

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE, AT
HIREKERUR.**

**PRESENT: SRI: MANJUNATHA. K.P. BAL, LLB
Prl. Civil Judge & JMFC, Hirekerur.**

DATED THIS THE 16th DAY OF AUGUST 2017.

O.S. No:22/2015.

Plaintiffs.

Petitioners:-

- 1) Smt. Lalitamma W/o
Virupakshappa Bevinahalli,
Age: 54 years, Occ: House hold work,
R/o: Puradakeri, Tq: Hirekerur, Dist: Haveri.
- 2) Vishwanatha S/o Virupakshappa Bevinahalli
Age: 25 years, Occ: Agriculturist,
R/o: Puradakeri, Tq: Hirekerur, Dist: Haveri.

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

//VS//

Defendants.

Respondents:-

1. Veerappa S/o Halappa Pujar,
Age: 55 years, Occ: Agriculturist,
R/o: Puradakeri, Tq: Hirekerur,
Dist: Haveri.
2. Rudrappa S/o Basappa Pujar,
Age: 50 years, Occ: Agriculturist,
R/o: Puradakeri, Tq: Hirekerur,
Dist: Haveri.

3. Basavaraj S/O Basappa Pujar,
Age: 45 Years, Occ: Agriculturist,
R/o: Puradakeri. Tq: Hirekerur,
Dist: Haveri.

(Defendant No: 2 & 3 by Sri. G.S.Mattur, Advocate)

(Defendant No.1 exparte)

ORDERS ON I.A. NO. I

1. This order arise out of I.A.No.1 filed by the Plaintiffs U/O XXXIX Rule 1 and 2 & R/W.Sec.151 of CPC to restrain the defendants, their men, agents, or anybody through them from interfering with the plaintiffs 1/3rd share as per the will dated 01.01.2005 by means of Temporary Injunction, till pending disposal of the suit.

2. In support of the I.A.No.I, plaintiff No.1 filed affidavit, in which he stated that, plaintiffs have acquired the 1/3rd share of suit schedule survey properties as per the will dated 01.01.2005 executed by the Veerabasappa and in pursuance of said will plaintiffs are in possession of 1/3rd

share by exercising their respective agricultural operations and said Veerabasappa died on 21.12.2010 and defendants have no way concerned to the plaintiffs property, though they attempted to interfere with plaintiffs possession, hence they constrained the suit and I.A.No.I, and prima-facie case and balance of convenience lies in their favour and prayed to allow the I.A.No.I with costs.

3.Per contra the Defendants have filed written statement and memo to adopt the written statement contents as objection to IA, in which they denied the entire allegations of I.A. No: I and stated that, suit is not maintainable in eye of law and there is no cause of action to the suit and it is hit by non joinder of necessary parties and there is no title to the plaintiffs and deceased Virupakshappa had 2 wives one is Ratnamma and another is Lalithamma and said Ratnamma filed O.S. No: 310/2014 for partition and such other reliefs and it is pending for adjudication and Veerabasappa has no competency to bequeath the will as

alleged by the plaintiffs and there is no prima-facie case and balance of convenience lies in favour of plaintiffs. Hence, they pray for dismissal of I.A.No. I with costs.

4.From the above said pleadings, the following points arise for my consideration are:

- 1) Whether plaintiffs make out prima-facie case for grant of Temporary injunction order as sought for in I.A.No.I?
- 2) Whether balance of convenience lies in favour of plaintiff?
- 3) Whether plaintiffs are suffering with irreparable injury of prayer for interim injunction is disallowed?
- 4) What order?

5.My answers to the above points are as under:

Point No: 1 : Negative.

Point No: 2 : Negative.

Point No: 3 : Negative.

Point No: 4 : Is as per final order below for the following reasons.,

REASONS

6.**Point No:1:-** The brief facts of the I.A.No.I & objections as already stated above, as such I need not repeat the said facts once again to avoid repetition of the same facts.

