

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,  
SEDAM

**PRESENT:**

Sri SAGAR GURUGOUDA PATIL  
B.A., LL.B(Spl.)  
Senior Civil Judge & JMFC, Sedam

Dated: 26-07-2024.

**OS No.76/2021**

Plaintiff/s :  
Devindramma & others  
(Smt/Sri S.S.A., Advocate)

VS

Defendant/s :  
Siddamma and others  
(D.1 & 8 Sri. R.M. Advocate)  
(D.7. 9 to 12 by Sri.B.G..P.Advocate)  
(D.2 & 6 in person)  
(D.3 to 5 Exparte)

**RANK IN IA 1**

Devindramma & others :Applicant/s/Plfts

VS

Siddamma & others : Opponent/s/  
Defts

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for partition and separate possession
iii	The date on which the application is filed	29-11-2021
iv	Number of application	One
v	The date on which the objections are filed by different opponents	11-07-2024
vi	The date on which the orders were passed on the said application	26-07-2024

**ORDERS ON IA 1**  
**Under Order 39 Rule 1 & 2 of CPC**

The plaintiffs/applicants have filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendants 1, 2 and 7 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 and stated that mother of the plaintiffs deceased Nagamma and her sister defendant No.1 jointly owned and possessed the suit properties. They succeeded the suit properties from their mother Sharanamma. The said Sharanamma died leaving behind her the defendant No.1 and Nagamma who is the mother of the plaintiffs. The said

Sharanamma brought her son-in-law Veerbhadrappa as the husband of Nagamma to her house. The defendant No.1 is blind by birth. Therefore, she did not get bridegroom. Hence, she too married husband of Nagamma Mr.Veerbhadrappa.

3) After the death of Sharanamma, her two daughters Nagamma and defendant No.1 got entered their names jointly in the revenue records. The plaintiffs and defendants are in joint possession and enjoyment of the suit properties as joint owners. There is no partition in the family. The defendant 1 to 8 in collusion with each other behind the back of the plaintiffs got entered their names in the revenue records. The said entries are illegal. The plaintiffs are entitled for 1/8th share each in the suit properties. The defendants are trying to alienate the suit properties to their parties. Hence, prays to allow the IA.

4) After service of suit summons, the defendants 1 and 7 appeared through their counsels and defendant No.1 and 8 together have filed written statement and defendant No.7 has filed both written statement and objections to IA No.1. The defendant No.2 though appeared in person has not filed objections to IA No.1.

5) The defendant No.1 and 8 in their written statement have denied entire plaint averments and submitted that the defendant No.1 is blind by birth and Sharanamma brought husband of defendant No.1 to her house. The defendant No.1 is legally wedded wife of the said Veerbhadrappa. The mother of the plaintiffs 2 and 3 married one Tippanna and due to their wedlock the plaintiff No.1 was born. The plaintiff No.1 is no way concerned to the family of the defendants. After the death of Tippanna his wife Nagamma came to her parental house at Shakalathpalli to live with defendant NO.1 and her mother. The said Nagamma married Veerbhadrappa as a second wife. The mother of the defendant No.1 died 60 years back. Nagamma died 7 years back. Due to the wedlock of Nagamma and Veerbharappa the plaintiffs 2 and 3 and defendant No.6 were born to them.

6) It is submitted that the pedigree shown by the plaintiffs is not correct. The suit is not maintainable unless and until the plaintiff NO.1 proves that her mother Nagamma was first wife of deceased Veerbhadrappa. Hence, prays to dismiss the IA.

7) The defendant No.7 has filed objections to IA and contended that the application is frivolous one. He has

denied the contents of the affidavit filed in support of the IA. The plaintiffs have not made out prima facie case. The balance of convenience does not lie in favour of the plaintiffs. Hence, prays to dismiss the IA.

8) On the basis of the above facts 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) Perused the records. Heard arguments.

10) My answer to the above points are as under:

- 1) IN THE AFFIRMATIVE
- 2) IN THE AFFIRMATIVE
- 3) AS PER THE FINAL ORDER  
for the following:

### **REASONS**

11) **POINT No.1 & 2:** Since both these points are interconnected the same are taken together for common discussion.

12) It is not in dispute that deceased Nagamma and defendant No.1 are full sisters and daughters of one Sharanamma W/o Irappa. It is also not in dispute that the said Nagamma and defendant No.1 are wives of one Veerbhadrappa.. But it is in dispute that who is the first wife of the said Veerbhadrappa. The plaintiffs claiming that mother of plaintiffs Nagamma is first wife of said Veerbhadrappa and defendant No.1 is claiming that she is the first wife of deceased Veerbhadrappa. It is to be noted that at this stage this issue cannot be decided and it can only be decided after the full fledged trial. Therefore, at this stage this court keep this issue open until conclusion of the trial.

