

KAHV300001882017



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C AT HANGAL**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Addl. Senior Civil Judge & JMFC.,
Hangal.

Dated this the 03rd day of February, 2022.

OS No.14/2017

Plaintiff/Applicant: Smt.Shobha,
W/o Manjunath Hulikeri,
Aged 57 years, Agriculturist,
R/at Belagalapete, Hangal Taluk.

-Vs-

Defendants/
Opponents:

8. Kumarappa, S/o Channaveerappa
Huggishettara, Aged 68 years,
Agriculturist, R/at Belagalapete,
Hangal Taluk.
9. Shivayogeppa, S/o Channaveerappa
Huggishettara, Aged 65 years,
Agriculturist, R/at Belagalapete,
Hangal Taluk.
10. Basavaraj @ Channaveerappa
Huggishettara, Aged 61 years,
Agriculturist, R/at Belagalapete,
Hangal Taluk.

11. Mrutyunjaya @ Mookappa,
S/o Channaveerappa Huggishettara,
Aged 61 years, Agriculturist,
R/at Belagalapete, Hangal Taluk.
12. Gangadharappa,
S/o Channaveerappa Huggishettara,
Aged 65 years, Agriculturist,
R/at Belagalapete, Hangal Taluk.

ORDERS PASSED ON IA NO.XII

The learned counsel for the plaintiff filed IA No.XII under Order 39 Rule 1 and 2 of CPC seeking for an order of temporary injunction restraining defendants No.8 to 12 from constructing any weigh bridge in suit schedule 2 (b to h) properties till the disposal of the suit.

2. The application is supported with the affidavit of the plaintiff stating that, she has filed the suit against the defendants seeking for the relief of partition and separate possession of her share in the suit schedule properties. It is also stated that, the suit schedule properties are the ancestral properties and she has got equal share in it. Suit schedule 2(a) to (h) properties consists of rice mill and vacant space which is also the ancestral properties of herself and defendants No.1 to 7. The rice mill was being run by herself, her father the 1st defendant and her brothers. She has further alleged that, defendants No.6 and 7 without any knowledge to herself and her brother Jayalingappa colluding with the

Grama Panchayath officials entered their names in respect of suit schedule item No.2(b) to (h) properties. On the basis of the said created documents, defendants No.8 to 12 knowing fully well that, the plaintiff has got legitimate share in the said properties, purchased the same from defendants No.6 and 7 by colluding with each other. It is further stated that, defendants No.6 and 7 without having exclusive right over the said properties got executed a created and nominal sale deed in favour of defendants No.8 to 12 and the said defendants never derive any right, title or interest over the said properties on the basis of the created sale deed. It is further alleged that, defendants No.8 to 12 are not the bonafide purchasers of the said properties. It is further alleged that, defendants No.8 to 12 in order to support their false claim about the suit colluded with the officials and are trying to construct the weigh bridge in the suit schedule item No.2(a) to (h) properties in a hurry. They have interfered with the possession of the plaintiff over the said properties and on 30-09-2021 defendants No.8 to 10 have brought JCB to the said properties and tried to level the properties by removing the mud and they have damaged the said properties and they continued their act in spite of request made by the plaintiff and elders of the village. It is further stated that, she has made out a prima-facie case, the balance of convenience lies in her favour and if an order of temporary injunction is

not granted she will be put to great hardship and loss and on the other-hand if an order of injunction is granted no hardship is going to be caused to defendants No.8 to 12. Hence, prayed to allow the application.

3. On the other-hand learned counsel for defendants No.8 to 12 filed the objection contending that, the application is not maintainable under law and on facts. Defendants No.8 to 12 have acquired their right over the suit schedule item No.2(b to h) properties by virtue of a registered Sale Deed dated 05-11-1998 executed by the 1st defendant and his sons. They have sold the said properties in order to repay the loan availed from Karnataka State Financial Corporation. The said loan was repaid by defendants No.8 to 12 and the said plaintiff has filed the suit by suppressing the said fact. It is also stated that, the plaintiff earlier filed a suit in OS No.19/2013 against her father and brothers which was dismissed at the inception itself. The present suit has been filed by suppressing the fact of earlier suit in OS No.19/2013. It is further contended that, if the plaintiff is entitled for any share in the suit schedule properties she is also entitled for the improvements done during the pendency of the suit. They have already partially completed the work of weigh bridge and if at this stage the same is restrained they will be put to great hardship. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsel for the plaintiff and learned counsel for defendants No.8 to 12 and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the plaintiff has made out a prima-facie case?
 2. Whether the balance of convenience lies in favour of the plaintiff?
 3. Whether irreparable loss and hardship will be caused to the plaintiff which cannot be compensated in terms of money if an order of injunction is not granted?
 4. What order?
5. The findings of the above points are as hereunder:
- 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

6. **Point No.1 to 3:** Since, these points are inter connected with each other and needs common discussion on the same set of facts and to avoid repetition of facts, these points are taken up together for discussion.

