

KAMS500009732024



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

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 19th day of February 2025

O.S./248/2024

Plaintiffs

1. D.M.Shivamurthy
S/o late Bavihatti Marappa,
aged about 65 years,
2. D.M.Puttaswamy
S/o late Bavihatti Marappa,
aged about 63 years,
3. Devammanni
W/o late Doddamallappa,
aged about 54 years,
4. Shivakumara D.M.
S/o late Doddamallappa,
aged about 34 years,
5. Girish S/o late Doddamallappa,
aged about 32 years,

All are residing at
Duggahalli Village,
Hullahalli Hobli,
Nanjangud Taluk.

-V/s-

- Defendants:**
1. Madappa S/o late Eraiah @ Veerappa, aged about 63 years,
 2. Shivanagappa S/o late Mahadevappa, aged about 45 years,
 3. Shivaprasad S/o late Mahadevappa, aged about 44 years,
 4. Shivanna S/o late Veerabhadrapa, aged about 44 years,
 5. Naganna S/o late Eraiah @ Veerappa, aged about 66 years,

defendants No.1 to 6 are
residing at Duggahalli Village,
Hullahalli Hobli,
Nanjangud Taluk.

6. Asif S/o late Mohammed Shafi Ulla, aged about 52 years, residing at Doora Village, Jayapura Hobli, Mysuru Taluk.

I.A. I

Applicant : D.M.Shivamurthy
.... plaintiff No.1
(By Sri. S.S.J., Adv.)

-V/s-

Opponents : Madappa and others
...defendants
(By Sri. S.G. Adv. for D.1)

ORDER ON I.A. I UNDER ORDER 39
RULES 1 & 2 OF CPC

The plaintiff No.1 filed the application for the relief of temporary injunction to be issued against the defendants restraining them from alienation, creating charge, mortgage etc., over the suit schedule property of Sy.No.64/2 measures 1 acre 24 guntas and Sy.No.65/2 measures 2 acre out of 4 acres 3 guntas situated at Duggahalli Village of Nanjangud Taluk.

2. In the affidavit it is sworn that, the suit schedule properties originally belonged to Puttamadappa and Basamma, because the said properties are the joint

family properties. The schedule properties fallen to the share of the father of the plaintiffs through partition deed. But the defendants by creating false documents succeeded to get false judgment and decree in O.S.28/2020. The said suit ended in compromise. After that, the defendants changed the khatha of the suit schedule properties into their names pertaining to the properties of Sy.No.64/2 measures 1 acre 24 guntas and sold it in favour of the 6th defendant. Subsequently the 6th defendant created charge over the purchased property and 1st defendant also persistently making attempt to sell the other properties.

It is further submitted that, the plaintiffs have got prima-facie case, balance of convenience in their favour and in case of rejection of injunction it would create much hardship to them, that cannot be compensated in terms of money. Hence, prays to allow the application to protect the suit schedule property till disposal of the main case.

3. The defendant No.1 has filed objections to the application stating that the facts narrated in the application are totally false and away from truth, because the suit of O.S.28/2020 was filed and ended in compromise and in that compromise the defendants have got the property shown against their names and they have got every right to sell the property according to their will and wish. Therefore, the defendant No.1 prays to reject the application.

4. Heard the arguments. Perused pleadings and materials placed on record. The points that arise for my consideration are:

1. Whether the plaintiff No.1 proves prima-facie case to grant temporary injunction ?
2. Whether the plaintiff No.1 further proves that balance of convenience lies in his favour?
3. Whether irreparable injury will cause to the plaintiffs if temporary injunction is rejected?
4. What order ?

5. The above points are answered as follows :-

Points No.1 to 3 : In the negative

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

REASONS

6. **Points No.1 to 3** :- These points are interlinked with each other, hence they are taken up together for discussion to avoid repetition of facts.

7. The allegation of the plaintiffs that the defendants filed false suit of O.S.28/2020 and succeeded to get decree in their favour. The said suit was ended in compromise dated 18.12.2021. The reading of para No.4 of the plaint shows that, O.S.28/2020 was filed before the learned Prl. Civil Judge and J.M.F.C., Nanjangud for partition and separate possession. The above referred suit was ended in compromise on the basis of information given in the genealogy sketch. Through that compromise decree, the suit schedule properties were divided equally among the

beneficiaries. The defendants of the suit are also one of the beneficiaries of compromise decree. After final decree the defendants became the absolute owner of the suit schedule property in O.S.28/2020. Now they have every right to deal with the property according to their wisdom. In the paragraph No.5 of the plaint the plaintiffs have described that the defendants after getting the change of khatha of the suit schedule property, persistently interfering into the peaceful possession of their properties. In that effect the plaintiffs have given police complaint against the defendants and police have not received the complaint and advised to get solution in the civil court only.

8. Per contra, the defendants have alleged that the suit of the plaintiffs is not maintainable before this court and the plaintiffs have narrated false things. In order to concrete their contention, the plaintiffs have produced 10 documents. It is not necessary and cardinal to discuss the value of the documents, because the plaintiffs have alleged that O.S.28/2020 filed before the learned Prl. Civil Judge

and J.M.F.C., Nanjangud was wrongly compromised. Now it is worth to say that the plaintiffs failed to prove prima-facie case, because a compromise decree passed on lawful agreement between the parties is general binding and difficult to challenge, but it can be challenged only on the grounds of being unlawful or void and the party must approach the same court that records the compromise to do so. Any number of decided cases of Hon'ble Apex Court of India or Hon'ble High Court across India can be referred to this point. To avoid the prejudice to be caused to the parties I would not like to discuss the settled position of law to challenge the compromise decree. In single sentence it may be said that no independent suit can be filed for setting aside the compromise decree on the ground that compromise was not lawful in view of the bar contained in Rule 3(a) of Order 23 of C.P.C. A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree. By this discussion, I would like to conclude the point saying that the plaintiffs utterly failed to prove prima-facie case.

The discussion of rest of the points like irreparable injury and balance of convenience would not give any strength to the application of the plaintiff. Hence, **points No.1 to 3** are answered **in the negative**.

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

ORDER

I.A.I filed by the 1st plaintiff under Order XXXIX Rules 1 and of CPC is rejected.

No order as to cost.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 19th day of February 2025).

(Kamalaksha D.)
Senior Civil Judge & J.M.F.C.,
Nanjangud.