

KAMD610001412023



**IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC., AT
PANDAVAPURA**

DATED ON THIS THE 4th DAY OF APRIL-2025

:PRESENT:

**Sri.KISHOR KUMAR, B.A.L, L.L.B.,
ADDL. Civil Judge & JMFC.,
PANDAVAPURA**

ORIGINAL SUIT NO.37/2023

Plaintiff : Shivappa S. S/o Siddaiah,
Aged about 72 years,
R/o Bolenahalli Village,
Melukote Hobli, Pandavapura Taluk.

(By Sri. A.L.S., Adv.,)

V/s

Defendants: 1. Sidda S/o Late Chowdashetty,
Aged about 72 years,
2. Sumithra W/o Late Rajashetty,
Aged about 33 years,

3. Javarashetty S/o Late Chowdashetty,
Aged about 60 years,
4. Krishnashetty S/o Late Chowdashetty,
Aged about 55 years,
5. Mangalamma W/o Late Attigashetty,
Aged about 52 years,

All are R/o: Bolenahalli village,
Melukote Hobli, Pandavapura Taluk
Mandya district.

(By Sri. N.B.G., Adv.,)

ORDER ON I.A.No.II

Applicant : Shivappa ---- Plaintiff

V/s

Opponents : Sidda and others
---- Defendants

:ORDERS ON IA.No.II:

1. The plaintiff has filed I.A.No.I under Order 39 Rule 1 & 2 R/w Sec.151 CPC seeking interim injunction restraining defendants or their agents, workers, henchmen from interfering with the peaceful possession and enjoyment of the suit schedule properties by the plaintiff.

2. **Brief facts of the plaintiff's case is that :**

It is specifically contended that, the suit schedule property is the ancestral and joint family property of the plaintiff. The Suit schedule properties originally belongs to the Chowdashetty who is none other than the brother of the grand father of the plaintiff. The said Siddaiah died without marriage. Hence the said Siddaiah has no wife and children. Therefore Class-I legal heir his mother Chowdamma W/o Chowdashetty. She is also died with out issues. Atigashetty and his wife Lakshamma are the legal representatives. The said Atigashetty is father of Siddaiah. The said Siddaiah is father of plaintiff. The said Siddaiah is also no more. Hence the plaintiff Shivappa is only a legal representatives of said Siddaiah. The said Suit schedule properties are ancestral properties of the plaintiff. The katha of the properties not mutated in the name of plaintiff due to lack of knowledge and illiteracy. After demise of Siddaiah and father of the plaintiff. The plaintiff is in possession and enjoyment of the suit schedule properties. Except the plaintiff no one is in possession land enjoyment of the suit schedule property.

3. Further plaintiff submits that, the defendants have no manner of right, title, interest much less possession over the suit schedule property. Even though the defendants trying to interfere over the suit schedule properties unnecessarily and also proclaimed himself that, he is in owner of the suit schedule properties. The defendants did not stopped the illegal interfere

over the suit schedule properties. Therefore the plaintiff filed a present suit against the defendants for the relief of declaration and injunction. The defendants colluded with the other defendants and witnesses created a partition deed dated 01.04.2022 and transferred the katha by colluding the revenue officials to grab the suit schedule properties. Therefore the defendant No.1 Sidda is misuses his name and by created Aadhaarcad and other documents to show that, his name is Siddaiah but the defendant No.1 is not a Siddaiah. The defendant No.1 name is Sidda and katha also stands in his name. The defendant No.1 is not family member of the plaintiff. Even though the defendant No.1 created document and executed a partition deed in favour of the other defendants. The plaintiff has filed application to grant relief of ad-interim injunction against the defendants. Hence, plaintiff has contended that he had got a prima facie case in his favour and balance of convenience lies in favour of the plaintiff and greater hardship will be caused to the plaintiff if the order of injunction is not granted.

4. After the suit summons, the defendant No.1 to 5 have appeared before the court and filed written statement and learned counsel for the defendants filed memo stating that, the written statement itself treated as an objection to I.A.No.1.

5. **The gist of the objection filed by the defendants No.1 is as follows:** The suit filed by the plaintiff is not maintainable either in law or facts. The allegation made in the plaint are not admitted by this defendants as false. The plaintiff must strict proof of the same. The father name of the plaintiff is not Siddaiah as shown in the cause title of the plaint. It is particularly false to allege that, the suit schedule properties was originally belongs to Siddaiah S/o Chowdashetty who is the brother of the grand father of the plaintiff as alleged in the said para. It is further denied that, the said Siddaiah was died without marriage as alleged in the said plaint.