13) The RTC extracts at Ex.P.5 to P.7 show that from the year 1978-79- 1982-83 the suit properties were standing in the name of one Sharanamma. The RTC extracts at Ex.P.5 to 7 show that the name of the said Sharanamma was rounded off and the names of deceased Nagamma and defendant No.1 were entered. In the column NO.10 of the said RTC extracts the mode of possession is shown as successors and children of the deceased. The same goes to show that previously the suit properties were belonged to Sharanamma who is mother of the deceased Nagamma and defendant No.1 and after her death the said Nagamma and defendant No.1 succeeded the suit properties under the

Hindu Succession Act. Therefore, prima facie it appears that they hold the properties jointly and they were in possession of the suit properties as tenants in common. Therefore, both the said Nagamma and defendant No.1 had equal rights in the suit properties. The RTC extracts at Ex.P.8 to 19 show that from the year 1983-84 till 1998-99 the suit properties were jointly standing in the name of the deceased Nagamma and the defendant No.1. Therefore, after the death of the deceased Nagamma her heirs are entitled for the share of the said Nagamma in the suit properties by way of succession.

14) It is pertinent to note that previously the suit properties were belonged to mother of Nagamma and defendant No.1. After her death the said Nagamma and defendant No.1 succeeded the suit properties and they had equal rights in the suit properties. After the death of the said Nagamma her heirs are entitled for her rights in the suit properties. The fact that whether the said Nagamma is first wife of Veerbhadrappa or defendant No.1 is first wife of Veerbhadrappa does not make any difference in deciding the rights of the parties in the suit properties since the suit properties are maternal properties of the said Nagamma and defendant No.1. Therefore, the fact that who is first wife does not make any difference in deciding the rights of the

parties.

15) The mutation register at Ex.P.4 shows that after the death of the said Nagamma the defendants got entered their names in the revenue records on the basis of inheritance. But they are not the legal heirs of the said Nagamma. Therefore, based on the said mutation register the defendants did not acquire any right, title or possession over the suit properties. It is settled law that mutation entries does not confer or extinguish title to the properties. After the death of Nagamma the plaintiffs being her heirs are entitled for her share in the suit properties. Assuming that, the plaintiff No.1 born to the said Nagamma through Tippanna does not make any difference because in both the case she will be the Class-I heir of the deceased Nagamma. It is not in dispute that the plaintiffs 2 and 3 are children of the said Nagamma and Veerbhadrappa. Therefore, prima facie it appears that the plaintiffs are entitled for the share of deceased Nagamma in the suit properties. Hence, at this stage the plaintiffs have made out prima facie case.

16) At this stage it is useful to refer the decision of the Hon'ble High Court of Karnataka in the case of Chinnamma VS Nagaraj, reported in ILR 1995 KAR 1561 wherein the Hon'ble High Court held as under:

CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908)  
- Order 39 Rules 1 & 2 - Disputes relating to agricultural lands  
& joint family property : grant of interim orders - Principles.

HELD:

Disputes relating to agricultural lands and disputes relating to joint family property are quite common in the Civil litigation of this Country. Courts have therefore been required to evolve certain broad principles which have now become almost well defined while dealing with disputes of this type which principally take into account the fact that the litigation takes some time and that if certain changes take place in the character of the property under dispute during the interim period, that it would only give rise to further litigation and sometimes renders the relief itself infructuous. For this purpose, more as a measure of safety, caution and legal expediency, the Courts have culled out certain well defined principles which ordinarily ought not to be departed from. One of this principles is that where there is a dispute in relation to immovable property which happens to be vacant, that if the property were to be encumbered, alienated, built upon or if third party rights are permitted to be created during the interim period that the situation might become and in fact does become totally irreversible by the time the Court passes final orders. It is a well defined principle of law that a Court is required to be equally fair to the defendant Nos.1 & 7s as also to the parties who have approached the Court and therefore, necessary safety precautions in relation to the plaintiffs' interest are also of some consequence. This is in fact essence of the principle behind the grant for interim orders.

17) The above principle of law is aptly applicable to the case at hand. In this case in order to avoid creating of third party rights over the suit schedule property till disposal of the suit it is just & necessary to restrain the defendants 1, 2 and 7 from alienating the suit schedule properties. The plaintiffs have stated that now the defendant No.1, 2 and 7 are trying to sell the

suit properties. Therefore, if they succeed in their attempt and alienate the suit properties to third parties it will complicate the matter and lead to multiplicity of suits and also cause irreparable loss & untold hardship to the plaintiffs. On the other hand if the defendant No.1 2 and 7 are restrained from alienating the suit properties for some period i.e. till disposal of the suit no prejudice would be caused to the defendant No.1, 2 and 7. Hence I answer Points 1 & 2 in the affirmative.

18) **POINT No.3**: For the foregoing reasons, the following:

### **ORDER**

The application filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendant No.1 , 2 and 7 are hereby restrained by way of temporary injunction from alienating suit schedule properties till disposal of the suit.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the 26<sup>th</sup> day of July 2024.)

(SAGAR GURUGOUDA PATIL)  
Senior Civil Judge & JMFC, Sedam.