

KAMS300002612024



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE  
AND J.M.F.C AT HUNSUR**

**Present:** Smt.Anitha, B.A. (Law) L.L.B.,  
Addl. Senior Civil Judge & JMFC.,  
Hunsur.

**Dated this the 17<sup>th</sup> day of August, 2024.**

**OS No.45/2024**

Plaintiff: Sri.A.C.Shivananda,  
S/o Late A.B.Channabasappa,  
Aged 81 years, R/at D.No.36,  
2<sup>nd</sup> Main Road,  
Sheshadripuram, Bengaluru.

**(By: Sri.C.S.Sridhar, Advocate)**

-Vs-

Defendants: 1. Smt.Mallamma, W/o A.C.Vishwanath  
@ Papanna, Aged about 87 years,  
R/at Alanahalli village, Hampapura  
Hobli, H.D.Kote Taluk, Mysore District.

2. Smt.Pushpa, D/o Late A.C.Vishwantha  
@ Papanna, W/o Jayashekara M.R.,  
Aged about 68 years,  
R/at No.79/1, Kallahalli village,  
Jayapura Hobli, Mysore Taluk.

3. Sri. A.V.Kumara, S/o A.C. Vishwanath  
@ Papanna, Aged about 65 years,  
R/at Alanahalli village, Hampura Hobli,  
H.D.Kote Taluk, Mysore District.

4. Sri.A.V.Channabasappa,  
S/o A.C.Vishwanath @ Papanna,  
Aged about 63 years,  
R/at Alanahalli village,  
Hampapura Hobli, H.D.Kote Taluk,  
Mysore District.

1.	Provision under which the application is filed	:	Under Order 39 Rule 1 and 2 of CPC
2.	Relief sought for	:	Grant of Temporary Injunction
3.	The date on which the application is filed	:	16.02.2024
4.	Number of the application	:	IA No.I
5.	The date on which the objection is filed by different opponents	:	12.06.2024
6.	The date on which the orders passed on the said application	:	17.08.2024

#### **ORDERS PASSED ON IA NO.I**

The learned counsel for the plaintiff filed IA No.I under Order 39 Rule 1 and 2 of CPC seeking the relief of temporary injunction restraining the defendants from alienating the suit schedule property in any manner pending disposal of the suit.

2. The application is supported with the affidavit of the plaintiff stating that, he has filed the suit for the relief of declaration and permanent injunction. The suit schedule property belongs to him having acquired the same under panchayath partition deed entered between himself and his brothers. It is further stated that, when the suit schedule

property was subjected for durasth the defendants without his knowledge entered their names in the khata of the suit schedule property. He is aged, suffering from age related health problems and is residing at Bengaluru and and he could not able to change the Khata into his name. He has initiated legal proceedings against the defendants before Assistant Commissioner, Hunsur and by coming to know about the same the defendants are making attempt to alienate the suit schedule property. If they succeed in their attempts, he will be put to great hardship and difficulty. A prima-facie case has been made in his favour. The defendant have got no manner of right, title, interest or possession ove the suit schedule property. If the application is allowed no prejudice will be caused to the defendants. Hence, prayed to allow the application.

3. On the other-hand learned counsel for defendants No.1, 2 and 4 filed objection contending that, the suit is bad and false and not maintainable under law or on facts. It is also contended that, the suit schedule properties are under the exclusive enjoyment of the 4<sup>th</sup> defendant who acquired it through a registered conveyance. The plaintiff is never in possession of the suit schedule property and he failed to mention the names of adjoining land owners. The suit schedule properties cannot be identified and he has narrated the suit schedule property on the basis of the document of the

year 1978. The plaintiff has not produced any documents to show his possession over the suit schedule properties.

