

KAKL400045512023



IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND JMFC
AT MULBAGAL.

DATED THIS THE 1ST DAY OF MARCH, 2024

:PRESENT:

SMT. **SNEHA M.** B.A.LLB
ADDITIONAL CIVIL JUDGE & JMFC,
MULBAGAL

O.S.No.338/2023

PLAINTIFF/s : **Sri. Lakshminarayana**
S/o late Narasimhappa,
Aged about 46 years,
R/at Seegenahalli Village,
Kasba Hobli, Mulbagal Taluk,
Kolar District.

(By Sri. **M.V. Honnegowda,**
Advocate)

Vs

DEFENDANT/s : **1. Sri.K.Rajappa** S/o late Kadirappa,
Aged about 55 years,
2. Smt. Gangarathnamma D/o Chengappa,
Aged about 42 years,
3. Sri. Mohan S/o late Marappa ,
Aged about 50 years,
4. Smt. Rukmani W/o Mohan ,
Aged about 43 years,

5. Sri. K.Jayaramareddy S/o Krishappa,
Aged about 47 years,

All are R/at Seegenahalli Village,
Kasaba Hobli, Mulbagal Taluk.
Kolar District.

(D1 & D2 By Sri.**K.R. Rajanna,**
Advocate)

(D 3 to 5 By Sri. **C.S. Nagaraj,**
Advocate)

:Parties to IA.No.I:

Applicant: SRI. LAKSHMINARAYANA
(Plaintiff)

V/s

Opponent: SRI. K.RAJAPPA & OTHERS
(Defendants)

ORDERS ON I.A.No.1

This is an application filed by the plaintiff/applicant under Order 39 Rule 1 and 2 of CPC seeking for grant of temporary injunction restraining the defendants, their agents, servants, persons or persons any body claiming through them from interfering with plaintiffs peaceful possession and enjoyment of the suit schedule property, till disposal of the suit.

2. The plaintiff sworn to an affidavit in support of the application, wherein he has stated that he has filed the present suit against the defendants for the relief of permanent injunction

in respect of suit schedule property. The suit schedule property belongs to the one Hanumappa who got one son by name Narasimhappa, the said Hanumappa acquired the suit property by his ancestors, as such the suit property is his ancestral property. The said Hanumappa and his son Narasimhappa died leaving behind the plaintiff to succeeded their estate, but the katha of the suit property is still standing in the name of the deceased Hanumappa. The plaintiff is continuously in possession and enjoyment of the suit property. The defendants having no manner of right over the suit schedule property unnecessarily trying to interfere over the suit schedule property on 25.8.2023. The plaintiff resisted the illegal acts of the defendants. The plaintiff made out a *prima facie* case and the balance of convenience is in his favour. Hence, it is prayed to allow the application.

3. The defendants no.1 has filed written statement and filed memo to treat the written statement as objection to IA No.1, the defendant no.2 has adopted the written statement of the defendant no.1. Even after giving sufficient opportunity the defendant no. 3 to 5 have not filed the objections. The defendant no. 1 and 2 have contended that, the plaintiff grandfather

Hanumappa and defendants No.1 grandfather Papanna are the sons of Khadirappa @ Kadiriga, the plaintiff is the member of the joint family and he and defendant No.1 are having properties succeeded from their ancestors and they are in joint possession and enjoyment of the suit schedule property and other joint family properties. The plaintiff has not disclosed about the relationship of the plaintiff and the defendants No.1 and the properties are in joint possession of the plaintiff and the defendants No.1 and hence the suit of the plaintiff is not maintainable for the relief of injunction against the co-sharer of the joint family member. The suit schedule property and other non suit schedule properties are standing in the name of the plaintiff grandfather Hanumappa, because the said Hanumappa was elder son of Kadirappa @ Kadiriga. After the death of Kadirappa @ Kadiriga i.e. plaintiff grandfather who was looking after the joint family and properties as a kartha of the joint family got mutated the documents in his name by way of Pavathivarasu from his father Kadirappa @ Kadiriga. The plaintiff father Narsimhappa has two wives by name Seethamma and Gangamma. The said Seethamma had one daughter i.e. Narayanamma and the said Gangamma had two sons and three daughters and among them

