pre-deceased son ; son of a pre-deceased daughter ; daughter of a pre-deceased daughter ; widow of a pre-deceased son ; son of a predeceased son of a pre-deceased son ; daughter of a pre-deceased son of a pre-deceased son ; widow of a pre-deceased son of a pre-deceased son. Therefore, the plaintiff is not the Class-I legal heir of deceased Annappa S/o Hanumanthappa Byagavadi.



The defendant No.1 is the Class-I legal heir of deceased Annappa S/o Hanumanthappa Byagavadi. Therefore, the plaintiff has no right to claim any temporary injunction against other properties also.

10. While considering the question of granting injunction one way or the others, evidently, the court, apart from finding out a prima-facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiff if the prayer for injunction is to be refused. The contention of the plaintiff must be bonafide. Conduct of the plaintiff would also be relevant. In this case the plaintiff has suppressed the materials fact ie., earlier compromise in OS.No.134/1995. Thereafter, the plaintiff again filed suit for partition in OS.No.18/2011 and filed RA.No.35/2018. The above said fact is suppressed by the plaintiff and filed this suit. This court feels that the plaintiff is not entitle for the relief of temporary injunction against defendant No.1 That



apart, on perusing the pleadings of plaintiff and documents placed before this court, the full pledged trial is required. That apart if TI is granted the defendant No.1 would be frustrated and every possibility of causing damage to the suit way and due to which the plaintiff would not substance more hardship and loss at this stage.

11. From the above discussions, it is quite obvious that, the plaintiff has not made out prima-facie case for the grant of TI as prayed and also not prove other two statutory ingredients. Accordingly, this court answered the **point Nos.1 to 3 in the Negative.**

12. Point No.4:- Since the plaintiff has fail to make out a prima-facie case and failed to proved hardship and the balance of convenience, she is not entitled to discretionary and equitable relief of TI as payed. Hence, for the aforesaid reasons, I proceed to pass the following;



ORDER

IA No.1 filed by the plaintiff U/o XXXIX
Rule 1 and 3 of CPC., is hereby rejected.

No order as to costs.

(Dictated to the Stenographer, directly on computer, after typed by her, corrected, and then pronounced by me in the open court on this the **04th day of November – 2024**).

(Suresh Wagganavar)
Civil Judge & JMFC,
Byadgi.