4. It is also contended that, the 4<sup>th</sup> defendant being the owner of the suit schedule properties has got every right to deal with the property and he has taken taken of the entire property on behalf of his mother and improved the suit schedule property by investing hard earned money. It is also contended that, the relief sought by the plaintiff is based on equity and it is discretionary power of the court and the court is required it look into the conduct of the parties. It is also contended that, earlier the suit schedule property was in the possession of Vishwanath and upon his death the Khata has been changed in the name of the 1<sup>st</sup> defendant with the consent of sons of A.B.Channabasappa and from then the defendants are in peaceful possession and enjoyment of the suit schedule properties and on the basis of the Gift Deed the 4<sup>th</sup> defendant is in possession of the suit schedule properties. It is further contended that, the appeal preferred by the plaintiff before the Assistant Commissioner came to be dismissed as barred by time. There will be no hardship going to be caused to the plaintiff as pleaded in the affidavit filed in support of the application. The plaintiff himself is the signatory for changing the khata into the name of the 1<sup>st</sup> defendant and the 4<sup>th</sup> defendant. Hence, prayed to dismiss the application with costs.

5. Thereafter, heard arguments addressed by learned counsels for the plaintiff and defendants No.1, 2 and 4 and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

**POINTS**

1. Whether the plaintiff has made out a prima-facie case?
  2. Whether balance of convenience lies in favour of the plaintiff?
  3. Whether irreparable loss and hardship is going to be caused to the plaintiff if an order of temporary injunction is not granted?
  4. What order?
6. The findings of the above points are as hereunder:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

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

**REASONS**

7. **Point No.1 to 3:** Since, these points are inter connected with each other and needs common discussion on the same set of facts and to avoid repetition of facts, these points are taken up together for discussion.

8. This is the suit filed by the plaintiff against the defendants seeking the relief of declaration that he is the absolute owner in possession of the suit schedule properties

and he has also sought for consequential relief of permanent injunction restraining the defendants from in any way interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule properties and also sought for mandatory injunction directing the revenue authorities to enter the name of the plaintiff in the revenue records in respect of the suit schedule properties. The suit schedule properties are bearing old Sy.No.1/48 and new Sy.No.102 measuring 5 acres and old Sy.No.1/49 and new Sy.No.103 measuring 1 acre situated at Soolekere Kaval village, Bilikere Hobli, Hunsur Taluk, bounded on the East: Land of M.B.Appaiiah, West: Devegalli Border, North: Lands of Smt.Mallamma and South: Lands of Govindaraju and Kushakumar.

9. It is the specific case of the plaintiff that, the properties situated in Sy.No.1/48, 1/49, 1/50, 1/51, 1/52 and 1/53 totally measuring 45 acres 25 guntas situated at Soolekere Kaval village, Bilikere Hobli, Hunsur Taluk was the self acquired property of one Smt.Bhagyalakshamma who purchased it from His Highness Maharaja of Mysore. Thereafter, Smt.Bhagyalakshamma sold the said property infavour of A.B.Channabasappa who is the father of the plaintiff and one Smt.Basamma who is mother of the 1<sup>st</sup> defendant jointly for valuable consideration. After purchase A.B.Channabasappa and Smt.Basamma partitioned the said

properties equally and 6 acres 3 guntas in Sy.No.1/48, 1 acre in Sy.No.1/49, 8 acres 10 guntas in Sy.No.1/51, 8 acres 20 guntas in Sy.No.1/52 and 4 acres 33 guntas in Sy.No.1/53 have been fallen to the share of A.B.Channabasappa who is the father of the plaintiff.

