



IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HANGAL

PRESENT: Sri. Janardhana. S.K. B.A.L.,LL.B.,
Civil Judge & J.M.F.C.,
Hangal.

O.S.No.85 of 2022

DATED THIS THE 29th DAY OF MARCH 2023

Plaintiff : Nagareddy S/o Madivalappa Marodi

(By Sri.G.S.Kurubar – Adv.)

V/s.

Defendants : Ningavva W/o Hanumareddy Marodi
and 4 others.

(Def., No.1 to 3 By Sri.Bhaskar B.D – Adv.)

(Def.,No.4 & 5 Exparte.)

PARTIES TO I.A. No.I

Applicant/

Plaintiff : Nagareddy S/o Madivalappa Marodi
Age: 68 years, Occ: Agriculturist
R/o: Kalvekallapura, Tq: Hangal,
Dist: Haveri.

- V/s -

Opponents/

Defendants: Ningavva W/o Hanumareddy Marodi
Age: 70 years, Occ: House hold work
R/o: Kalvekallapura, Tq: Hangal,
Dist: Haveri and 4 others.

(Sri. Janardhana. S.K.)
Civil Judge & JMFC.,
Hangal.



ORDERS ON I.A.No.I FILED U/O XXXIX RULE 1
AND 2 R/W SEC.151 OF C.P.C

The applicant/plaintiff has filed this application U/o.XXXIX Rule 1 & 2 R/w Sec.151 of C.P.C., by seeking to restrain the defendant No.1 to 3 to get khata of the suit schedule properties in their names till disposal of suit by way of ad-interim temporary injunction.

2. In response to suit summons the defendant No.1 to 3 have appeared through their respective counsels and among them, defendant No.2 has filed written statement. A separate memo dated 07-09-2022 is filed wherein, it is prayed to treat the contents of written statement as objections to I.A.No.I. Despite due service of suit summons, the defendant No.4 and 5 remained absent and consequently placed exparte.

3. Heard the arguments of counsel for the plaintiffs and perused the materials made available on record at this stage. The counsel for the defendant No.1 to 3 has filed written arguments in support of their defense.

4. The points that would arise for the consideration of this court are as follows:-



POINTS

- 1. Whether the applicant/plaintiff has made out prima facie case?*
- 2. Whether balance of convenience is lies in favour of the applicant?*
- 3. Whether irreparable loss will be caused to the applicant if injunction is refused?*
- 4. What order?*

5. The findings of this court on aforesaid points are as follows:-

Point No.1: In the affirmative

Point No.2: In the negative

Point No.3: In the negative

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

REASONS

6. **Point No.1:-** The applicant/plaintiff in the affidavit annexed to the application has specifically deposed that he has filed this suit for the relief of partition and separate possession of his share in the suit schedule properties and by taking advantage of khata of item No.1, 2 and 4 of suit schedule properties stood in the name of deceased Sri.Hanumareddy, the husband of the defendant No.1 and father of the defendant No.2 and 3, they have making



hectic efforts to get khata of said properties in their names in order to knock of the same and same is came to his knowledge very recently. Unless, aforesaid proposed act of the defendant No.1 to 3 to get khata of item No.1, 2 and 4 of the suit schedule properties in their names with the collusion of PDO of Maranabeeda Gram Panchayat is restrained, same would cause irreparable loss to him in addition to denial of existing right over the suit schedule properties and accordingly, it is prayed to allow the application.

7. On the other hand, as stated earlier, the defendant No.2 has filed the written statement by denying the case of the plaintiff. As indicated earlier, in a separate memo, the defendant No.1 to 3 prayed to treat contents of written statement as objections to I.A.No.I. In the written statement, the defendant No.2 has contended that suit is based on false assertions of facts and not maintainable under the law and thereby denied the fact that suit schedule properties are an ancestral and joint family properties of plaintiff and defendants. In addition, it is specifically and independently asserted that the suit schedule properties are self acquired properties of husband of defendant No.1 and father of defendant No.2 and 3 Sri.Hanumareddy and he was in possession and enjoyment



of the suit schedule properties during his life time and as such, the question of alienation of the suit schedule properties is does not arise at all. It is further asserted that, upon death of Sri.Hanumareddy, the defendant No.1 to 3 being his legal heirs have succeeded the suit schedule properties by virtue of inheritance and accordingly, they have been in possession and enjoyment of the suit schedule properties as absolute owners. It is contended that, the plaintiff having no semblance of right and interest in the suit schedule properties in order to knock of the same has filed this false suit. On said grounds, the defendant No.1 to 3 have prayed to dismiss the application with costs.

