

**IN THE COURT OF THE CIVIL JUDGE AND JMFC,**  
**HANGAL.**

**Present:** Smt. Fakirawwa Kelageri, B.A.,LLB.  
Civil Judge and JMFC, Hanagal.

**O.S. NO.75/2020**

**DATED THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2020.**

**PLAINTIFF/S:-**

Basavaraj S/o Heggappa Dharaneppanavar  
@ Kadappanavar, Age: 49 year, Occ:  
Agriculturist, R/o Hirehullal, Tq: Hangal,  
Dist: Haveri.

(By Sri K.C.Pawali, Advocate)

V/S

**DEFENDANT/S:-**

1. Guddappa S/o Neelappa  
Dharaneppanavar @ Kadappanavar, Age:  
56 year, Occ: Agriculturist, R/o  
Hirehullal, Tq: Hangal, Dist: Haveri and  
others.

(Defts.No.1, 2 & 4 by Sri.M.S.Hullur, Adv.)  
(Deft.No.3 by Sri.I.K.H.(Court guardian)  
Adv.)

**INTERLOCUTORY APPLICATION No.I.**

**APPLICANT :**  
**(Plff.)**

Basavaraj S/o Heggappa  
Dharaneppanavar @ Kadappanavar.

V/S

**OPPONENT :**  
**(Deft.No.1)**

1. Guddappa S/o Neelappa  
Dharaneppanavar @ Kadappanavar and  
others

**ORDERS ON I.A.No.I**

I.A.No.I filed by the plaintiff U/o 39 rule 1 and 2 R/w Sec.151 of CPC, requesting the court to grant ad-interim temporary injunction to restrain from execution of decree passed in OS No.148/2016 dated 14-07-2018, till disposal of present suit.

2. In the accompanying affidavit it is stated that, the father of plaintiff namely deceased Heggappa, father of defendants No.1 and 2 namely deceased Neelappa and deceased Gangappa are own brothers. Further Gangappa went in adoption to Shivabasappa Dharaneppanavar and as such his name was changed as Gangappa adopted S/o Shivabasappa Dharaneppanavar and the suit properties were standing in the name of Gangappa. Further Gangappa and his wife namely Basavva died issue-less. Further Gangappa executed registered 'Will' on 05-05-1967 in favour of father of plaintiff, father of defendants No.1 and 2, his far relative Chikkappa S/o Neelappa Nellibeed and his sister Basavannevva W/o Basappa Huralikuppi and accordingly their names were to the suit properties. This being the fact, Gouravva claiming herself as she is wife of deceased Gangappa and by colluding with defendants and in order to engulf the share of plaintiff, got entered her name illegally to the suit properties and filed OS No.148/2016 and got compromise decree on 14-07-2018 by suppressing the material facts and without including the plaintiff as necessary party to the suit. On these grounds present suit filed for relief of permanent injunction by filing present application, the plaintiff has requested the court to grant Ad-interim temporary

injunction against the defendants from executing the Compromise decree passed in OS No.148/2016 dated 14-07-2018, till disposal of present suit.

**3.** The defendants have filed written statement and by filing memo they have requested the court to treat contents of written statement as objection to I.A.No.I. In their written statement they clearly denied the entire case of the plaintiff. It is specifically contended that, the plaintiff has not paid proper court fee. Further the compromise decree passed in OS No.148/2016 dated 14-07-2018 cannot be canceled since the plaintiff and defendants have given their consent for the same. Further specifically denied the contents of plaint Para No.6 of the plaintiff. The plaintiff and his father by colluding with Revenue authorities have got sanctioned ME No.663 and 909 which are not binding on the defendants. Further specifically contended that, any 'Will' comes into effect only after the death of that person instead he can make gift deed and as such in this deceased has not executed any 'Will' in respect of suit property and not got passed ME No.663 and 909 on 31-12-1972 and hence they are not binding on these defendants. Further Gouravva is the only legally wedded wife deceased Gangappa, but Basavva is not the wife of deceased Gangappa as per the pleadings of plaintiff and all the documents like Voter ID, Adhar card, SB A/c in MG Bank, Sangur and Ration card are all standing in the name Gouravva W/o Gangappa Dharaneppanavar. Further contended that, since Gouravva had no issues she took Nagaraj S/o Chandrappa Charaneppanavar in adoption who is son defendant No.3. Further specifically

contended that, the defendant No.1 tried to interfere over the suit property by taking undue advantage of old age of Gouravva and minor adopted son of Gouravva and as such deceased Gouravva had filed OS No.148/2016 before this court. During the pendency of the same Gouravva died and hence the said suit was referred to mediation and the same was ended in compromise, which is not binding on the plaintiff. Further the plaintiff has filed this suit after lapse of 28 years and as such the suit of the plaintiff is barred by law of limitation. Further the plaintiff and defendants are not coming under genealogy, and hence the plaintiff is not having any right to claim share in the suit properties. Further if the plaintiff wants to claim right over the suit properties, first the plaintiff has to file declaration and then he may file partition suit. On these grounds defendants have requested the court to dismiss an application with costs.

