



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC,
MULBAGAL.**

PRESENT:- Sri.ESHWAR, B.Com., LL.B.,
Senior Civil Judge and JMFC,
Mulbagal.

OS. No.47/2021

DATED THIS THE 27th DAY OF FEBRUARY- 2023

1. Sri. Venkatappa S/o Late Venkataswamy,
@ Jinke Venkataswamy, aged about 75 years.
2. Sri. Munivenkataramappa S/o Late Venkataswamy
@ Jinke Venkataswamy, aged about 65 years.

Both are R/o Kambamdinne Village,
Gudipalli Post, Byrakuru Hobli,
Mulbagal Taluk, Kolar District.

....Plaintiffs

-Versus -

1. Sri. Raju K.R @ Rajappa S/o Late Krishnappa,
Aged about 42 years, R/o J.R.S Collections,
Krishna Reddy Badavane, Konappana Agrahara,
Electronic City, 2nd Stage, Near Ganesha Temple,
Bengaluru-100.
2. Sri. Venkataramanappa @ Appalappa,
S/o Late Venkatappa, R/o Kambamdinne Village,
Gudipalli Post, Byrakuru Hobli, Mulbagal Taluk,
Kolar District.

.....Defendants

:: Parties to IA.No.1 ::

1. Sri. Venkatappa S/o Late Venkataswamy,
@ Jinke Venkataswamy, aged about 75 years.

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2. Sri. Munivenkataramappa S/o Late Venkataswamy
@ Jinke Venkataswamy, aged about 65 years.

Both are R/o Kambamdinne Village,
Gudipalli Post, Byrakuru Hobli,
Mulbagal Taluk, Kolar District.

.....Applicants/Plaintiffs

-Versus -

Sri. Raju K.R @ Rajappa S/o Late Krishnappa,
Aged about 42 years, R/o J.R.S Collections,
Krishna Reddy Badavane, Konappana Agrahara,
Electronic City, 2nd Stage, Near Ganesha Temple,
Bengaluru-100.

.....Opponent/Defendant No.1

**:: ORDERS ON IA.No.1 FILED U/O 39 RULE 1 & 2 R/w Sec.151
OF CPC ::**

This is the application filed by the Applicants/plaintiffs seeking ad-interim order of Temporary Injunction restraining the defendant No.1 from alienating the suit schedule property i.e., Landed property bearing Sy.No.26/2, to an extent of 4 acres 24 guntas, bounded on bounded on East by- Shanbhog Ramappa and Magasali Venkataswamy, West by- Remaining Land belongs to Same Survey number and Kere, North by-Sarakari Kere and Oni, South by- Nallappa's Land and Govt. Land, situated at Kambamdinne Village, Gudipalli Post, Byrakuru Hobli, Mulbagal Taluk, Kolar District till pending disposal of the suit in the ends of justice and equity.

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2. The Applicants/plaintiffs have filed this application along with the affidavit sworn to by the plaintiff No.2. In the affidavit it is stated that the originally the suit property acquired by their father Late Venkataswamy @ Jinke Venkataswamy through a registered sale deed vide document No.970 dated: 05-03-1945 Book-1, Volume No.424, pages No.150 to 152 from K. Kumara Shastry and on the basis of the registered sale deed khata of the suit property was effected in the name of their father. A patta book was also stands in their father's name and all the revenue records stands in the name of their father till 1980. After the death of their father the khata was transferred through IHC No.187/1/1980-81, dated 26-06-1980 based on the record they are the absolute owners and peaceful possession and enjoyment of the suit property. In the mean while without cancellation of the mutation register the defendant No.1 and 2 have colluded with each other and entered the alleged entries in the RTC. Based on the alleged sale deed by the defendant No.2, the defendant No.2 trying to alienate the suit schedule property, they have got information from relevant sources through real estate agents, after collecting the revenue records, they came to know regarding the sale transaction. The defendant No.1 and 2 have created fraudulent

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documents through revenue officer, hence they filed this suit for declaration and injunction. In this circumstance the defendant No.1 fully put efforts to sell the suit schedule property to an extent of 2 acres. Hence this application seeking ex-parte order of temporary injunction. If the application is allowed, no hard ship and injury would be caused to other side. If the application is not allowed, they will be put to hardship and injury and irreparable loss. Hence prays to allow the IA.No.1.

