

**IN THE COURT OF THE CIVIL JUDGE AND JMFC., JEWARGI  
AT JEWARGI.**

**Present:- Sri.D.Ramesh, B.AL., LL.B.,  
Civil Judge and JMFC, Jewargi.**

**Dated : This the 04<sup>th</sup> day of March, 2023**

**O.S.No.70/2022**

Between:

Siddamma : **Plaintiff**

**(By Sri.J.V.H., Adv.,)**

And

Mahantappa @ Mahanthgouda : **Defendants**  
and Others

**(Defendant No.1 and 2 Exparte)**

**(Defendant No.3 By Sri.P.K., Adv.,)**

**I.A.No.1**

Siddamma : **Applicant/Plaintiff**

W/o Shivananda,  
(D/o Mahanthappa @  
Mahanthgouda S/o Goudappa Biradar)  
Aged about : 36 years,  
Occupation: Agriculture and Household,  
R/o Kalaburagi,  
Tq: and Dist: Kalaburagi.

V/s.

1. Mahantappa : **Opponents/Defendants**

@ Mahanthgouda  
S/o Goudappa Biradar,  
Aged about : 60 years,  
Occupation: Agriculture.

2. Mallikarjun  
S/o Mahantappa @ Mahanthgouda  
Biradar,  
Aged about : 42 years,  
Occupation: Agriculture.

3. Goudappa  
S/o Mahantappa @ Mahanthgouda  
Biradar,  
Aged about : 30 years,  
Occupation: Agriculture.

All are R/o Kahinoor,  
Tq: Sindagi, Dist: Vijaypur.

### **ORDERS ON IA No.1**

The plaintiff has filed the application U/o 39 rule 1 and 2 R/w 151 of CPC praying to restrain the defendants from alienating, mortgaging or creating any type of charges over the suit properties.

**2.** The brief averments of the affidavit annexed to the IA No.1 are as follows;

That the defendant No.1 is the father of plaintiff and defendant No.2 and 3. The plaintiff is the natural sister of defendant No. 2 and 3. The plaintiff and defendants are members of Hindu Joint family following Mitakshara school of law and they are residing jointly without partitioning the same by metes and bounds. The suit properties at item number 'A' to 'D' are the joint and ancestral properties of plaintiff and defendants. The suit properties and non-suit properties were standing in the name of paternal grandfather of plaintiff by name Goudappa S/o Ningappa

Biradar. After the death of said Goudappa the suit properties and non-suit properties have been divided orally among the brothers of defendant No.1. The Sy.No.354/3 measuring 6 acres 29 guntas and Sy.No.335 measuring 8 acres 10 guntas was allotted to the share of branch of defendant No.1 and his name is entered in the ROR for and on behalf of plaintiff and defendants. The defendant No.1 has sold land measuring 4 acres in Sy.No.354/3 and 2 acres 10 guntas in Sy.No.335 for the joint family necessity, hence the plaintiff is not claiming the sold out properties. Thereafter in Sy.No.354/3 measuring 25 guntas out of 6 acres 29 guntas has been acquired by the KBJNL and remaining area of 1 acre 10 guntas in Sy.No.354/2 and 1 acre 02 guntas in (Sy.No.354/3 old) is the suit property at item number 'A'. In Sy.No.335/1 measuring 2 acres and 4 acres respectively are entered in the name of defendant No.2 and 3 behind the back and without the knowledge of plaintiff. Wherein the plaintiff also having 1/4<sup>th</sup> share as they are joint and ancestral properties of parties to the suit and they are continued to be the members of Hindu joint family and jointly cultivating the suit properties without partition by metes and bounds and sharing the yields and expenditure. The defendants are bent upon to alienate, mortgage or create any types of charges over the suit properties to dupe the legitimate share of plaintiff upon coming to the knowledge she had approached to the defendants on 20-04-2022 and demanded to partition the suit properties and allot her 1/4<sup>th</sup> share, but they denied to do so hence she filed the suit and present application.

**3.** In spite of service of summons the defendant No.1 and 2 remained absent and place exparte. The defendant No.3

appeared through his counsel and filed written statement, but he did not file objections to the I.A.No.1.

