

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

**Present: Sandesh Prabhu.B**, B.A(Law),LL.B,PGDHRM.,  
Senior Civil Judge & J.M.F.C.,  
H.D.Kote.

**O.S. NO.146/2023**

**Dated : On this the 2<sup>nd</sup> April, 2024**

**Plaintiff/s** :1. Kamalamma  
W/o Late.Javarappa,  
Aged About 63 Years.

2. Shivakumara.J  
S/o Late Javarappa,  
Aged About 34 Years.

3. Mahadevaswamy.S.J  
Late.Javarappa,  
Aged About 32 Years,  
  
R/at Ambedkar Street, 4<sup>th</sup> Ward,  
Saragur Town and Taluk, Mysore District.

**(By Sri.H.G.Venkatesha., Advocate)**

**-V/s-**

**Defendant/s:** 1. Mahadevamma  
S/o Late. Somaiah S.M,  
Aged about 60 years

2. Padmaja  
S/o Late.Somaiah, S.M,  
Aged about 57 years

3. Kamalaja  
S/o Late Somaiah, S.M,  
Aged about 54 years

4. Jalaja  
S/o Late.Somaiah,S.M,  
Aged about 51 years

5. Parashivamurthy.S  
S/o Late.Somayya,S.M,  
Aaged about 48 years

R/at Ambedkar Street, 4<sup>th</sup> Ward,  
Saraguru Town and Taluk,  
Mysuru District

**(D1 to 5 by Sri. K.Chandrashekar.,  
Advocate,)**

**ORDER ON I.A. No.III**

**Applicants/ Plaintiffs** : Mahadevaswamy.S.J

**-V/s-**

**Opponents/Defendants** : Mahadevamma and others

**Order on application I. A No.II filed U/O 39 rule 1 & 2 R/w  
Sec 151 of CPC**

The application I.A.No.II is filed by the plaintiffs U/O 39 Rule 1 & 2 R/w Sec 151 of CPC praying for an order of temporary injunction by restraining the defendants from alienating, mortgaging, executing agreement or transferring in any manner of suit schedule property till disposal of the present suit.

2. The said application is supported by the affidavit of the plaintiff No.3 and it is sworn that the suit schedule property was originally granted in favour of the grandfather of the plaintiffs by name Madaiah S/o Madaiah as per grant certificate bearing No. ADR 74/1948-49 dated 16.03.1949. After the said grant, the said Madaiah S/o Madaiah was in peaceful

possession and enjoyment of the said granted property bearing Sy.No.50 measuring 5 acre 11 guntas till his life time. After his death, the husband of plaintiff No.1 and father of other plaintiffs by name Javarappa S/o Madaiah was in peaceful possession and enjoyment of the schedule property. After the death of said Javarappa, the plaintiffs being the legal heirs are in possession of the schedule property. It is further sworn that the said Madaiah S/o Madaiah was deceased on 08.07.1997 and the husband of plaintiff No.1 by name Javarappa was deceased on 02.11.1999. It is also sworn that recently when the plaintiffs examined the documents relating to suit schedule property for changing of the katha in their name, they came to know that the father of the defendants by name S.M.Somaiah illegally got mutated the katha in his name. Thereafter on perusal of the handwritten RTCs relating to the suit schedule property for the year 1990-91, there is mentioning about transfer of right but no entry about any mutation order. The revenue officials have also given endorsement by stating that there is no any order relating to mutation. It is further sworn that the defendants by colluding with the revenue officials, got created the documents and they now filed application for durasth of the suit schedule property but the plaintiffs have given objection for the same.

3. It is further sworn that the defendants got no manner of right or interest over schedule property but they by creating the illegal documents intends to grab the schedule property. The plaintiffs have made out prima facie case and if the order of

temporary injunction is not granted, they will be put to irreparable loss and hardship. Hence prayed to allow the application.

4. After filing of the suit, in pursuance of the summons, the defendants have appeared before the court through their counsel. The defendant No.5 has filed his written statement and the same has been adopted by the other defendants and also filed memo by stating that the written statement may be consider as objection to I.A.No.II.

5. The defendants in their written statement have pleaded that the plaintiffs have not included all the necessary parties to the suit and the same is barred by limitation. It is denied that the suit schedule property was exclusively granted in favour of Madaiah S/o Madaiah as per grant certificate dated 16.03.1949 but it is stated that when the said Madaiah along with his brothers by name S.M.Somaiah, Maliyaiah and Javaraiah wherein joint family, the said property was granted in the name of the elder member of the family by name Madaiah S/o Madaiah. It is denied that after the death of husband of the plaintiff No.1 by name Javarappa, the plaintiffs are in possession of the schedule property. It is further denied that the plaintiffs are in peaceful possession and enjoyment of the suit schedule property.

