

**IN THE COURT OF THE CIVIL JUDGE & JMFC**  
**HEGGADADEVANAKOTE**

**PRESENT**

Sri Mohammed Shaiz Chouthai, B.A.,LL.B. (Hons.), LL.M.(M.L.)  
Civil Judge & JMFC.,  
Heggadadevanakote

**Dated: 26<sup>th</sup> day of February 2021**

**O.S.No.145/2020**

- Plaintiff/s : 1. Lakshamma D/o.Late Govindegowda,  
Aged about 52 years,  
2. Seenegowda S/o.Late Govindegowda,  
Aged about 50 years,  
3. Thirumalegowda S/o.Late Govindegowda,  
Aged about 48 years,  
4. Nagegowda S/o.Late Govindegowda,  
Aged about 46 years,

All are R/o.Karimuddanahalli Village,  
Bilikere Hobli, Hunsur Taluk,  
Mysuru District.

(By Sri.Kiran, Advocate)

V/s

- Defendant/s : 1. Thimmamma W/o.Late Thirumalegowda  
(Shukregowda), Aged about 72 years,  
2. T.Manjunatha S/o.Late Thirumalegowda,  
(Shukregowda), Aged about 52 years,  
3. Jayaramegowda S/o.Late Thirumalegowda,  
(Shukregowda), Aged about 50 years,

All are R/o.Gollanabeedu Saraguru Village,  
Hampapura Hobli, H.D.Kote Taluk.

(By Sri.N.M.K./S.K.G., Advocates)

Applicant : Nagegowda (Plaintiff No.4)

V/s

Opponents : Thimmamma & Others (Defendants)

**ORDER ON I.A.No.I FILED UNDER ORDER 39**  
**RULE 1 AND 2 OF C.P.C.**

This instant application is filed by the plaintiff No.4 U/O.39 Rule 1 and 2 of C.P.C., to restrain the defendants from alienating the suit schedule property till the disposal of the suit.

2. The plaintiff No.4 has filed affidavit in support of the application deposing that, plaintiff No.1 to 4 are siblings. Likewise, defendant No.2 and 3 are also siblings and defendant No.1 is their mother. Defendant No.2 and 3 are children of plaintiffs' uncle-Thirumalegowda. Plaintiffs and defendants are joint family members and suit property is their ancestral property, which is under their joint possession. The defendants had promised to give share to the plaintiffs. The suit property was initially in the name of defendant No.1, which thereafter came to be mutated in the joint names of defendant No.2 and 3 on the basis of alleged Gift Deed dated 24/01/2018. The defendants are trying to sell the tamarind trees situated over suit property. The Gift Deed is not binding on plaintiffs. According to plaintiffs, the defendants are trying to sell the suit schedule property.

3. On 02/07/2020 the Panchayath was summoned and defendants were asked to part with share of plaintiffs in suit

property, however the defendants denied the same. It is further contended that, the defendants have already sold the properties fallen to their share and now they are trying to sell the suit property without allotting any share to the plaintiffs. The plaintiffs contended that, they have got *prima-facie* case in their favour, the balance of convenience lies in their favour. If the injunction is not granted, irreparable loss would be caused to the plaintiffs. Amongst other grounds, the plaintiff No.4 prayed to allow the application.

4. After service of notice, the defendants appeared through their learned Counsel. The defendant No.2 and 3 filed written statement, which is adopted by defendant No.1. They have filed memo to treat the written statement as also objections to the instant application.

5. The defendants admit the relationship between the plaintiffs and defendants, but contend that, the genealogical tree referred to in plaint is incomplete, as the other members of propositor's family of Govindgowda have not been made party. The defendants also denied that, they are in joint family with plaintiffs. They further denied that, the suit property is in joint possession of the plaintiffs and defendants. They also denied that, the Gift Deed executed

by defendant No.1 in favour of defendant No.2 and 3 is illegal transaction. They have also denied that, they are trying to dispose off the tamarind trees situated over suit property. The defendants never intended to sell the suit property. They further denied the summoning of Panchayath, as contended by plaintiffs.

