

KAMD410051142021



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE
AND J.M.F.C., AT MALAVALLI**

PRESENT

Smt. MAMATHA SHIVAPUJI

B.A.L., LL.M.,

Prl. Civil Judge & J.M.F.C.
Malavalli.

Dated this the 26th Day of September 2022

O.S.No.355/2021

Sri.Thibbegowda

... Plaintiff

S/o late Thibbegowda,
Aged about 78 years,
R/o Ankanahalli village,
Kasaba Hobli,
Malavalli Taluk, Mandya District.

(By Sri.PSMK., Advocate.)

Vs.

1. **Sri.Siddegowda**

.....Defendants

W/o late Thibbegowda,
Aged about 68 years,
R/o Ankanahalli village,
Kasaba Hobli,
Malavalli Taluk, Mandya District.

2. **Panchayath Development Officer,**
Kandegala Grama Panchayath,
Malavalli Taluk, Mandya District.

(D1 by Sri.SVS, Advocate,)
(D2 : Exparte.)

**Parties in I.A.No.I U/o 39 Rule 1& 2 of C.P.C. filed by
the plaintiff**

Applicant/plaintiff : Sri.Thibbegowda

Vs.

Opponents/Defendants : Sri.Siddegowda & another.

**Orders on I.A.I U/o 39 Rule 1 & 2 of C.P.C
filed by the Plaintiff**

The plaintiff has filed the above application for an ad-interim order of temporary injunction restraining defendant No.1 from alienating the suit schedule property pending disposal of the suit.

2. In support of the application, plaintiff has filed affidavit and documents and prayed to allow the application.

3. On the other hand, defendant No.1 has filed written statement and memo adopting the written

statement as objection the the above application and prayed to dismiss the same.

4. Heard the arguments of both side counsels and perused the materials on record. The following points arise for my consideration:

- 1) Whether the plaintiff has made out a prima-facie case?
- 2) Whether the balance of convenience lies in favour of plaintiff?
- 3) Whether irreparable loss and injury would cause to plaintiff if temporary injunction as prayed in I.A.No.I is not granted?
- 4) What order?

5. My answer to the above points are as 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

6. POINT NO.1 to 3:- The plaintiff has filed above suit for declaration and Permanent Injunction against the

defendants in respect of suit schedule property. It is the case of plaintiff that, the father of plaintiff late Thibbegowda had acquired property in Sy.No.69/16 measuring 0.03.08 guntas. Said property is the possession of joint family. But defendant No.1 & 2 colluding with each other have got created false documents in their names illegally. The suit schedule property is the joint family property. During the life time of father of plaintiff and defendant No.1, they were in joint possession of the same. Suit schedule properties are not self-acquired properties. The father of plaintiff has been expired. Defendants in order to knock off the suit schedule property and to deprive the right of plaintiff over the suit schedule property, have created the false documents in their names. The said document is illegal and not binding on the plaintiff. Hence, plaintiff has filed the above suit and prayed to allow the application.

7. In support of the plaintiff's case, plaintiff has produced endorsement given by Secretary of Kandegala Grama Panchayath, E-Khata of the suit schedule property in the name of defendant No.1, RTC extract of Sy.No.69/16

measuring 03.08 guntas in the name of father of plaintiff, Genealogical tree of plaintiff's family, death Certificate of father of plaintiff, Aadhaar card, tax paid receipts, copy of letter given to Executive Officer, Taluk Panchayath, Malavalli by plaintiff, order by Executive Officer, Taluk panchayath to the PDO, Kandegala Grama Panchayath, order of Deputy Secretary, Zilla Panchayath, Mandya, endorsement by the Secretary of Kandegala Grama Panchayath.

