

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AT
CHINCHOLI.**

Present: **Sri. RAVI KUMARA. V. BA.L.,L.L.B.,**
Prl. Civil Judge,
Chincholi.

DATED THIS THE 23rd DAY OF MAY-2022.

O.S.No.130/2021

Plaintiffs : Ramrao.

V/s

Defendants : Annarao.

I.A.No.I

Applicants : Ramrao

By Sri. J.P.A Advocate

V/s

Opponents : Annarao.

By Sri. S.G.J Advocate.

**ORDER ON I.A. NO.I FILED UNDER ORDER 39 RULE 1 AND 2
OF CPC**

The plaintiff/applicant has filed this I.A No.I U/o 39 Rule 1 and 2 R/w 151 of CPC and praying this court to restrain the defendant from alienating or mortgaging or creating 3rd party

right over the suit schedule property, pending disposal of the suit.

2. In the affidavit accompanying to the present I.A., it is alleged by the plaintiff that, the defendant is his uncle and the suit schedule property is ancestral property of himself and defendant. Further, the plaintiff contended that, himself and the defendant are the joint owners and in joint possession of the suit schedule property.

It is the further case of the plaintiff that, the suit schedule property and other joint family properties of the plaintiff and defendant were stood in the name of grand father of the plaintiff Siddappa and after his death the Khata of the suit property was mutated in to the name of the father of plaintiff Gurulingappa as he was the elder son of Siddappa. Further, it is stated that the defendant is none other than the brother of Gurulingappa and during life time of Gurulingappa himself and the defendant were in joint possession of the suit property. After the death of Gurulingappa the plaintiff and defendant become the joint owners of the suit property.

3. Further, it is stated by the plaintiff that, all the joint family properties of plaintiff and defendant, except the suit schedule property, were orally partitioned between them 30-35 years ago and ever since they were residing separately and having separate possession of the property fallen to their share. But, since the suit property was situated next to a canal and since the water shedded in the said property, the suit property was remained joint and plaintiff and defendant jointly using the said property for the purpose of grazing the cattles and for other agricultural purposes.

It is alleged by the plaintiff that, the defendant had got mutated his name in the revenue records of the suit property without the knowledge of the plaintiff. Hence, plaintiff demanded his share in the suit property but the same was refused by the defendant. The plaintiff further alleged that, by taking advantage of revenue entries standing in his name the defendant in order to defraud the share of the plaintiff is trying to sell the suit property and create 3rd party right over it. Hence, the plaintiff

prays to allow this I.A and restrain the defendant from alienating the suit property pending disposal of the suit.

4. Per contra, the defendant has filed his Written Statement by denying the entire plaint allegations and by filing a memo he praying to this court to treat his Written Statement as his objection to the present I.A.

In his Written Statement the defendant is contending that, in the oral partition took place between him and the father of plaintiff Gurulingappa the suit property was fallen to the exclusive share of the defendant and he is in exclusive possession of the said property and accordingly the revenue records of the suit property has mutated in to his name. The defendant also stated that he had no intention to sell the suit property but the plaintiff by making false claim filed this suit and hence, the defendant prays to reject the prayer of the plaintiff for issuance of temporary injunction.

5. In light of the rival contentions raised by the plaintiff in the present I.A. and the contention taken up the defendant in his

Written Statement the following points are arisen for my consideration;

1. **Whether the plaintiff has made out a prima-facie case in his favour?**
2. **Whether balance of convenience lies in favour of plaintiff?**
3. **Whether irreparable injury would be caused to the plaintiff, if an order of temporary?**
4. **What order?**

6. I have heard the counsel for plaintiff and contesting defendant the I.A. perused the I.A, Written Statement defendant along with all other materials produced before me.

7. My answers to the above points are as follows,

Point No.1 : **In the Affirmative.**

Point No.2 : **In the Negative.**

Point No.3 : **In the Negative.**

Point No.4 : As per final order for the following.,

REASONS

8. **12. Point NO.1 to 3:** Since, these points are inter connected to each other and are based on common set of

facts, in order to avoid the repetition of facts and for the purpose of brevity, these points are taken together for my common consideration.

