

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 29th day of January, 2022

O.S.No. 22/2021

Plaintiff/s : 1. Rangaraju
S/o Late Shivarudregowda
Aged About 38 Years.

2. Savitha
W/o Ramesha,
Aged About 40 Years
R/At: Pandupura Village,
Pandupura Taluk, Mandya District.

3. Sunitha
W/o Ramesha,
Aged About 36 Years,
R/At: No.365, Basavanagudi Circle,
Belavadi Village, Elawala Hobli,
Mysuru Taluk.

4. Pavithra
W/o Shivakumar T.R,
Aged About 34 Years,
R/At: Sugar factory Quaters,
Vishweshwara Nagara, Pandupura Town,
Pandupura Taluk, Mandya District.

5. Nagamma
W/o Late Shivarudregowda,
Aged About 52 years,
P1 & P5 are R/at Yarahalli Village,
Kasaba Hobli, H.D.Kote Taluk.

(By Sh.Jayashankar, Advocate)

-V/s-

- Defendant/s :
1. Shivalingegowda
S/o Late Kempegowda,
Aged About 65 Years,
 2. Narayanagowda
S/o Late Kempegowda,
Aged About 60 Years,
 3. Lakshmamma
W/o Late Rangegowda,
Aged About 60 Years,
 4. Roopa
W/o Late Bhaskar,
Aged About 40 Years,
R/At: Beedarahalli Village,
Antharaanthe Hobli, H.D.Kote Taluk,
 5. Shobha
W/o Mahadeva,
Aged About 38 Years,
R/At: Hegganuru Village, Kandalike Hobli,
Saraguru Taluk, Mysuru District.
 6. Paramesha
S/o Late Rangegowda,
Aged About 36 Years,
 7. Mohan Kumar
S/o Late Rangegowda,
Aged About 34 Years,
 8. Roopa.C
W/o Paramesha,
Aged About 30 Years,
 9. Drakshayini.D.M.
W/o Mohankumar,
Aged About 28 Years,

10. Maalamma
W/o Late Shivannegowda,
Aged About 55 Years,
11. Pramod
S/o Late Shivannegowda,
Aged About 30 Years,
12. Abhishek
S/o Late Shivannegowda,
Aged About 28 Years,
13. Parvathamma
W/o Late Basavarajegowda,
Aged About 65 Years,
14. Shrinivas
S/o Late Basavarajegowda
Aged About 47 Years,
15. Shrinivas
S/o Rangegowda
Aged About 42 Years,
16. S. Manju
S/o Late Chunchegowda @ Sannegowda,
Aged About 41 Years,

D1 to 3 and 6 to 16 are R/At: Yarahalli Village,
Kasaba Hobli, H.D.Kote Taluk,
Mysuru District.

17. Ramashekhar
S/o Late Muddaramegowda,
R/At: Channegowdanahundi Village,
Kasaba Hobli, H.D.Kote Taluk,
Mysuru District.

(D1, 2, 10 to 17 Exparte,
D3 to D9by Sh. G.N.Narayanagowda.,
Advocate,)

PARTIES TO I.A. II

Applicant/ Plaintiff : Rangaraju & Others

-V/s-

Opponents/Defendants : Shivalingegowda & Others

ORDER ON I.A.II

By way of this Order I shall dispose off one application u/o. 39 Rule 1 & 2 CPC.

The facts of the case in brief are as under that: Great grandfather of the plaintiff no.1 to 4, the father of defendant no.1 and 2 and grandfather of other defendants namely Sh.Annegowda during his life time had acquired the suit properties (original Sy.no.14 measuring 8.00 acres), which was purchased out of his own funds. He expired intestate leaving behind the plaintiffs and defendants as his legal heirs. By the operation of law of succession, the suit properties, after the death of the Sh.Annegowda have devolved in between the plaintiffs and defendants in equal ratio.. Plaintiffs are in possession of the suit properties. Defendants were adamant due to which partition could not took place and illegally sold some portion of suit properties to defendant no.15 to 17 under various sale deeds and also crested some bogus partition deeds which are not binding on the plaintiffs, hence, this suit.

2. In their WS, defendant no.3 to 9 have alleged that plaintiffs have filed this suit on false and frivolous grounds. Suit has not been valued as pr the Suit Valuation Act and appropriate Court fees has not been filed by the plaintiffs. The suit properties which was originally bearing Sy.no.14 measuring 8.00 acres was orally divided between the sons of

Sh.Annegowda namely kempgowda and Girigowda in equal shares i.e., 4 acres each long back. Thereafter the land fallen to the share of kempegowda was equally divided between his sons namely Rangegowda, Shivalingegowda (defendant no.1), Shivarudregowda, Narayanagowda (defendant no.2) and Shivannegowda i.e., 32 guntas each during the life time of their father and the same was duly acted upon. The plaintiffs being the legal heirs of deceased Shivarudregowda are in the possession of the share fallen to share of Shivarudregowda in the family partition and same has been suppressed before this court and the present suit is filed to grab the land fallen to the share of defendants, therefore, the suit filed by the plaintiffs deserve dismissal.

3. Arguments on this application heard at length. Record perused thoroughly.

4. Before proceeding further, it is important to discuss here the scope of Order 39 Rule 1 & 2 CPC. Order 39 Rule 1 & 2 CPC lays down the guiding principals for temporary injunction which is to be granted after considering three essential ingredients:

(i) Prima Facie case established by the plaintiff.

(ii) Balance of convenience in the favour of plaintiff.

(iii) The plaintiff shall suffer an irreparable loss which cannot be compensated in terms of money.

5. With regard to the first essential requirement i.e., "prima facie case" plaintiffs have alleged that properties in question are the joint family properties under which all the properties are having their respective share. Plaintiffs have disputed the plea of oral partition and have sought

the partition of the properties alleging themselves as one of the co-owner / co-sharer. During arguments, the defendants have alleged that they have no intention to create third party interest with regard to the suit properties in question. Defendants have also not opposed the application filed by the plaintiffs and has alleged that they have no intention to create third party interest, during the pendency of the suit. In these circumstances, as per the submissions of the defendants, I am of the opinion that plaintiffs have establish his "prima facie" case against the defendants. The "Balance of Convenience" is also tilted in favour of the plaintiffs and I am further of the opinion that plaintiffs shall suffer an "irreparable loss which cannot be compensated in terms of money", if the relief so prayed by them is not granted to them which shall result into multiplicity of litigation.

6. In these facts and circumstances, I am of the opinion that as the plaintiffs have established all the three essential ingredients in their favour, therefore, in these circumstances, application under order 39 Rule 1 & 2 CPC is allowed and defendants are restrained from selling, alienating or creating any third party interest in respect of suit properties, during the pendency of the suit.

7. It is further important to mention here that the opinion express above shall not lay its impact upon the merits of the main case.

8. In view of the above, I proceed to pass the following;

ORDER

**I.A.No.II filed by applicants/plaintiffs U/o 39
rule 1 &2 R/w Section 151 CPC is hereby allowed.**

Consequently the defendants are restrained from transferring, selling, alienating, parting with possession or in any manner creating any third party interest in respect of the suit properties till the disposal of the main suit.

It is further important to mention here that the opinion express above shall not lay its impact upon the merits of the main case.

No order as to cost in view of the relationship between the parties.

Issues framed and read over in the open court

For P/E put up on 14.2.2022.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 29th day of January, 2022.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote