



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE &
J.M.F.C., RANEBENNUR.**

Present : **Sri.PADMAKAR VANAKUDRE,**
B.A., LL.B.,(Spl)
Addl.Senior Civil Judge & J.M.F.C.,
Ranebennur.

F.D.P No.20 of 2023

Dated this 02nd day of September 2024

Between

1. Sri. Ramappa S/o Gangappa Holiyammanavar,
Age: 75 years, Occ: Agriculture,
R/o: Basavanagudi Road, Tq: Ranebennur,
Dist: Haveri.
2. Sri. Honnappa S/o Gangappa Holiyammanavar,
Age: 70 years, Occ: Agriculture,
R/o: Basavanagudi Road, Tq: Ranebennur,
Dist: Haveri.

.... Petitioners.

(By Sri. Y.H. Kudupali, Adv.)

And

1. Sri. Holiyappa S/o Gangappa Holiyammanavar,
(Dead by his L.Rs) and others.

... Respondents.

(Sri. H. Jagadeesh, Adv.)

: PARTIES TO I.A.No.I:

Sri. Ramappa S/o Gangappa Holiyammanavar.
Sri. Honnappa S/o Gangappa Holiyammanavar.

... Applicants/Petitioners.

//Vs.//

Sri. Holiyappa S/o Gangappa Holiyammanavar.
(Dead by his L.Rs) and others.

.... Respondents.



ORDER ON I.A. No.I

The petitioners have filed an application under Order 39 Rule 1 and 2 of CPC seeking temporary injunction against the respondents No.1 to 27 restraining them from alienating suit schedule "A" properties till disposal of the petition.

2. It is stated in the affidavit accompanying the application that, this is a petition for drawing up a final decree. As per the judgment and preliminary decree passed in O.S. No.9/2011, the petitioners have 2/27th share in the suit schedule properties. Till date the respondents have not given any share to the petitioners as per decree. By taking undue advantage of entry of their names to the revenue records of suit properties, they are trying to alinate the suit schedule properties. If they are not restrained from alinating the suit properties, then the petitioners will be put to irreparable loss. On the other hand, no hardship will be caused to the respondents. Hence, prayed to allow the application.

3. Learned counsel for the respondents has filed objection to the main petition contending that the



respondents had preferred an appeal in R.F.A. No.100202/2014 before the Hon'ble High Court of Karnataka, challenging the judgment and decree passed in O.S.No.09/2011. During the pendency of appeal, petitioners and respondents have entered into an agreement in respect to suit schedule properties. As per said agreement, the parties are in possession and cultivation of the properties of their respective share. Hence, the respondents have filed memo before the Hon'ble High Court of Karnataka stating that, the parties will settle the matter out of the Court. Despite the agreement, the petitioners have filed this petition and hence, the petition is not maintainable. Hence, prayed to dismiss the petition.

4. I have heard the arguments of learned counsels for the applicants and respondents. I have perused the materials placed on record.

5. Points that would arise for my consideration are as under;

1. Whether the petitioners have made out a prima facie case for grant of temporary injunction?



2. Whether the balance of convenience lies in favour of the petitioners?
3. Whether irreparable loss or injury would be caused to the petitioners if an order if T. I. is refused?
4. What order?
6. My answer to the above Points are as under;

Point No.1 : In the affirmative.
Point No.2 : In the affirmative.
Point No.3 : In the affirmative.
Point No.4 : As per final order
for the following;

REASONS

7. Points No.1 to 3:- These points are taken up together for consideration for the sake of convenience and to avoid repetition.

The suit for partition and separate possession instituted by the petitioners in O.S. No.09/2011 has been decreed on 14-07-2014 allotting 2/27th share to the petitioners, 1/27 th share to respondents No.1 to 12 and 1/3rd share to respondent No.13 to 28. This is a petition for drawing up of final decree on the basis of preliminary decree passed in O.S. No.9/2011. Now the petitioners have



filed application seeking temporary injunction against the respondents No. 1 to 27 restraining them from alienating suit properties.

8. The respondents have produced agreement dated 10-08-2021 and order passed by the Hon'ble High Court of Karnataka in M.F.A. No.100202/2014. Learned counsel for the respondents has argued that, the respondents had preferred an appeal before the Hon'ble High Court of Karnataka in R.F.A. No.100202/2014 challenging the judgment and preliminary decree passed in O.S. No.09/2011. In view of an agreement entered into between the petitioners and respondents on 10-08-2021, the respondents have filed memo before the Hon'ble High Court and accordingly the appeal came to be dismissed as not pressed. He has argued that in view of said agreement the petition is not maintainable.

9. The petitioners have denied execution of said agreement dated 10-08-2021. In view of judgment passed in O.S. No.09/2011 the petitioners and respondents have been allotted with specific shares. The final decree proceedings are nothing but continuation of the suit. The



share of parties is determined in a preliminary decree. Actual division of properties, putting the parties in separate possession of their respective shares etc., have to be settled in this petition. Whether the petitioners have entered into an agreement on 10-08-2021, etc., cannot be considered at this stage. The judgment and preliminary decree in O.S. No.09/2011 is not set aside. The appeal preferred by the respondents has been dismissed as not pressed. Therefore, there is no imedement to continue with the petition.

10. It is stated that the respondents are trying to alinate suit properties. A perusal of record of rights and property extracts shows that the suit properties stand in the names of respodents. Submissions made by the petitioners show that properties in dispute in this petition are in danger of being alienated by respondents No. 1 to 27. Therefore, it is necessary to grant a temporary injunction to restrain such alienation, until the disposal of the petition. If the respondents No.1 to 27 are not restrained by an order of injunction, they may alienate the suit properties, and that will cause loss to the petitioners.



The petitioners have made out prima facie case for trial and balance of convenience lies in their favour. If the order of injunction is denied the petitioners may be put to irreparable loss. On the other hand no hardship will be caused to the respondents. Hence, I proceed to answer points No.1 to 3 in the affirmative.

11. Point No. 4:- In view of my findings on points No. 1 to 3, I proceed to pass the following;

ORDER

Application filed by the petitioners
U/o.39 Rule 1 and 2 of CPC is hereby
allowed.

The respondents No.1 to 27 and men
on their behalf are hereby restrained, by
an order of temporary injunction from
alienating the suit properties in any
manner till the disposal of the petition.

(Dictated to the Stenographer directly on the computer, the same is corrected
and then pronounced by me in the open court on this 02nd day of September 2024)

(Padmakar Vanakudre)
Addl.Sr. Civil Judge & JMFC,
Ranebennur.