9. As it would be seen from the pleadings, it is evident that the plaintiff herein is claiming that the suit schedule property is ancestral and joint family property of himself and the defendant. The defendant is none other than the uncle of the plaintiff. According to the plaintiff, except the suit schedule property all the other joint family properties of the plaintiff and defendant were orally partitioned 30 to 35 years ago between his father Gurulingapa and the defendant. But, since the suit schedule property was situated adjoining to a canal and water used to be shedded there, the said property was not divided in the oral partition and it remain in joint possession of plaintiff and defendant and they using it for grazing the cattles and for other agricultural purposes. Thus, the plaintiff claims that the suit schedule property is an ancestral and joint family property of himself and defendant.

10. At the same time, the plaintiff alleged that the defendant has fraudulently changed the Khata of the suit property in to his name without the knowledge of the plaintiff and by taking undue advantage of the revenue entries standing in his name, the defendant is trying to alienate the suit property to a 3rd party. Hence, he prays to allow this I.A.

11. On the other hand, the defendant contending in his Written Statement that in the admitted oral partition the suit property was exclusively fallen to his share and accordingly the revenue entries mutated in to his name. Thus, the defendant is contending that the suit property is no more a joint family of himself and the plaintiff and he is having no intention to sell the suit property to anybody. Hence, the defendant prays to reject the claim of the plaintiff.

12. Though, the plaintiff claims that the suit property is the ancestral and joint family property of himself and the defendant and they are in joint possession of the suit property and he alleged that, the defendant by virtue of illegal entry of his name

in the revenue records is trying to alienate the suit property to a 3rd party and if the defendant succeeds in doing so, he will be put to great hardship, the said claim of the plaintiff is denied by the defendant. According to the defendant, the suit property is exclusively fallen to his share in the oral partition took place between the himself and the father of the plaintiff. He also contending that, he is never intending to sell the suit property to anybody. Hence, he prays to dismiss the prayer of the plaintiff.

13. It is to be noticed that, the plaintiff herein contending that all the joint family properties of himself and defendant was orally partitioned between his father and defendant. But, the suit property was remained joint as it was situated next to a canal. On the other hand, the defendant contending that all the joint family property including the suit property was partitioned between him and father of the plaintiff in the said oral partition and the suit property was exclusively fallen to his share in the said partition. Hence, it is burden of the plaintiff to prove that the

suit schedule property remained joint despite the properties orally divided between his father and the defendant.

14. But, at this stage of the suit, the plaintiff has not produced any documents to believe that the suit property remained joint despite all the other joint family property orally divided between his father and defendant. Thus, the said case of the plaintiff is a triable issue and without the plaintiff establishing the said fact after full pledged trial, the same can not be believed at this stage. Further, the revenue records produced by the plaintiff himself would go to show the name of defendant was entered in the revenue records of the suit property in the year 1983-84 itself. Thus, the allegation of the plaintiff that, the defendant has mutated the revenue records in to his fraudulently without the knowledge of the plaintiff can not be believed at this stage.

15. When no documents produced by the plaintiff at this stage of the suit to believe his case that the suit property remained joint despite of all other joint family properties of plaintiff and defendant divided in a oral partition and since, the

allegation of the plaintiff that the defendant has illegally got mutated his name in the revenue entries of the suit property and thereby trying to sell the suit to a 3rd party can not be believed as the documents produced by the plaintiff himself would goes to show the Khata of the suit property is standing in the name of the defendant since more than 30 years, the plaintiff has failed to establish a priam facie in his favour.

16. Further, when the plea of the defendant that the suit property was fallen to exclusive share in a oral partition held more than 30 years ago and since than the Khata of the suit property standing in his name is supported by the RTC's produced by the plaintiff himself, it can not be said that the balance convenience lies in the favour of plaintiff. Rather, the revenue entries which stands in the name of defendant since than 30 years would indicate that he is in exclusive possession of the suit property and if the temporary injunction order is granted in favour of the plaintiff, more hardship will be caused to the defendant as the balance of convenience lies in favour.

17. Therefore, this court is of the considered opinion that the plaintiff has failed to prove a prima facie case and balance convenience in his favour and hence, non granting of relief of temporary injunction will not cause any injustice or irreparable injury to the plaintiff. Hence, the Point No.1 to 3 are answered **in the Negative.**

18. **POINT No.4:** Resultantly, I proceed to pass the following;

ORDER

The I.A No.1 filed by the plaintiff U/o
39 Rule 1 and 2 R/W 151 of C.P.C is
dismissed.

No orders as to cost.

(Directly dictated to the Stenographer on Computer, print out taken by him, corrected and then pronounced by me in open court this 23rd day of May-2022)

(Ravi Kumara V.)
Prl. Civil Judge.,
Chincholi.