

KAKL400012022022



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.

AT : MULBAGAL

DATED THIS THE 24TH DAY OF AUGUST, 2023

:PRESENT:

SRI.NARASIMHA MURTHY M.

B.A.LLM., UGC – NET, JRF,
PRL. CIVIL JUDGE & JMFC, MULBAGAL

O.S.No.258/2022

PLAINTIFF/s : 1. Sri. Ramachandrappa
S/o late Narayanappa,
Aged About 60 years,

2. Sri. Srinivasappa
DEAD By Legal Heirs.

2(a). Smt. Nagamma W/o late Srinivasappa
Aged about 67 years,

2(b). Sri. Narayanaswamy
S/o late Srinivasappa
DEAD By Legal Heirs

2(b)(a). Smt. Mahalakshmi
W/o late Narayanaswamy
Aged about 45 years,

2(b)(b). Smt. Shilpa D/o late Narayanaswamy
Aged about 26 years,

2(b)(c). Smt. Gunashree

D/o late Narayanaswamy
Aged about 23 years,

2(b)(d). Kum. Nandini

D/o late Narayanaswamy
Aged about 20 years,

2(c). Sri. Amaresh S/o late Srinivasappa

Aged about 45 years,

2(d). Sri. Chalapathi S/o late Srinivasappa

Aged about 43 years,

3. Smt. Lakshamma

D/o Narayanappa & Hanumakka,
Aged about 55 years,

P1 to P3 R/at Reddihalli Village,
Angondhalli post, Avani Hobli,
Mulbagal Taluk, Kolar District.

(By Shri. **K.S.Munikrishna.**,
Advocate)

Vs

DEFENDANT/s : 1. Smt. Munivenkatamma

W/o late Dodda Muniyappa,
Aged About 70 years,
R/at Reddihalli Village,
Angondhalli post, Avani Hobli,
Mulbagal Taluk, Kolar District.

2. Smt. Narayanamma

D/o late Narayanappa,
Aged About 71 years,

3. Smt. Gowramma D/o late Narayanappa,
Aged About 68 years,
R/at Mannenahalli Village,
Alanguru Post, Kasaba Hobli,
Mulbagal Taluk.

4. Smt. Shanthamma
D/o late Narayanappa,
Aged About 64 years,

5. Smt. Nagamma D/o late Narayanappa,
Aged About 62 years,

D2, D4 & D5 are
R/at Gandhodahalli Village,
N.G.Hulkur post,
Kyasambahalli Post,
K.G.F. Taluk.

6. Sri. Anandakumar
S/o late Chinnappaiah,
Aged About 47 years,
R/at # 9, 2nd cross,
Green Wood Layout,
III Phase, G.K.Halli,
TC Palya, Bengaluru - 560 038.

(D2, D3, D4 & D5 By Shri. Vinod Kumar K.R.,
Advocate)

(D1 & D6 By Shri. M.Ramachandra.,
Advocate)

PARTIES TO THE I.A. NO.I

BETWEEN : **1. Sri. Ramachandrappa**
S/o late Narayanappa,
Aged About 60 years,

2. Sri. Srinivasappa

DEAD By Legal Heirs.

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Aged about 67 years,

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Aged about 45 years,

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Aged about 26 years,

2(b)(c). Smt. Gunashree
D/o late Narayanaswamy
Aged about 23 years,

2(b)(d). Kum. Nandini
D/o late Narayanaswamy
Aged about 20 years,

2(c). Sri. Amaresh S/o late Srinivasappa
Aged about 45 years,

2(d). Sri. Chalapathi S/o late Srinivasappa
Aged about 43 years,

3. Smt. Lakshmamma

D/o Narayanappa & Hanumakka,
Aged about 55 years,

P1 to P3 R/at Reddihalli Village,
Angondhalli post, Avani Hobli,
Mulbagal Taluk, Kolar District.

.....APPLICANT/PLAINTIFFS.

Vs

AND

:

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III Phase, G.K.Halli,
TC Palya, Bengaluru - 560 038.

....RESPONDENTS/DEFENDANTS.

ORDERS ON I.A.NO.I

The plaintiffs have filed present I.A. No.I under order 39 Rule 1 & 2 of *Civil Procedure Code.*, seeking an ad-interim order temporary injunction restraining the defendants, their agents, PA Holders, representatives from alienating or encumbering the suit schedule property, till pending disposal of the suit.

