

KAHV310006292024



The plaintiff No.1 to 3 have filed the present suit against the defendant No.1 to 5 by seeking the relief of permanent injunction to restrain the defendant No.1 and 2 from establishment or formation of petrol bunk in the suit schedule property.

2. Along with suit, the plaintiff No.3 has maintained I.A.No.II U/o. 39 Rule 1 and 2 of C.P.C., by seeking to restrain the defendant No.1 and 2 from establishment of petrol bunk in the suit schedule property by way of ad-interim ex-parte temporary injunction.

3. Perused I.A.No.I, its accompanying affidavit, plaint and documents relied upon by plaintiff at this stage. On perusal of the same, it is forthcoming that, the suit schedule properties pleaded as joint family properties of plaintiffs and defendant No.1 and 2 and other joint family members of propositus deceased Sri.Tippanna Kuruballi and in their joint possession. Despite said facts, by virtue of mutation entry in ME.No.1755, upon demise of propositus deceased

Sri.Tippanna Kuruballi, their father name excluded in the said mutation entry and by taking advantage of the same and even though pendency of suit in OS.No.97/2023 on the file of this court for the relief of partition and separate possession of same suit schedule property, the defendant No.1 and 2/defendant No.17 and 18 in the said previous suit without there being partition, trying to establish petrol bunk in the suit schedule properties and to that effect they already obtained permission from the defendant No.3 and NOC from defendant No.4. Even otherwise, their approach to the jurisdictional police, they never taken any action against the defendant No.1 and 2 and they being political influenced persons refused request of the plaintiffs not to establish petrol bunk and already stored materials to commence the work. Hence, this suit for permanent injunction.

4. In the context of said material facts, on consideration of documents produced by the plaintiff along with the suit, it is forthcoming that mutation entry in ME.No.1755, under which name of the father of the plaintiffs including legal heirs of their father's brother's joint mutated in respect to suit schedule land in Sy.No.171 along with land in Sy.No.197 by virtue of inheritance. However, in the subsequent mutation entry in ME.No.1867, which is came into being on the basis of alleged oral partition deed, the name of the plaintiff's father Sri.Hanumanthappa S/o Timmanna Kuruballi left therein. Aforesaid mutation entries

coupled with pending suit in OS.No.97/2023 on the file of this court which has been filed by plaintiffs herein jointly with other plaintiffs as against defendant No.1 and 2 herein and other defendants certainly establish prima facie case of the plaintiff to go on for trail. In addition, since suit schedule properties claimed to be an ancestral joint family properties and in their joint possession, unless division of joint family properties by metes and bounds, other coparcenars have no right to carryout any activities or construction so as to cause prejudice to the other coparcenars or co-owners. If at any activity in the nature of permanent change in the ancestral joint family properties, the court got power and authority grant injunction restraining the coparcenars or co-owners in the joint family to proceed with such act. Therefore, at this juncture case of the plaintiff cannot be doubted. In other words, the plaintiffs have made out prima facie case and balance of convenience lies in their favour and irreparable loss or injury would caused to them if exparte TI refused at this stage as photographs produced by the plaintiffs along with memo dated 25-04-2024 depicts store of materials to start and proceed with construction.

5. Moreover, if the exparte temporary injunction is not granted, very purpose of filing the suit would be defeated by reason of delay and also results in multiplicity of the judicial proceedings. Hence, the considered opinion of this Court is that notice of interim application to the defendant No.1 and

2 as contemplated under order 39 Rule 3 of C.P.C. is hereby dispensed with. Accordingly, the following:-

ORDER

The defendant No.1 and 2 are hereby restrained from proceed with construction activities in the suit schedule property till next date of hearing by way of ad-interim exparte temporary injunction.

Issue order of exparte TI in favour of plaintiffs if they complies the provision of 39 Rule 3(a) of CPC.

Issue suit summons to defendants and emergent notice on I.A.No.I of the defendant No.1 and 2, if sufficient P.F is paid.

Returnable by : 05-06-2024.

Civil Judge & JMFC.,
Hangal.