

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC, AT
KUSHTAGI.**

**PRESENT:-SHRI.B.S.HONNASWAMY
B.A., L.L.M**

DATED THIS THE 11th DAY OF MARCH -2022

O.S. No.607/2021

Applicant/Plaintiff/s:-

Chandrakant S/o Bharmappa Mantri,
Aged:54 years,Occ;Medical Officer.
R/o Mittalkod, Now at Tq;Kushtagi.
Dist:Koppal and others.

(By Sri.P.H.A. Advocate)

--V/s--

Opponents/Defendants:-

Umadevi W/o kapalappa, Aged Major,
Occ:Agril: by LR's and others.

(By Sri.K.V.A. Advocate)

ORDERS ON IA No.II to V

IA No.1:- The applicants/Plaintiff has filed I.A. No.II U/o.39 Rule-1 and 2 of C.P.C. and prays to grant injunction restraining the defendants, their agents, claiming under them from alienating charge on the suit properties such as 1)Land Sy. No.6 Hissa-1 measuring 4 acres 7 guntas, 2)Land Sy. No.6 Hissa-2 measuring 5 acres, 3)Land Sy. No.17 Hissa-1 to 8b measuring 7 acres 30 guntas, 4) Land Sy. No.18 Hissa-1 to 9b measuring 9 acres 19 guntas, 5) Land Sy. No.19 Hissa-rb measuring 2 acre 33 guntas, 6)Landy Sy. No.21 hissa 1 to 7B

measuring 10 acres 36 guntas, 7)Land Sy. No.23 Hissa-Aa measuring 8 acres, 8)Land Sy. No.90 Hissa-10 measuring 2 acre 23 guntas, 9)Land Sy. No.90 Hissa-10 measuring 3 acre 33 guntas all of them are situated at:Mittalkoda limits in Kushtagi taluk in the interest of justice and equity.

2. The Plaintiff filed affidavit on I.A-II stated that, he and other are filed for partition and separate possession and separate possession against the defendants but the defendants are taking dis-advantages as to standing suit properties in their name and they are trying to alienate them in order to harass him over and above one of the proposed suit land Sy. No.90 hissa-10 measuring 2 acre 33 guntas of Mittalkod limits is trying to alienate to one Tippanna S/o Hanumappa Totappanavar R/o:Guduru, Tq:Hungunda but his advocate has also issued legal notice to him on 31/12/2020 through registered post. As such it is just and necessary to restrain the defendants thei agent men legal heirs claiming through them from alienate or creatich charge on the all said 10 suit properties. By allowing this application no harm caused to other side if this application is not allowed very purpose of suit would be defeated and matter will prolong by impleading purchasers of the suit properties as such it is just and necessary to avoid multiplicity of proceedings the Hon'ble Court may kindly be

pleased to allow this application in the interest of justice and equity.

3. **IA No.3:-** Plaintiffs filed IA No.III U/o 6 Rule 17 R/w 151 of CPC pleased to implead the following properties om the schedule as 10)Land Sy. No.80 Hissa-6 measuring 2 acres 2 guntas situated at Mittalkod.

4. The plaintiff filed affidavit in IA3 he knows the facts of the case. he and other are filed for partition and separate possession against the defendants but inadvertently he has not inserting one of the joint family property land bearing Sy. No.80 hissa-6 measuring 2 acres 2 guntas situated at Mittalakoda limits in Kushtagi taluk, the defendants are taking disadvantages as to non-inclusion of the said land they are trying to alienate the said land in order to get illegal gain thereby they have sustained heavy loss which can not be compensated in any terms. The matter is posted for appearance of defendant and matter is still initial stage and court may kindly be pleased to allow this application and order for inclusion of the said land Sy. No.80 hissa-6 measuring 2 acres 2 guntas of Mittalkod in suit schedule.

5. **IA No.4:-** plaintiff filed IA No.4 U/o 39 Rule 1 and 2 of CPC restraining the defendants not to effect the mutation in respect of the land Sy. No.80 Hissa-6 measuring 2 acres 2 guntas situated at Mittalkod by the proposed defendant No.6

The plaintiff filed affidavit stating that during the pendency of the suit proposed defendant No.6 as nominally purchased the joint family property with collusion of defendant No.1 to 5 now he trying to change in his name.