the plaintiff is the one of the second wife son of Gangamma. The said Seethamma daughter Narayanamma has filed a partition suit in O.S.No.91/2018 on the file of this court against the plaintiff, her mother, sisters and brothers and this defendant in respect of one of the ancestral property bearing its Sy.No.38/2 measuring 4.00 acres of land situated at Dharenahallai village, Mulbagal Taluk. In the said suit this defendant appeared and filed his written statement. Further, adjacent to the suit schedule property towards northern side there is a panchayath property stands in the name of defendant and he executed a sale agreement in favour of defendant No.2 in respect of V.P. Katha and based on the said sale agreement the defendant No.2 is in possession of the said gramatana property and she got the panchayath katha and she constructed a low cost house under the government scheme of Ambedkar Awaz Nigama in the year 2015-16 and she is in possession of said panchayath property, the plaintiff is no way concerned to the property in possession of defendant No.2. The plaintiff intentionally to give trouble to the defendant No.2 has made her as party in this suit. Hence, it is prayed to dismiss the application filed by the plaintiff.

4. Heard the arguments on I.A. No.1 and perused the materials on record.

5. Now the following points arise for consideration of this court are:

1. **Whether the plaintiff has made out prima-facie case for grant of temporary injunction as prayed ?**
2. **Whether the balance of convenience lies in favour of the plaintiff?**
3. **Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction is not granted as prayed?**
4. **What Order?**

6. The findings of this court on the above points are as under:

Point No.1 : In the **Negative**

Point No.2 : In the **Negative**

Point No.3 : In the **Negative**

Point No.4 : As per the final order for the following;

REASONS

7. **POINT NO.1 :-**

The present suit filed by the plaintiff against the defendants for the relief of permanent injunction with respect of the suit

schedule property.

8. The specific case of the plaintiff is that the suit schedule property is the ancestral property of his grandfather Hanumappa. After the death of his grandfather the plaintiff is in possession and enjoyment of the suit schedule property.

9. To prove the same, the plaintiff has produced Genealogical Tree and certificate, Sketch, Aakarbandh, record of rights of Sy.no.33/5 & RTC Extracts of Sy.no.33/5.

10. The contention of the defendant no.1 & 2 is that the plaintiff grandfather Hanumappa and his brother by name Papanna are the sons of common ancestors Khadirappa @ Khadhiriga. The plaintiff grandfather being the member of the joint family got mutated the katha in his name and filed the present suit. The defendant no.1 sold the property towards northern side of the suit schedule property in favour of defendant no.2 and she is in possession of the suit schedule property. The plaintiff without disclosing these facts has filed this suit with wrong boundaries.

11. To prove the same, the defendants have produced Genealogical Tree & certificate, order passed by the Tahasildar in RRT/DIS/CR.59/2023-24, RTC Extracts of Sy.no.15/4,

Sy.no.1/2, Sy.no.38/2, Sy.no.33/5, copy of plaint & written statement in OS No.91/2018, copy of registered sale deed dated 13.10.2010, copy of encumbrance certificate, copy of mortgage deed, certified copy of order on IA no.1 in OS No.36/2022, certified copy of application under order 39 rule 1 & 2 of CPC in OS no.36/2022, certified copy of order on IA no.1 in OS No.106/2022, certified copy of application under order 39 rule 1 & 2 of CPC in OS No.106/2022, certified copy of order on IA no.1 in OS No.154/2022, certified copy of application under order 39 rule 1 & 2 of CPC in OS No.154/2022.

12. On perusal of the Genealogical Tree produced by the defendants it is noted that the grandfather of the plaintiff and defendant no.1 are sons of common ancestor Khadirappa @ Khadiriga. The RTC extracts produced by the plaintiff shows that the suit schedule property is the ancestral property of the plaintiff grandfather Hanumappa, in turn it shows that it is acquired by common ancestor Khadirappa @ Khadiriga. The plaintiff in his pleadings has admitted that the suit schedule property is the ancestral property of his grandfather Hanumappa. Such being the case, the suit schedule property is ancestral property of the defendants grand father Papanna. Taking into consideration the

settled position of law it is noted that when property is the ancestral property the possession of the members of the family over the suit schedule property has to be presumed. It is not even the case of the plaintiff that, there was a partition between his father and defendant no.1 father.

13. The documents produced by the defendants such as certified copy of order passed in OS no.36/2022 shows that the defendant no.5 has filed a suit for the relief of permanent injunction against the plaintiff. The certified copy of order in OS No.154/2022 shows that the defendant no.3 & 4 have filed a suit for the relief of permanent injunction and copy of plaint in OS No.91/2018 shows that the sister of the plaintiff has filed a suit for partition against the plaintiff and others. Further, the Genealogical tree produced by the defendants *prima-facie* shows the relationship between the plaintiff and the defendants which is a material fact, but the plaintiff has not disclosed the same.

14. The plaintiff has suppressed the material fact before this Court. In AIR 1999 Bombay 362 (Agarwal Industries Ltd Vs Golden Oil Industries (P) Ltd.), wherein his lordship has held that:

“Inspite of the courts repeatedly stating and reaffirming the principle that it is the duty of a party asking for an injunction to bring to the notice of the court all facts material and relevant to the issue, the litigants continue in their efforts to obtain favourable orders from the Court, exparte, without disclosing all material facts to the Court.

15. In WRIT PETITION No. 83336/2011 (GM-CPC) dated 14.08.2012 between The Citizen Housing Co-operative Society Ltd. and another Vs. Khaja Moinuddin the Hon'ble High Court of Karnataka at para no. 6 has held :

“This suppression of the material facts alone is sufficient to refuse equitable and discretionary relief of temporary injunction. One who seeks the discretionary relief of injunction shall come to the Court with clean hands”.

16. The above said fact is not disclosed by the plaintiff either in his plaint or in his application, hence in view of above said decisions it can be said that the plaintiff has not approached the court with clean hands. The order of the temporary injunction is an equitable relief. Therefore, one who approaches the Court for seeking the relief of temporary injunction must approach the Court with clean hands. Hence the plaintiff has failed to prove his

prima facie case. Hence, this court answered Point No.1 in the 'Negative'.

17. Point No.2 and 3: These two points are taken for common discussion in order to avoid repetition of reasoning. While considering the question of granting of an order of injunction one way or the other, the Court, apart from finding out a prima facie case, would consider the question with regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiff if the prayer for injunction is to be refused.

18. It has been held by Hon'ble High Court of Karnataka in **Gowrishankar Swamigalu V/s. Siddaganga Mutta and Others reported in ILR 1989 KAR 1701 that:-**

“ The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself”.

19. Further, Hon'ble Apex Court in **AIR 2010 SUPREME COURT 296** (In between Kashi Math Samsthan and another Vs. Srimad Sudhindra Thirtha Swamy and Another) held as follows:-

Civil P.C, O.39 R.1 – Injunction – Grant of – Party unable to prove prima facie case – Injunction cannot be granted even if such party makes out case of balance of convenience and irreparable injury.

20. Since, the plaintiff has failed to establish the prima facie case, the question of considering balance of convenience and irreparable loss and injury would not arise. Hence, **point No.2 and 3** are answered in the **'Negative'**.

21. POINT NO.4 :-

In view of the above findings and discussions, this Court proceeds to pass the following:

ORDER

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

No order as to costs.

(Dictated to the Stenographer, transcribed by him, order corrected and signed by me, then pronounced by me in the Open Court on this the 1st day March, 2024).

(SNEHA M.)
ADDL.CIVIL JUDGE & JMFC,
MULBAGAL.