

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

: PRESENT :

***Smt.Fakirawwa Kelagari B.A.,LL.B.,
Civil Judge and JMFC., Hangal.***

ORIGINAL SUIT NO.161/2017

Dated this the 5th day of January 2018

Plaintiffs: 1. Mallappa S/o Shivappa Doddamani, Age: 68 years, Occ: Agriculturist, R/o Shiramapur, Tq: Hangal, Dist: Haveri and others.

(By Sri. R.S.Talawar, Advocate)

- Versus -

Defendant : Shankrappa S/o Basavanneppa Gali, Age: 55 years, Occ: Agriculturist, R/o Araleshwar, Tq: Hangal, Dist: Haveri.

(Defendant placed exparte)

PARTIES IN I.A. No.I

Applicant/

Pltff.No.1 : Mallappa S/o Shivappa Doddamani and others.

- Versus -

Opponent/

Defendant : Shankrappa S/o Basavanneppa Gali.

**ORDER ON I.A. NO.I FILED UNDER ORDER 39 RULE 1 AND 2
OF C.P.C :**

The plaintiff No.1 has filed I.A.No.I under Order 39 Rule 1 and 2 of CPC seeking the relief of temporary injunction restraining the

defendant from interfering over the schedule properties till disposal of the suit.

2. The applicant/plaintiff No.1 in his affidavit filed along with application has stated that, the suit schedule property bearing R.S.No.7 measuring 1As-03Gs is the ancestral property of plaintiffs and they partitioned the said property among themselves (plaintiffs No.1 to 3) as RS No.7/8 measuring 00As-21½Gs, RS No.7/7 measuring 00As-11Gs and RS No.7/5B measuring 00As-10½Gs respectively and since then they are in peaceful possession and enjoyment of the same without anybody's interference. The defendant though not having any right, title and interest over the schedule properties but he is trying to interfere over the same and as such they pray to grant temporary injunction till disposal of the suit.

3. On the other hand the defendant he has not appeared before this court and this court has passed exparte order against defendant.

4. Heard the arguments and perused the entire materials available on records.

5. Now the points that arise for my consideration are as follows:

- 1) *Whether the plaintiffs have made out prima-facie case?*
- 2) *Whether the balance of convenience lies in favour of plaintiffs?*

3) *Whether the irreparable loss will be caused to the plaintiffs, if the T.I is refused?*

4) *What order?*

6. My findings on the above points are as follows:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per the final order
for the following:

REASONS:

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

8. I have perused the plaint averments and the documents produced in this case. It is his specific contention of the plaintiffs that, they are the absolute owners and in possession of the suit schedule properties and the defendant is not having any right, title or interest over the same, inspite of it he is trying to interfere over the same and accordingly they pray to grant temporary injunction till disposal of the suit. As I already stated supra, the defendant placed exparte in this case and as such there is nothing on record to disbelieve the case of the plaintiffs. As such at this juncture the plaintiffs have made out prima facie case and obviously balance of convenience lies in their favor and hence it is just and necessary to restrain the defendant from interfering over the schedule properties and accordingly I answer the above points No.1 to 3 in the **Affirmative**.

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

ORDER

✍. I.A. No.I filed under Order 39 Rule 1 and 2 of C.P.C by the plaintiffs is hereby allowed.

✍. Defendant or anybody else claiming under him are hereby restrained from interfering over the suit schedule properties till the disposal of the suit.

✍. No order as to costs.

✍. Call on for plaintiff evidence by

(Dictated to the stenographer directly on Laptop, corrected and then pronounced by me in the open court on this the 5th day of January 2018.)

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