

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT JEWARGI

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Senior Civil Judge & J.M.F.C.,
Jewargi.

Dated This the 20th Day of December-2023

ORIGINAL SUIT NO.186/2023

PLAINTIFFS : 1. Bharamreddy S/o Late. Bhimareddy Hosalli,
Age: 70 years, Occ: Agriculture.

2. Yankareddy S/o Bharamreddy Hosalli,
Age: 40 years, Occ: Agriculture.

3. Mallikarjunreddy S/o Bharamreddy Hosalli,
Age: 37 years, Occ: Agriculture.

R/o Hattikuni, Tq: & Dist: Yadagir.

.....(By. Sri.J.V.H., Advocate)

V/s.

DEFENDANTS: 1. Mallareddy S/o Bhimareddy Mudbal,
Age: 50 years, Occ: Agriculture.

2. Bharamareddy S/o Mallareddy Mudbal,
Age: 30 years, Occ: Agriculture.

Both are R/o Alloli,
Tq: Chitapur Dist: Kalaburagi.

.....(By. Sri.M.S.M., Advocate)

PARTIES TO I.A. NO.I

**APPLICANT/
PLAINTIFFS** : Bharamreddy and Others
V/S

**OPPONENT/
DEFENDANTS** : Mallareddy and Another

i.	Provision under which the application is filed	U/o 39 Rule 1 and 2 R/w Sec.151 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	18-08-2023
iv.	Number of the application	IA No.1
v.	The date of which the objections are filed by different opponents	26-10-2023
vi.	The date on which the orders were passed on the said application	20-12-2023

ORDER ON I.A No.I FILED BY PLAINTIFFS

U/O 39 RULE 1 & 2 OF C.P.C.

1. The plaintiff has filed I.A No.I under Order 39 Rule 1 & 2 of C.P.C. praying for temporary injunction against the defendants restraining them from alienating, mortgaging or creating any type of charge over the suit property, till disposal of the suit.

2. The plaintiff sworn to the affidavit annexed to the I.A. No.I and prayed to consider the plaint para's as part and parcel of the plaint. Therefore, it is necessary to refer the plaint averments;

3. The plaintiffs filed this suit seeking the relief of partition and separate possession and injunction. The plaintiff no.1 is father and plaintiff no.2 and 3 are his children's. The defendant is no.1 is father of defendant No.2. The plaintiffs and defendants are stated to be the joint family members and joint owners and possessors of suit properties. One Sanganasawwa W/o Channabasappa @ Basappa Poradi is the common ancestor of plaintiffs and defendants. She had two daughter's namely Ningamma W/o Nagappa Hossali and Basamma W/o Bhimareddy Mudbal. The said Ningamma had daughter by name Narasamma W/o Bharamareddy i.e., wife of plaintiff no.1. The said Basamma S/o Bhimareddy Mudbal had a son namely Mallareddy i.e., defendant No.1. The suit properties were owned and possessed by common ancestor namely Sanganasamma W/o Channabasappa @ Basappa Poradi and her name was entered to the record of rights as owner and possessor of suit properties.

4. After death of said Sanganasamma her two daughters namely Ningamma W/o Nagappa Hosalli and Basamma W/o Bhimareddy got mutated their name to the suit property bearing Sy.No.8 measuring 6 acres 15 guntas vide mutation no.62 dated 15-03-1999 and were jointly cultivating the said properties as joint owners and possessors without effecting any partition by metes and bounds. The said Neelamma W/o Nagappa Hosalli and her husband and only daughter Narasamma dead intestate leaving behind plaintiffs as their heirs and successors. Said Basamma S/o Bhimareddy and her husband

also dead intestate leaving behind defendant No.1 and 2 as their heirs and successors. The plaintiffs being class-I heirs and successors of deceased Neelamma W/o Nagappa and her deceased daughter Narasamma W/o Bharamareddy having $\frac{1}{2}$ share in the suit properties, whereas defendants being class-I heirs of Basamma W/o Bhimareddy have remaining $\frac{1}{2}$ share in the suit properties. But defendants without the knowledge of plaintiffs got mutated their names to the record of rights vide mutation No.10/2011-12 dated 17-12-2011 on basis of partition without having any kind of right, title or interest over the properties. Therefore, plaintiffs approach defendants and requested them to effect partition in the suit properties but defendants refused to effect partition. Therefore, plaintiff was constrained to file this suit. This is all stated to be the cause of action for the plaintiffs to file this present suit.