3. On the other hand, in spite of sufficient opportunity given to the defendant No.1 to file objection to said IA.No.1, but failed to file the objection to said IA.No.1, hence objection to IA.No.1 by the defendant No.1 taken as not filed. The learned counsel for the defendant No.2 has filed the written statement on behalf of defendant No.2 and adopted the same as objection to IA.No.1 by filing the adoption memo. In the objection it is contended that the valuation arrived in the plaint is not correct and the plaintiff has to valued the suit property on present market value for the relief as prayed in the suit against defendants. The suit is barred by law of limitation for the relief as prayed in the plaint for declaration of the sale deed dated: 21-01-1960 as alleged in the plaint. Originally one Bodeppa and his

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wife Ramakka are the common ancestor of the plaintiffs and defendant No.2. The said Bodeppa having three sons first son Genke Venkatswamy and Venkatappa and Muniswamy and the first son Genke Venkataswamy and his wife Venkatamma died leaving behind the plaintiff No.1 and 2 and their family members are the legal heirs succeeded to the share of their father Genke Venkataswamy and the second son Venkatappa and his wife Seethamma died behind the defendant No.2 and his other brothers and sister are his legal heirs and succeeded the share of Venkatappa and the third son Muniswamy and his wife Gangamma died without any issues and the same has not been correctly shown in the genealogical tree as alleged in the plaint. During the life time of Genke Venkataswamy, Venkatappa and Muniswamy sons of Bodeppa they were residing in the joint family and acquired the suit schedule property in the name of Genke Venkataswamy under the registered sale deed dated: 05-04-1945 and enjoying jointly and subsequently there after the said three brothers have got divided the suit schedule survey number of land to an extent of 1.31 acres to the share of Genke Venkataswamy and Venkatappa and 2-00 acres to the share of Muniswamy and subsequently the said Muniswamy sold his share of 2-00 acre of land in favour of father of defendant No.1 Krishnappa under a registered sale deed dated: 21-01-

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1960 and delivered the possession to the said Krishnappa and after the death of Krishnappa his legal heir are the first defendant and his other family members are succeeded to the property purchased under the registered sale deed of 1960 and continued to be in possession and enjoyment of the said 2.00 acres of land out of 5.22 acres. The share of Venkatappa to an extent of 1.31 acres out of 5.22 acres of land succeeded by the defendant No.2 and his other brothers and sisters are continued to be in possession and enjoyment and so also the share of Genke Venkataswamy after his death his sons i.e., the plaintiffs and their other family members were succeeded his share of land to an extent of 1.31 acres out of 5.22 acres of land in possession of plaintiffs and their other family members. But the plaintiffs have not disclosed the same in the plaint and wrongly claiming entire land in the plaint schedule property of their property and they are in possession and enjoyment is absolutely false. Hence prays to dismiss the IA.No.1.

4. Heard the arguments of learned counsel for the plaintiff and defendants on IA.No.1.

5. Now the points that arise for my consideration are as under:

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1. Whether the Applicants/plaintiffs have made out prima facie case?
 2. Whether the balance of convenience lies in favour of plaintiffs?
 3. Whether the Applicants/plaintiffs would cause injury and hardship in the event of rejecting the T.I as prayed in the IA.No.1?
 4. What order?
6. My findings on the above said points are as under:
- Point No.1 : In the Negative,
- Point No.2 : In the Negative,
- Point No.3 : No hardship and injury would be caused to the Applicants/Plaintiffs in the event of rejecting the TI as prayed in IA.No.1.
- Point No.4 : As per the final order, for the following:

:: R E A S O N S ::

7. **Point No.1 to 3 :** These points are interlinked with each others, to avoid repetition of facts in discussion took these points together for my discussion.

8. I gone through the pleadings averments, IA No.1 and accompanying affidavits and documents produced by the plaintiffs and the defendants. This is the suit filed by the plaintiffs against the defendants for the relief of declaration declaring the plaintiffs are the

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absolute owners in the suit schedule property pursuant to the sale deed dated: 05-03-1945 Book No.1, Volume No.424, Page No.151-152 Reg.No.970/1944-45 and for permanent injunction restraining the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit schedule property and for declaration declaring the sale deed dated:21-01-1960 Reg.No.281 Book No.1, Volume No.717 pages 215-216 is not binding on the plaintiffs.

