

KAMS310011452021



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

Dated: This the 22<sup>nd</sup> day of October, 2024

**Present:**

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

**O.S./147/2021**

<b><u>PLAINTIFFS :</u></b>	1.	Smt. Rihana Banu, W/o Sami Ahmed, Aged about 55 years,
	2.	Sri Shabaj Ahmed, S/o late Sami Ahmed, Aged about 23 years,
	3.	Kumari Sbeeha Fathima, D/o late Sami Ahmed, Aged about 21 years,
	4.	Sri Mohammed Khaleel Ulla, S/o late Sami Ahmed, Aged about 19 years, J.M. Small Wood Industries,  All are R/o Shabbeer Nagara, Hunsur Main Road, Hunsur City, Mysuru District.

// Vs //

<b><u>DEFENDANTS:</u></b>	1)	Smt. Saba Fathima, W/o Shameel, D/o Sami Ahmed, Aged about 30 years,
	2)	Smt. Jaiba Fathima, W/o Nayaz, D/o Sami Ahmed, Aged about 26 years, Sunnada Beedi, Virajpet Town, Kodagu District.
	3)	Sri Salman Ahmed, S/o late Sami Ahmed, Aged about 25 years,  Defendants-1 & 3 are R/at No.1820, Bazar Road, Hunsur City, Mysuru District.
	4)	Smt. Saniya Fathima, W/o Mudasir Ahmed, D/o late Sami Ahmed, Aged about 23 years, Shabeer Nagara, Hunsur City, Mysuru District.
	5.	Range Forest Officer, Hunsur Range Office, Hunsur City, Mysuru District.

**PARTIES TO I.A. NO.II**

<b>APPLICANTS / PLAINTIFFS</b>	:	Smt. Rihana Banu & others (By Sri <b>LKJ.</b> , Adv.)
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**V/s**

<b>OPPONENTS/ DEFENDANTS</b>	:	Smt. Saba Fathima & others (By Sri <b>MSMD</b> , Adv. For Def.Nos.1 to 3; Sri <b>MRH</b> , Adv. For Def.No.4 and learned <b>AGP</b> for Def.No.5)
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**ORDERS ON I.A. NO.II**

This application is filed by the plaintiff-1 under Order 39 Rule 1 & 2 R/w Sec.151 of the Code of Civil Procedure praying to restrain the defendants from interfering with respect to suit schedule property for her peaceful possession and enjoyment over the suit schedule property.

2. In support of the application, the plaintiff-1 has sworn to an affidavit and stated that one Sami Ahmed is the husband of plaintiff-1 and father of other plaintiffs and defendants-1 to 4. Originally the suit schedule property is the self acquired property of said Sami Ahmed. During his life time he has executed a registered Will with respect to other properties as well as the suit schedule property by equally distributing in favour of plaintiffs and defendants-1 to 4. As per the Will dated 05.02.2009 the suit schedule property has vested in favour of plaintiffs, as such the plaintiffs in order to change the katha as per the Will has applied

the requisite application before defendant-5 for change of license in their favour. But, the defendant-5 has informed the plaintiffs that the defendants-1 to 4 have objected to the requisite application filed by the plaintiffs stating that even though they have rights over the suit schedule property and objected for change of licence in the name of plaintiffs. Hence, the plaintiffs have brought the present suit for the relief of declaration of their title with respect to suit schedule property as per Will dated 05.02.2009 and other consequential relief of injunction. Along with main suit, the present application is filed for restraining the defendants from interfering with peaceful possession and enjoyment of plaintiffs over the suit schedule property.

