

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : Sri. Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge, Nanjangud.

Dated : This the 23rd day of August, 2019.

O.S.No. 119/2017

Plaintiff/s : Vasanthamma @ Vanajakshi & others

-V/s-

Defendant/s : Siddashetty and others.

I.A.

Applicant/s : Siddashetty
.... 1st defendant

-V/s-

Opponent/s : Vasanthamma @ Vanajakshi & others
....Plaintiffs

**ORDERS ON I.A. DATED 23.07.2019 UNDER
ORDER 39 RULE 1 & 2 OF CPC**

The defendant No.1 has filed I.A. U/o 39 Rule 1 and
2 of CPC seeking temporary injunction against the
plaintiffs restraining them from interfering with the

possession of the defendant No.1 over 1.00 acre of land out of suit schedule item No.1 property, description of which is as mentioned in the I.A.

2. The plaintiff has filed objections.

3. Heard both sides. Perused the pleadings and materials placed on record.

4. The points that arises for consideration is as follows:-

1. Whether the defendant No.1 has made out prima facie case ?

2. Whether the defendant No.1 has got balance of convenience in his favour ?

3. Whether the defendant No.1 will be put irreparable injury if the temporary injunction is not granted ?

4. What order ?

5. The above points are answered as follows :-

Point No.1 to 3 : In the Negative

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

REASONS

6. **Point No.1**:- According to the applicant/defendant No.1, the 1.00 acre of land mentioned

in the I.A. is bequeathed in his favour under registered will dated 16.03.2018 by his father, who died on 13.02.2012 and he is in the possession of the land and the plaintiff is interfering with his possession.

7. The objections of the plaintiff is that the said Will is false and highly disputed and the plaintiff is a co-owner and hence, the defendant who is only a co-owner cannot claim any injunction against the plaintiff. It is also pleaded in the objections of the plaintiff that, the khata is mutated to the name of defendant No.1 during the pendency of the suit, which is illegal as the revenue authorities could not have mutated the khata on the basis of will and prayed to dismiss the I.A.

8. It is relevant to note that the present application requires to be dismissed for more than one reasons. Firstly, the present suit is for partition and separate possession of the suit schedule properties and the defendant No.1 is claiming exclusive possession, to the

exclusion of the plaintiff in respect of a portion of suit schedule item No.1, which claim cannot be decided at this preliminary stage, without holding a trial and without deciding the suit on merits. Secondly, the exclusive possession is claimed on the basis of a disputed Will, which is not yet proved and hence, such a solemn document cannot be a basis for passing the interim order or to form a prima facie opinion regarding exclusive possession. Mere production of a copy of a Will cannot be considered as prima facie proof of its due execution and valid attestation. Thirdly, the revenue authorities having no jurisdiction to mutate the khata on the basis of will, as argued by the learned counsel for plaintiff who relied on the decisions reported in *ILR 2005 KAR 5777 (Smt. Papamma Vs. The Deputy Commissioner and others)* and another decision reported in *ILR 2002 KAR 2750 (C.N.Nagendra Singh Vs. The Special Deputy Commissioner, Bangalore District and others)*. Such a mutation order cannot be prima facie relied upon at this juncture to raise

a presumption regarding genuineness of the revenue entries. Succinctly stated, the very mutation order is not prima facie shown to be lawfully made, after notice to all other co-owners who have a caveatable interest regarding the Will, for which the very mutation order cannot be prima facie relied upon. Fourthly, it is relevant to note that, the nature of the temporary injunction claimed is not to interfere with the possession, which is totally different than an injunction not to alienate or encumber the suit property. In a suit for partition the temporary injunction of the present nature cannot be considered as an interlocutory order in aid of the main relief. For all the above, such an order can not be held to be equitable.

9. In view of the above, the present claim of the defendant No.1 on the basis of the Will, the proof of which is not yet tested by trial, is not sustainable under law. Hence, prima facie case is not made out by the defendant No.1. Hence, point No.1 is answered in the **Negative**.

10. **Point No.2 and 3** :- In view of the finding on point No.1, question of holding detailed discussion on Point No.2 and 3 is not necessary. Thus, balance of convenience does not lie in favour of the defendant No.1 and defendant No.1 will not be put to irreparable injury if the temporary injunction is not granted. Hence, Point No.2 and 3 are answered in the **Negative**.

11. **Point No.4**:- In view of the findings on the points supra, this Court proceeds to pass the following:

ORDER

I.A. dated 23.07.2019 filed by the defendant No.1 under Order 39 Rule 1 and 2 of CPC is hereby dismissed.

(Dictated to the Stenographer, typed by her, corrected, initialed and then pronounced by me in open Court on this the 23rd day of August 2019).

(Ganapathi Prashanth.M)
Senior Civil Judge, Nanjangud.