5. Along with the suit, plaintiffs filed I.A.No.1 under Order 39 Rule 1 and 2 of CPC seeking relief of temporary injunction against defendants to restrain them from alienating the suit schedule properties. The plaintiff no.1 sworn to the affidavit and requested to consider the plaint paras as part and parcel of the affidavit and further stated that they have got prima facie case balance of convenience lies in their favour and if temporary injunction order is granted no hardship will be caused to the other side. On the other hand, if the application is not allowed, plaintiffs will be put to irreparable loss and injury and it may lead to multiplicity of judicial proceedings. Therefore, they prayed to grant temporary injunction against the defendants.

6. In pursuance of the suit summons defendant No.1 and 2 appeared through their counsel and resisted the claim of plaintiffs by filing written statement. The defendants have also filed memo to consider written statement as objection to IA No.1. The defendants denied the entire plaint averments and called upon plaintiffs to prove the same with strict proof. The defendants specifically contended that plaintiffs have not mentioned name of Ayyappa and two daughters in the plaint. The defendants denied the relationship in between them and also denied the genealogy furnished by the plaintiffs. The defendants also denied other aspects and specifically contended that plaintiffs have suppressed real facts. The defendants further contended that suit properties were standing in the name of Sangambasamma and after her demise name of her daughters namely Neelamma and Basamma was jointly mutated to the suit lands but since Neelamma was having more property and therefore she out of love and affection towards her sister Basamma given up her share to her sister Basamma, but it was not came into force immediately. After demise of both the sisters defendants got mutated entire land in their name as per the consent document given by Neelamma in favour of Basamma.

7. Earlier one Shivaraj Patil filed application before Land Tribunal seeking occupancy rights and said petition was allowed without making Neelamma and Basamma as party to the proceedings. Therefore, both sisters filed Writ Petition No.14382/2000 which was came to be allowed on 22-01-2002 and accordingly Tahsildar issued notice to the parties on 07-02-

2022 to appear before Land Tribunal. Thus plaintiffs are well known about these aspects but at that time they did not filed the suit thus now there is no cause of action for the plaintiff to file this suit. The defendants further contended that said Neelamma has given her share in favour of her sister Basamma under such circumstance question of seeking share by plaintiffs doesn't arise and it is not maintainable. The present suit is barred by law of limitation. The plaintiffs have not challenged the mutation order which is in the name of defendants. Therefore, suit is not maintainable and also barred by limitation. The plant is not properly valued and court fee paid on plaint is insufficient. On all these grounds the defendants prayed to reject the IA.

8. On considering the I.A No.1, affidavit and arguments on I.A No.1, the points that would arise for my consideration are as under:

POINTS

1. Whether the plaintiffs/applicants have made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiffs/applicants?
3. Whether the irreparable loss and injury would be caused to the plaintiffs/applicants if the temporary injunction is refused?
4. What order?

9. Learned Counsel for plaintiffs argued that the plaintiffs has produced the record of rights, MR extracts of the suit schedule properties and made out a prima facie case and balance of convenience lies in favour of the plaintiffs. If temporary injunction is not granted the plaintiffs would be put to heavy and untold hardship. Therefore, temporary injunction may be granted to the plaintiffs. Therefore, he prays to allow the I.A.No.I.

10. On the other hand, defendants counsel argued that suit itself is not maintainable. He further argued that Neelamma has given her share to her sister Basamma and plaintiffs did not challenged the mutation effecting name of defendants to the suit property. He further argued that plaintiff has not made out a of prima-facie case and suppressed materials facts before this court. Therefore, defendants prayed to reject IA No.1.

11. 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

12. **Point No.1:** I have already set out in brief as to what the case of the plaintiff is and as to what the objection of the defendants.

13. It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C. (1) plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the party seeking the relief and (3) that the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come to court with clean hands and place all the materials before the court so that, the court will be satisfied about the prima facie case in favour of the party seeking the order.

14. The plaintiffs have produced record of rights of suit properties, whereas defendants have produced valuation slip of property.