6. It is stated that one Javarappa alias Bugutaiah of H.D.Kote Town got four children by name Madaiah, S.M.Somaiah, Maliyaiah and Javaraiah. All the said persons

deceased at present. The plaintiffs belongs to the family of said Madaiah and defendants belong to the family of said S.M.Somaiah. When the said four brothers were living together in joint family, the suit schedule property was granted in the name of said Madaiah by the Taluk Thasidlar. The said Madaiah and his brothers were cultivating the joint family properties including the schedule property till 15.11.1960 and on said date, they have got divided the joint family properties by way of a Partition Deed. In the said partition, 2 acre 25½ gutnas of land in suit schedule property was allotted to the share of grandfather of the plaintiff No.2 and 3 by name S.Madaiah and he was in possession of said allotted property by mutating his name in the revenue records. Similarly the remaining 2 acre 25½ gutnas of land in suit schedule survey number was fallen to the share of the father of the defendants.

7. It is further stated that as per the said Partition Deed the said S.Madaiah was in possession and enjoyment of only 2 acre 25½ gutnas of land and the said S.Madaiah or his legal heirs never been in possession of entire 5 acre 11 gutnas of land. It is also stated that the father of the defendants by got mutating his name in respect of the property allotted to his share, was in possession and enjoyment of the schedule property and he was died on 06.04.2012. After the death of the said S.M.Somaiah, the katha relating to said property measuring 2 acre 25½ gutnas was mutated in the name of mother of the defendants and after her death the katha relating to said property was mutated in the name present defendants as per

M.R.No.5/2022-23. Hence the defendants are in possession and enjoyment of the said 2 acre 25½ gutnas of land which was fallen to the share of their father. It is also stated that the suit of the plaintiffs is barred by limitation since the defendants are in possession and enjoyment of the allotted share since from 1960. Similarly the other brothers of said Madaiah and S.M.Somaiah are also got mutated the katha relating to properties allotted to their share as per said partition. It is stated that the plaintiffs are in possession and enjoyment of only 2 acre 25½ gutnas of land and the defendants are in possession of remaining property in the suit schedule survey number. As per the revenue records, the plaintiffs and defendants are in possession and enjoyment of each 2 acre 20 guntas but the plaintiffs by including the property belong to the defendants, by giving false boundaries to the schedule property has filed the present suit. Hence prayed to dismiss the suit with cost and also prayed to dismiss the interim application filed by the plaintiffs.

8. Heard arguments of counsel for both parties.

9. The points that arise for consideration of this court are as under:

### **P O I N T S**

**Point No.1.** Whether the plaintiffs have made out prima facie case?

**Point No.2.** Whether the plaintiffs have further established that the balance of convenience lies in their favour?

**Point No.3.** Whether the plaintiffs have further established that if the order of temporary injunction is not granted they would be put to irreparable loss and hardship?

**Point No.4.** What order?

10. The findings of this court on above points are as under:

**Point Nos.1 to 3 :- In Affirmative**

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

### **REASONS**

#### **Point No.1:**

11. The plaintiffs have filed the present suit against the defendants for the relief of declaration that they are the owners of suit schedule property and for relief of permanent injunction. The plaintiffs along with plaint have filed the present application I.A.No.II by praying for an order of temporary injunction restraining the defendants from alienating, mortgaging or creating charge over the suit schedule property till disposal of the suit. The plaintiffs in the affidavit accompanying to the application have stated that the suit schedule property was originally granted in favour of one Madaiah S/o Madaiah as per grant certificate dated 16.03.1949 and after his death his son by name Javarappa who is the husband of plaintiff No.1 and father of other plaintiffs was in possession and enjoyment of the suit schedule property and after the death of said Javarappa the plaintiffs are in peaceful possession and enjoyment of the suit schedule property. It is also sworn by the plaintiffs that they have made out prima facie

case, balance of convenience lies in their favour and if the order of temporary injunctions not granted they will be put to irreparable loss and hardship.

12. The Hon'ble Supreme Court in **AIR 2010 SC 296 - Kashimata Samsthanam Vs Srimad Sudeendrathirtha Swamy**, has held that the party who seeks the order of temporary injunction he has to prove that he has made out a prima facie case which is fit go for trial, the balance of convenience also lies in his favor and he will suffer irreparable loss and hardship if the temporary injunction is not granted. As per the principle laid down in the aforesaid ruling the fist and foremost ingredient to be considered by the court is that whether the plaintiff got a prima facie case. It is settled principle of law that while granting the temporary injunction, the court must be satisfied that there is bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and on the facts before the court, there is probability that the applicant being entitle for the relief claimed by him.