4. Heard, the learned counsels for the parties before the court and perused materials placed before the court.

5. The following point arises for my consideration.

1. *Whether plaintiff shows that, there exist prima facie case?*
2. *Whether the balance of convenience lies in favour of plaintiff?*
3. *Whether plaintiff shows that, if injunction as prayed for is not granted, the plaintiff will be put to an untold hardship and injury, on the other hand, no hardship or injury would be caused to other side?*
4. *What order?*

6. My answer to the above points are as follows:-

*Point No:1. In the Negative.*

*Point No:2. In the Negative.*

*Point No:3. In the Negative.*

*Point No:5. As per final order for the following:-*

### **REASONS**

7. **Point No: 1 to 3:** In order to avoid repetition of facts and for convenience sake, these points taken together for common discussion.

The learned counsel for the plaintiff argued that deceased Gangappa executed registered 'Will' on 05-05-1967 in favour of his brothers namely Heggappa, Neelappa and Chikkappa Ningappa Nellibeed and his sister Basavannevva Basappa Huralikuppi. Deceased Gangappa gone in adoption to one Shivabasappa Dharennavar. Basavva was wife of Gangappa and died long back and they died no issues. The said Gangappa himself submitted vardi along with 'Will' to Revenue authority during his lifetime. Based on said vardi ME No.663 and 909 were certified. Their names have been entered in Column No.11 and the same was continued till today. This being fact, the plaintiff has got right, title over the suit property, the defendant No.2 and 3 colluding with others compromised the matter in OS No.148/2016 before Lok Adalat by suppressing material facts. Said Gouravva is not wife of deceased Gangappa. Any suppression of material facts it amounts to fraud.

8. Further argued that, mere existence of decrees by a party does not disentitle a court to restrain decree holder from executing the decree by a temporary injunction Under O.39 of

Cpc, where grave allegations, such as, fraud and collusion were prima facie sustainable. If the decree is obtained by playing fraud on the court, the decree cannot be said to be lawfully obtained decree and If a decree is obtained by fraud or otherwise not binding or enforceable against the plaintiff an injunction could be granted restraining the decree-holder defendants from executing the decree. In support of his argument the learned counsel for the plaintiff relied ruling reported in **1977 LawSuit (GAU) 10 between Tazmul Ali V/s Ulairaja dated 11-05-1977**

9. The learned counsel for the plaintiff relied another ruling reported in **Appeal Suit No.968/2013 between Kothakapu Muthyam Reddy and others V/s Bhargavi Construction represented by its Managing partner Shri.Ramachandra Rao and others**, where in HC held that the remedy is invoked of a civil suit is not barred where the jurisdiction of the court is invoked by a party to the compromise, or award was obtained by misrepresentation or Fraud. Hence the suit is maintainable and has requesting the court to restrain the defendant to execute the decree in OS No.148/2016.

10. The Learned counsel for defendant No.2 argued that suit of the plaintiff is not maintainable under law. During the life time of Gouravva who was wife of Gangappa, had taken the defendant No.3 in adoption and filed suit against present defendant No.1 for relief of declaration to declare that her adopted son Nagaraj was owner of suit properties. During the pendency of suit Gouravva died and natural guardian i.e.,

genetic father had been proceeded with the matter. Afterwards the matter referred to mediation and matter was ended in compromise before Lok-Adalat. Therefore, the plaintiff can not claim that the decree passed in OS No.148/2016 before Lok-Adalat is null and void and not binding on plaintiff. Further argued that the deceased Gangappa had not executed any 'Will' and himself not submitted vardi along with Will before revenue officials to enter the name of father of plaintiff and father of defendant No.1 and 2 and others in respect of suit properties. A Will becomes enforceable only after death of the testator. On these grounds IA No.I is deserved to be dismissed.

**11.** In the light of the arguments canvassed by the learned Counsels appearing for the parties, this court has carefully perused the pleadings of the parties on the I.A.No.1 and list of documents produced by the parties. The list of documents produced by the plaintiff consist of RTC extracts, Will, Certified copy compromise decree obtained in OS No.148/2016 dated 14-07-2018 and certified copies of ME No.663 and 909. the list of documents produced by the defendant consist of Xerox copies of adoption deed, Adhar card, election card, Bank pass book partining to Gouravva and record of right in respect of RS No.52/2 which is standing in the name of Gouravva.

