

**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C. AT  
HIREKERUR**

**Present: Smt. Nagarathnamma, B.A.L., L.L.B.,**  
*Civil Judge & JMFC, Hirekerur.*

**O.S. No.02 of 2016**

**Dated this the 21<sup>st</sup> day of January, 2025**

**PLAINTIFF :-** Rudravva @ Ratnavva W/o Chikkappa  
Bidari, (Dead Represented by her LR)

1(A). Guddappa S/o Chikkappa Bidari,  
Age: 42 years, Occ: Agriculture,  
R/o: Hirebudihal Village, Post: Aralikatti,  
Hirekerur Taluk, Haveri District

(By Sri. V.M.H., Adv.,)

-Vs-

**DEFENDANTS :-** Basavanneppa S/o Channabasappa  
Shettar, Age: 53 years, Occ: Agriculture,  
R/o: Hirebudihal Village, Hirekerur Taluk,  
Haveri District and others.

(D1 to 5 by Sri. K.B.K., Adv.,)  
(6 & 7 by Sri. G.V.K., Adv.,)

**I.A.No.XV U/O.39 R.1 & 2 CPC**

**APPLICANT :-** Smt. Tirakavva W/o Puttappa Hebbala  
(Defendant No.6) and another

-Vs-

**OPPONENT:-** Rudravva @ Ratnavva W/o Chikkappa  
Bidari, (Plaintiff)

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

This is an application filed by the defendant No.6 under order 39 Rule 1 & 2 R/w 151 of C.P.C against the defendant No.1 to 5 seeking an order of injunction to restraining the defendant No.1 to 5 from interfering & causing obstruction over the peaceful possession & enjoyment of the suit schedule properties till the disposal of the suit.

**2.** This application is accompanied with an affidavit filed by the defendant No.6, wherein it is held that, the suit of the plaintiff is not maintainable in the eye of law or on the facts & circumstances. Further, it is contended that, the propositus Guddappa and his wife Gangamma are died very long back by left their legal heir namely Rudravva @ Ratnavva. The said Rudravva had children namely Tirakavva (defendant No.6), Mahadevakka (defendant No.7) and Guddappa. Further, it is contended that, during the life time of propositus Guddappa dated: 04-03-1973 himself has made an wardi and entered the khata in the name of original plaintiff Rudravva in respect of suit schedule properties. Wherein 'ॐ' number is granted and certified under M.E. No.1252. The husband of the original plaintiff being a clever person with an intention to knock off the property of original plaintiff, as she was illiterate, himself has created wardi and got entered his

name as he is the owner & occupier of the property in respect of suit schedule properties. But, since the suit schedule properties are self acquired properties of Rudravva. Further, it is contended that, the entries of the name of Chikappa is valid in the eye of law. But, by taking undue advantage of entering the name of Chikappa, he sold the property without their being any right or interest over the suit schedule properties to Basavanneppa, Mahadevappa, Jagadishappa & Gadigeppa S/o Channabasappa Shettar and executed sale deed in their favour. But, the said sale deed is not valid and does not create any right or title or interest to them over the suit schedule properties. Further, it is contended that, the defendant No.6 & 7 and Guddappa are the persons, those, who are legal heirs of Rudravva and they are the joint owners of the suit schedule properties. But, defendant No.1 to 5 are legal heirs of original purchasers. Therefore, they are made as a parties in this suit. Further, it is contended that, the defendant No.1 & 2 are not the owners of suit schedule properties and they are not in the possession & enjoyment of the suit schedule property. Instead of that, the defendant No.6 & 7 and Guddappa, those who are children of Rudravva are in possession & enjoyment of the suit schedule properties. When things stood like this, the defendant No.1 to 4 & plaintiff have created

documents and claiming that, they are the owners of the suit schedule properties. By taking undue advantage of created documents, they are obstructing the peaceful possession & enjoyment of the suit schedule properties. Since, the plaintiff and defendant No.6 & 7 and Guddappa are the coparceners and they are having joint interest over the suit schedule properties. But, the defendant No.1 to 4 without their being any right or interest over the suit schedule properties, they are causing obstruction with the peaceful joint possession over the suit schedule properties. As such, the prima-faice case & balance of convenience is in favour of defendant No.6 & 7. If, application is not allowed they will be put into great loss & hardship, which cannot be compensated in terms of money. Therefore, the defendant No.6 & 7 have filed this application to restrain the defendant No.1 to 4, their men, their agents, their servants or anybody claiming through them from causing obstruction and interference over the suit schedule properties. With these, they prays to allow the application in the interest of justice & equity.

