

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT
SEDAM**

PRESENT: SRI. SAGAR GURUGOUDA PATIL

**B.A., LL.B.
Senior Civil Judge & JMFC., Sedam**

DATED THIS THE 30th DAY OF MAY-2023.

ORIGINAL SUIT No.13/2022.

PLAINTIFFS:

1) Shreya D/o Late Siddappa Choragasti, Age: 18 months (Minor) through her natural guardian/Next Friend Sangeeta W/o Late Siddappa Choragasti, Age: 21 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

2) Sangeeta W/o Late Siddappa Choragasti, Age: 21 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

3) Bhimavva @ Bhimbai W/o Tippanna Choragasti, Age: 55 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

(Advocate for plaintiffs by Sri.S.K.D)

//V E R S U S//

DEFENDANTS:

1) Tippanna S/o Kareppa Choragasti, Age: 60 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

2) Mahadevamma W/o Tippanna Choragasti, Age: 50 years, Occ: Houehold, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

3) Monappa S/o Tippanna Choragasti, Age: 28 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

4) Nagappa S/o Tippanna Choragasti, Age: 26 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

5) Kashamma W/o Mallappa Itagi, Age: 24 years, Occ: Houehold, R/o Itagi, Tq: Chittapur, Dist: Kalaburagi.

6) Gouramma W/o Mallappa, Age: 22 years, Occ: Household, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

7) Shaik Hussain S/o Saifansab Yadrami, Age: 55 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

8) Mahabub S/o Akbar Ali Korba, Age: 48 years, Occ: Agriculture, R/o Kodla, Tq: Sedam, Dist: Kalaburagi.

9) Mahinderkar Bajrang Rao S/o Late M.Babu Lal, Age: 70 years, Occ: Agriculture and Business R/o H.No.21-1-249, Opp. High court Charminar Hyderabad.

10) M.Krishna Raj S/o Mahinderkar Bajrang Rao, Age: 38 years, Occ: Agriculture and business R/o H.No.21-1-249, Opp. High Court Charminar Hyderabad.

**(Advocate for defendant No.1 to 4 by Sri.H.L.A)
(Advocate for defendant No.5 & 6 by Sri.B.T.)
Advocate for defendant No.7 by Sri.B.S.S.)**

**(Defendant No.8 Absent)
(Advocate of defendant No.9 & 10 by S.B.M.)**

I.A.No.1

Shreya and others

Applicants

//Versus//

Tippanna

Opponent/Deft.1.

ORDER ON I.A.No-1 U/ORDER 39 RULE 1 & 2 OF CPC

The plaintiffs have filed this application U/O 39 Rule 1 and 2 and sought to restrain the defendant No.1 by way of temporary injunction from alienating the suit schedule properties till disposal of the suit.

2. The plaintiff No.3 has sworn to an affidavit in support of IA No.1 and stated that the defendant No.1 is grand father of plaintiff No.1, father-in-law of plaintiff No.2 and plaintiff No.3 is the wife of defendant No.1. One Siddappa who is the son of plaintiff No.3 and defendant No.1 married to plaintiff No.2 and due to their wedlock plaintiff No.1 is born on 2.9.2020. The plaintiff No.1 is minor. The plaintiff No.2 is the mother/natural guardian of plaintiff No.1.

3. The defendant No.1 during subsistence of his first marriage with one Bhimavva @ Bhimabai i.e., plaintiff No.3 got married

defendant No.2 without the knowledge and consent of plaintiff No.3. The defendant No.3 to 6 are children of the said Tippanna through his second wife defendant No.2. The marriage of defendant No.1 and 2 is null and void and defendant No.3 to 6 are their illegitimate children.

4. After the second marriage, the defendant No.1 started to illtreat and neglect the plaintiff No.3 and her son Siddappa. Thereafter at the instigation of defendant No.2 he thrown out the plaintiff No.3 and her son out of the house 20 years back. The said Siddappa died on 18.8.2021 leaving behind him the plaintiffs. The plaintiffs are not having any source of income for their livelihood. The plaintiffs are unable to maintain themselves. The defendant NO.1 has not made any arrangement for their maintenance. The defendant No.1 is having income about 10 to 15 lakhs per annum from the suit properties.

5. The suit schedule properties are ancestral properties of plaintiffs and defendant No.1. The plaintiffs are having their legitimate share in the suit properties. Such being the fact the defendant No.1 at the instigation of defendant No.2 to 6 sold land to an extent of 2 acres in Sy.No.731/1 to defendant No.7 under the sale deed dated 15.3.2012. Similarly he sold land to an

extent of 1 acre 24 guntas to defendant No.8 in Sy.No.731 without their any legal necessities. He also executed registered sale deed dated 8.10.2021 in favour of defendant No.9 and 10. The said alienation is against the interest of the family and therefore the said sale deeds are not binding on the plaintiffs. Now the defendant No.1 is also trying to sell the remaining joint family properties. Hence prays to allow the I.A. No.1.

