

KAKB320007072021

**IN THE COURT OF CIVIL JUDGE & JMFC., AT: AFZALPUR.****PRESENT**

Sri. KESHA.V.K., B.A. LL.B.,
C/c Civil Judge & JMFC.,
AFZALPUR.

Dated this 31st day of July-2023

O. S. No.22/2021

Plaintiffs: Smt. Sarubai W/o Hanamantharaya & others
(By Sri. S.S.Patil Advocate)
V/s

Defendants: Sri. Parameshwar S/o Naganna Mallikarjun & others
(By Sri.. Advocate for D-1)
(By Sri. S.K.P. Advocate for D-2 to 5)

PARTIES IN I.A.NO.I

Applicant: Smt. Sarubai W/o Hanamantharaya & others
V/s

Opponents: Sri. Parameshwar S/o Naganna Mallikarjun & others

**ORDERS ON APPLICATION UNDER ORDER XXXIX
RULE 1 AND 2 OF C.P.C.**

The plaintiffs have filed the above said application seeking to grant ad-interim temporary injunction order against the defendants by restraining the defendants from alienating, mortgaging, execution of sale deed or from creating any kind of charge over the suit schedule property until till disposal of this suit.

Description of the suit property:

The suit property is land Sy.No.120 measuring 9 acres 26 guntas situated at Revoor (B) village, Tq:Afzalpur, Dist: Kalaburagi. bounded by:

East : River.
West : Land of Shankar Nasi
North : Land of Sharanabasappa Kalaburagi
South: Land of Bannappa Basappa.

2. Briefly, the plaintiff's case is as follows:-

It is the case of the plaintiffs that, plaintiffs are the daughter of deceased Basappa and the defendants are the sons of Annaraya, Naganna and Basappa who were brothers one to another and hence plaintiffs and defendants are the brothers and sisters in relation. The suit schedule property is the ancestral property of plaintiffs and defendants which original standing in the name of Gurappa who is the ancestor of both parties, as such after his demise the said land nominally mutated in the name of father of the defendant No.2 to 5 and his name is mutated into ROR, the plaintiff and defendants being the joint Hindu undivided family members. After the marriage of the plaintiffs, the father of defendant No.2 to 5 used to give share in the yield of the suit properties to the plaintiffs as their shares. Recently on 06-08-2020 and after his demise the sons of Annarayya @ Annappa have cultivating the suit land and still the suit land is standing in the name of Annappa @ Annaraya and the defendants have used to give share in the yield of the suit lands. Such being the case, after demise of the said Annappa @ Annaraya the plaintiffs have requested the defendants to divide the suit property of their 1/9th legitimate share as per amended Hindu Succession Act, but the defendants have postponed the same for one or the other reasons. All of sudden the plaintiffs came to know that the defendant No.2 to 5 who have by taking undue advantage of entry of their father's name in the ROR have trying to alienate the suit property by mutating their names and hence the plaintiffs have requested them to allot their legitimate share, but they have refused to do so for which without any alternative remedy the plaintiffs have come up with this suit along with above said application seeking ad-interim temporary injunction order as prayed is as above.

3. On the other hand defendants have also appeared before the court and filed written statement but during the course of arguments, defendants counsels pointed out that written statement may be treated objection even to the instant application. In the written statement the defendants have denied the contents of the plaint along with reasons which averred in the annexed affidavit. Further it is specifically contended that the defendant No.1 is also set up a counter claim seeking his 1/3rd share over the suit schedule property. On the other hand defendant No.2 to 5 who have also filed written statement in which the reasons stated in the annexed affidavit are denied and specifically contended that the joint family of late Guruappa and his sons Basanna, Naganna and Annaraya being disrupted about 50 years back with their ancestors, properties were also divided and put them in possession in their respective properties, subsequently all are divided and residing separately. Further long standing entries in revenue records about 50 years in the father's name of defendant No.2 to 5 clearly indicates that the joint family being disrupted and late father of Annarayya was the only exclusive owner in possession of suit land bearing Sy.No.120 measuring 09 acres 26 guntas. Joint family of their Guruppa's by name Basanna, Naganna, and Annaraya being disrupted the records of rights shown that the land bearing Sy.No.82/2A was owned 06 acres 13 gutnas and Sy.No.123 measuring to an extent of 05 acres 00 guntas were hold by late Basanna deceased father of plaintiffs, further the entire land property sold out by the deceased Basanna for his family necessitates and for marriages expenses of plaintiffs. Accordingly the land bearing Sy.No.123 to an extent of 04 acres 38 guntas held by the deceased Naganna. No any joint family is in existence as on the date of filing the suit. As already stated that joint family of deceased father of parties to the suit being disrupted about 50 years back. However, the plaintiffs not at all entitled to seek the relief of partition and separate possession over the suit schedule property, with these reasons suit of the plaintiffs may

kindly be dismissed along with above said application.

4. In view of above the following points that would arise for my consideration on I.A.No.I are as follows:-

1. Whether, at this stage the plaintiffs have made out a *prima facie* case lies in their favour?
2. Whether the plaintiffs prove the balance of convenience lies in their favour?
3. Whether the plaintiffs prove that in event of not allowing I.A.No.I, they will be put to irreparable loss and injury?
4. What Order?

5. My answers to the above points is as follows:-

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| 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

6. **Points No.1 to 3**:-These three points are taken up together for common discussion in order to avoid repetition of facts.

7. The plaintiffs have filed above said application and in order to prove their case and intending to establish prima-facie case they have produced documents among them RTC pertains to land bearing Sy.No.120, P20/A from 1963 to 2020. All these documents are clearly establishes the case of of the plaintiffs that so far as suit schedule property not been partitioned among the parties accordance with law. Rest of the reasons averred in the written statement of defendants which taken into consideration after full-pledged trial, but before going to conclude the case of the parties in relation to above said application herein it is relevant to mention here that whether the plaintiff's grandfather has been acquired the properties, later on his sons have

been partitioned the suit schedule property as alleged in the written statement, as of now after hearing both sides arguments this court finds that the plaintiffs have made out prima-facie case that the suit schedule property not been partitioned accordance with law. Moreover as per contention of defendants it is stated that the suit schedule properties have been already divided for away from 50 years back and entry also clearly indicates that all the joint family members as stated in the plaint were divided as their respective properties and during the life time of Basanna he has sold his share for the purpose of incurring marriage expenses to the plaintiffs. Such so then question arisen between the before the court is that if so it not been clarified by parties that by producing believable and reliable documents that those have been already partitioned during the lifetime of plaintiff's father. Such things not been produced before the court for which at this stage it cannot be accept that the suit schedule property has been partitioned between the parties. By holding these reasons this court of the considered opinion that so far as documents and arguments which clearly made out fact that so far the suit schedule property has not been partitioned accordance with law between the parties that itself is prima-facie case made out by the plaintiffs, as such if the instant application is not allowed definitely in future the defendants may going to alienate the suit schedule property and create the charge over the same intending to avoid the share of plaintiffs, in that event of time the plaintiffs will be put to irreparable loss and injury, hence I answer point No.1 to 3 in the Affirmative.

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

ORDER

Application filed by the plaintiffs under
Order XXXIX Rules 1 and 2 of C.P.C. is

hereby allowed.

Consequently, the defendants are hereby restrained from alienating the suit schedule property in favour of anybody until further orders.

(Dictated to the Stenographer, transcribed revised, corrected by me, signed and then pronounced in open court on this the 31st Day of July-2023)

(KESHAVA.K)
C/c Civil Judge, AFZALPUR.