

KAKL510012782021



IN THE COURT OF I ADDL. CIVIL JUDGE & JMFC,

AT K.G.F.

PRESENT: **Sri.VINOD KUMAR.M** BAL.,LLB,LLM.,
I ADDL. CIVIL JUDGE & JMFC
AT K.G.F.

O.S. No.157/2021

DATED THIS THE 16th DAY OF JUNE 2022

BETWEEN :

Sri. Shivalinga Reddy,
S/o late Sri. Munivenkata Reddy,
Aged about 53 years,
R/at: Sundarapalaya Village & Post,
K.G.F. Taluk.

... Applicant/Plaintiff
(By **Sri. P.R.**, Advocate.)

V/s

1. Smt. Jayamma
D/o late Sri. Munivenkata Reddy,
W/o Sri. Hanuma Reddy,
Aged about 60 years,
R/at: Jeedumakanahali,
Sonnakuppa Post,
Kysamballa Hobli,
K.G.F. Taluk.

2. Smt. Munirathnamma,
D/o late Sri. Munivenkata Reddy,
W/o Sri. Srinivas Reddy,
Aged about 57 years,

3. Smt. Parvathamma,
W/o late Sri. Narayan Reddy,
Aged about 70 years,

4. Sri. Munivenkata Reddy,
S/o late Narayan Reddy,
Aged about 30 years,

5. Sri. Bhaskar Reddy,
S/o late Narayan Reddy,
Aged about 28 years,

6. Smt. Narayanamma,
W/o late Sri. Rajagopal Reddy,
Aged about 68 years,

7. Sri. Vishwanath Reddy,
S/o late Rajagopal Reddy,
Aged about 32 years,

8. Sri. Bal Reddy,
S/o late Rajagopal Reddy,
Aged about 30 years,

9. Smt. Narayanamma,
W/o late Sri. Krishna Reddy,
Aged about 65 years,

10. Sri. Manjunath Reddy,
S/o late Sri. Krishna Reddy,
Aged about 34 years,

11. Sri. Rajasekher Reddy,
S/o late Sri. Krishna Reddy,
Aged about 32 years,

Defendants No.2 to 11 are R/at;
Thallapalli Village,
Sundarapalaya Post,
Kyasamballi Hobli,
K.G.F. Taluk.

.... Opponents/Defendants
(By **Sri. K.C.N., & V.V** - Advocates.)

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ORDERS ON IA NO.1 U/O 39 RULE 1 & 2 R/W SECTION 151
OF CPC

The Applicant/plaintiff has filed an IA.No.1 U/o 39 Rule 1 & 2 R/w Sec.151 of CPC praying to pass an Ad-interim order of temporary injunction restraining the defendants, their family members, agents, servants or anybody from alienating the application schedule properties till disposal of the suit, in the interest of justice and equity.

2. In support of application sworn in the affidavit by contented that, he filed suit for partition in respect of suit properties. Originally suit properties belongs to Munivenkatareddy, who had 6 children i.e., himself and Narayana Reddy, Rajagopal Reddy, Krishna Reddy are no more. The legal heirs of brothers are defendants No.3 to 9 and defendants No.1 and 2, who are his sisters. After death of a father/Munivenkata Reddy and mother/Ramakka, they are Hindu undivided joint family members and suit schedule

properties are their joint family properties. After death of his father, the Khata of all the properties got changed in the name of Krishna Reddy. He had been to Andhrapradesh for individual livelihood for 30 years ago. From 6 months, he demanded partition and separate possession with defendants, but they did not respond and trying to sale the properties in order to deprive his share. He has made out prima-facie case and balance of convenience in her favor. If the order of injunction is not granted, he will be put loss and injury. On the other hand, the defendants will not be put to any loss. Hence, he prays to allow the application.

3. Per contra, the defendants No.1, 3 to 11 filed memo to adopt the written statement as objection of present application inter-alia contended that, application is not maintainable either in law or on facts. The suit of plaintiff is hit by non-inclusion of necessary parties and properties and suit filed to grab the valuable properties. The properties shown in plaint are not at all joint family properties. It is further that, there was an oral partition in respect of schedule properties, the item No.1 and 3 of suit property fell into share of defendants No.3 to 5, item No.2 and 4 of suit properties fell into share of defendants No.6 to 8, item No.5 of suit property fell into share of defendants No.9 to 11, item No.6 of suit property fell into share of plaintiff and item No.7 of suit property fell into share of defendants No.6 to 11. From the date of partition, all are in possession of their allotted properties and enjoyment of the same. The suit filed by

the plaintiff only for not change the Khata in his name in respect of Choultry, shops and Khata No.160/832, 324/833. Hence, they prays to dismissal the application.

