

KAKL200009292022



**IN THE COURT OF THE ADDL. CIVIL JUDGE, & JMFC.,
AT BANGARPET**

DATED THIS THE 1st DAY OF SEPTEMBER 2022

:PRESENT:

**SRI. AJIT DEVARAMANI., B.SC. LLB.,
Addl. Civil Judge and JMFC, Bangarpet.**

O.S. No. 130/2022

Plaintiff/s :- Sri.G. Narayana Swamy,
S/o Late M.Giriyappa,
Aged about 61 years,
R/at Byadabele Village,
Hynorahosahalli Post,
Kasaba Hobli,
Bangarpet Taluk.

(Reptd. by Sri.S.A.H./C.V- Advocates.)

V/s

Defendant/s :- 1.Sri.M.Venkateshappa,
S/o Muniswamappa,
Aged about 65 years,
R/at Karipura Village,
Inorahosahalli Post,
Kasaba Hobli,
Bangarpet Taluk.

2. Smt.Padmavathi,

W/o Srinivas,
D/o M.Venkateshappa,
Aged about 46 years,
R/at Byadabele Village,
Inorahosahalli Post,
Kasaba Hobli,
Bangarpet Taluk.

3. Smt.Shanthamma,

W/o Ponnuswamy,
D/o M.Venkateshappa,
Aged about 44 years,
R/at Rajendra Layout,
Deshihalli Village,
Kasaba Hobli,
Bangarpet Taluk.

4.Sri.Chandrashekar,

S/o M.Venkateshappa,
Aged about 41 years,
R/at Kasipura Village,
Inorahosahalli Post,
Kasaba Hobli,
Bangarpet Taluk.

5. Smt.Mamatha,

W/o Revanna,
D/o M.Venkateshappa,
Aged about 33 years,
R/at Srinivasa Nilaya,
Opp.Chamundeshwari
Temple, Gulpet, Kolar.

(Reptd. by Sri.N.S.-Advocate)

Applicant/s:- Sri.M.Venkateshappa & Others
/Vs/

Opponent/s:- Sri.G. Nanjundappa

ORDERS ON IA -1

The plaintiff has filed this interim application U/o 39 rule 1 & 2 read with Section 151 of CPC seeking Temporary injunction to restrain the defendants, their family members, agents, servant and another acting on behalf of the defendants from illegally interfering and dispossessing the plaintiff from the suit schedule property till disposal of the suit.

2) In the affidavit annexed to the application the plaintiff has contended that, the plaintiff and his brothers have divided the joint family property under Palupatti. 'B' schedule was fallen to the share of plaintiff and mutation was effected by virtue of the said Palupatti dated 05.02.1993. The revenue records are standing in his name.

The defendants are not having any right to interfere plaintiff's possession over the suit property. The defendants are trying to dispossess the plaintiff from the suit schedule property. Hence, prays to allow the application.

3) On the other hand, the learned counsel for the defendants has written statement by adopting same to be objection to the I.A.No.1. In the written statement the defendants have denied all the averments of the plaint and specifically contended that, one Rathnamma has filed a suit for partition in O.S.No.13/2009, during the pendency of the suit Rathnamma was expired. The present defendants were brought on record as Lrs in the said suit. In O.S.No.13/2009 the Hon'ble Court has passed preliminary decree holding that the present defendants are entitled $1/8^{\text{th}}$ share in the suit schedule property. As per decree demarcation has not been made in the suit schedule property. The final decree proceedings and Execution proceedings have not been

initiated on the basis of preliminary decree.
Hence, prays to reject the application.

4) On the basis of the above contentions the points that would arise for my consideration are as under:

- 1) Whether the plaintiff has made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) If injunction is not allowed, whether the plaintiff will be put to irreparable loss and injury?
- 4) What order?

5) Heard arguments of both counsel and perused the materials available on record.

6) My findings to the above points are as follows:

Point No.1 to 3 : In the **Negative**
Point No.4 : As per final order,
for the following :

REASONS

7) **Point No.1 to 3:** All these three points are inter linked to each other. I have taken these 3 points together for common discussion to avoid repetition facts and for better appreciation of evidence.

The plaintiff has filed this suit against the defendants for the relief of permanent injunction with respect to suit schedule property.

8) It is the contention of the plaintiff that, the plaintiff and his brothers have divided the joint family property under Palupatti. 'B' schedule was fallen to the share of plaintiff and mutation was effected by virtue of the said Palupatti dated 05.02.1993. The revenue records are standing in his name. The defendants are not having any right to interfere in the plaintiff's possession over the suit property. The defendants are trying to dispossess the plaintiff from the suit schedule property.

9) On the other hand learned counsel for the defendants argued that, in O.S.No.13/2009 the Hon'ble Court has granted $1/8^{\text{th}}$ share to the defendants by its judgment and preliminary decree. As per decree still there no demarcation with respect to suit schedule property and prays to reject the application.

10) On perusal of materials it shows that, with respect to suit schedule property the present defendants have filed suit in O.S.No.13/2009. On perusal of the judgment and decree of O.S.No.13/2009, it shows that, Rathnamma has filed suit for partition against the present plaintiff and others. During the course of trial Rathnamma was expired. The present defendants were brought on record as a Lrs of Rathnamma. The Court has passed judgment and decree holding that, the present defendants are entitled for $1/8^{\text{th}}$ share in the suit schedule property.

11) The plaintiff has contended that, the defendants are trying to interfere in the plaintiff's peaceful possession and enjoyment over the suit schedule property. This court has passed an interim order in O.S.No.120/2022 restraining the present defendants from putting up any construction in the suit schedule property. Further the plaintiff in this case has filed I.A.No.2 seeking to restrain the defendants from dispossessing the plaintiff from the suit schedule property. Therefore it shows that the plaintiff himself is illegally constructing the house in the suit schedule property, though there is a judgment and decree of this court. Hence, this court is of the opinion that, the plaintiff has not approached this court with clean hands and conduct of the plaintiff's shows that, he is not entitled for the injunction. Hence, I answered **point No. 1 to 3 in the Negative.**

12) **Point No. 4:-** In view of the above discussions on Point No.1 to 3, I proceed to

pass the following:

ORDER

I.A.No.1 filed by the plaintiff
U/o 39 Rule 1 & 2 read with
Section 151 of CPC is hereby
rejected.

(Dictated to the steno, transcribed on computer, typed by her corrected and then pronounced by me in open court on this 1st day of September 2022).

(AJIT DEVARAMANI)
Addl. CJ and JMFC, Bangarpet.