**3.** On other hand, upon being service of summons, the defendant No.1 to 4 have filed objection to I.A. No.15, wherein they have clearly denied all the contents of affidavit of defendant No.6, which is

accompanied with the I.A. No.15. Further, it is stated that, the plaintiff has filed this suit without their being any right, interest or title over the suit schedule properties. Plaintiff filed this present suit only with an intention to cause loss & harassment to the defendant No.1 to 4. Further, it is contended that, with an intention to do help to the plaintiff, in collusion with the plaintiff, defendant No.6 & 7 have filed this present application is not maintainable in the eye of law. Further, it is admitted that, the suit schedule serial No.1 property originally belongs to Guddappa Kariyappa Aralikatti. Further, they have stated that, the said Guddappa Kariyappa Aralikatti has given his daughter namely Rudravva none other than original plaintiff to one Mr. Chikkappa, who is son of his sister. Out of wedlock of their marriage, the said Tirakavva, Madevakka & Guddappa were born. Further, it is admitted that, during the life time of propositus Guddappa dated: 04-03-1973 himself made an wardi and entered the name of original plaintiff as she is the owner & occupier of the properties, wherein '೩' number was granted and certified under M.E. No.1252. On basis of said wardi, the original plaintiff has become the absolute owner of the suit schedule properties. But, now neither original plaintiff nor defendant No.6 & 7

are the owners of the property or they are not in possession & enjoyment of the suit schedule properties.

4. Further, it is contended that, the original plaintiff has relinquished her right over the suit schedule properties in favour of her husband namely Chikkappa S/o Basappa Bidari for the purpose of transaction of their family necessities & transferred the property in the name of said Chikkappa Basappa Bidari. Wherein '೩' number was granted and certified under M.E. No.1253 with respect of suit schedule properties and other properties such as Re.Sy.No.57/4, 57/6, 90/2 & 38/1. Since, the said properties were in the name of husband of original plaintiff. Thereafter, the said Chikkappa and Guddappa, who is present plaintiff are entered into a partition dated: 06-11-1981. In the said partition, Re.Sy.No.57/6, 93/2 & 73/2 were fallen to the share of Guddappa, who is the son of original plaintiff and it has been granted & certified under '೩' No.1447 as at that time he was minor, the said properties were entered in the name of original plaintiff as she was his natural guardian. Thereafter, the original plaintiff has made wardi before revenue authorities and transferred the khata in the name of her husband Chikkappa as she was natural guardian. As such, '೩' No. was granted and certified under '೩'

No.1700. Since, the said 'ಓ' numbers are not challenged either by the defendant No.1 to 4 or plaintiff. Since, the said 'ಓ' numbers are existed. Further, it is contended that, with the said Chikkappa Basappa Bidari has acquired the suit schedule properties from his wife, he became the absolute owner of the property bearing Re.Sy.No.73/2 measuring 3 acres 28 guntas. Thereafter, for the purpose of his family legal necessities and in order to discharge of legal debts and hand loans, he sold the property to defendant No.1 to 4 for sale consideration amount of Rs.12,000/- and executed registered sale deed dated: 09-03-1988 and on the same day he handed over the possession of the suit schedule property to defendant No.1 to 4. Since ever then, defendant No.1 to 4 were in possession & enjoyment of the suit schedule properties. On basis of that sale deed, their names were entered in the revenue records as they are the joint owners & occupiers of the suit schedule properties and 'ಓ' number was granted & certified under 'ಓ' No.1757. By that time, neither plaintiff nor defendant No.6 & 7 have objected the same, even in spite of knowing the said facts. Since ever then, the defendant No.1 to 4 are in joint possession & enjoyment of the same by developing the property by availing the loans by pledging the same in various banks.