6. After service of suit summons the defendant No.1 has put his appearance through his counsel and filed his written statement. In the written statement he has denied the relationship of the plaintiffs with him. He has also denied entire plaint averments. He has contended that there is no cause of action to file this suit.

7. He has submitted that one Tippanna Chorgasti was the absolute owner of the suit properties. He died long back leaving behind his wife Bhimavva and a daughter by name Iramma. The said Bhimavva also died long back leaving behind a daughter i.e., Iramma. The defendant No.1 inherited the suit properties from his mother Iramma. The suit properties are his self acquired properties. He availed loans for the marriage of his son-Siddappa who is father of plaintiff No.1 and husband of plaintiff No.2. The

said Siddappa was addicted to bad voices like consuming alcohol. Therefore the defendant No.1 had spent huge money for his medical treatment. Therefore the defendnat No.1 alienated some of the properties in favour of defendant No.7 to 10. Hence prays to dismiss the I.A.No.1.

8. On the basis of the above pleadings and on hearing both sides, the following points arise for my consideration.

- 1) Whether the plaintiffs have made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiffs?
- 3) What Order?

9. My findings on the above points are as under:

Point No:1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3: As per final order
for the following:

REASONS

10. Point No.1:- The plaintiffs have filed this suit for the relief of partition and separate possession, for declaration that the sale deeds dated 15.3.2012, 23.8.2012 and 8.10.2021 are

null and void and not binding on the plaintiffs and for maintenance.

11. The plaintiffs in order to substantiate their case have produced RTC extracts of the suit schedule properties, wherein the suit schedule items No.1, 2, 4 and 5 are standing in the name of defendant No.1 and suit schedule item No.3 is standing in the name of defendants No.7 to 10. The certified copy of the registered sale deed dated 15.3.2012 shows that the defendant No.1 sold land to an extent of 2 acres out of suit schedule item No.3 to defendant No.7. The certified copy of the registered sale deed dated 23.8.2012 shows that the defendant No.1 sold land measuring 1 acre 24 guntas out of suit schedule item No.3 to defendant No.8. The certified copy of the registered sale deed dated 8.10.2021 shows that the defendant No.1 sold land measuring 4 acre 33 guntas out of suit schedule item No.3 to defendant No.9.

12. On other hand in order to substantiate his case the defendant No.1 has not produced any document. It is pertinent to note that the plaintiffs in their plaint have contended that the suit schedule properties are the ancestral properties of

themselves and defendant No.1. But they have not produced any document to substantiate the same. But they have produced the documents to show that the suit schedule items No.1,2, 4 and 5 are standing in the name of defendant No.1 and earlier suit schedule item No.3 was standing in the name of defendant No.1. This fact prima facie shows that the suit properties are standing in the name of defendant No.1 who is the head of the joint family. Therefore now the burden is upon the defendant No.1 to show that he inherited the suit properties from his maternal grand mother and same are his self acquired properties. But he has not produced any such documents. Therefore it comes clear that whether the suit properties are ancestral and joint family properties or not has to be decided only after the full fledged trial. At this juncture without there being any material it cannot be said that the suit properties are the self acquired properties of defendant No.1. Therefore unless and until trial is completed this court cannot come a conclusion that the suit properties are either the joint family properties or self acquired properties of defendant No.1. Hence at this stage the plaintiffs have made out prima facie case. Hence I answer **point No.1 in the Affirmative.**

13. Point No.2: The suit is one for the relief of partition and separate possession and maintenance. If IA No.1 is not allowed and the defendant No.1 succeeds in alienating the suit properties it would cause irreparable loss and hardship to the plaintiffs. It may also lead to multiplicity of suits. On the other hand if for a short period i.e., till disposal of the suit the defendant No.1 is restrained from alienating the suit properties it will not cause any loss to the defendant No.1. Therefore, the balance of convenience lies in favour of the plaintiffs. Further in order to protect and preserve the suit properties intact till disposal of the suit it is very much desirable to allow the IA No.1. Moreover the plaintiff No.1 is minor daughter and therefore her interest needs to be protected. If the defendant No.1 alienates the suit properties during the pendency of the suit the interest of the minor plaintiff No.1 will be adversely affected and she will be forced to face further unnecessary litigations. In such a event much inconvenient would be caused to the plaintiffs. Hence I answer **point No.2 in the Affirmative.**

14. Point No.3: For the foregoing reasons, this court proceed to pass the following:

ORDER

I.A.No.1 U/O 39 Rule 1 and 2 of CPC filed by the plaintiffs is hereby allowed.

The defendant No.1 is hereby restrained by way of temporary injunction from alienating the suit schedule properties till disposal of the suit.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me, in the open Court on this the **30th day of May-2023**)

(Sagar Gurugouda Patil)
Senior Civil Judge & JMFC,
Sedam.