9. The case of the plaintiffs is that originally the suit property acquired by their father Late Venkataswamy @ Jinke Venkataswamy through a registered sale deed vide document No.970 dated: 05-03-1945 Book-1, Volume No.424, pages No.150 to 152 from K. Kumara Shastry and on the basis of the registered sale deed khata of the suit property was effected in the name of their father. A patta book was also stands in their father's name and all the revenue records stands in the name of their father till 1980. After the death of their father the khata was transferred through IHC No.187/1/1980-81, dated 26-06-1980 based on the record they are the absolute owners and peaceful possession and enjoyment of the suit property. In the mean while without cancellation of the mutation register the defendant No.1 and 2 have colluded with each other and entered the alleged entries in the

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RTC. Based on the alleged sale deed by the defendant No.2, the defendant No.2 trying to alienate the suit schedule property and the defendant No.1 and 2 have created fraudulent documents through revenue officer. In this circumstance the defendant No.1 fully put efforts to sell the suit schedule property to an extent of 2 acres. In order prove the same the plaintiffs have produced the notarized affidavit related to G-tree, certified copy of the sale deed dated:02-03-1945, Photostat copy of the patta receipt, mutation extracts, hand written RTCs, computerized RTCs, certified copy of sale deed dated:21-01-1960, encumbrance certificates.

10. The contention of the defendant No.2 is that originally one Bodeppa and his wife Ramakka are the common ancestor of the plaintiffs and defendant No.2. The said Bodeppa having three sons first son Genke Venkatswamy and Venkatappa and Muniswamy and the first son Genke Venkataswamy and his wife Venkatamma died leaving behind the plaintiff No.1 and 2 and their family members are the legal heirs succeeded to the share of their father Genke Venkataswamy and the second son Venkatappa and his wife Seethamma died behind the defendant No.2 and his other brothers and sister are his legal heirs and succeeded the share of Venkatappa

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and the third son Muniswamy and his wife Gangamma died without any issues and the same has not been correctly shown in the genealogical tree as alleged in the plaint. During the life time of Genke Venkataswamy, Venkatappa and Muniswamy sons of Bodeppa they were residing in the joint family and acquired the suit schedule property in the name of Genke Venkataswamy under the registered sale deed dated: 05-04-1945 and enjoying jointly and subsequently there after the said three brothers have got divided the suit schedule survey number of land to an extent of 1.31 acres to the share of Genke Venkataswamy and Venkatappa and 2-00 acres to the share of Muniswamy and subsequently the said Muniswamy sold his share of 2-00 acre of land in favour of father of defendant No.1 Krishnappa under a registered sale deed dated: 21-01-1960 and delivered the possession to the said Krishnappa and after the death of Krishnappa his legal heir are the first defendant and his other family members are succeeded to the property purchased under the registered sale deed of 1960 and continued to be in possession and enjoyment of the said 2.00 acres of land out of 5.22 acres. The share of Venkatappa to an extent of 1.31 acres out of 5.22 acres of land succeeded by the defendant No.2 and his other brothers and sisters are continued to be in possession and enjoyment and so also the share of Genke

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Venkataswamy after his death his sons i.e., the plaintiffs and their other family members were succeeded his share of land to an extent of 1.31 acres out of 5.22 acres of land in possession of plaintiffs and their other family members. But the plaintiffs have not disclosed the same in the plaint and wrongly claiming entire land in the plaint schedule property of their property and they are in possession and enjoyment. To prove his contention the defendant No.2 has not produced any documents at this stage.

