

IN THE COURT OF PRL. CIVIL JUDGE, MADDUR

Present:- B. Priyanka, B.A., LL.B.,
Prl. Civil Judge and JMFC,
Maddur.

Dated this the 26th day of October, 2023

O. S. No. 144/2023

Plaintiff : Mahadevaswamy S/o Basavaraju
37 years, R/o No.215,
Beereshwaranagar,
Chunchanaghatta main road,
Konanakunte, Bengaluru south

(By Sri VS, Advocate)

V/S

- Defendants:
1. Mangala W/o Late Madaiah
D/o Late Madaiah, 49 years,
R/o Thippuru Village
Athaguru Hobli, Maddur Taluk
 2. Mahadevamma W/o Sadashivaiah
D/o Late Madaiah 60 years,
R/o Kethonahalli village,
Kasaba Hobli, Mayaganahalli Post
Ramanagar Taluk
 3. Shivamadamma W/o Prakash,
D/o Late Madaiah, 58 years,
R/o Thippur Village,
Athaguru Hobli, Maddur Taluk
 4. Prema W/o Ningappa,

D/o Late Madaiah, 52 years,
R/o Hulivana Village, Keragodu
Hobli, Mandya Taluk

(By Sri HG, Advocate)

RANK OF THE PARTIES IN IA No.1

**Applicant : Mahadevaswamy
(Plaintiff)**

V/s

**Opponents : Mangala and others
(Defendants)**

**ORDERS ON I.A.No.1 FILED UNDER
ORDER 39 RULE 1 AND 2 R/w. Sec.151 CPC**

The plaintiff has filed IA No.1 under **Order 39 Rule 1 and 2 of CPC** with a prayer to restrain the defendants, their men, agents, servants or any other person claiming under them from interfering with peaceful possession and enjoyment of suit schedule property until the disposal of the suit in the interest of justice and equity.

2. The suit schedule property is described as follows:

The suit schedule property is part and parcel of old Sy.No.107/p1 and new Sy.No.311RS, 324RS and Sy.No. 107 total extent of 2.10 guntas situated at Thippur village,

Athaguru Hobli, Maddur taluk bounded on

East	-	Kukkurudoddi-Nidaghatta road
West	-	land of Jayamma
North	-	land of Jayamma
South	-	Halla

3. In the affidavit annexed to the IA, the plaintiff contends that the present suit has been filed against the defendants for the relief of declaration and permanent injunction with respect to suit schedule property and the suit schedule property was the self acquired property of Mallamma who purchased the same under the sale deed dated 09.04.1956 and after the death of plaintiff's father, the plaintiff being the only legal representative has filed the present suit for declaration of his title.

4. The plaintiff further submits that Smt. Mallamma is his great grand-mother and the revenue records of the suit schedule property is standing in the joint name of the plaintiff and his sister Shilpa and now his sister has relinquished her right over the property in favour of the plaintiff. But however, the defendants, after the death of his father are attempting to grab the suit schedule property and among these grounds prays for the IA to be allowed.

4. The defendants, on the other hand though have

appeared before the court through their counsel, have failed to file their written statement or objections to the IA. The IA which was also filed by the plaintiff was sought to be dismissed as not pressed and memo was filed to that effect and hence, the plaintiff has come up with the present IA.

5. Heard Smt Vilasini, Advocate appearing on behalf of the plaintiff and perused the records carefully and meticulously.

6. The following points arise for my consideration.

1. Whether the plaintiff has made out a prima-facie case for the grant of temporary injunction?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will be put to irreparable loss and hardship in case of refusal of temporary injunction?

4. What order?

7. My answer to the aforesaid points are as follows:

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

8. **Point No.1:-** The present suit has been filed by the plaintiff for the relief of declaration of title and permanent injunction with respect to suit schedule property and the present IA is filed by the plaintiff with a prayer to restrain the defendants from interfering with his peaceful possession and enjoyment of suit schedule property until disposal of the suit.

9. The plaintiff No.1 in support of his case, has produced the genealogical tree which shows that Mallamma had 3 children

1. Madaiah,
2. Shivanna
3. Mahadevaiah

and the plaintiff is the grand son of the 1st son Madaiah. The plaintiff has also produced the certified copy of the sale deed dated 09.04.1956.

10. On careful perusal of the sale deed, the recitals reveal that the sale deed has been executed by one Madaiah S/o Moolehatti Bolappa with respect to Sy.No. 107 of Kesturu village measuring 5 acres 31 guntas and the suit schedule property is described in the plaint as Sy.No. 107/P/1

measuring to an extent of 2 acres 10 guntas. The plaintiff has also produced the Mutation Register Extract. He has also produced the registered relinquishment deed executed by his sister Shilpa in his favour. He has also produced the tax paid receipt and RTC extracts with respect to re Sy.No. 311 and RTC extracts for Sy.No. 107 for the period of 2008-09 which was standing in the name of Shivarathnamma W/o Basavaraju and the said Shivarathnamma is the mother of plaintiff as per the genealogical tree.

11. It is pertinent to note that, the present suit has been filed by the plaintiff for the relief of declaration that he is the absolute owner of suit schedule property and the defendants have failed to even file the objections to the present IA in spite of being given sufficient time and opportunity and the documents produced by the plaintiff makes out a prima-facie case in favour of the plaintiff. Hence point No.1 is answered in the affirmative.

12. **Point No. 2 and 3:** When the question of balance of convenience and comparable hardship is considered, the actual question that has to be considered is who will be put to more inconvenience if temporary injunction is granted. The plaintiff has contended that the defendants are attempting to interfere with his peaceful possession and enjoyment of the suit schedule property. If the defendants succeed in their attempt,

the plaintiff would be put to more inconvenience and hardship. Therefore, I proceed to answer point No.2 and 3 in the affirmative.

13. Point No.4 : In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

IA No.1 filed by the plaintiff under order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants, their men, servants, agents or anybody claiming under them are hereby restrained from interfering with peaceful possession and enjoyment of suit schedule property until disposal of the suit.

(Dictated to the Stenographer, corrected and then pronounced by me in the open court on this the 26th day of October, 2023)

(B. Priyanka)
Prl. Civil Judge, Maddur