3. On the other hand, defendants-1 to 4 have appeared before through their counsel and filed their written statement and admitted the relationship between the parties and execution of Will in favour of themselves as well as the plaintiffs by their father on 05.02.2009 and it is the specific contention of defendants-1 to 4 that as per the Will dated 05.02.2009 the assessment No.1272/1820/1 measuring 83 x 28 vacant space the house property and the shops has been vested in favour of these defendants along with building of saw mill. Among two saw mill licences under a registered Will the father of plaintiffs-2 to 4 and defendants-1 to 4 has bequeathed in favour of these defendants but in the said registered Will there is a mention of two machines for cutting trees has been bequeathed in favour of plaintiffs. Taking this as an advantage the plaintiffs have approached defendant-5 for changing of license with respect to saw mill in their favour but their father has bequeathed one license in favour of

defendants and another license in favour of plaintiffs. Under such circumstances, the plaintiffs having no right have filed the present false suit. Hence, prays to dismiss the present application.

4. On going through the pleadings, documents, IA and written statement the following points would arise for my consideration:-

### **POINTS**

- 1. Whether the plaintiffs have made out a prima-facie case for grant of temporary injunction?**
- 2. Whether the balance of convenience lies in favour of the plaintiffs?**
- 3. Whether the plaintiffs will be put to irreparable injury, if an order of Temporary Injunction is not granted?**
- 4. What order?**

5. Heard both sides appearing for the plaintiffs and defendants and perused the documentary evidence produced before this court. My findings on the above points are as under:

**Point No.1 : In the Affirmative**

**Point No.2 : In the Negative**

**Point No.3 : In the Negative**

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

**:REASONS:**

**6. POINT No.1:-** Admittedly, the parties before the court in the present suit are mohammadans. Further, the present suit is filed for the relief of declaration of title based on Will dated 05.02.2009. Further, there is no dispute with regard to relationship between plaintiffs and defendants-1 to 4. It is stated in the plaint that the father of plaintiffs-2 to 4 and defendants-1 to 4 by name Sami Ahmed has executed Will in favour of plaintiffs and defendants-1 to 4 along with suit schedule property other properties have been bequeathed. There is no dispute with regard to other properties bequeathed in the Will executed by father of plaintiffs-2 to 4 and defendants-1 to 4. The only dispute in the present case is with respect to saw mill and the license of the saw mill. The prima-facie means there should be a merit in the case and triable case. As it is an admitted fact that the parties are mohammadans. The pre-requisite for execution of Will as per Mohammadan law is, in a property only 1/3rd of the property can be bequeathed by mohammadans. But in the present case there is ambiguity in the Will executed by late Sami Ahmed. The pre-requisite of law is also not complied because only 1/3rd of his property has to be bequeathed and rest of the property has to be inherited through natural succession. I have perused the Will produced by both parties in support of the present case. There is ambiguity in the said Will. Under such circumstances, there is triable issue in the present case as the suit is based on Will and for the declaration of title. For these reasons, I answer **Point No.1** in the **Affirmative**.

**7. Point No.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.

No doubt, the plaintiffs have established prima-facie case over the suit schedule property but with respect to balance of convenience and there is ambiguity in the registered Will produced by both the parties with respect to suit schedule property, without conducting mini trial the court cannot come into conclusion that the suit schedule property has been bequeathed in favour of plaintiffs. At this stage, the court cannot conduct mini trial. It definitely needs evidence for determining the execution of Will because the Will itself is under ambiguity and as I have already discussed as per Mohammadan law only 1/3rd property has to be bequeathed that too not for his legal heirs. These all question of law has to be answered after trial. At this stage for the above reason the balance of convenience and hardship do not lie in favour of plaintiffs. For all these reasons, I answer **Point No.2 & 3** in the **Negative**.

8. **POINT No.4:** In view of my above discussion and conclusion arrived at point No. 1 to 3, the application filed by the plaintiffs is liable to be dismissed. **Accordingly, I proceed to pass the following.**

**ORDER**

**I.A. No.II filed by the plaintiff-1 under Order  
39 Rule 1 and 2 R/w Sec.151 of CPC, is  
hereby dismissed.**

(Dictated to the Stenographer, transcript computerised by him revised, corrected and then pronounced by me in the open Court on this the **22<sup>nd</sup> day of October 2024**)

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