10. It is further case of the plaintiff that, Smt.Parvathamma was the wife of A.B.Channabasappa who died leaving behind four sons i.e., A.B.Basavaraju, A.C.Vishwanath (Husband of defendant No.1 and father of the defendants No.2 to 4), A.C.Shivananada (the Plaintiff) and A.C.Shivakumar. The plaintiff further stated that, his family had some other properties also and on 05.08.1978 there is a partition between plaintiff and his brothers and in the said partition the plaintiff acquired the suit schedule properties and from the date of the partition he is in possession and enjoyment of the suit schedule properties till today. It is also alleged that, the suit schedule properties are having common boundaries totally measuring 6 acres and when the properties have been subjected for Durasth the defendants by suppressing the partition dated 05.08.1978 got the khata entered in their names under MR No. 6/88-89 and MR No.H 11/2011-12 without the knowledge or consent of the plaintiff. It is the further case of the plaintiff that, now he wanted to obtain the revenue records of the suit schedule properties for the purpose of settling the properties in the name of his wife

and daughter and he came to know about the revenue entries standing in the name of the defendants. He has preferred an appeal before Assistant Commissioner, Hunsur in RA No.174/019 and without proper appreciation the appeal came to be dismissed on 26.09.2022 which made him to file this suit.

11. On the other-hand defendants No.1, 2 and 4 have appeared before the court and defendant No.3 has been placed exparte. The defendants have filed their written statements denying the entire case of the plaintiffs. However, the defendants admitted about the relationship. The 1<sup>st</sup> defendant is none other than the sister-in-law of the plaintiff and defendants No.2 to 4 are nephews of the plaintiff. It is contended that, the plaintiff on imagination filed the suit and conduct of the plaintiff plays important role. It is the specific contention of defendants No.1, 2 and 4 that, the plaintiff has only stick on to the properties described in the schedule to the Panchayath Paluparikath (ಪಂಚಾಯ್ತಿ ಪಾಲುಪಾರಿಕತ್) dated 05.08.1978 in a misleading manner.

12. It is an admitted fact that, originally through a registered sale deed dated 2.06.1966 A.B.Channabasappa (father of the plaintiff) and Smt.Basamma have jointly purchased 44 acres 25 guntas of land in Sy.No.1/48, 1/49, 1/50, 1/51, 1/52 and //53 of Soolekere Kaval Village, Bilikere Hobli, Hunsur Taluk. The total properties held by Late

A.B.Channabasappa and Smt.Basamma is 47 acres 24 guntas and A.B.Channabasappa and Smt.Basamma had 50% each share in the said properties. In the partition totally 24 acres has been fallen to the share of A.B.Channabasappa and remaining went to the share of Smt.Basamma. Other than the aforesaid 24 acres of properties A.B.Channabasappa had other properties totally measuring 73 acres 20 guntas in Sy.No.2/11, 27/11, 29/11, 26/11 and 4/4 of Yaravanadu village of Madikere Taluk. As such the sons of A.B.Channabasappa had  $\frac{1}{4}$ <sup>th</sup> share each which comes to 24 acres each. Defendants No.1, 2 and 4 further contended that, in the Panchayath Paluparikath (ಪಂಚಾಯ್ತಿ ಪಾಲುಪಾರಿಕತ್) dated 05.08.1978 the 'B' schedule property i.e., only 18.00 acres have been fallen to the share of the husband of the 1<sup>st</sup> defendant and father of defendants No.2 to 4. Since he has got only 18 acres of land there is one more document entered between the brothers in which the suit schedule properties have been fallen to the share of A.C.Vishwanath i.e., husband of the 1<sup>st</sup> defendant. It is the specific case of defendants No.1, 2 and 4 that, the plaintiff has suppressed the said material fact and filed the suit.

13. It is also contended that, the revenue records of the suit schedule properties has been mutated in the name of the 1<sup>st</sup> defendant as per MR No.6/1988-89 dated 25.02.1989 and as such the plaintiff is not at all in possession and enjoyment

of the suit schedule properties. Since, 26.02.1989 the 1<sup>st</sup> defendant is in possession of the suit schedule properties and recently on 29.07.2022 the 1<sup>st</sup> defendant executed a Gift Deed infavour of the 4<sup>th</sup> defendant and on the basis of said Gift Deed the 4<sup>th</sup> defendant became owner of the suit schedule properties.