4. Heard the counsel for plaintiff and perused the record.
5. The following points arise for my consideration.

**Point No. 1:- Whether the plaintiff has made out prima-facie case?**

**Point No.2:- Whether the plaintiff has made out balance of convenience lies in her favour?**

**Point No.3:- Whether the irreparable injury caused to the plaintiff, if the I.A is not allowed?**

**Point No.4:- What Order?**

6. I answer the above points as follows:-

**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. **POINT NO.1 :-** It is the specific case of the plaintiffs that, the defendant No.1 is the father of plaintiff and defendant No.2 and 3. The plaintiff and defendants are members of Hindu Joint family. The suit properties are the joint and ancestral properties of plaintiff and defendants. The suit properties and non-suit properties were standing in the name of paternal grandfather of plaintiff by name Goudappa S/o Ningappa Biradar.

After the death of said Goudappa the suit properties and non-suit properties have been divided orally among the brothers of defendant No.1. The defendant No.1 has sold two lands for the joint family necessity, hence the plaintiff is not claiming the sold out properties. The defendants are trying to alienate the suit properties, hence the plaintiff demanded her share, but defendants denied to do so. Hence she filed the suit and present application.

**8.** To substantiate the case of plaintiff she has produced RTCs and tax paid receipts.

**9.** I have carefully gone through the documents furnished by the plaintiffs. The RTCs in respect of land bearing Sy.No.335/1 for the year 2004-05 to 2021-22. They show the names of various persons in respect of deferent measurement. The current year RTC in respect of land bearing Sy.No.335/1 measuring 4 acres and 2 acres standing in the name of defendant No.2 and 3 respectively. The RTCs in respect of land bearing Sy.No.354/3 for the year 1993-94 to 2002-03 show the name of defendant No.1. The RTCs for the year 2003-04 to 2019-20 in respect of land bearing Sy.No.354/3 show the name of defendant No.1. The RTCs for the year 2020-21 to 2021-22 in respect of land bearing Sy.No.354/2 measuring 1 acre 10 guntas show the name of defendant No.1. The RTC in respect of land bearing Sy.No.354/4 measuring 1 acre 2 guntas standing in the name of defendant No.1. Tax paid receipts in respect of house bearing No.225 item number 'D' standing in the name of defendant No.1. The above said RTCs and tax paid receipts made it clear that the suit properties standing in the names of defendants. As discussed

above though the defendant No.3 filed written statement, but he did not file objections to the I.A.No.1. Therefore at the stage the prima-facie shows that the said properties are ancestral and joint family properties of parties to the suit. Hence plaintiff is made out prima-facie case. Accordingly, I answer the Point No.1 in the Affirmative.

**10. POINT NO.2 AND 3:-** Both points are interlinked to each other, hence both are taken up together for common discussion to avoid the repetition of facts.

**11.** As discussed in point No.1 the plaintiff has made out prima-facie case. And she has pleaded that the defendants are trying to alienate the suit schedule property. Hence if the defendants are not restrained, they may alienate the suit properties. If they alienate the suit properties the plaintiff will be put to great hardship which will not be compensated in terms of money. Hence balance of convenience also lies in favour of the plaintiff, and if application is not allowed it will cause irreparable injury to the plaintiff. Accordingly, I answer the Point No.2 and 3 are in the Affirmative.

**12. Point No.4 :-** In view of the above discussion, I proceed to the pass the following :-

### **ORDER**

**The I.A.No.1 filed by the plaintiff under Order 39 Rule 1 and 2 R/w section 151 of C.P.C is hereby allowed.**

**Consequently the defendants are hereby restrained from alienating,**

**mortgaging or creating any type of charges over the suit properties by way of temporary injunction till further orders.**

**In the facts and circumstances of the case no order as to costs.**

(Dictated to the Stenographer directly on Computer corrected and then pronounced by me in the open court on the 04<sup>th</sup> day of March-2023.)

**(D.RAMESH)  
Civil Judge & JMFC,  
Jewargi.**