2. The plaintiff averred in the affidavit annexed to the application that, the plaintiff and defendant no.1 to 5 are the Hindu undivided joint family members. One Narayanappa got 8 children by name Dodda Muniyappa (died) his legal heir Munivenkatamma (D1), Hanumakka (died) her legal heir Lakshamma (P3), Narayanamma (D2), Gowramma (D3), Srinivasappa (died) (P2), Shanthamma (D4), Nagamma (D5), Ramachandrappa (P1) and the defendant no.6 is the agreement holder of property to an extent of 1 acre 10 guntas and the same is part and parcel of the suit schedule property. The plaintiff no.3 is none other than wife of plaintiff no.1 and she is grand daughter of common ancestor Narayanappa. The common ancestor Narayanappa acquired the suit schedule property under Darkasth. After the death of said

Narayanappa, the defendant no.1 being the head of the family looking after the welfare of both the defendant no.1 to 5 and the plaintiffs. The suit schedule property is the ancestral property of plaintiffs and defendant no.1 to 5. The plaintiffs requested the defendant no.1 to allot their shares in the suit schedule property. But, the defendant no.1 has denied to effect the partition of the suit schedule property. The plaintiffs and defendant no.1 to 5 jointly developed the suit schedule property by spending more men and materials. The katha of the suit schedule property earlier stands in the name of husband of defendant no.1 Dodda Muniyappa. After his death, his wife Munivenkatamma (D1) succeeded to estate of deceased Dodda Muniyappa and she has filed necessary application before the concerned revenue authority for transfer of katha on the basis of Pavathivarasu. After due formalities, the revenue authority mutated the katha in the name of defendant no.1, plaintiff no.1 & 2 jointly vide MR No.96-12/88-89. The defendant no.1 suppressed the real facts and she colluded with some unknown persons and executed registered agreement of sale dated 11.04.2022 in favour of defendant no.6 illegally to an extent of 1 acre 10 guntas in suit survey number. The defendants are

making hectic attempts to execute the registered sale deed in the name of defendant no.6, the said agreement of sale is not binding on the plaintiffs. The defendant no.1 to 5 colluded with other persons and enter into sale agreement pertaining to remaining extent of of 2 acre 20 guntas in the suit schedule property. On 10.05.2022 the plaintiffs have conveyed a panchayath and through panchayathdhars they demanded to allot their shares. But, the defendants have denied the same. Hence, the plaintiffs have made out *prima-facie* case and balance of convenience lies in their favour. If the present application is allowed, no harm and injustice will be caused to the other side, if the present application is not allowed, they will be put to irreparable loss and injustice. Hence, the plaintiffs have pray to allow I.A.No.I.

3. On the other hand, on perusal of the order sheet, the defendant no.2 to 5 submitted that, they have no objection to allow IA No.1 filed by the plaintiffs. The defendant no.1 & 6 have filed the Written Statement and they have filed memo to treat the Written Statement as objection to IA No.1, wherein, they they have admitted the description of the suit schedule

property and remaining averments have been denied by them. The defendant no.1 & 6 admitted that, the suit schedule property is the ancestral and joint family property and katha was effected jointly through Pavathivarasu under MR No.96-12/1988-89 in the names of plaintiff no.1, 2 & defendant no.1. The defendant no.1 & 6 submitted that, one Narayanappa got two wives first wife by name Honnamma through her he got one son by name Dodda Muniyappa who is the husband of defendant no.1 and the said Narayanappa through his second wife Muniyamma he got 7 children by name Hanumakka (died), Narayanamma, Gowramma, Srinivasappa, Shanthamma, Nagamma & Ramachandrappa. Further, the plaintiffs have not included all the joint family movable and immovable properties in the present suit. The defendant no.1 also got share in other non suit schedule properties. The defendant no.1 is in possession and enjoyment of the suit schedule property to an extent of 1 acre 10 guntas. Further, due to ill-health of defendant's grandson for his medical expenses the defendant no.1 fell in financial difficulties and sold the said property to an extent of 1 acre 10 guntas in favour of defendant no.6 under a registered sale agreement vide document no.MBL-1-

00156/2022-23. Further, the plaintiff has not produced the genuine genealogical tree of the family in the present suit. Since the date of agreement of sale the defendant no.6 is the agreement purchaser of the said property. Hence, the defendant no.1 & 6 prays to dismiss the suit filed by the plaintiffs.

4. Heard the arguments and perused the materials available on record.

5. The following points arise for my consideration:

- 1. Whether the plaintiff has established the existence of prima-facie case in their favour at this stage of the suit?**
- 2. Whether the plaintiff has established the existence of balance of convenience in their favour?**
- 3. Whether the plaintiff further proves that, if the order of temporary injunction is not granted they will be put to irreparable loss and hardship?**
- 4. If so, what order?**

6. 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 the final order for the following :-

REASONS

7. POINT NO.1 :-

The plaintiffs have filed present suit against the defendants for the relief of partition and separate possession and declaration of sale agreement executed by the defendant no.1 in favour of defendant no.6 is not binding on the plaintiffs. The plaintiffs have filed the present application seeking temporary injunction restraining defendants from alienating the suit schedule property.