6. **IA No.5:-** plaintiff filed IA No.5 U/o 1 Rule 10(2) R/w Sec.151 of CPC pleased to implied/add Yallappa S/o hanamappa Totlappanavar, Age:Major Occ:Agri, R/o:Gudur, Tq:Ilakal, Dist:Bagalkote, as defendant No.6 in the interest of justice and equity.

7. The plaintiff filed affidavit in IA5 he knows the facts of the case. He is the joint owner and possessor of the suit land Sy. No.80 Hissa-6 measuring 2 acres 2 guntas situated at Mittalkod tq;Kushtagi and they have filed for partition and separate possession against the defendants No.1 to 5 during the pendency of the suit the proposed defendant No.6 has purchased the said land nominally in order to rash him. In support of the said version he produced the EC No.807/2021-22 issued by the sub-register Kushtagi for kind perusal of the court. He further submitted that the proposed defendant No.6 is become a necessary party without impleading him. Suit is not properly adjudicated as such the Hon'ble court may kindly be pleased to allow this application in the interest of justice and equity.

8. The defendant No.2 and 4 counsel did not filed any objections to IA 2 to 5 but orally objected IA No.2 to 5 not maintainable. At the time of argument defendant No.2 counsel submitted IA No.3 and IA No.5 may be allowed IA No.4 become infructuous.

9. Heard the arguments both sides that the points that arise for my consideration

1. Whether the plaintiff has made out a prima facie case for grant of injunction?
2. Where does the balance of convenience lies?
3. Who would be put to irreparable loss and injury if Injunction is granted?
4. Whether the IA-4 deserves to be allowed ?
5. What order ?

10. My answer to above point are

1. Point No.1 to 4 : In the Affirmative.
2. Point No.5 :As per the final Order for the following

-: **Reasons** :-

11. Point No.1 to 4 :- These points are taken together to avoid repetition of facts; plaintiff has filed suit for for partition and separate possession and separate possession against the defendants, the defendants trying to alienate suit properties as per IA No.2, the plaintiff counsel also issued legal notice not to alienate the suit property as per IA No.3 the plaintiff prays to implead Sy. No.80 Hissa-6 measuring 2 acres 2 guntas and IA No.4 restraining the defendant No.6 not to change mutation in his name. The defendant No.6 is

not the owner of the said suit land Sy. No.80 but the defendant No.6 as created the sale deed colluded with defendant No.1 to 5 so it has to be decided during trial during the pendency of the suit Yallappa S/o Hanumappa as purchased the said land nominally purchased in this regard EC No.807/2021-22 issued by the sub-register is produce before the court. On perusal of the RTC in Sy. No.80 it is standing in the name of Vijayalaxmi D/o Kavalappa plaintiff has made out prima facie case balance of convenience in his favour if IA is not allowed the plaintiff will be put to irreparable loss and injury on the other hand the defendants did not produce the any documents in support of their arguments. Hence for the reasons stated in IA No.3 to 5 they deserves to be allowed. Hence I answer the point No.1 to 4 in the affirmative.

12. Point No.5:- For the above said reasons and discussion from point No.1 to 4, I proceed to pass the following :

:: ORDER ::

I.A. No.II to V filed by the plaintiff counsel is allowed on cost of Rs.200/-. The defendants are restrained not to alienate the suit schedule properties till disposal of suit as per IA No.2. IA No.3 allowed plaintiff counsel is permitted to amend the plaint by including Sy. No.80.

IA No.4 allowed the defendant No.6 is hereby restrained not to effect mutation in respect of Sy. No.80. The IA No.5 allowed proposed defendant No.6 is impleaded as defendant No.6.

Call on 24.03.2022 for amendment.

(Dictated to the stenographer directly on computer typed by him, corrected, initiated by me and then pronounced by me in the open Court, on this the 11th March -2022).

(B.S.HONNASWAMY)

Senior Civil Judge, Kushtagi.