6. Further defendant No.1 contended that, the suit schedule properties is not belongs to the plaintiff. The suit schedule properties are ancestral and joint family properties of the defendants. They have got partitioned through the registered partition deed dated 01.04.2022 by virtue of partition deed, the defendants are in possession and enjoyment of the suit schedule properties. The katha and RTC extracts stands in the name of defendants. Therefore the plaintiff is not a owner and in possession of the suit schedule properties. Therefore question of interfere over the suit schedule properties by the defendants does not arise at all. Therefore the plaintiff is not in possession and enjoyment of the suit schedule properties. Eventhough the plaintiff has falsely claimed suit schedule properties by virtue of registered partition deed. The defendants are possession and enjoyment of the suit

schedule properties. The father name of the defendant No.1, 3 and 4 is not only Chowdashetty but is was called Sidda. Therefore the suit schedule property is originally belongs to the ancestral properties. Therefore the plaintiff is not having right interest, ownership over the suit schedule properties. Hence the suit of the plaintiff is liable to be dismiss with cost. The plaintiff is neither maintainable nor tenable either in the eye of law or on facts, misconceived, vexatious and frivolous one and as such the same is liable to be dismissed in limine with exemplary cost. The entire averments made in the affidavit and application are false. If the application is dismissed no hardship, injustice and irreparable loss will be caused to the plaintiff. Hence, they prayed for dismissal of the application.

7. Heard the argument canvassed by the learned counsels for the plaintiff and defendants. Perused entire materials on record.

8. On careful examination of contention of both sides and materials on record, the following points arise for consideration of this court:

Point No 1: Whether the plaintiff has made out prima facie case in his favour?

Point No 2: Whether the balance of convenience lies in favour of plaintiff?

Point No.3: Whether the plaintiff will be put to irreparable loss and injury, if an order of temporary injunction is not granted?

Point No 4: What order?

9. The above points are answered as follows:

Point No.1: In the Negative,

Point No.2: In the Negative;

Point No.3: In the Negative;

Point No.4: As per final order for the following:

REASONS

10. **Point No.1:-** The plaintiff has filed this suit for relief of declaration and permanent injunction against defendants. The plaintiff has stated in his affidavit, the plaintiff is the suit schedule property is the ancestral and joint family property of the plaintiff. The Suit schedule properties originally belongs to the Chowdashetty who is none other than the brother of the grand father of the plaintiff. The said Siddaiah died without marriage. Hence the said Siddaiah has no wife and children. Therefore Class-I legal heir his mother Chowdamma W/o Chowdashetty. She is also died with out issues. Atigashetty and his wife Lakshmamma are the legal representatives. The said Atigashetty is father of Siddaiah. The said Siddaiah is father of plaintiff.

The said Siddaiah is also no more. Hence the plaintiff Shivappa is only a legal representatives of said Siddaiah. The said Suit schedule properties are ancestral properties of the plaintiff. The katha of the properties not mutated in the name of plaintiff due to lack of knowledge and illiteracy. After demise of Siddaiah and father of the plaintiff. The plaintiff is in possession and enjoyment of the suit schedule properties. Except the plaintiff no one is in possession land enjoyment of the suit schedule property. Further plaintiff submits that, the defendants have no manner of right, title, interest much less possession over the suit schedule property. Even though the defendants trying to interfere over the the suit schedule properties unnecessarily and also proclaimed himself that, he is in owner of the suit schedule properties. The defendants did not stopped the illegal interfere over the suit schedule properties. Therefore the plaintiff filed a present suit against the defendants for the relief of declaration and injunction. The defendants colluded with the other defendants and witnesses created a partition deed dated 01.04.2022 and transferred the katha by colluding the revenue officials to grab the suit schedule properties. Therefore the defendant No.1 Sidda is misuses his name and by created Aadhaarcad and other documents to show that, his name is Siddaiah but the defendant No.1 is not a Siddaiah. The defendant No.1 name is Sidda and katha also stands in his name. The defendant No.1 is not family member of the plaintiff. Even though the defendant No.1 created document and executed a partition deed in favour of the other defendants. The plaintiff has filed

application to grant relief of ad-interim injunction against the defendants. Hence, plaintiff has contended that he had got a prima facie case in his favour and balance of convenience lies in favour of the plaintiff and greater hardship will be caused to the plaintiff if the order of injunction is not granted. Moreover the defendants are trying to interfere and obstructing to the plaintiff's peaceful possession and enjoyment of the said property and also trying to dispossess the plaintiff. The defendants are created document in respect of suit schedule properties. Then plaintiff will suffer irreparable loss and hardship. Further plaintiff has stated that, he is having prima facie case against the defendants. Hence, he filed this suit along with the application.

