

IN THE COURT OF CIVIL JUDGE, CHITTAPUR.

Before : Sri K.S.Rotter, B.Com. LL.B (Spl),
Civil Judge, Chittapur.

Dated: this 8th day of September 2015

O S No.59/2014

Smt.Gurubasamma W/o Shenkarayya,
Age: 60yrs, Occ: Agriculture,
R/o: Salahalli, Tq: Chittapur
Dist: Kalaburgi
(By.Sri.HMP Advocate)

// Vs //

1. Bannayya S/o Gurulingayya
Age:80yrs, Occ: Agriculture,
2. Smt.Umadevi W/o Gurulingayya,
Age: 40yrs, Occ: Agriculture,
Both R/o:Kamarwadi, Tq:Chittapur,
Dist:Kalaburgi
(By.Smt.M V Ladda Advocate)

ORDERS ON I.A.NO.1

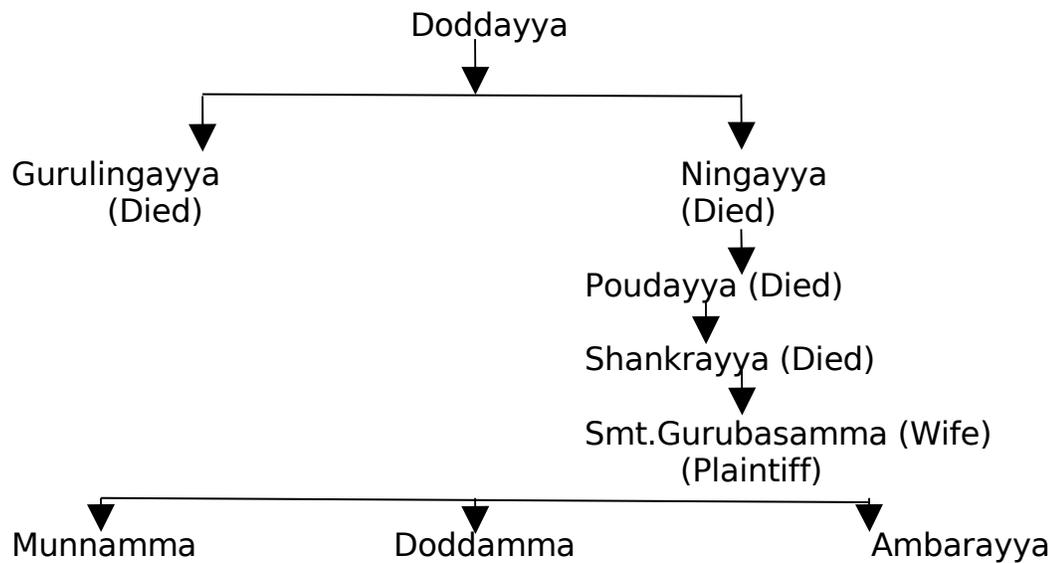
The plaintiff has filed I A - I U/o.39 Rules-1 and 2 of CPC praying therein for restraining the defendants or their legal representative, or servants and henchman from alienating,

- mortgaging or creating any charge over the suit property pending disposal of suit.
2. In support of I A - I the plaintiff has filed her sworn affidavit explaining the reasons for the same and prayed for allowing IA.
 3. On the other hand the defendants have filed written statement and the same is adopted as objection to I.A-I and prayed for dismissal of I.A-I.
 4. Heard both the sides.
 5. The points which arise for my consideration are as below :-
 1. *Whether the plaintiff has made out prima-facie case as per IA-I?*
 2. *Whether balance of convenience leans in favour of the plaintiff?*
 3. *Whether the plaintiff will be put to irreparable loss and injury if TI order is not granted?*
 4. *What order?*
 6. My findings on the above points are as under :-
 1. In negative
 2. In negative

3. In negative
4. As per final order for the following :-

REASONS

7. **Points No.1 to 3** : I take all these points for common consideration, because they are inter-linked each other.
8. The plaintiff has filed this suit for the relief of declaration and permanent injunction against the defendants. The plaintiff has shown the pedigree her relationship as follows;