5. Further, it is contended that, the defendant No.1 to 4 are owner brother, after purchasing of the suit schedule property they have got effected the partition and the said suit schedule property bearing Re.Sy.No.73/2 is phoded into three parts as Re.Sy.No.73/2 ॐ, measuring 37 guntas which was fallen to the share of defendant No.4, Re.Sy.No.73/2 ॐ, measuring 37 guntas which was fallen to the share of defendant No.3, Re.Sy.No.73/2 ॐ measuring 37 guntas, which was fallen to the share of defendant No.2 and Re.Sy.No.73/2 ॐ measuring 37 guntas, which was fallen to the share of defendant No.1 and as per that partition, they are in separate possession & enjoyment of their respective shares and M.R. numbers has been granted under M.R. No.49/2006-07. Since, the said mutation register has not been challenged either by plaintiff or defendant No.6 & 7. Further, it is contended that, the defendant No.4 has sold the property bearing Re.Sy.No.73/2 ॐ measuring 37 guntas which was fallen to his share to defendant No.5 dated: 13-01-2004 through registered sale deed and on the same day he handed over the property to defendant No.5, ever since then, the defendant No.5 is in possession & enjoyment of Re.Sy.No.73/2 ॐ measuring 37 guntas. As such, nowhere the plaintiff or defendant No.6 & 7 are in possession & enjoyment of the suit schedule properties.

If at all the sale deed executed by the Chikkappa is false or created or defendant No.6 & 7 have denied the said sale deed, they should have questioned the said sale deed within 3 years from the date of knowledge of defendant No.6 & 7. But, since they have not challenged. Therefore, the suit of the plaintiff is barred by limitation. Therefore, suit of the plaintiff is not maintainable. Further, it is contended that, the suit of the plaintiff is barred by estoppel by conduct. Further, it is contended that, the defendant No.6 & 7 have filed application at belated stage only with an intention to cause loss to the defendant No.1 to 4. Therefore, they have prayed to reject the application.

**6.** I have heard the arguments on both side and perused materials placed on record.

**7.** Now the following points would arise for my consideration;

1. Whether the defendant No.6 & 7 have established the prima-facie case ?
2. Whether the balance of convenience lies more in favour of the defendant No.6 & 7 ?
3. Whether the irreparable loss hardship will be caused to defendant No.6 & 7 if the injunction is not granted?
4. What order?

**8.** 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.4: **As per final order  
for the following;**

### **REASONS**

**9. Point No.1 to 3**:- Since these points are inter-linked with each other, hence they have taken up together for common discussion in order to avoid repetition of facts & circumstances.

As could be seen from the pleadings of the affidavit, which is supported with the I.A. No.15, the plaintiff has filed this suit for the relief of declaration to declare that, the plaintiff is the absolute owner of the suit schedule serial No.1 property and defendant No.1 to 5 have no right or interest over the suit schedule properties. Further to declare that, sale deed executed by Chikkappa in favour of defendant No1 to 4 dated: 19-03-1988 is null & void and 'ಠ' No.1253, 1447, 1700 & 1757 are null & void. The said entries are not binding on the plaintiff and for other costs. When matter was reserved for cross-examination of DW3, the defendant No.6 & 7 have came up with application U/o 9 Rule 7 R/w 151 of CPC to set aside the order of Ex-parte and came on record. Thereafter, they have filed application U/o 39 Ru.e 1 & 2 R/w 151 of CPC seeking

for injunction against the defendant No.1 to 4 to restrain them, their men, their agents, their servants or anybody claiming through them from causing obstruction from interfering over the suit schedule properties.

**10.** In support of it, the counsel for the defendant No.6 & 7 has vehemently argued that, the suit schedule properties are belongs to father of original plaintiff Rudravva. Further, it is argued that, during the life time of propositus Guddappa S/o Kariyappa himself made an wardi before the revenue authorities and entered the khata in the name of said Rudravva. Wherein, 'ಠ' No. was granted and certified under 'ಠ' No.1252, but, the husband of plaintiff being a clever person by taking advantage of illiteracy of deceased plaintiff Rudravva, created documents as he is the owner & occupier of the suit schedule properties and sold the same to the defendant No.1 to 4 illegally without having any manner of right or title over the suit schedule properties. Therefore, the sale deed executed by the Chikkappa in favour of defendant No.1 to 4 is not vailed and it is liable to be declared as null & void. Further, it is contented that, the defendant No.6 & 7 and Guddappa, those who are successors of Rudravva are joint owners & occupiers of the properties and since

they are in the possession & enjoyment of the suit schedule properties. But, the defendant No.1 to 5 have created the false & fabricated and concocted documents and falsely claiming that, they are the owners & occupiers of the property and causing obstruction to the defendant No.6 & 7, who are in peaceful possession & enjoyment of the joint possession of the suit schedule properties. Further, it is argued that, the Chikkappa who is the husband of deceased plaintiff had no title on the suit schedule properties to sale the same to the defendant No.1 & 2. Therefore, no rights or interest creates to the defendants over the suit schedule properties and sale deed executed by the Chikkappa in favour of defendant No.1 to 4 and 'ॐ' numbers, which were granted and certified on basis of said sale deed is null & void and there is no sanctity to said documents in the eye of law.