7.This is a suit filed by the plaintiffs against the defendants for the relief of Declaration and Permanent Injunction and such other relief's. To make out the prima-facie case, plaintiffs have produced the following documents:

- a) RTC bearing Survey Nos.76/1, 76/2, 76/7, 76/8
- b) RTC bearing Survey Nos.35/1, 35/3, 35/4, 43/3
- c) Death Certificate of Veerabasappa Pujar.
- d) Will dated 01-01-2005.
- e) Office copy and acknowledgment.

Per contra there is no documents have been placed by the defendants.

8. During the course of arguments learned counsel for plaintiffs Sri. RSD vehemently argued that, there is a

materials for grant of Temporary Injunction in favour of plaintiffs i.e., they having prima facie case i.e., will executed by the Veerabasappa for 1/3rd share etc. Hence, he prays to allow the I.A.I with costs.

9. Per contra, Sri. GSM for defendants resisted the arguments, of plaintiffs counsel and argued that, absolutely plaintiffs have no right over the entire suit property and they suppressed the materials of facts and will always valied subject to proof by the Civil Court, and prays for dismissal of I.A.No.I with costs.

10. To make out Prima-facie case as already stated above, plaintiffs have placed aforesaid documents, i.e., Will, RTC's, death Certificate etc., Admittedly on perusal of entire papers plaintiffs have seeking relief in present case based on will dated 01.01.2005, so as per the ratio's of Hon'ble High Court of Karnataka and Appex Court will's are not confers any title to the parties until decided by the Civil Court for its validity its concerned. So here in this case also unless full fledged

trial is completed, it is not possible to believe the case of plaintiffs with respect to their possession of 1/3rd share as alleged in IA No: 1, further admittedly the plaintiffs are seeking the relief of declaration of title in pursuance of will for 1/3rd extent, so unless it has proved by way of trail it is not possible to believe arguments of learned counsel Sri RSD for plaintiffs and to grant temporary injunction as per IA No: 1, of course defendants have not placed any documents though it is not a ground to grant the temporary injunction order in favour of plaintiffs based on will and other documents because burden lies on plaintiffs to prove the will and remove the suspicious circumstances of the said document, so in the absence of sufficient materials I am of the opinion that plaintiffs have failed to make out prima facie case for grant of temporary injunction as prayed in the IA No:1 Hence, I answered Point No .1 in the Negative.

11.**Point No.2 & 3** : As these two points are interlinked with each other, hence I have taken up together for discussion in

order to avoid the repetition of same facts. In view of the discussions made in point No.1, I am of the considered opinion that, plaintiffs have failed to place sufficient materials before the court and satisfied about the existence of prima- facie case in their favour, further it is settled principle of law that, unless proved the will before Civil Courts, they shall not be acted upon on behalf of any parties and further to prove the will of the plaintiffs a full pledged trial is to be required, so unless trial is completed plaintiffs are not entitled for any relief's as per IA No: 1 and documents placed by them i.e., RTC's, Will, Death certificate are not sufficient to grant the Temporary Injunction. So, in the absence of proof of said fact, I am of the considered opinion that, plaintiffs have failed to make out balance of convenience also, so if the temporary injunction order could not be granted no hardship will be caused to the plaintiffs, and they are not entitled for the relief's as sought for

in I.A.No.I. **Hence, I answer point No.2 and 3 in the Negative.**

12. **Point No:4:-**For the discussions made above on Point No:1 to 3 I proceed to pass the following order.

ORDER

The I.A. No.I filed by the plaintiffs
U/OXXXIX Rule 1 & 2 R/W. Sec. 151 of
CPC is here by dismissed with costs.

(Dictated to the stenographer, transcribed and computerized by her, corrected by me and then order is pronounced in the open court on this the 16th day of August 2017, at Hirekerur)

(Sri. Manjunatha. K.P.)
Prl. Civil Judge & JMFC.,
Hirekeur.

(Order pronounced by the open court,
vide separate order)

ORDER

The I.A. No.I filed by the
plaintiffs U/O XXXIX Rule 1 & 2
R/W. Sec. 151 of CPC is here by
dismissed with costs.

Prl. Civil Judge & JMFC.,
Hirekeur.