

KAHV310000382022



Presented on : 19-01-2022

Registered on : 19-01-2022

Decided on : --

Duration

:

The plaintiffs have filed the present suit against the defendants by seeking relief of partition and separate possession of their 1/6th share each the suit schedule properties by metes and bounds.

The plaintiff No.1 has maintained I.A.No.I under order 39 Rule 1 and 2 of C.P.C., by seeking to restrain the defendants or anybody acting under them from alienation or otherwise of the suit schedule properties by way of ad-interim ex-parte temporary injunction till the disposal of the suit.

I have perused the IA No.I, its accompanying affidavit, plaint and other document relied upon by the plaintiffs at this stage. In the plaint as well as in the affidavit, it is asserted that defendant No.1 and plaintiff No.1 are the first and second wife of deceased Sri. Basavaraja Chikkanannavar respectively and plaintiff No.2 and 3 born through plaintiff No.1 and defendant No.2 and 3 born through 1st wife, the defendant No.1. It is further averred in

the affidavit to the effect that the suit schedule properties are ancestral properties of plaintiffs and defendants and defendants upon the death of Sri. Basavaraj alleged to had mutated their respective names in respect to suit schedule properties without knowledge of the plaintiffs and thereby denied their legitimate shares in the suit schedule properties which constrained them to file this suit for partition and separate possession along with interim application for grant of temporary injunction.

On perusal of materials available on record, the plaintiffs have not filed prima facie documents at this stage to show that suit schedule properties are originally stood in the name of deceased Sri. Basavaraja and there is no material on record at this stage to believe that the suit schedule properties are the ancestral and joint family properties of plaintiffs and defendants. As such, the considered opinion of this court is that before passing any orders on IA.No.I, notice of it shall be directed to the defendants as contemplated under order 39 Rule 3(1) of CPC. In other words, there is lack of prima facie case and balance of convenience not lies in favour of the plaintiffs and no loss or injury will be to cause to them if exparte temporary injunction is refused. Accordingly, the following:-

ORDER

Issue suit summons and emergent notice on I.A.No.I to the defendants if sufficient PF is paid.

Returnable by : 16-03-2022.

Civil Judge & JMFC.,
Hangal.