8. In the context of relief claimed in the instant application, facts deposed in the accompanying affidavit, I have perused the application, its accompanying affidavit, pleadings of the both the sides in the form of plaint and written statement including all other materials available on record at this stage. The plaintiff has filed present suit against the defendant No.1 to 5 for the relief of partition and separate possession of his share in the suit schedule properties. Along with the suit, the plaintiff has maintained this application under order XXXIX Rule 1 and 2 R/w



Sec.151 of C.P.C., seeking to restrain the defendant No.1 to 3 to get khata of item No.1, 2 and 4 of the suit schedule properties in their respective names till the disposal of the suit.

9. It is settled law is that, the grant of temporary injunction is of discretionary and equatable relief and same shall be granted only when the applicant has establish prima facie case, balance of convenience as well as irreparable loss and injury caused to the applicant if the injunction is refused. It is equally settled principle of law is that the applicant need not to establish that he has every chance of success in the suit. What is to be proved that the applicant has arguable case to go on for trial.

10. Bearing in mind said settled principle of law regarding the temporary injunction, it is necessary to analyze the facts and circumstances involved in the suit. On perusal of affidavit annexed to the application coupled with material facts averred in the plaint wherein, applicant/plaintiff has specifically contended that propositus of himself and defendants Sri.Madivalappa S/o Adivappa Marodi was owner and in possession of the suit schedule properties and he has four sons and a daughter by names 1.Hanumareddy 2.Nagareddy 3.Ramareddy



4.Ningareddy 5.Shanthavva and upon his demise, his elder son Sri.Hanumareddy has managing the family and family properties as kartha of the joint family and by taking advantage of the same, he got mutated khata of suit schedule properties in his exclusive name by excluding the names of applicant himself and other brothers and sister and as such, contended that the suit schedule properties are ancestral and joint family properties of plaintiff and defendants. It is further case of the applicant/plaintiff that upon demise of Sri.Hanumareddy, his wife defendant No.1 and children, defendant No.2 and 3 making hectic efforts to transfer khata of the suit schedule properties in their names so as to defeat right of the plaintiff over the suit schedule properties and in that event, it is claimed that he would put to great loss and inconvenience. Moreover, when the defendants refused to allot the plaintiff's share on his demand which constrained him to file present suit along with instant application seeking temporary injunction. On the other hand, the defendant No.2 in his written statement have denied very case of the plaintiff to the effect that suit schedule properties are an ancestral properties of plaintiff and defendants and thereby raised specific defense that same are self acquired properties of deceased Sri.Hanumareddy, the husband of the defendant No.1 and



father of the defendant No.2 and 3 and accordingly, denied very right and share of plaintiff over the suit schedule properties and further denied existence of prima facie case and as such prays to dismiss the application with cost.

11. To prove prima facie case, the plaintiff has relied on several documents produced along with list of documents dated 12-04-2022 at the time of institution of suit. Before advert to scrutinize the documents relied by the plaintiff/applicant to prove his prima facie case, it is relevant to state undisputed facts in the suit. On primary consideration of facts asserted in the plaint and defense raised in the written statement, it is forthcoming that relationship between the parties interse not in dispute. That is to say, the plaintiff, defendant No.4 and 5 are sons of propositus Sri.Madivalappa and deceased Sri.Hanumareddy, husband of the defendant No.1 and father of the defendant No.2 and 3 is also another son of propositus Sri.Madivalappa. On clear consideration of tax assessment extracts in respect to suit schedule properties relied by the plaintiff prima facie indicate that originally the suit schedule properties stood in the name of propositus of the plaintiff and defendants Sri.Madivalappa Marodi and subsequently, upon demise of propositus Sri.Madivalappa,