15. I have considered the documents produced by the plaintiffs at this stage. On perusal of the documents produced by plaintiffs it reveals that the suit land bearing Sy.No.8 measuring 6 acres 15 gunats was originally standings in the name of Sangambasawwa W/o Channappa and after her death name of her daughters namely Neelawwa W/o Nagappa Hosalli and Basamma W/o Bheemareddy was mutated to the records of rights and it was continued till 2010-2011. Thereafter it appears that name of defendant no.1- Mallareddy was entered to the extent of 3 Acres 15 guntas and name of Defendant No.2 – Bharamareddy was entered to the extent of 3 Acres and which is continued till toady.

16. It is to be noted here that the main contention of the defendants is that Neelamma given her in share infavour of her sister Basamma and suit is barred by time therefore, the plaintiffs are not entitled for a share in the suit schedule property. It is important to note here that the relationship between the parties is not disputed by the defendants. However, defendant specifically denied that plaintiffs have no right in the suit property since Neelamma has given her share to her sister Basamma. It is necessary to observe here that the court cannot conduct a mini trail at the time of adjudicating the applications of this nature. The dispute regarding the alleged aspect that Neelamma giving her share to Basamma and whether plaintiffs are entitled for any relief is subject matter of the trial. The court cannot express its opinion regarding the merits of the case. While dealing with the applications of this nature the only function of the court is to see does the applicant has made out a prima-facie case and balance of convenience lies in whose favour and in case of refusal of granting temporary injunction loss of hardship would be caused to which side. As above pointed the court has to consider do the Neelamma given her share to her sister Basamma and do the plaintiffs are entitle for share or not and do the suit is barred by limitation are all the aspects which required to be adjudicated in the present case which requires a full-fledged trial. As above stated defendants have not denied their relationship with plaintiffs and it is also not in dispute that suit schedule properties were originally belongs to their ancestor Sanganbasawwa, when such being the case it can be opined that the plaintiffs have made out a arguable case and therefore whenever there is a arguable case then it can be said that

the plaintiff has made out a prima-facie case. In this sense, I answer Point No.1 in the Affirmative.

17. **Point No.2 and 3** :- Both these points are taken up together for common discussion to avoid repetition of facts. The court has to see that do the applicants will sustain such injuries which cannot possibly and adequately remedied by way of damage and the said damage would be in adequate in case of success of the applicants. Considering the question of balance of convenience is concerned court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status quo till the adjudication of dispute finally decided. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being the discretionary relief the party who claims such relief should come to the court with clean hands and place all the materials before the court so that court will satisfy about the case in favour of the party seeking the order.

18. It is to be noted here that the plaintiffs have sought for temporary injunction against defendants from alienating the suit schedule properties. Admittedly the records of rights of the suit properties are standing in the name of defendants. Therefore the possibilities of alienating the suit schedule properties by the defendants cannot be ruled out. In this sense I hold that the balance of convenience lies in favour of the plaintiffs and not in favour of the defendants. Now as regard to the hardship is concerned. If in case the temporary injunction is not granted and if defendants alienates the suit properties which will lead to

multiplicity of proceedings and plaintiffs will be put to hardship. On the other hand, if the temporary injunction is granted no hardship will be caused to the defendants, since if in case plaintiffs fail to succeed in the suit ultimately the defendants can deal with their properties as per their whims and fancies. The plaintiffs are under apprehension that defendants are trying to alienate the suit schedule properties in favour of others. Therefore, I am of the view that if the I.A No.1 is not allowed, the plaintiffs would be put to heavy and irreparable loss on the other hand defendants will not be put to any hardship. Hence, I answered Point No.2 and 3 in the Affirmative.

19. **Point No.4** :- In view of my findings on Points No.1 to 3, the plaintiffs are entitle to the relief of temporary injunction which they have sought for. Hence, I proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiffs under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C. is hereby allowed.

The defendants are hereby restrained by an order of temporary injunction from alienating, mortgaging or creating any type of charge over the suit schedule properties, pending disposal of the suit.

Cost of this application will follow the result of this suit.

Call on for issues by 16-01-2024.

(Dictated to the Stenographer directly on Laptop, typed by him, corrected and then pronounced by me in the Open Court on this 20th Day of December -2023).

(Sandeep. A. Naik)
Senior Civil Judge,
Jewargi.