7. The plaintiff has filed the suit against the defendants for the relief of partition and separate possession of her 1/6th share in the suit schedule properties and also sought for declaration that, the Sale Deeds executed by defendants No.6 and 7 in favour of defendants No.8 to 12 in respect of the suit schedule item No.(a to h) properties, the sale deed executed by the 2nd defendant in favour of the 14th defendant in respect of suit schedule item No.1(c) property and the sale deed executed by the 13th defendant in favour of the 15th defendant in respect of suit schedule item No.1(d) property are not binding upon her. The plaintiff alleged that, she is the daughter of one Shivaputrappa and his wife is Shakuntala. The plaintiff filed the suit against her father and her brothers. The 1st defendant is the father of the plaintiff and during the pendency of the suit he died. Defendants No.2, 6 and 7 are the brothers of plaintiff. Defendants No.3 to 5 are the wife and children of one Jayalingappa Satyappanavar who is the elder brother of the plaintiff. As per the plaintiff, defendants No.8 to 12 are the purchasers of some of the suit schedule properties. Defendant No.13 is the wife of the 2nd defendant and defendant No.14 and 15 are also the purchasers.

8. As per the plaintiff all the suit schedule properties are the ancestral and joint family properties of herself and defendants No.1 to 7. In 10th defendant filed written-

statement. Defendants No.2, 3, 5, 13, 14 and 15 have filed the written-statement stating that, as per the partition in between the 1st defendant and his sons the suit schedule properties have been got partitioned. As per the written-statement of the 10th defendant, they have purchased the said properties. It is the specific case of defendants No.8 to 10 that, the 1st defendant and his sons were running rice mill in suit schedule item No.2(a) to (h) properties and they had availed loan from the Karnataka State Financial Corporation and in order to repay the said loan they have sold the said properties in favour of defendants No.8 to 12. It is specifically pleaded by the defendants that, there was already a partition in the family of the plaintiff and defendants No.1 to 7.

9. The records goes to show that, on 20-01-2018 the issues have been framed and on 12-08-2021 the additional issue has been framed. When the case was posted for further cross-examination of PW1, the present application came to be filed seeking temporary injunction restraining defendants No.8 to 12 from constructing weigh bridge in suit schedule item No.2(b) to (h) properties. The application is supported with the affidavit of the plaintiff and it has been opposed by defendants No.8 to 12. They have also contended that, on the basis of the Sale Deed they are in actual possession of the said properties and they have developed the said properties. They have also contended that, even the plaintiff

has not opposed development in the earlier suit filed in OS No.19/2013.

10. Now it is necessary to look into the written-statement averments of defendant No.10. The said written-statement was filed on 25-10-2017. In the said written-statement at para No.9, defendants No.8 to 12 on 25-10-2017 itself have clearly stated that, they are running Petrol Bunk in the suit schedule item No.2(a) to (h) properties and they are making preparation to put up weigh bridge in the suit schedule properties. Therefore it is very much necessary to note that, the plaintiff was very much aware about the fact that, defendants No.8 to 10 are making arrangement for construction of the weigh bridge in the year 2017 itself. In the cross-examination of PW1 which was recorded on 27.11.2019 there was a suggestion to her saying that, the defendants No.8 to 10 are making arrangement for putting up weigh bridge in the properties sold to them. This suggestion has been denied by her, but this suggestion also goes to show that, defendants No.8 to 10 have made arrangement for putting up weigh bridge in the year 2017 itself. Further it is necessary to note that, the suit is for the relief of partition and if the plaintiff is entitled for any share in suit schedule item No.2(b) to (h) properties she is also entitled for the improvements made during the pendency of the suit. Defendants No.8 to 12 are improving the said properties

during the pendency of the suit which is also hit by the principles of lis pendense. Further in the objection defendants No.8 to 10 have categorically sated that, alrerady part construction of weigh bridge has been completed. Such being the case this court comes to the conclusion that, at this stage the plaintiff has not made out a prima-facie case for grant of temporary injunction. The balance of convenience does not lie in her favour. She has failed to show that, irreparable hardship is going to be casued to her which cannot be compensated in terms of money if an order of injunction is not granted. lies in her favour. Accordingly, point No.1 to 3 are answered in the negative.

11. **Point No.4:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA No.XII filed by the plaintiff under
Order 39 Rule 1 and 2 of CPC is hereby
dismissed with costs of Rs.300/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 03rd day of February, 2022)

Sd/-
(ANITHA)
Addl Senior Civil Judge and JMFC,
Hangal.