

KAMS310002572014



IN THE COURT OF THE PRL. CIVIL JUDGE AND J.M.F.C.

AT HUNSUR

Dated this the 19th day of April, 2025

Present:

Smt. Pooja Belakeri, B.A., LLB., LL.M.,
Prl. Civil Judge & J.M.F.C.,
Hunsur.

O.S./229/2014

<u>PLAINTIFFS :</u>	1	Sri. Narayanaswamy @ Narayan S/o Venkatappa Aged about 58 years, R/at Samudravalli Village, Shanthi Village Hobli, Hasana Taluk & District.
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// Vs //

<u>DEFENDANTS:</u>	1)	Smt. Rukmannamma W/o late Venkatappa, Aged about 78 years,
	2)	Sri Manjunatha @ Khani, S/o late Puttaswamy, Aged about 35 years,
	3)	Smt. Ammannamma, W/o Nagaraju, Aged about 56 years,

	4)	Smt. Lakshamma W/o Narayana Aged about 49 years
	5)	Sri. Srinivasa S/o Narayana Aged about 26 years D1 to 5 are R/at Benkipura Village, Challahalli Post, Bilikere Hobli, Hunsur Taluk, Mysuru District.
	6)	Smt. Geethashree W/o Venugopal M.J. Aged about 28 years
	7)	Sri. Puttaswamy S/o Late. Venkatappa Aged about 54 years C/o Defendant No.6 and 7, Honnammanakatte Village, Antharasanthe Hobli, H.D. Kote Taluk, Mysuru District.

PARTIES TO I.A. NO.VII

APPLICANTS / PLAINTIFFS	:	Sri. Narayanaswamy @ Narayan S/o Venkatappa (By Sri R.S.M. , Adv.)
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V/s

OPPONENTS/ DEFENDANTS	:	Smt. Rukmannamma W/o late Venkatappa & others (By Sri H.L.K. , Adv. for D1 to 3, 6 & 7 By Sri K.C.B. , Adv. for D4 and 5)
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ORDERS ON I.A. NO.VII

This application has been filed by the plaintiff U/o 39 Rule 1 and 2 of CPC seeking restraint of the defendant No.7 from alienating the suit schedule properties.

2. Along with the application the plaintiff has filed into an affidavit and contended that, the plaintiff has filed the suit for Partition and Separate Possession. Defendant No.7 has filed unregistered partition deed. The plaintiff has filed objection to the said Partition deed. On 27.10.2023 this court has ordered to pay the deficit duty and penalty of Rs.61,700/- with respect to unregistered Partition deed filed by the defendant No.7. Even after giving sufficient opportunities, defendant No.7 has failed to pay the deficit duty and penalty. Defendant No.1 is suffering from old aged ailments. In order to defraud the plaintiff, the defendant No.6 in collusion with defendant No.7 has purchased the item No.2 of schedule property by creating the sale deed dated 26.06.2023. Defendant No.7 has created the registered relinquishment deed dated 22.05.2019 with respect to item No.3 of the suit schedule property measuring 1.00 acre out of 3.00 acre. Defendant No.7 has filed written statement. As such 6th defendant has executed a gift deed dated 06.10.2022 in favour of defendant No.7. This fact, after came to the knowledge of the plaintiff, the plaintiff has obtained the relevant documents from the sub-registrar office and filed before the court. As such the defendant No.7 is trying to alienate the schedule properties as per the concocted documents. Hence the plaintiff sought for temporary injunction order against the defendant No.7 from alienating the schedule properties. If the application is not allowed the purpose of filing of suit would be defeated and the plaintiff would be put

to great hardship and inconvenience. Therefore, prays to allow the application.

3. On the receipt of the application the defendant No.7 has filed his objection and submitted that, the application filed by the plaintiff is not maintainable under law or on facts. The schedule properties are purchased by the 7th defendant. The plaintiff has no right, title over the schedule properties. The defendant No.7 has filed his written statement. The plaintiff and 7th defendant's father have partitioned their entire ancestral joint family and self acquired properties and accordingly the plaintiff has sold the properties allotted to him. The plaintiff has no right over the share of his brother's property which were allotted to them. The said partition deed is an unregistered documents hence the defendant No.7 is ready to pay the deficit duty and penalty of Rs.61,700/-. The 7th defendant has also filed an application seeking to reduce the deficit duty and penalty. Hence the suit is not maintainable as the plaintiff has filed this suit against the properties purchased by the 7th defendant. The plaintiff has sold his share of property by mutating the katha into his name as per the unregistered partition deed. The remaining properties are standing in their respective shares of defendants. Hence prays to dismiss the application.