13. By keeping in mind the said three principles laid down for granting the temporary injunction, now it is necessary to conclude that whether the plaintiffs have made out prima facie case which is fit to go for trial and further established that the balance of convenience lies in their favour and they would be put to irreparable loss and hardship if the order of temporary injunction is not granted. The plaintiffs along with the plaint, they have produced documents in order to establish the prima

facie case before the court. The plaintiffs have produced copy of grant certificate dated 16.3.1949, handwritten RTCs in respect of suit schedule properties for various years, endorsement issued by Taluk Thasildar dated 29.08.2023, certified copies of RR VI index, computerized RTC, EC and death certificates of Late.Madaiah and Late.Javarappa.

14. On the other hand it is specific defence of the defendants that the suit schedule property was granted in the name of Madaiah S/o Late.Madaiah on behalf of all the joint family members including the four brothers of said Madaiah. The said Madaiah and his brothers were in joint possession and cultivation of the suit schedule property till 15.11.1960 and on said date, the partition was took place between said Madaiah and his three other brothers by name S.M.Somaiah, Maliyiah and Javaraiah. In the said partition the said Madaiah was allotted with 2 acre 25½ gutnas of land and remaining 2 acre 25½ gutnas of land was allotted to the share of said S.M.Somaiah who is the father of defendants. It is also the defence of the defendants that the plaintiffs are in possession and enjoyment of only 2 acre 20 gutnas of land in schedule property as per revenue records but the plaintiff by including the property of defendants have filed the suit. To substantiate the said defence raised by the defendants, they have produced the xerox copy of the alleged Partition Deed dated 15.11.1960, handwritten RTCs, mutation extract, present RTC in respect of suit schedule property, copy of order passed by DDLR, Mysuru, copy of akarband, copy of patta book and tax paid receipt.

15. On careful perusal of the pleadings of both parties, it is not in dispute that the suit schedule property was granted in the name of S.Madaiah S/o Madaiah. It is the specific defence of the defendants that since the said Madaiah and his three other brothers were residing together in the joint family, the schedule property was granted in the name of said Madaiah since he was elder member of the family. The plaintiffs have produced xerox copy of the grant certificate and there is no dispute about the granting of said land in the name of Madaiah S/o Madaiah. As it is discussed above, the defendants have taken up the specific defence that the said Madaiah and his other three brothers were living together and on 15.11.1960 they entered into a Partition Deed in respect of all the joint family properties and in the said partition the property measuring 2 acre 25½ gutnas of land in suit schedule survey number was allotted to the share of said S.Madaiah and remaining property was allotted the the share of father of defendants. To substantiate the said fact, the defendants have produced the xerox copy of the unregistered Partition Deed dated 15.11.1960. On perusal of recitals of said unregistered Partition Deed dated 15.11.1960 the recitals reveals that S.Madaiah and his other three brothers have got divided joint family properties including the present suit schedule survey number and in the said partition, the suit schedule property was equally divided and one portion was allotted to S.Madaiah and the remaining portion was allotted to the share of S.M.Somaiah who is the father of defendants. The question to be considered is whether said unregistered xerox copy of the

Partition Deed could be relied upon at this stage to conclude about the defence raised by the defendants. As it is stated above the said Partition Deed is a unregistered Partition Deed and on perusal of the recitals it is clear that the said document is not a Memorandum of Partition which recorded the earlier partition in writing. It is settled principle of law that if the document is a Memorandum of Partition which recorded the earlier partition, then the same need not be registered and same can be relied upon for the division of the property. In the present case as it is stated above, the alleged Partition Deed is not a Memorandum of Partition which was reduced into writing about earlier partition took place between said S.Madaiah and his other brothers. Since the said document is not a Memorandum of Partition and unregistered document, the same cannot be relied upon for any purpose U/sec 49 of Registration Act. Moreover the contents of said document has to be established in a full dressed trial. The Hon'ble Supreme Court in **AIR 1966 SC 432 - V.N.Sarin Vs Ajit Kumar Poplai and another**, **AIR 1988 SC 881 - Roshan Singh and others Vs Zile Singh and others** and the judgment reported in **2011 (3) KCCR 1871 - Smt. Laxmibai and others Vs Vaijinath**, it has been held that if there was earlier family partition and subsequently the same was reduced into writing, the same should be considered as Memorandum of Partition which does not require compulsory registration.

16. As per the principles laid down in the aforesaid rulings, the unregistered Partition Deed cannot be relied upon unless

the same is a Memorandum of Partition. Therefore even though the defendants have produced the said unregistered Partition Deed dated 15.10.1960, the same cannot be relied upon at this stage in order to conclude about partition took place between said S.Madaiah and his other three brothers in respect of present suit schedule property along with other joint family properties. Moreover the contents of said documents has to be established by the defendants after completion of the trial.