11. The certified copy of the sale deed dated: 02-03-1945 produced by the plaintiffs clearly reveals that one Sri.Kumar shastry S/o Venkatramshastry has sold the property bearing Sy.No.26 measuring 4 acres 24 guntas in favour of one Sri. Venkataswamy S/o Jinkala Venkatappa. The certified copy of another sale deed dated:21-01-1960 clearly reveals that one Jinka Munishamy S/o Bodeppa has sold the property bearing Sy.No.26/2 measuring 2 acres in favour of one Sri.Krishnappa S/o Nallappa on 21-01-1960 and the said sale deed further reveals that the khata was standing in the name of elder brother of Jinka Munishamy, 2 acres of land fallen to his share. The Patta receipt produced by the plaintiffs reveals that 1/3 Hissa, If the entire suit property is absolute property of the father of the plaintiffs

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and he purchased the suit property from his hard earned money, why the extent of 2 acres fallen to the share of said Jinka Munishamy and in turn he sold the same to one Sri.Krishnappa S/o Nallappa in the year 1960 and accordingly to an extent of 2 acres was given with separate sub- number as Sy.No.26/2. Though the defendant No.2 has not produced any documents to prove his contentions and the defendant No.1 failed to file his objection to said IA.No.1, but the documents produced by the plaintiffs prima facie shows that the suit property was purchased in the name of the father of the plaintiffs and subsequently the father of the plaintiffs and his two brothers have partitioned the suit property and accordingly 1 acre 31 guntas fallen to the share of the father of the plaintiffs and 1 acre 31 guntas fallen to the share of his brother Venkatappa and 2 acre fallen to the share of his another brother Jinka Munishamy and in turn he sold the same to one Krishnappa who is none other than the father of the defendant No.1 and accordingly RTCs were reflects their respective names. The plaintiffs have only shown the genealogical tree of his father in the affidavit without disclosing the G-tree of their grandfather. The documents produced by the plaintiffs has supported to the contentions taken by the defendant No.2. The plaintiffs have suppressed the material facts G-tree of their grandfather and also

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suppress the facts of division of suit property among the father of the plaintiffs and his two brothers claiming the entire suit property that they are the owner and in possession of suit property. The plaintiff has filed the IA.No.1 seeking ad-interim order of temporary injunction restraining the defendant No.1 from alienating 2 acres of land in the suit property, but in the accompanying affidavit the plaintiffs have stated that the defendant No.2 also trying to alienate the suit property. It shows that the plaintiffs themselves have no clarity mind in their suit. Out of the suit property 1 acre 31 guntas was standing in the name of plaintiffs, 1 acre 31 guntas was standing in the name of wife of Venkatappa and 2 acres was standing in the name of defendant No.1 and his brother which was purchased by their father Krishnappa from Jinka Munishamy. The prima facie shows that the plaintiffs have suppressed the material facts and they approached this court not with clean hand seeking the ad-interim order of injunction. The plaintiffs have not made out prima facie case.

12. This is the suit filed by the plaintiffs against the defendant No.1 and 2 for declaration and permanent injunction. The plaintiffs have not made out prima facie case that they are owner in possession of the entire suit property. In such circumstances if the court granted

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ad- interim order of temporary injunction in favour of the plaintiffs as prayed in the IA.No.1, there is chances of conflict and inconsistency. The plaintiffs have not made out prima facie case, hence balance of convenience not lies in favour of the plaintiffs.

13. The plaintiffs have not made out prima facie case and the balance of convenience not lies in favour of the plaintiffs as my findings given above. The plaintiffs and defendant No.2 are in possession and enjoyment of their respective share in the suit property. The defendant No.1 is in possession of the share of Jinka Munishamy which was purchased by his father Krishnappa. In such circumstances if the court not granted the ad-interim order of temporary injunction as prayed in IA.No.1 in favour of the plaintiffs, no hardship and injury would be caused to the plaintiffs. If the court granted ad-interim order of temporary injunction in favour of plaintiff, certainly the defendant No.1 and 2 would cause more hardship and injury at this stage. Hence I answer point No. 1 and 2 in the negative and point No.3 as no hardship and injury would be caused to the plaintiffs in the event of rejecting the T.I order as prayed in IA.No.1.

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14. **Point No.4:** In view of my findings on point No.1 to 3, the IA.No.I filed by the Applicants/plaintiffs is liable to be dismissed. Accordingly I proceed to pass the following:

:: O R D E R ::

IA.No.I filed U/o 39 Rule 1 & 2 R/w 151 of CPC by the Applicants/plaintiffs is hereby dismissed.

(Directly dictated to the stenographer on Laptop and corrected, signed by me & then pronounced in the open court on this the 27th day of February-2023)

(ESHWAR)
Senior Civil Judge & JMFC.
Mulbagal.