**11.** On the other hand, counsel for the defendant No.1 to 4 vehemently argued that, the suit schedule properties are originally belongs to father of original plaintiff. Further, it is argued that, during the life time of father of original plaintiff itself, her father made an wardi before the revenue authorities and entered the khata in the name of Rudravva, who is original plaintiff. On basis of that wardi, she became the

absolute owner of the property. Thereafter, for the purpose of family transaction, she relinquished her right over the suit schedule properties in favour of her husband and mutated the name of her husband in respect of suit schedule properties as he is the owner and occupier of the properties along with other properties. Thereafter, her husband Chikkappa for the purpose of legal necessities and to clear the hand loans, he sold the suit schedule property to defendant No.1 to 4 for sale consideration amount of Rs.12,000/- and executed the sale deed dated: 09-03-1988, since ever then, the defendant No.1 to 4 were in possession & enjoyment of the suit schedule property and their names were mutated in the revenue records with respect of suit schedule properties. Wherein 'ॐ' number was granted & certified under M.E. No.1757. During that time, neither plaintiff nor defendant No.6 & 7 have challenged the said 'ॐ' number. Thereafter, the defendant No.1 to 4 being the own brothers have got effected the partition in the suit schedule properties and they obtained their respective shares and they are in possession & enjoyment of the their respective share, wherein the suit schedule property bearing Re.Sy.No.73/2 was phoded into 04 parts as Re.Sy.No.73/2 ॐ, 73/2 ॐ, 73/2 ॐ and 73/2 ॐ. Subsequently, the defendant No.4 has sold the property

which was fallen to his share to defendant No.5 through registered sale deed. Since ever then, the defendant No.5 is in possession & enjoyment of the suit schedule property. Further, it is contended that, from the year of 1973 the plaintiff was not in possession & enjoyment of the suit schedule property and defendant No.6 & 7 are falsely claiming that, they are the owners and they are in possession & enjoyment fo the suit schedule property. Further, it is argued that, the suit of the plaintiff is hopelessly barred by limitation as plaintiff has failed to challenge the sale deed within 03 years from the date of their knowledge. As such, the defendant No.1 to 5 are in possession and enjoyment of the suit schedule properties by virtue of their respective sale deeds and neither plaintiff nor defendant No.6 & 7 have right or interest over the suit schedule property. Even, there is no prima-facie case & balance of convenience is in favour of defendant No.6 & 7, if the application is allowed, the defendant No.1 to 4 being the purchasers of the property will put into great loss & hardship, which cannot be compensated in terms of money.

**12.** In support of their case, counsel for the defendant No.6 & 7 has relied upon the documents, which have been marked at Ex.D1 to 14. Having heard

arguments on both side and on perusal of the documents and materials placed on record by both parties, it is no doubt to true that, the suit schedule properties originally belongs to propositus Guddappa who is father of original plaintiff. Even there is no dispute that, during the life time of propositus Guddappa, he himself made an wardi before the revenue authorities and entered the name of original plaintiff, as she is the owner & occupier of the property in respect of suit schedule property. It is specific contention of the defendant No.6 & 7 that, the husband of the original plaintiff/Rudravva namely Chikkappa illegally created document and sold the suit schedule property to defendant No.1 to 4 by taking advantage of illiteracy of original plaintiff. In this regarding, at this stage, the defendant No.6 & 7 have not produced any documents to show that, he husband of the original plaintiff has played fraud and entered his name in the revenue records as he is the owner of the property. On the other hand, the documents produced by the defendant No.1 to 4, Ex.D1 sale deed dated: 09-03-1988, it appears that, the Chikkappa Basappa Bidari has sold the property to defendant No.1 to 4 with respect of suit schedule property for sale consideration amount for Rs.12,000/-. Further, it appears that, the said deed is registered in the year of 1988.

**13.** Further, on perusal of the Ex.D4, it appears that, the father of the original plaintiff made an wardi before the revenue authorities and entered the name of his daughter.