17. Further the defendants have produced handwritten RTCs in respect of suit schedule survey number and on perusal of said handwritten RTCs the name of father of defendants by name S.M.Somaiah mutated in respect of 2 acre 25½ gutnas of land and there is entry in column No.10 about change of right (ಹಕ್ಕು ಬದಲಾವಣೆ) but the said handwritten RTC does not contain the mutation order. The defendants further produced M.R.No.16, 17 and 18/1987-88 and on carefully perusal of said mutation extracts, the same is not relating to present suit schedule property bearing Sy.No.15 and there is no entry regarding the mutation of said survey number. As per the case of the defendants, the name of said S.M.Somaiah in respect of 2 acre 25½ gutnas of land in suit schedule property was mutated as per partition but the defendants have not produced any document to substantiate their contention that the RTC was mutated in the name S.M.Somaiah on the basis of the said partition. Further the defendants have produced mutation extract in M.R.No.H4/2021 and also produced the present computerized RTCs in respect of schedule property. On careful

perusal of the said mutation extract and computerized RTCs, the name of defendants have been mutated in respect of 2 acre 25½ gutnas of land after the death of said S.M.Somaiah.

18. As it is discussed above it is the case of the plaintiffs that after the death of said Madaiah, the husband of plaintiff No.1 by name Javarappa was in possession and enjoyment of entire suit schedule property and after his death the plaintiffs are in possession and enjoyment of the same. The plaintiffs have produced the endorsement relating to property bearing Sy.No.15 and it is stated that there is no entry about mutation extract in column No.10 of property bearing Sy.No.15. No doubt on careful perusal of the documents produced by the both parties, it reveals that initially the schedule property was granted in favour of S.Madaiah who is the grandfather of plaintiff No.2 and 3 and the subsequent revenue records reveals that the name of father of defendants by name S.M.Somaiah has been mutated in respect of 2 acre 25½ gutnas of land. The defence raised by the defendants about partition took place dated 15.11.1960 has to be established by them by way of full dressed trial.

19. The plaintiffs in the present application have claimed only relief of temporary injunction by restraining the defendants from alienating the schedule property or creating charge over the same until disposal of the suit. The plaintiffs have claimed the relief of declaration that they are the owners of entire extent of suit schedule property. On the other hand the defendants have taken up the defence of partition of the suit schedule

property by equally dividing the schedule property between the grand father of the plaintiff No.2 and 3 and father of defendants. The plaintiffs by producing documentary evidence prima faice established that the schedule property was originally granted in favour of their grandfather by name S.Madaiah. The defence of the defendants that the schedule property was granted on behalf of joint family and subsequent partition should be established by way of trial. Until then the suit schedule property should be preserved intact. Therefore by considering the entire materials available on record, the plaintiffs by producing material evidence has established the prima facie case which is fit to go for trial. Hence for the said reasons, this court answers Point No.1 in Affirmative.

**Point Nos.2 & 3:**

20. Both these points are inter connected each other and in order to avoid the repetition of the facts and appreciation of material documents, both these points are taken up together for common discussion.

21. The plaintiffs in order to get the discretionary relief of temporary injunction they have to establish the other two golden principles which includes the balance of convenience, loss and hardship. It is already concluded above that the plaintiffs have made out prima facie case which is fit to go for trial. The plaintiffs have claimed the limited relief of temporary injunction by restraining the defendants from alienating the suit schedule property. As it is discussed above the defence of

the defendants should be established in full dressed trial and until then the schedule property should be protected. If the defendants alienate or create charge over schedule property, then it will leads to multiplicity of proceedings and it will cause loss and hardship to the plaintiffs if they would successful in establishing their case. Therefore this court comes to the conclusion that the balance of convenience lies in the in favour of the plaintiffs and if the order of temporary injunction by restraining the defendants from alienating the schedule property is not granted more loss and hardship to the caused to the plaintiffs rather than the defendants. The suit schedule property should be kept intact until disposal of the suit. Therefore the plaintiffs are entitle for discretionary relief of temporary injunction claimed by them. Hence this court comes to the conclusion that the exparte temporary injunction granted by this court should be extended until disposal of the present suit. Hence for the said reasons, this court answers Point Nos.2 and 3 in Affirmative.

**Point No.4:**

22. For the reasons discussed above, this court proceeds to pass the following:

**ORDER**

**The application I.A. No.II filed by the plaintiffs U/O 39 Rule 1 & 2 R/w section 151 of CPC is hereby allowed.**

**The exparte temporary injunction granted against the defendants by restraining them from alienating or crating charge over schedule property is hereby confirmed until disposal of the suit.**

**No order as to the cost.**

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 2<sup>nd</sup> day of April, 2024)

**(Sandesh Prabhu. B)  
Senior Civil Judge & J.M.F.C  
H.D.Kote**