14. In this regard it is very much necessary to look into the documents produced by both the parties. It is an admitted fact that, plaintiff and husband of the 1<sup>st</sup> defendant are own brothers. It is also an admitted fact that, the plaintiff and his brothers got divided the properties through a panchayath paluparikath dated 05.08.1978. In order to support his case the plaintiff got produced the RTC pertaining to the suit schedule properties. As per the RTC produced by the plaintiff the suit schedule item No.1 property is standing in the name of father of the plaintiff. The suit schedule item No.2 property is standing in the name of defendants. It is very pertinent to note that, the plaintiff in his plaint described the suit schedule properties as Sy.No.102 measuring 5 acres and Sy.No.103 measuring 1 acres. As per the RTC produced by the plaintiff the total extent of Sy.No.102 is 5 acres 27 guntas. The plaintiff has described only 5 acres of property. Further, as per the RTC produced by the plaintiff Sy.No.103 measures totally 10 acres 11 guntas. The plaintiff has not stated about the other extent of the properties.

15. Further, the plaintiff produced original Panchayath Paluparikath (ಪಂಚಾಯ್ತಿ ಪಾಲುಪಾರಿಕತ್) dated 05.08.1978. As per this document the properties have been divided into 4 shares. The share of the plaintiff is described at 'C' schedule. Further 'B' schedule has been allotted to the share of husband of the 1<sup>st</sup> defendant. In "C" schedule of this document it is mentioned that 5 acres in Sy.No.1/48 and 1 acre in Sy.No.1/49. The plaintiff also produced the copy of the sale deed dated 02.06.1966 which discloses about the purchase by A.B.Channabasappa and Smt.Basamma. There is no dispute about this document. On the other-hand the defendants have also produced the xerox copy of Panchayath Paluparikath (ಪಂಚಾಯ್ತಿ ಪಾಲುಪಾರಿಕತ್) dated 05.08.1978. There is no dispute about this document. The defendants also produced the counter file, the xerox copy of MR No.6/1988-89. It is very necessary to mention that, as per the statement given by Smt.Basamma the suit schedule properties have been entered in the name of plaintiff as well as defendant No.1.

16. Further, at that time of addressing the arguments learned counsel for defendants No.1, 2 and 4 produced the copy of one more document which is dated 25.08.1983 wherein it is clearly mentioned that the 6 acres of property given to the plaintiff under partition dated 05.08.1978 has been fallen to the share of Vishwanath and they have got no

objection for it. The plaintiff is silent about this document. He has suppressed the material fact before this court. The document produced by the defendants shows that, the name of the 1<sup>st</sup> defendant came to be entered in the revenue records in the year 1988-89 itself. The plaintiff filed this suit in the year 2024. It clearly shows that, the plaintiff is not at all in possession of the suit schedule properties since long time. The plaintiff has suppressed the material fact about the consent given by him for change of khata infavour of the 1<sup>st</sup> defendant. The relief of temporary injunction is an equitable relief and the person who comes before the court seeking equity is required to do equity. Suppression of material fact before the court makes this court to hold that the plaintiff has failed to make out a prima-facie case. No balance of inconvenience lies in favour of the plaintiff and if an order of injunction is not granted no hardship is going to be caused to the plaintiff which cannot be compensated in terms of money. On the other-hand if an order of injunction is granted the defendants will be put to great hardship and their long standing possession over the suit schedule property will be affected. On the basis of the above discussions it is to be held that the plaintiff is not entitled for the relief of temporary injunction. Accordingly, point No.1 to 3 are answered in the negative.

17. **Point No.4:** In view of the reasons discussed above, this court proceeds to pass the following:

**ORDER**

IA No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby rejected with costs of Rs.300/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 17<sup>th</sup> day of August, 2024)

**(Anitha)**

Addl. Senior Civil Judge and JMFC,  
Hunsur.