**12.** At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the

time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

**13.** The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

**14.** The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before

the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

**15.** On perusal of pleadings and documents of couple parties, it could be seen that the plaintiff has filed this suit for declaration and partition against defendants in respect of suit properties based on registered 'Will' dated 05-05-1967 and he is in joint possession and enjoyment of suit properties along with defendant No.1, 2 and 4. But the defendants behind the back of the plaintiff and in order to engulf the share of plaintiff, was filed suit OS No.148/2016 by colluding with deceased Gouravva who was not wife deceased Gangappa. After death of Gouravva, defendant No.1 and 3 got compromised decree the same without including the plaintiff as necessary party to the said suit. The compromise decree obtained in OS No.148/2016 by playing fraud is null and void and not binding on the plaintiff. The defendants denied same contentions and sought interim relief to restrain the execution of decree in OS No.148/2018 till disposal of this suit.

**16.** It is pertinent to note here that when an award passed in the Lok-Adalat in terms of compromise petition arrived between parties, it is binding on the parties. If the allegation is that the compromise was obtained by playing fraud or mis-representation or undue influence, the suit is not barred. But party must plead in his pleading regarding fraud. The basic principle of the rules of evidence require a party alleging fraud to give particulars of the fraud. In the absence of such

particulars, no inference can be drawn of fraud merely on the basis of presumption. A heavy duty lies upon the party who alleges fraud and the level of proof required, for proving fraud, is extremely high. The plaintiff has specifically pleaded regarding how the decree obtained the defendant No.1 by played fraud. Hence suit filed by plaintiff is maintainable.

**17.** On perusal of 'Will', it could be seen that deceased Gangappa executed registered 'Will' in favour of propounder/Heggappa, Neelappa Chikkappa Nellibeed and his sister Basavannevva Huralikuppi on 05-05-1967 in respect of suit properties. Afterwards during his life time, himself submitted varadi along with 'Will' before revenue authorities to enter the name as mentioned in the 'Will'.

**18.** Based on said 'Will' names of Heggappa who is father of plaintiff, Neelappa who is father of defendant No.1 and 2 and Chikkappa Nellibeed had been entered Column No.11 of record of rights of suit properties. On perusal of contents of record of rights in respect of suit properties RSN0.39 and 52/2, it could be seen that names of Neelappa Bharamappa Dharennavar and Gouravva Gangappa Dharennavar are forthcoming.

**19.** It is pertinent to note here that the 'Will' is suspicious document. It is settled proposition of law that, the person who claiming right under 'Will' has to clear off all suspicious circumstances surrounded to due execution of 'Will' so as to inspire confidence of the court to accept 'Will' as genuine one and a Will must be proved in terms of the provisions of Section 63(c) of the Succession Act, 1925 and

Section 68 of the Evidence Act, 1872. Whether the alleged compromise decree was obtained the defendant No.1 and 2 by playing fraud or not? Whether the Gangappa executed 'Will' in favour Neelappa Chikkappa Nellibeed and his sister Basavannevva or not ? Whether the Gouravva was wife of deceased Gangappa or not ? Whether deceased Gouravva had taken the defendant No.3 in adoption through registered adoption deed or not are to be looked into after full fledged trial and also it is left to parties to establish the said aspect at the later stage. While passing temporary injunction, court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief. The records of reflects that the defendants are in possession of suit properties. Hence the plaintiff has not made out prima facie case and at this stage, this Court made it clear that the plaintiff filed the present suit for the relief of partition and to declaration to declare that the compromise decree null and void and not binding on plaintiff and now this Court is only regarding I.A No.1. In the absence of sufficient material this court not restrain the judicial proceedings. As such I am of the considered opinion that at this stage, the plaintiff has not produced relevant and cogent materials before this court to grant the relief of temporary injunction. Hence I answer **point No.1 in the Negative.**

**20. Point No.2**:- While discussing on point No.1, this court clearly held that the plaintiff has not made out prima-facie case, further question of balance of convenience and irreparable loss need not be considered since the plaintiff would failed at

very threshold. In the light of above discussion I am of the opinion that the balance of convenience does not lies in favour of the plaintiff and hence I answer the above **point No.2 in the Negative.**

**21. Point No.3:** When the plaintiff failed to prove his prima-facie case, certainly if T.I. is refused irreparable loss would not be caused to him. Hence this court of the opinion that if temporary injunction is refused no harm or prejudice will be caused to the plaintiff and hence I answer the above **point No.3 in the Negative.**

**22. Point No.4:** In view of above findings and discussions, I proceed to pass the following.

**ORDER:**

*I.A. No.I filed by the plaintiff U/Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C is hereby dismissed.*

*No order as to costs.*

*(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me, in the open Court on this the 13<sup>th</sup> day of November- 2020.)*

**(Fakiravva Kelageri)**  
*Civil Judge and JMFC, Hangal.*