9. It is the case of the plaintiff that, the defendant No.2 is the real daughter of the defendant No.1 and they are no way concerned with the family of plaintiff. The plaintiff stated that, the suit property bearing land Sy.No.23 measuring 3 acres 30 guntas situated at village Sulahalli, Tq:Chittapur originally belongs to the

ancestor Doddayya. The plaintiff stated that, her ancestor has got landed properties in Kamarawadi village and in Sulahalli village and the said lands were standing in the name of Gurulingayya. The plaintiff stated that, as the son of the ancestor by name Nagayya was leaving in Sulahali village and another son Gurulingayya lived in Kamarwadi village, they have got orally partitioned the suit property. It is specific case of the plaintiff that, Gurulingayya has brought up the defendant No.1 for the service of Math and Died issueless. Thereafter, the defendant No.1 by creating false documents got entered his name to the suit properties stating that, he is the legal heir of Gurulingayya. Further the plaintiff stated that, the defendant No.1 having no right, or interest, illegally created false document and entered his name to the suit property. Further the plaintiff stated that, she is the legal heir of one Ningayya who is brother of Gurulingayya and she is in possession and cultivating the suit property since from her ancestors. It is stated that, since, 1958 till today the records are standing nominally in the name of defendant No.1. However, the plaintiff contended that, she has exercise her right of ownership over the entire suit land as an absolute owner and in possession of the suit property, openly, peacefully and to the knowledge of defendants and all concerned without any obstruction till today. Therefore, the plaintiff contended that, she

has perfected her title over the suit property by way of adverse possession. Further the plaintiff stated that, at the time of entering the name of defendant No.1 to the suit property she has filed objection to the Tahasildar Chittapur. However, the Tahasildar orally told her to approach Civil Court for taking necessary action. Further the plaintiff contended that, now the defendants taking undue advantage of their names appearing in the suit properties are trying to interfere in the peaceful possession and enjoyment of the suit property with the help of unsocial elements and also trying to sell the suit property in order to defeat the rights of plaintiff and the suit property. Hence, plaintiff stated that, she has got prima-facie case, balance of convenience lies in her favour and she will be put to irreparable loss and hardship if T.I. is not granted.

10. On the other hand, the defendants have filed their written statement and adopted the same as objection to I A No.1. The defendants specifically deny the contention taken by the plaintiff. The defendants contended that, the suit of the plaintiff as well as IA is false and not maintainable. The defendants denied that, the plaintiff was distant relative. The defendants also denied the relationship of the plaintiff with Gurulingayya and Ningayya. They also denied the, pedigree shown by the plaintiff. Further the

defendants denied that, originally the suit property was belonging to ancestor by name Doddayya and they also denied that, after the death of said Doddayya his sons Gurulingayya and Nagayya have succeeded the suit properties. Further the defendants denied that, the defendant No.1 illegally got created some documents and got entered his name to the suit property. Further the defendants denied that, the plaintiff is the legal heir of one Nagayya who is brother of one Gurulingayya. It is also denied that, the plaintiff is in possession and cultivation of the suit land since her ancestors. The defendants denied that, the plaintiff is in possession of the suit property since 1958 and the records are nominally standing in the name of defendant No.1. Further the defendants denied that, the plaintiff has exercised her ownership over the suit property and enjoyed the same peacefully to their knowledge defendants without any interruption. It is also denied that, the plaintiff has perfected her ownership over the suit property by way of adverse possession. It is also denied that, the plaintiff has filed objection before the Tahasildar Chittapur and the Tahasidar Chittapur has advised her for approaching the Civil Court. The defendants have denied that, they have caused obstruction to the plaintiff for enjoyment of the suit property. Hence, the defendants contended that, there is no cause of action for the plaintiff to file this suit.