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

POINTS

- 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 in his favour?**
3. **Whether the plaintiff further prove that if the order of temporary injunction is not granted he will be put to irreparable loss and hardship?**
4. **If so, what order?**

5. I have heard both side and perused the materials available on record.

6. My answer to the above 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:

7. **POINT No.1:-** The present suit is filed by the plaintiff against the defendant for the relief of Partition and Separate Possession with respect to item No.1 to 3 of suit schedule properties. When the suit was filed, the plaintiff has maintained an application U/o 39 Rule 1 and 2 of CPC praying to restrain the defendants from alienating the suit schedule properties. But the objection to the said application was not filed. Hence it was taken to be decided along with the main suit. When the case was posted for further chief of DW1 the defendant has filed an unregistered document on such stage the present application U/o 39 Rule 1 and 2 of CPC is filed seeking to restrain the defendant No.7 from alienating the suit schedule properties.

8. The gist of the present application is that, the suit schedule properties are Joint family properties of plaintiff and defendant No.7. The propositus of the plaintiff and defendants family Late. Venkatappa has inherited the suit schedule properties. As such both the plaintiff and defendants having inherited right over the suit schedule properties. Hence the present suit and application. The present application is filed to restrain the defendant No.7 from alienating the suit schedule properties. The defendant No.7 is one of the son of propositus Late. Venkatappa, the plaintiff is the brother of defendant No.7. It is contended that, during the proceedings the defendant No.7 is trying to alienate the suit schedule properties.

9. On perusal of the documents produced by the plaintiff and defendants there is prima-facie case because there is triable issue between the plaintiff and defendants as the defendants have contended that there is already panchayath palu parikath taken place between the defendant No.7 and plaintiff along with propositus Late. Venkatappa. Such unregistered palu parikath is produced by the defendant No.7 and payment of duty and penalty is still pending to be payable by the defendant No.7. On prima-facie, the documents produced by the plaintiff and defendants it reveals that, originally the suit schedule properties stood in the name of propositus Late. Venkatappa. As such I answer **Point No.1 in the Affirmative.**

10. **Point Nos.2 & 3:-** These points are taken up together for common discussion in order to avoid repetition of facts as they are inter-related with each other.

11. Presently, the suit schedule properties stand in the name of defendant No.6 but the plaintiff is seeking to restrain the defendant No.7 from alienating the suit schedule properties. As the case is at the stage

of further evidence of defendant side, at this stage end of the case, the present application is filed. If the present application is not allowed it will definitely lead to multiplicity of proceedings. As presently the suit schedule properties stand in the name of the defendant No.6. If the present application is allowed it avoids multiplicity of proceedings as well as the balance of convenience lies in favour of plaintiff. Because the matter is of 2014, as such hardship lies in favour of plaintiff. At this stage end of the case, if the suit schedule properties are transferred again it leads to prolonged procedure. In the objection filed by the defendants their only contention is that, at the stage of payment of duty and penalty the present application is not maintainable and there is already partition taken place as per the panchayath palu parikath between the defendant No.7 and plaintiff along with propositus Venkatappa. No doubt such palu parikath is also produced by the defendant whether the said panchayath palu parikath has been acted upon or not is a question of trial. At this stage the court cannot conduct mini trial to answer such question. Further the defendants have taken contention that, the plaintiff share was already been allotted and he has sold his share. But to substantiate such contention at this stage there are no documentary evidence. For all these reasons I am of the opinion that the balance of convenience and hardship lies in favour of plaintiff. Hence I answer these **Point No.2 and 3 in the Affirmative.**

12. **POINT No.4:** In view of my above discussion and conclusion arrived at point No. 1 to 3, the application filed by the plaintiff deserves to be allowed. **Accordingly, I proceed to pass the following.**

ORDER

The I.A. No.VII filed by the plaintiff Under Order 39 Rule 1 and 2 of CPC, is hereby allowed.

The defendant No.6 & 7 are hereby restrained from alienating the suit schedule properties, for a period of next 8 months.

The parties are hereby directed to proceed with the case and to cooperate in disposing of the suit on merits within the time framed of next 8 months from the date of this order.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me in the open Court on this the **19th day of April, 2025**)

(Pooja Belakeri)
Prl. Civil Judge & J.M.F.C.,
Hunsur.