**14.** Further, on perusal of the Ex.D8, on basis of sale deed/Ex.D1, the revenue authorities have decided to enter the name of defendant No.1 to 4 as they have purchased the property for legal consideration amount of Rs.12,000/- on 08-03-1988. Further, on perusal of the Ex.D11, it appears that, the suit schedule property is standing in the name of Chikkappa Basappa Bidari in the year 1966-67, prior to that, the name of Rudravva W/o Chikkappa is bracketed, prior to that, name of Gudddappa Kariyappa Aralikatti is bracketed. Further, on perusal of the Ex.D12 it appears that, the suit schedule property bearing Re.Sy.No.73/2 pertaining to the year of 2001-02, it appears the name of Basavanneppa, Mahadevappa, Jagadishappa, Gadideppa S/o Channabasappa as they are joint owners & occupiers of the property. Further, it appears in the column No.9 & 10 as they are in possession & enjoyment of the suit schedule property. Further, on perusal of the copy of RTC of Re.Sy.No.73/2 ☺, it appears that, the name of Karabasappa defendant No.5 is finds place in the column No.9 as he is the

owner & occupier of the property measuring 37 guntas, it appears that, the said property is acquired by way of sale. Further, on perusal of the RTC property bearing Re.Sy.No.73/2<sup>ω</sup>, it is standing in the name of Jagadishappa S/o Channabasappa, the said property is measuring 37 guntas having been acquired by him by way of partition. Further, it appears that, he is in possession & enjoyment of the property. On perusal of the copy of RTC of property bearing Re.Sy.No.73/2<sup>ξ</sup>, on perusal of the same, it reveals the name of Mahadevappa S/o Channabasappa finds place in the column No.9 as he is the owner & occupier of the property. Further, on perusal of the copy of RTC of Re.Sy.No.73/2<sup>ϑ</sup>, the name of Basavanneppa Channabasappa is finds place as he is the owner & occupier by virtue of partition and he is in possession & enjoyment of the same.

**15.** On the other hand, though the defendant No.6 & 7 have contended that, the defendant No.6 & and plaintiff are in joint possession & enjoyment of the suit schedule properties, they have not produced any single piece of paper to show that, they are in possession & enjoyment of the suit schedule properties. Still matter is reserved for cross of DW3 and evidence of defendant No.6 & 7 yet to be lead. Further, on perusal of the materials placed on record and contents of the affidavit

of defendant No.6, it appears that, at this stage, there is no prima faice case and balance of convenience in favour of defendant No.6 & 7. The contention raised by the defendant No.6 & 7 is to be decided after the fulfilled trial. At this stage, court cannot decide the contention of the defendant No.6 & 7 that, the sale deed executed by the Chikkappa in favour of defendant No.1 to 4 and '೩' numbers, which were certified on basis of sale deed, are not binding on the plaintiff and defendant No.6 & 7. It is to be decided after ful-fledged trail. As such, no grounds are made out by the defendant No.6 & 7 to grant injunction, since they have not produced single piece of paper to show that, as on the date of filing of this application, prima-facie case & balance of convenience is in favour of defendant No.6 & 7. At this stage, defendant No.6 & 7 are not entitled to get injunction as sought for. Since, defendant No.6 & 7 have failed to prove their case that, if the injunction is not granted, they will be put into great loss & hardship more than defendant No.1 to 4. **Under such circumstances, this court answered point No.1 to 3 in the Negative.**

**16. Point No.4:-** For the reasons stated while discussing points No.1 to 3, I proceed to pass the following ;

**ORDER**

The IA No.XV filed U/o 39 Rule 1 and 2 R/w 151 of C.P.C., by the defendant No.6 & 7 is hereby dismissed.

For cross of DW3.

(Dictated to Stenographer, transcribed by him, corrected by me and then pronounced it in open court on this **21<sup>th</sup> day of January, 2025**)

**(Smt. Nagarathanmma)  
Civil & J.M.F.C.  
HIREKERUR.**

**(Order pronounced in the  
open court vide  
separate Order)**

**ORDER**

The IA No.XV filed U/o  
39 Rule 1 and 2 R/w 151  
of C.P.C., by the defendant  
No.6 & 7 is hereby  
dismissed.

For cross of DW3.

Call on by:

**Civil Judge & J.M.F.C.  
HIREKERUR.**