

KAMS500015922021



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

Present : **Smt. B. Anupama Lakshmi B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 13th day of October 2023

O.S./155/2021

Plaintiffs

1. Mahadevamma
W/o Basasvashetty
D/o late Madashetty,
aged about 70 years,
residing at Hanumanapura Village,
Doddakavalande Hobli,
Nanjangud Taluk.
2. Thimmamma
W/o late Narayanashetty,
D/o late Madashetty,
aged about 77 years,
residing at Chinnamballi Village,
Biligere Hobli,
Nanjangud Taluk.
3. Madamma W/o late Siddashetty,
D/o late Madashetty,
aged about 75 years,

4. Siddamma W/o Dasashetty
D/o late Madashetty,
aged about 73 years,
Plaintiff Nos.3 and 4 are
residing at Thoravalli Village,
Beguru Hobli,
Gundlupet Taluk,
Chamarajanagara District.
5. Jayamma W/o Shivanna
D/o late Madashetty,
aged about 68 years,
residing at Terakanambi
Village and Hobli,
Gundlupet Taluk,
Chamarajanagara District.

-V/s-

Defendants

1. Jayamma W/o late Gundegowda,
aged about 78 years,
2. Jungegowda S/o late Gundegowda,
aged about 56 years,
3. Mahadevamma D/o late Gundegowda,
aged about 54 years,
4. Shivanna S/o late Gundegowda,
aged about 52 years,
5. Krishna S/o late Gundegowda,
aged about 50 years,

6. Shanthi D/o late Gundegowda,
aged about 47 years,

All are residing at
Tagaduru Village,
Biligere Hobli,
Nanjangud Taluk.

I.A. DATED 12.09.2023

Applicant : Krishna
.....Defendant No.5
(Sri. R.Prasanna, Adv.)

-V/s-

Opponents : Mahadevamma and others
...Plaintiffs
(Sri. Siddaraju S., Adv.)

ORDERS ON I.A. UNDER ORDER 39
RULES 1 & 2 R/W SECTION 151 OF CPC

The defendant No.5 has filed I.A. when the case was posted for plaintiffs' evidence, for an order of temporary injunction restraining the plaintiffs from interfering with suit schedule property till disposal of the suit.

2. Plaintiffs filed statement of objections through their counsel.

3. Heard. Perused pleadings and materials placed on record.

4. The points that arise for consideration are as follows:-

1. Whether the defendants have made out a prima facie case ?
2. Whether the balance of convenience lies in favour of defendants?
3. Whether the defendants will be put to irreparable injury if the temporary injunction is not granted ?
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 taken up together for consideration as they are interconnected with one another and to avoid repetition of facts.

7. The suit is for the relief of declaration and possession. Case of the plaintiffs is that, their father for legal necessity mortgaged the suit schedule property in favour of father of defendant in the year 1983 and handed over possession to him on the date of mortgage itself. But father of defendant instead of mortgage deed created the alleged sale deed in a fraudulent manner. That the plaintiffs after coming to know of the alleged sale deed approached the defendants for redemption of mortgage. But the defendants refused to redeem the mortgage stating that father of the plaintiffs had executed the sale deed dated 04.03.1983 and khatha had been changed in the name of father of defendants in respect of suit property. Therefore, the plaintiffs have claimed the above said relief.

8. The defendants contended that they have been in possession of the suit schedule property as owners, but the plaintiffs due to rise in the value of land to extract money instituted the present suit. The defendant No.5 to restrain the plaintiffs from the alleged interference filed the instant

application seeking temporary injunction against the plaintiffs.

9. Here the interim relief claimed by the defendants is to restrain the plaintiffs from interfering with their possession and enjoyment of the suit schedule property. In this regard it is necessary to look into the provision Order 39 Rule 1 and 2 C.P.C. which are extracted here below:

1. Cases in which temporary injunction may be granted.

Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in

the suit as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach.

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained, of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may be order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

10. Furthermore, the decision of the Hon'ble High Court rendered in ILR 2014 KAR 6025 – Smt. Shakunthalamma and others Vs. Smt.Kanthamma and others, the defendants can maintain the application only under Order 39 Rule 1-A C.P.C. As per the said decision the defendant cannot maintain an application for the reliefs available in clauses (b) and (c) of Rule 1 of Order 39 C.P.C. in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises either from the same

cause of action or a cause of action that arises subsequent to filing of the suit.

11. In this case the relief claimed by the defendants is to restrain the plaintiffs from interfering with their possession of the suit schedule property which is not available to the defendants under Order 39 Rule 1-A C.P.C. Therefore, the defendants are not entitled for the relief. Hence, I answer points No. 1 to 3 in the negative.

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

ORDER

I.A. dated 12.09.2023 filed by the defendant No.5 under Order 39 Rules 1 and 2 r/w Section 151 of CPC is rejected.

(Dictated to the stenographer directly on computer, revised, corrected and then pronounced by me in open Court on this the 13th day of October 2023).

(B. Anupama Lakshmi)
Senior Civil Judge & J.M.F.C.,
Nanjangud.