khata of the suit schedule properties transferred in the name of elder son Sri.Hanumareddy, husband of defendant No.1 and father of defendant No.2 and 3. Certificate dated 04-04-2022 issued by PDO of Maranabeeda Gram Panchayat, substantiate the fact that without there being resolution if any, khata of the suit schedule properties transferred in the name of elder son Sri.Hanumareddy excluding joint names of plaintiff and other brothers, defendant No.4 and 5 including sister one Smt.Shantavva. Document No.1 to 3 produced along with the list of document dated 12-04-2022 in the form of certificate and true copies of tax assessment extract clearly indicate that originally the suit schedule properties stood and in possession of propositus Sri.Madivalappa and only based on inheritance, the khata of the suit schedule properties mutated in the name of elder son Hanumareddy. Aforesaid material documents primarily and prima facie suspect and doubts very defense of the defendant No.1 to 3 that the suit schedule properties are self acquired properties of deceased Hanumareddy. Therefore, the material averments in the plaint to the effect that the suit schedule properties are an ancestral properties of plaintiff and defendants does constitute prima facie case of the plaintiff to go on for trial. It is pertinent to note that, aforesaid assertions of the



plaintiff also substantiated through document No.1 to 3 in the form of certificate issued by the PDO of Maranabeeda Gram Panchayat and true copies of tax assessment extracts. No contra materials produced by the defendant No 1 to 3 to disbelieve prima facie case of the plaintiff and to substantiate their defense that suit schedule properties are self acquired properties of deceased Sri.Hanumareddy. Hence, the considered opinion of this court is that, aforesaid discussed materials on record establish and prove prima facie case of the plaintiff to go on for trial. Accordingly, point No.1 is answered in the affirmative.

12. **Point No.2 and 3:-** Both points are taken together for common discussions to avoid repetitions of facts. As indicated and referred earlier, mere existence of prima facie case does not entitle the plaintiff to seek equatable relief of temporary injunction. In addition to prove prima facie case, the plaintiff require to establish principles of balance of convenience lies in his favour and also irreparable loss caused to him if the temporary injunction is refused. No doubt, material pleadings in the plaint including prima facie and corroborative documents produced by the plaintiff at this stage establish that initially Sri.Hanumareddy and upon his death, his legal heirs, the defendant No.1 got transferred khata of the suit schedule properties excluding



name of the plaintiff and defendant No.4 and 5. At the same time, as apparent on record, the plaintiff sought to restrain the defendant No.1 to 3 to get khata of the item No.1, 2 and 4 of the suit schedule properties in their names. In this regard, it is pertinent to note that, it is not within the jurisdiction of this court to prohibit or restrain the defendant No.1 to 3 to get khata of the aforesaid properties in their name. The plaintiff ought to have approach the competent authority i.e., concerned Gram Panchayat officials by way of representation and objections not to effect or change khata of the item No.1, 2 and 4 of the suit schedule properties in the names of defendant No.1 to 3. The applicant/plaintiff has equally efficacious remedy available before the competent authority to object act of the defendants in illegally getting khata of the suit schedule properties in their names. Therefore, it is inherent and exclusive jurisdiction of the concerned Gram Panchayat officials to entertain and consider the nature of relief claimed in the present application.

13. In addition, it is worth to note that mere change of khata in respect to suit schedule properties in favour of defendant No.1 to 3 does not extinguish right, title and interest over the suit schedule properties. It is settled law is that mere revenue entries does not confirm title or



interest in respect to immovable properties. Such being the settled principle of law and even if the defendant No.1 to 3 successful in get khata of the suit schedule properties in their names, same would not affect right of the plaintiff over the suit schedule properties. Such being the facts, even if the temporary injunction as sought for is rejected, no way affect and cause loss to the applicant. Primarily, very nature of the relief claimed in the application is within the authority of concerned Gram Panchayat to consider and as such, this court has no jurisdiction to entertain the relief claimed in the application. In view of said facts and circumstance of the case, the plaintiff has failed to establish balance of convenience tilt in his favour and no irreparable loss or injury caused to him if injunction is refused. The applicant got very much right to approach competent authority for equally efficacious remedy by filing objections not effect or change khata of item No.1, 2 and 4 of the suit schedule properties. Therefore, the considered opinion is that the applicant/plaintiff has not entitle for equatable relief temporary injunction as sought for. Accordingly point No.2 and 3 are answered in the negative.

14. **Point No.4:-** In the light of said reasons and discussions, this court has proceed to pass following:-



ORDER

***I.A.No.I filed by the plaintiff
U/o XXXIX Rule 1 & 2 of C.P.C.,
is hereby dismissed.***

***In the circumstance of the
case no order as to cost.***

(Dictated to Stenographer, directly typed by him on computer, once corrected and later initialed by me and then pronounced by me in the open court on this the 29th day of March - 2023)

***(JANARDHANA S.K)
Civil Judge and JMFC.,
Hangal.***