4. Heard the argument of learned counsel for the plaintiff and that of learned counsel for defendants. Perused the records.

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

Point No.1: Whether the Plaintiff has made out prima-facie is lies for grant Temporary Injunction sought in I.A.No.I ?

Point No.2: Where does balance of convenience?

Point No.3: If any irreparable loss to the plaintiff?

Point No.4: What order ?

6. My findings on the above said points as here under :

Point No.1	:	In the Affirmative
Point No.2	:	In the Affirmative
Point No.3	:	In the Affirmative
Point No.4	:	As per final order for the following :-

:: REASONS ::

7. Point No.1 to 3 : These points are inter connected with each other and taken up together for common discussion. This is the suit filed by the plaintiff against defendants none-other-

than his mother, brothers' family for the relief of partition and separate possession in respect of suit schedule properties.

8. I have gone through the entire plaint and documents produced by the plaintiff, it clearly goes to show that, plaintiff and defendants are children of deceased Munivenkata Reddy. The Plaintiff and defendants are joint family members and suit schedule properties are the joint family as well as ancestral properties. All of them are in peaceful possession and enjoyment of suit schedule properties. During the course of arguments by learned counsel for plaintiff argued that, plaintiff being son of Munivenkata Reddy with other 5 children, who acquired the application schedule properties under self-acquired among the brothers' family and there is no partition between plaintiff and defendants till today. On other hand, defendants filed objection contended that, suit properties have been orally partitioned among 10 members and item No.1 to 5 and 7 fell into share of defendants family, but item No.6 of suit property fell into share of plaintiff. It is further contended that, the plaintiff filed present suit only to not changing to Khata in his name pertains to shops and other valuable property.

9. From perusal of revenue documents in respect of suit properties clearly reveals that, item No.1 to 7 of suit properties stands in the name of deceased Munivenkatappa and Krishna Reddy, none-other-than father and brother of plaintiff. In the meantime, the brother of plaintiff/Krishna Reddy died leaving

behind defendants No.9 to 11 as legal heirs to succeed his estate and Khata of item No.2 to 7 of suit properties stands in the name of Krishna Reddy. Admittedly, said Krishna Reddy was brother of plaintiff and got changed Khata in his name in respect of suit properties. From the year of 2020-21, RTC Extracts reflects in the name of Krishna Reddy, who is the brother of plaintiff and husband as well as father of defendants No.9 to 11.

10. It is important to note that, admittedly, the Khata stands in the name of Krishna Reddy, but who died leaving behind defendants as legal heirs, they may ever chance to alienate the application schedule properties as contended by plaintiff. The relief of present application about restraining the defendants from alienation in respect of suit properties is harmless and no one has to be caused any loss if the exparte order is passed. The condition of the application schedule properties have been protected as same till disposal of the suit. The objection filed by the defendants cannot be consider unless proof of documents in evidence. If not granted interim order against defendants, the suit will becomes multiplicity of proceedings to made as other parties. If any partition within family members, it would decide in testing of trial, but not at this stage. He has made out prima-facie case and balance of convenience lies in his favor. If order of injunction is not granted, he will be deprive his share from application schedule properties which cannot compensate in any terms of money. Hence, it is

necessary in the facts and circumstances of the case to pass an order of injunction till disposal of the suit. Accordingly, I answered to Point No.1 to 3 in the **Affirmative**.

11. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass following:-

ORDER

I.A.No.1 filed by the plaintiff U/o 39 Rule 1 & 2 R/w Sec.151 is hereby allowed.

Consequently, the defendants, their family members, agents, servants or anybody are hereby restrained from alienating the application schedule properties in any manner till disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on computer and typed by him, corrected, signed by me & then pronounced in the open Court on this the **17th day of June - 2022**)

Sd/-

(VINOD KUMAR M.)

I ADDL. CIVIL JUDGE &
JMFC., K.G.F.