

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this 13th day of October, 2022

O.S.NO.123/2022

Plaintiff/s : 1. Rangamma
W/o Late. Ramashetty,
Aged about 73 years,
R/at Machanayakana Halli,
Kasaba Hobli, H.D.Kote Taluk,
Mysuru District.

2. Gopamma
W/o Gopalashetty,
Aged about 67 years,
R/at Harohalli, Halli,
Jayapura Hobli, Mysuru Taluk,
Mysuru District.

3. Kamalamma
W/o Govindashetty,
Aged about 59 years,
R/at Nijaganahalli,
Chunchanakatte Hobli, K.R. Nagara Taluk,
Mysuru District.

4. Jayamma
W/o Papashetty,
Aged about 48 years,
R/at Kyathanahalli, Hampapura Hobli,
H.D.Kote Taluk, Mysuru District.

(By Sh. M.N.Ravishankar., Advocate)

-V/S -

- Defendant/s :
1. Chikkavenkatamma
W/o Late. Devashetty,
Aged about 68 years,
 2. D.Rangaswamy
S/o Late. Devashetty,
Aged about 39 years,
 3. D.Naganna
S/o Late. Devasetty,
Aged about 37 years,
 4. M.D.Najundaswamy
S/o Late. Devashetty,
Aged about 34 years,
 5. Rangahetty
S/o Late. Devashetty
@ Chikkannashetty,
Aged about 69 years,
R/a 2317, Ist Cross, 4th Main,
Vinayaka Nagara, Paduvarahalli, Mysuru City.
 6. M.C.Nanjandaswamy
S/o Late. Devashetty @ Chikkannashetty,
Aged about 62 years,
 7. Nagesha
S/o late. Devashetty @ Chikkannashetty,
Aged about 54 years,
 8. Lolamma
W/o Shivannashetty,
Aged about 55 years,

D1 to 4 and 6 to 8 are R/at Machanayakana Halli, Kasaba Hobli, H.D.Kote Taluk, Mysuru District.

(D1 to D5 & 7 by Sh. Mahaesha. T.R.,
Advocate, D6 by Sh. M.S.Rajappa., Advocate,
D8 Exparte)

PARTIES TO I.A.II

Applicant/ Plaintiff : Rangamma

V/S

opponents/Defendants : Chikkavenkatamma and others

ORDERS

Vide this order, I shall decide an application under Order 39 rule 1 and 2 r/w Sec. 151 CPC filed by the plaintiff.

2. The application is neither replied nor contested on behalf of defendants.

3. The application arose out of suit for partition and rendition of accounts claiming the partition of the suit properties being ancestral and joint family properties in favor of plaintiffs and against the defendants thereby declaring that each plaintiff is owner of 1/9th share each in the suit properties.

4. The defendants have not contested the suit and filed their written statements.

5. I have heard Ld. Counsel for the plaintiff and have gone through the record of the case carefully.

6. For consideration of grant of relief of temporary injunction under Order 39 rule 1 & 2 CPC, the civil courts basically considers the

three well known principles. Firstly, the plaintiff has to show a prima facie case in his favour, secondly balance of convenience is also in his favour and lastly he would suffer irreparable loss if interim injunction as prayed is not granted.

7. In the present application, the plaintiffs have claimed ad interim injunction in their favour and against the defendants thereby restraining them from alienating, transferring, selling, parting with the possession, disposing off or creating any third party interest in the suit properties till the disposal of the suit.

8. The prima facie case only means that there is a legal right vested in the plaintiffs and the defendants have infringed the same or intends to infringe the same so the matter requires investigation by way of evidence of parties to evaluate the pleadings of the parties to know which of the parties have legal right, title or interest in the suit property. The controversy is whether plaintiff is entitled to 1/9th share each in the suit properties which is triable issue and matter requires investigation by way of evidence of the parties and the plaintiffs can be said to have the prima facie case in their favor.

9. As regards the creation of third party interest, the principle of balance of convenience and irreparable loss is tilted in favour of the plaintiffs. Plaintiffs shall suffer an “Irreparable loss which cannot be compensated in terms of money as rights in immovable properties are involved” if relief so prayed by them is not granted to them which shall result into multiplicity of litigation. On the other hand, it will not affect the interest of the defendants.

10. In the light of these findings, I am of the opinion that as the plaintiffs have establish all the three essential ingredients in his favour, application U/o 39 1 & 2 CPC is liable to be allowed.

11. It is however, clarified that the observations made above are only for the purpose of disposal of the present application and shall not tantamount to be expression of opinion on the merits of suit.

12. In view of the above, I proceed to pass the following.

ORDER

I.A.No.II filed by applicants/plaintiffs U/o 39 rule 1 &2 R/w Section 151 CPC is hereby allowed.

Consequently the defendants are restrained from transferring, selling, alienating, parting with possession or in any manner creating any third party interest in the suit properties till the disposal of the main suit.

No order as to cost in view of the relationship between the parties.

For P/E put up on 4.11.2022

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 13th day of October, 2022.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote