

KAMS310002242021



**IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C.,
AT HUNSUR**

Dated this 23rd day of March, 2022

**:PRESENT: Sri. Basavaraj H. Talawar, B.A., L.L.B.,
Prl. Civil Judge & J.M.F.C.,
Hunsur.**

O.S./36/2021

1. Sri. Javarayanayaka W/o Late. Chaluvanayaka,

Aged about 53 years,
R/at Kamagowdanahalli village,
Hanagodu Hobli,
Hunsur Taluk.
Mysuru District.

.....plaintiff

(By Shri. K.R.M, Advocate)

V/s.

1. Smt. Puttamma W/o Late. Chaluvanayaka,

Aged about 80 years,
R/at Kamagowdanahalli village,
Hanagodu Hobli,
Hunsur Taluk.
Mysuru District.

2. Smt. Mahadevamma W/o Venkateshanayaka,

Aged about 60 years,
R/at Shankaregowdana Koppalu,
Gavadagere Hobli,
Hunsur Taluk.
Mysuru District.

- 3. Smt. Manchamma**
W/o Late. Doddasiddanayaka,
Aged about 58 years,
- 4. Sri. Madanayaka S/o Late. Chaluvanayaka,**
Aged about 55 years,
- 5. Sri. Chandranayaka**
S/o Late. Chaluvanayaka,
Aged about 48 years,
- 6. Sri. Karinayaka S/o Late. Chaluvanayaka,**
Aged about 49 years,
Def. No.3 to 6 are
R/at Kamagowdanahalli village,
Hanagodu Hobli,
Hunsur Taluk.
Mysuru District
- 7. Smt. Rathnamma W/o. Thammaiahnayaka,**
Aged about 46 years,
- 8. Smt. Lokamani W/o Nagarajanayaka,**
Aged about 36 years,
Def. No.7 and 8 are
R/at Jabagere village, Gavadagere Hobli,
Hunsur Taluk,
Mysuru District.

..Defendants

(By Shri. M.R.S Defendant No.1 to 8)

PARTIES TO I.A.NO.I

- 1. Sri. Javarayanayaka**
W/o Late. Chaluvanayaka,

..plaintiff/Applicant

V/s

- 1. Smt. Puttamma**
W/o Late. Chaluvanayaka and 7 others.

..Defendants/Opponents

Orders on I.A.No.I U/o 39 Rule 1 & 2 of CPC.

The instant I.A.No.I is filed by the plaintiff Under Order XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C. seeking an temporary injunction against the defendants restraining them, their family members or anybody acting on their behalf from alienating the suit schedule properties till disposal of the suit.

2. In the affidavit annexed to the said application, the plaintiff No.2 has stated that, he has made out existence of prima-facie case and balance of convenience leans in his favour and also stated that if the said application is not allowed, he will be put to loss and hardship.

3. The I.A.No. I is opposed by the defendants by filing W/S come objection to the said I.A. No.1.

4. In support of I.A.No.I plaintiff filed his affidavit wherein he has stated that, he has filed this suit for partition and separate possession in respect of the suit schedule properties against the defendants. It is stated that the plaintiff and defendants are joint family members defendant No.1 is the mother of the plaintiff and defendant No.2 to 8. The suit

schedule properties are ancestral and joint family properties of the plaintiff and defendants. The suit schedule properties are originally belongs to his father by name Chaluvanayaka after the death of his father the name of the 1st defendant mutated as a Pouthi Khatha. The defendant No.1 has executed gift deed in respect of suit Item No.1 and 2 in favour of defendant No.5 and 7 without knowledge of the plaintiff. Therefore, the gift deed executed the defendant No.1 in favour of the defendant No.5 and 7 not binding on the plaintiff. The plaintiff and defendants are jointly cultivating the suit schedule properties, there is no partition between plaintiff and defendants. The plaintiff is having 1/9 share in the suit schedule properties. The suit schedule properties are standing in the name of defendant No.1 , 5 and 7. They are taking undo advantage of their name over the suit schedule properties they are creating charge and they are trying to alienate the suit schedule properties without consent of the plaintiff. Therefore, the plaintiff requested to the defendants for effective partition but the defendants have refused the request of the plaintiff. Hence, the plaintiff constrained to file the present suit as well as application. The plaintiff has

averred in the affidavit filed in support of the I.A that, if the relief prayed in the IA is not granted, then he would be put to irreparable loss, injury and hardships. On the other hand, if the relief is granted, no prejudice will be caused to the other side. Hence, prays to allow the application.

5. The defendants filed W/S and filed memo for adopt the same as objection to I.A. No.1. The defendants denied the plaint averments and contended that, the plaintiff already taken his share in the family properties and executed relinquish deed in favour of defendant No.2 to 8 in respect of suit schedule properties. The plaintiff is not having right over the suit schedule properties. The plaintiff has sold his property to the one K.G. Lingarajappa. It is further contended that, the plaintiff is not included all the family properties in this suit. Therefore, partial partition is not maintainable under the Law. Hence, prays to rejection of the application.

6. Based upon the above said respective contentions of the plaintiff and defendants, the following points arose for consideration of the Court:

1. Whether the plaintiff has established the existence of prima facie case in his favour at this stage of the suit?

2. Whether the plaintiff has established the existence of balance of convenience leans in his favour?

3. Whether the plaintiff further prove that if the order of temporary injunction is not granted, he will be put to great and irreparable loss and hardship?

4. If so, what order?

7. I have heard Shri. K.R.M., Advocate for plaintiff. Sri. M.R.S., Advocate for defendants. Perused the materials placed on record, the court proceeds to answer aforesaid points are as under:

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : In the Affirmative.

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

:REASONS:

8. **POINT No.1 TO 3:-** These points taken together for discussion, in order to avoid repetition of facts as they are interconnected with each other.

9. In support of his case, plaintiff has produced Record of Rights in respect of R.S. Nos.14/1, 14/2B, 14/2A, 14/3, of Gowdikere Village, Record of Rights in respect of R.S.No.121, 103 of Kamagowdanahalli Village. On the other hand, defendants have produced Relinquish Deed, Record of Rights, Record of Rights in respect of R.S No.66/4 in the year 1996-97 to 1999-2000, Mutationn Extract, Record of Rights in respect of R.S.66/4, 103 of Kamagowdanahalli Village, M.R. No.18/2009-10.

10. On perusal of the records, it reveals that the plaintiff has filed the present suit against the defendants for partition and separate possession. The pleadings made in the affidavit filed in support of the I.A and in the objections filed to the I.A reveal that the defendants have contended that, the plaintiff was already taken his share and relinquished his right over the suit schedule properties. Therefore, the plaintiff is not having any right over the suit schedule properties. On the other hand the plaintiff is claiming that the suit schedule properties are ancestral and joint family properties of the plaintiff and defendants. Considering the rival contention of both the parties, the Court is of the considered opinion that,

it can be decided during the full fledged trial. At this stage the defendants have not produced sufficient documents to show that the plaintiff was already taken his share and relinquished his right over the suit schedule properties. Considering the contentions of both the parties, this Court is of the opinion that if the defendants alienate the suit schedule properties during the pendency of this suit, it would lead to injury and hardships to the plaintiff. The plaintiff has made out a prima-facie case that the suit properties are the ancestral properties. The contention of the defendants that the plaintiff has no right over the suit schedule properties. Therefore, it can be considered during the full fledged trial. Therefore, considering the facts and circumstances of the case, if the defendants are restrained from alienating the suit properties, till the disposal of this suit end of justice will be met.

11. The plaintiff has prima-facie shown that the suit properties are the ancestral properties. Unless the full fledged trial is conducted, nothing can be said with regard to ancestral properties of the plaintiff and defendants. If the suit properties are alienated by the defendants, then the

plaintiff would be put to loss, injury and hardships, it would lead to multifarious litigations. The defendants are having an opportunity to prove their contention at the time of trial. Therefore, the balance of convenience leans in favour of the plaintiff. Above said facts and materials on record makes the Court to hold the view that the plaintiff has successfully established the existence of the above said mandatory ingredients to avail the relief of temporary injunction at this stage of the suit. Accordingly, the court proceeds to answer Points No.1 to 3 ***In the Affirmative.***

12. **POINT No.4:-** In view of the aforesaid findings on point No.1 to 3, the court proceeds to pass the following:

ORDER

I.A.No.I filed by the plaintiff Under Order XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C is hereby allowed.

In the result, the defendants or any persons claiming through or under them are hereby restrained from alienating the suit properties to anybody till the disposal of suit by way of grant of order of Temporary Injunction.

***Under the circumstances, there shall be
no order as to costs.***

(Dictated to the Judgment Writer directly on the computer, typed by her and corrected by me and then pronounced in the open Court on this 23rd day of March, 2022).

(Basavaraj H. Talawar)
Prl. Civil Judge and JMFC, Hunsur.