11. By way of further pleas, the defendants specifically contended that, originally the suit land was standing in the name of Gurulingayya and the defendant-1 being a only son of said Gurulingayya has succeeded the suit property in the year 1958-59. Since then the defendant-1 become owner in possession of the suit property. The defendants also stated that, the defendant-1 has only daughter by name Umadevi i.e. defendant-2 and due to love and affection the defendant-1 has gifted the suit property to the defendant-2 under the registered gift deed on 20-11-2008 and thereafter she become absolute owner in possession of the suit property. The defendant stated that, the plaintiff is no way concerned to their family, however she has challenged the mutation entry of suit property certified on the basis of gift deed executed by the defendant-1 but the said appeal is dismissed by AC Sedam. The defendant stated that, thereafter the plaintiff has filed this false suit which is barred by limitation. Hence, the defendants contended that, plaintiff has neither prima-facie case, nor balance of convenience lies in her favour. Accordingly, they prayed for dismissal of I A No.I.

12. The advocate for plaintiff vehemently canvassed his argument and contended that, the plaintiff is in possession and enjoyment of the property since the date of her ancestors. The

plaintiff has exercised her right over the suit property as absolute owner in possession and perfected her right over the suit property by way of adverse possession. The defendants without having any right or interest over the suit property illegally causing obstruction to the use and enjoyment of the suit property by plaintiff. It is stated that, the defendants also trying to alienate the property in order to defeat the rate of plaintiff in the suit property. Hence, the advocate for plaintiff prayed for temporary injunction against the defendants.

13. On the other hand, the advocate for defendants argued with force that the suit of the plaintiff itself is not maintainable. It is contended that, the defendant-1 has succeeded the suit property in the year 1958 and since then he is in possession and enjoyment of the said property. The plaintiff is not related to the family of defendants nor she related to the property filed this false suit. The plaintiff with an intention to grab the suit land filed this false suit. Accordingly, they prayed for dismissal of I A.

14. In support of her contention the plaintiff has relied upon the document i.e. the RORs pertaining to the suit land. On perusal of all these documents, it is observed that, the suit land is standing in the name of defendant-1 since 1958. The documents clearly show the name of defendant-1 in the ownership and possessor

column of the suit property. On the other hand the plaintiff claiming her ownership over the suit property by way of adverse possession. However, the plaintiff has not produced any single documents for showing her possession over the suit property. In this case plaintiff stated that, defendant-1 has created false documents in their 1958 and got entered his name to the suit property but the plaintiff is challenging the said documents and claiming her right over the suit property in the year 2014. Therefore, at this stage from perusal of the material on hand doubt arises with respect to the maintainability of suit. Such being the case, I am of the opinion that the contention of the plaintiff and alleged interference of defendant cannot be acceptable one.

15. As held in a ruling reported in ***ILR 1989 Karnataka 1701 between GOWRISHANKAR SWAMIGALU V/s SIDDAGANGA MATH*** that the cases, Granting of temporary injunction is a harbinger to the main relief, hence for granting of temporary injunction the prima-facie case is to be looked into. The prima-facie case includes maintainability of suit. On the basis of the documents and material available on record; it is clear that, the name of defendant-1 is appearing in the suit property since long date and now the name of defendant-2 is appearing in the

ownership and possession column of suit property as on the date suit. Under the facts and circumstances of the case, the contention of the plaintiff creates doubt about the maintainability of suit. The interim relief can be granted only in the Prima facie cases but not in the present case on hand on the basis of material available on record I am of the considered opinion that plaintiff has not made out Prima facie case and balance of convenience is also not in favour of plaintiff. Therefore I answer the points No.1 to 3 in negative.

16. **Point No.4:** For the foregoing discussion on above points I proceed to pass the following:

ORDER

I A - I filed by the plaintiff U/O.39 Rules-1 and 2 of CPC is hereby rejected.

No order as to costs.

(Dictated to the stenographer directly on laptop, corrected by me and then pronounced in open court on this 8th day of September 2015)

(K.S. Rotter)
Civil Judge, Chittapur