8. Specific case of the plaintiff is that, the suit schedule property is the ancestral property of plaintiffs and defendant no.1 to 5 and they are enjoying the suit schedule property jointly. The katha effected in the name of defendant no.1, plaintiff no.1 & 2 jointly. The defendant no.1 colluded with some unknown persons and executed registered agreement of sale dated 11.04.2022 in favour of defendant no.6 illegally to an

extent of 1 acre 10 guntas in suit survey number. The defendants are making hectic attempts to execute the registered sale deed in the name of defendant no.6, the said agreement of sale is not binding on the plaintiffs. The defendant no.1 to 5 colluded with other persons and enter into sale agreement pertaining to remaining extent of of 2 acre 20 guntas in the suit schedule property. Hence, the plaintiff prays to allow IA No.1.

9. On the other hand, the defendant no.1 & 6 have filed the Written Statement and admitted that, the suit schedule property is the ancestral and joint family property and katha was effected jointly through Pavathivarasu under MR No.96-12/1988-89 in the names of plaintiff no.1, 2 & defendant no.1. Further, the plaintiffs have not included all the joint family movable and immovable properties in the present suit. The defendant no.1 also got share in other non suit schedule properties. The defendant no.1 is in possession and enjoyment of the suit schedule property to an extent of 1 acre 10 guntas. Further, due to ill-health of defendant's grandson for his medical expenses the defendant no.1 fell in financial difficulties and sold the said property to an extent of 1 acre 10 guntas in favour of

defendant no.6 under a registered sale agreement vide document no.MBL-1-00156/2022-23. Further, the plaintiff has not produced the genuine genealogical tree of the family in the present suit. Since the date of agreement of sale the defendant no.6 is the agreement purchaser of the said property. Hence, the defendant no.1 & 6 prays to dismiss the IA No.1.

10. At this stage, the plaintiff has produced the documents i.e. Genealogical Tree, copy of agreement of sale dated 11.04.2022, RTC Extract of Sy.no.95, copy of Aadhar card of defendant no.1, RTC Extract of Sy.no.95, copy of Mutation Register Extract, copy of receipt patta, copy of grant certificate.

11. At this stage, the defendants have not produced the documents to prove their contention.

12. I have carefully perused the materials available on record. On perusal of the RTC Extract of Sy.no.95 produced by the plaintiff, wherein, the suit schedule property stands in the name of defendant no.1, plaintiff no.1 & 2. The plaintiff no.2 is no more. On other hand, at this stage, the defendants have not produced any documents to prove their contention. Hence, at this stage, the contention of the plaintiffs is that, the suit

schedule property is the ancestral and joint family property of plaintiffs and defendant no.1 to 5 cannot be ruled out.

13. The very object of granting temporary injunction in favour of the parties is to protect the property until the rights of the parties are adjudicated by full-fledged trial. In this suit, the apprehension of the plaintiffs that, the defendants tried to alienate the suit schedule property. As such, if injunction is not granted to suit schedule property, it will affect the interest of the plaintiffs and it may lead to multiplicity of proceedings and cause hardship to the plaintiffs. At this stage, the plaintiffs have made out *prima-facie* case in respect of suit schedule property. Hence, I answer Point No.1 in the **AFFIRMATIVE**.

14. POINT NO.2 :-

At this stage, if the injunction is not granted to the plaintiff in respect of suit schedule property, they will be put to more inconvenience than the defendants. At this stage, the balance of convenience lies in favour of the plaintiffs in respect of suit schedule property. Accordingly, I answer Point No.2 in the **AFFIRMATIVE**.

15. POINT NO.3 :-

If the defendants are restrained from alienating the suit schedule property, no hardship or prejudice will be caused to them. But, if the defendants are not restrained, the plaintiffs will be put to more loss and hardship which cannot be compensated in terms of money. The materials available on record and the facts and circumstances of the case, it is just and proper, the defendants have to be restrained from interfering over the suit schedule property till the rights of parties are adjudicate by full-fledged trial. Hence, I answer Point No.3 in the **AFFIRMATIVE**.

16. POINT NO.4: In view of the findings on Point No.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under
Order 39 Rule 1 and 2 of *Civil Procedure Code*,
is hereby allowed.

The defendants, their agents, PA
Holders, representatives are hereby
temporarily restrained from from alienating the
suit schedule property.

*(Dictated to the Stenographer, transcribed by him, Order
corrected and signed by me, then pronounced by me in the Open Court
on this the **24th day of August, 2023**).*

(NARASIMHA MURTHY. M)
PRL. CIVIL JUDGE & JMFC.,
MULBAGAL.

ssm*/-