

KAMS310011452021



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

Dated: This the 22nd day of October, 2024

Present:

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

O.S./147/2021

<u>PLAINTIFFS :</u>	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 //

<u>DEFENDANTS:</u>	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.IV

APPLICANT / DEFENDANT-3	:	Sri Salman Ahmed (By Sri MSMD , Adv.)
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V/s

OPPONENT/ DEFENDANT-5	:	Range Forest Officer, (Learned AGP)
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ORDERS ON I.A. NO.IV

This application is filed by the defendant-3 under Order 39 Rule 1 & 2 of the Code of Civil Procedure praying to restrain the defendant-5 from changing the license with respect to suit schedule property in favour of plaintiff till the disposal of present suit.

2. In support of the present application, the defendant-3 has sworn to an affidavit and stated that originally the suit schedule property belongs to Sami Ahmed who is the husband of plaintiff-1 and father of other plaintiffs and defendants-1 to 4. During his life time he was enjoying the suit schedule property which also includes the sawing machine under the control of defendant-5. As such he has executed Will on 05.02.2009 with respect to suit schedule property in favour of both the parties which is presently disputed in the present case.

3. The plaintiffs have moved an application before defendant-5 for change of saw mill license standing in the name of father – Sami Ahmed. But, in the said Will dated 05.02.2009 the

plaintiffs and defendants-1 to 4 have been equally bequeathed with regard to license also but the plaintiffs are trying to influence the defendant-5 by effecting license in their favour. As the matter is pending for adjudication till the disposal of suit the defendant-3 prays to restrain the defendant-5 from changing the license in favour of plaintiffs.

4. On the other hand, defendant-5 has appeared through learned AGP. Learned AGP has filed written statement admitting the fact that plaintiffs have filed the requisite application for change of saw mill license in favour of plaintiffs. But, on perusal of Will he has found ambiguity in the said Will, as such he has issued endorsement for approaching the civil court. Hence, he has not changed the license with regard to saw mill in favour of plaintiffs. Hence, there is no question of allowing the present application is contended by defendant-5.

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

POINTS

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

4. What order?

6. Heard both sides appearing for the defendant-3 and defendant-5 and perused the documentary evidence produced before this court. My findings on the above points are as under:

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 Nos.1 to 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.

The present suit is filed for the relief of declaration of title with respect to suit schedule property based on Will. Under this background, the defendant-3 has filed the present application to restrain the defendant-5 from changing license with respect to suit schedule property in favour of plaintiffs. In the plaint averments it is an admitted fact by the plaintiffs that they have moved necessary application before defendant-5 for change of license with respect to suit schedule property i.e., saw mill in their favour. Further, it is also an admitted fact that the defendant-5 has informed the plaintiffs that for change of license the defendants-1 to 4 have

objected and he has perused the Will which is under ambiguity. As such he has endorsed that Will is under ambiguity and hence referred the parties for approaching the civil court. In support of the same, the defendant-5 has filed the application filed by plaintiff-1 for change of license into her name and copy of Will is also produced along with the endorsement issued by him. The endorsement issued by defendant-5 in favour of plaintiff-1 clearly states that after getting clarification with regard to Will the defendant-5 authority will consider the application filed by plaintiff-1 for change of license in her name. Under the circumstances, there is no question of defendant-5 changing the license in favour of plaintiffs. As he himself has referred the parties to approach the civil court based on the application. Under such circumstances, it is nothing but indirectly stating that there is ambiguity in the Will. As such there is no prima-facie in favour of defendant-3 and as the defendant-5 has already issued an endorsement. On making clarification by the civil court with regard to Will he will consider the application. The balance of convenience and hardship do not lie in favour of defendants-1 to 4. For all these reasons, I answer **Point Nos.1 to 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 defendant-3 is liable to be dismissed. **Accordingly, I proceed to pass the following.**

ORDER

I.A. No.IV filed by the defendant-3 under Order 39 Rule 1 and 2 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 **22nd day of October 2024**)

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