8. On the other hand, defendant No.1 has filed the written statement denying the claim of plaintiff and contended that, plaintiff and 1st defendant's father late Thibbegowda S/o late Chikkaputtegowda @ Chikkamotegowda @ Kebbegowda had three male children namely Hanumegowda who is expired, Thibbegowda who is the plaintiff herein and Siddegowda who is the 1st defendant herein. The father of plaintiff and defendant No.1 during his life time has divided the properties in Sy.No.69/16 and allotted the share to his three children. As such the land measuring 03.08 guntas has been allotted to the share of defendant No.1. In the said property, there is an old house

and towards southern side of house there is a vacant site. From the date of division, the defendant No.1 and his children are residing there by obtaining electricity connection and water supply. Defendant No.1 is paying tax and he is in peaceful possession of the same. The plaintiff and his brother late Hanumegowda have given house property in Sy.No.69/16 at Ankanahalli village and they are in possession of the same. The plaintiff was never in possession of the suit schedule property. He has no right over the same. On the basis of possession of defendant No.1 over the suit schedule property, the 2nd defendant authority has accepted the same in the revenue documents. Hence, defendant No.1 prayed to dismiss the application filed by the plaintiff. Defendant has not produced any documents in support of his contention.

9. On perusal of pleadings, application, affidavit and documents produced by the parties to the suit, it is found that there is no dispute about the relationship of parties to the suit. There is no dispute that the suit schedule property is originally belongs to One Thibbegowda S/o

Chikkamottegowda who is the father of plaintiff and defendant No.1. As per plaintiff suit schedule property is in the possession of joint family. But defendant No.1 colluding with defendant No.2 has got created false documents in his name illegally. The suit schedule property is the joint family property. During the life time of father of plaintiff and defendant No.1, they were in joint possession of the same. Suit schedule properties are not self-acquired properties. The father of plaintiff has been expired. In this regard the plaintiff has produced the E-Khata of the suit schedule property in the name of defendant No.1, RTC extract of Sy.No.69/16 measuring 03.08 guntas in the name of father of plaintiff. As per plaintiff he challenged the revenue entries in respect of the suit schedule property before Tahasildar and the same is pending. But now defendant No.2 is trying to alienate the suit schedule property in favour of third parties.

10. It is observed that as per defendant No.1 the father of plaintiff and defendant No.1 during his life time has divided the properties in Sy.No.69/16 and allotted the share

to his three children. As such the land measuring 03.08 guntas has been allotted to the share of defendant No.1. However the defendant No.1 has not produced any documents in this regard. Hence the said fact has to be proved by the defendant No.1 during trial. Defendant has further contended that from the date of division, the defendant No.1 and his children are residing there by obtaining electricity connection and water supply. Defendant No.1 is paying tax and he is in peaceful possession of the same. But no documents are produced. It is further contention of defendant No.1 that the plaintiff and his brother late Hanumegowda have given house property in Sy.No.69/16 at Ankanahalli village and they are in possession of the same. The plaintiff was never in possession of the suit schedule property. He has no right over the same. The defendant has to prove the same during trial by producing cogent evidence and documents. Admittedly the katha of the suit schedule property is in the name of defendant No.1 as per the E Katha but RTC extract of suit schedule property is still in the name of father of plaintiff and defendant No.1. So there are every chances of

sale of the suit schedule property by the defendant No.1. Hence at this stage it appears just and proper to injunct the defendant No.1 from alienating the suit schedule property in favour of any third parties, since great hardship would cause to the plaintiff if injunction against defendant No.1 is not granted.

11. Therefore, under these circumstances it is clear that plaintiff has made out prima-facie case. The balance of convenience does lie in favour of plaintiff. The irreparable loss and injury would cause to the plaintiff if temporary injunction is not granted in favour of plaintiff as prayed for. Therefore, **Point No.1 to 3** are answered in the **Affirmative.**

12. Point. No.4:- For the reasons discussed for point No. 1 to 3 the following:-

ORDER

I.A.I U/o. 39 Rule 1 and 2 of C.P.C. filed by the plaintiff is hereby allowed.

Defendant No.1 or any body claiming under him or through him is hereby restrained

from alienating the suit schedule property till
pending disposal of the suit.

(Dictated to the stenographer, corrected and pronounced in
the open court on this the 26th Day of September 2022).

(MAMATHA SHIVAPUJI)
Pri. Civil Judge & JMFC
Malavalli.