11. On the other hand, defendants contended that, the defendants has denied the averments made in the plaint as well as in the application. He has specifically stated that, the plaintiff is not possession of the suit schedule properties. The suit schedule properties ancestral properties of the defendants. The defendant No.1 has not created any documents . Evne though the plaintiff has filed a false case against the defendants. Therefore the plaintiff is not is in possessions and enjoyment of the suit schedule properties. According to the plaintiff the defendant No.1 has created the documents in order to grab the properties of the plaintiff. And katha also transferred in the name of defendant No.1 by colluded with the revenue office without having any title, interest and possession over the suit

schedule properteis. Therefore the plaintiff is possession and enjoyment of the suit schedule properties. The plaintiff submitted that, on the basis of the created documents the defendants have illegally interfering with the peaceful possession and enjoyment of the suit schedule properties. And also trying to dispossess the plaintiff possession and enjoyment of the suit schedule properties. The documents relied by the plaintiff are all created documents. The plaintiff has no prima facie case and balance of convenience. Therefore, the application filed by the plaintiff is liable to be rejected. The defendants further submitted that, they are the owner in possession of the properties by virtue of the register partition deed. The plaintiff himself interfering property of this defendants. But to grab the suit schedule properties, the plaintiff has filed the present suit with an ulterior motive to harass the defendants. There is no bonafide in the suit. If the application is allowed as prayed by the plaintiff, the defendants will be put to irreparable loss and hardship. The plaintiff has filed present false case and also present false application against the defendants to get false interim order against the defendants. Hence, they pray to dismiss the application.

12. In support of plaintiff case, he has produced copy of the RTC extracts, mutation register,.

13. The plaintiff has seeking declaration and permanent injunction against the defendants. On perusal of the RTC extract noticed that, the schedule properties are stands in the name of defendant No.1. But the defendants has taken serious contention that, the plaintiff is not in possession of the suit schedule properties. The contention of the plaintiff that, the documents are created by the defendant No.1 to grab the suit schedule properties. Therefore the plaintiff is in possession of the suit schedule properties. There is a serious dispute with regard to the ownership and possession of the both parties.

14. In this regard I relied the decision reported in **ILR 1992 Karnataka 2905** in the case ***R.Dilip Kumar V/s S. Ramu***, it is held that,

“The principles regarding granting or refusal of an injunction are well settled now. It cannot be disputed that in order to entitle to a temporary injunction, the plaintiff must have a clear prima facie case. Where there is doubt about the case of the plaintiff or when the case of the plaintiff is not clear, this extraordinary relief of temporary injunction cannot be granted to him. When judged in the light of the principles discussed in the ruling

cited above, it will have to be held that the lower court was right in coming to the conclusion that the plaintiff has not been able to establish any prima facie case to entitle him to temporary injunction". The said decisions are applicable to this case.

Hence, keeping in mind the above principles laid down by the Hon'ble High court of Karnataka, I have perused the documents produced by both the parties. There is a serious dispute with regard to the possession and ownership pertaining to the suit schedule properties. Hence it requires full-pledged trial to prove the case of the plaintiff. Therefore, at this stage, it appears the plaintiff has not made out prima facie case to grant the relief as sought by plaintiff.

15. After perusing the pleadings and documents placed on record by the both parties, this court holds that the plaintiff has not made out a prima-facie case. **Hence, I answer Point No.1 in Negative.**

16. **Point No. 2 & 3** :- These Points are taken together for discussion in order avoid repetition of facts.

17. Now it has to be seen whether the balance of convenience is lies in favour of the plaintiff and irreparable loss and injury would be caused to her if an order of temporary injunction is not granted.

18. In view of findings on Point No.1 the plaintiff has failed to prove a prima faice case. Where a party has failed to prove a prima facie case, injunction cannot be granted even if such party makes out case of balance of convenience and irreparable injury. It is so held by their Lordships in a decision reported in ***AIR 2010 SC 296, between Kashi Math Samsthan Vs. Srimad Sudhindra Thirtha Swamy.***

19. Viewed from any angle the balance of convenience does not lean in favour of plaintiff. When there is no prima facie case, question of considering the balance of convenience and irreparable loss and injury that would be caused to the plaintiff if temporary injunction is refused does not arise. Therefore, considering all these aspects, this court is of the considered view that, if the injunction is refused no irreparable loss and injury would be caused to the plaintiff.

20. The plaintiff has not made out prima facie case for grant of temporary injunction and balance of convenience does not lies in her favour and no injury will be caused to the plaintiff if the application is rejected. Hence, **I answer the Point No. 2 & 3 in the Negative.**

21. **Point No.4:** In view of my findings and discussions to the above points, this court proceed to pass the following:

:: O R D E R ::

**The I.A.No.II filed by the plaintiff
under Order 39 Rule 1 & 2 R/w Sec.151
CPC hereby rejected.**

No order as to cost.

(Dictated to the Stenographer directly on to the computer, corrected, then pronounced by me in the Open Court on this the 4th day of April 2025)

**(KISHOR KUMAR.K.N.)
Addl. Civil Judge & JMFC.,
Pandavapura.**