6. According to defendants, the land bearing Sy.No.89/11 measuring 0.04 guntas situated at Gollanabeedu Village, is the ancestral property of plaintiffs' father-Govindegowda and the husband of defendant No.1-Thirumalagirigowda @ Thirumalegowda. It is contended that, the Late Govindegowda had sold his share of 0.02 guntas of land in Sy.No.89/11 along with tamarind trees for a valuable consideration through Registered Sale Deed No.419/62-63, dated 19/02/1962 in favour of 1<sup>st</sup> defendant's husband-Thirumalegirigowda @ Thirumalegowda. As such, the entire extent of 0.04 guntas in land Sy.No.89/11 was in the ownership of Thirumalagirigowda @ Thirumalegowda and he was in possession of the entire extent of the property till his death. After his demise, the 1<sup>st</sup> defendant got her name mutated in the revenue records and she was in possession of the suit property along with defendant No.2 and 3. Thereafter, defendant No.1 executed Registered Gift Deed dated 06/12/2017 in favour of defendant No.2 and 3. As

such, they are the absolute owner and in possession of the suit property. The plaintiffs have no right whatsoever over the suit property. Hence, there is no question of partition between the plaintiffs and defendants. The plaintiffs have suppressed material facts and instituted this suit. The plaintiffs have not challenged the sale transaction between Thirumalegowda @ Thirumalagirigowda and Govindegowda. The plaintiffs have filed the present suit after the lapse of 58 years after the sale transaction and therefore the suit is barred by limitation. Amongst other grounds, the defendants prayed to dismiss the application.

7. I have heard the learned counsels for the plaintiffs. Even after giving opportunity to the defendants, they did not argue on the instant application.

8. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour?
2. Whether the applicant proves balance of convenience in his favour?
3. Whether the applicant proves that irreparable loss would be caused to him if injunction is not granted?
4. What order?

9. My answer on the above points are 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 TO 3:-** At the threshold, though the defendants have stated that, the genealogical tree given in the plaint is incomplete, they have not stated who are the other necessary parties to the present litigation in whose absence no effective decree could be passed.

11. The defendants admit the relationship as set up by the plaintiffs. The plaintiffs have filed two R.T.C.s of land Sy.No.89/11 for the year 2014-15 and 2019-20. The first R.T.C. for the year 2014-15 reveal the name of defendant No.1 for the whole extent of 0.04 guntas. Under Column No.10 of the said R.T.C., the nature of the property is mentioned as ancestral, and the name of defendant No.1 appears to have been mutated on the basis of Mutation Order No.27/1993-94. The plaintiffs have not produced the certified copy of the Gift Deed, dated 06/12/2017, executed by defendant No.1 in favour of defendant No.2 and 3. However, the defendants admit the above transaction of gift. The name of defendant No.2 and 3 appears in R.T.C. for the year 2019-20. Except these two documents, the plaintiffs have not produced any other document to show

the flow of title over the suit property.

12. On the other hand, the defendants except contending that, the father of plaintiffs, i.e., Late Govindegowda had sold his share of 0.02 guntas out of 0.04 guntas in favour of his brother Late Thirumalegowda, have not produced any documents in support of their contention.

13. The defendants admit that, the suit property was ancestral property of Late Thirumalegowda and Govindegowda. Therefore, the nature of the property at the hands of Late Thirumalegowda and Govindegowda, is not in dispute at this juncture. The plaintiffs however contend that, the suit property was previously standing in the name of defendant No.1. They did not explain how the property got mutated in the name of defendant No.1. It is surprising to note that, the plaintiffs in their pleadings have stated that, the defendants have already sold the properties fallen to their share and now they are trying to sell the suit property without allotting them any share. The plaintiffs did not state, which are all the properties sold by the defendants in which the plaintiffs too had share. They do not challenge the alienation of those properties. If it is assumed that, the defendants have sold their share in the suit property, but the plaintiffs have filed this present suit to the whole extent of

0.04 guntas of land Sy.No.89/11. The contention of the plaintiffs in this regard would *prima-facie* reveal that, the partition had already taken place and the share is already allotted to the defendants. If it is so, then the suit of the plaintiffs for partition and separate possession do not arise at any stretch of imagination. Though the defendants have not produced any documents in support of their contention, but on the face of records available at this juncture and also having regard to the pleadings of the plaintiffs, they have no *prima-facie* case in their favour. The defendants in their written statement have contended that, they never intended to sell the suit property. As such, the plaintiffs have failed to prove their *prima-facie* case in their favour. The other two ingredients for the grant of injunction couldn't be gone into. Therefore, the Point No.1 to 3 are answered in the **Negative.**

14. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

**ORDER**

The application filed by the plaintiffs U/O.39 Rule 1 and 2 of C.P.C., is hereby dismissed.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the

parties to prove their case by leading evidence during the trial.

*(Dictated to the Stenographer directly on computer, typed by him, the same is corrected, revised, signed and then pronounced by me in the open Court, the **26<sup>th</sup> day of February 2021**).*

**(MD SHAIZ CHOUTHAI)**  
CIVIL JUDGE & JMFC.,  
**H D Kote**