

KAMS500032922022



**IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C.,
NANJANGUD**

Dated this the 20th day of April 2024

Present : **Smt. B. Anupama Lakshmi**, B.A., LL.B.,
Senior Civil Judge & JMFC,
Nanjangud.

O.S./238/2022

Plaintiff : Mahadeva S/o Mallegowda,
aged about 38 years,
residing at portion of
House Assessment No.1240,
Property No.1048,
Hadinaru Village,
Chatra Hobli,
Nanjangud Taluk.

(By Sri. H.V.Sreenath, Advocate)

-V/s-

Defendants 1. Gurubasvegowda
S/o Putta Basavegowda,
aged about 62 years,

2. Doddabasavegowda
S/o Putta Basavegowda,
aged about 58 years,

3. Mahadevamma
D/o Putta Basavegowda,
aged about 65 years,

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

4. Rajamma D/o late Mahadevamma,
aged about 50 years,
Boghapura Village,
Chatra Hobli,
Nanjangud Taluk.

5. Jayamma D/o late Mahadevamma,
45 years,
Doddakanya Village,
Varuna Hobli,
Mysuru Taluk and District.

6. Rajegowda S/o Mahadevamma,
aged about 50 years,

7. Ravi S/o Mahadevamma,
aged about 45 years,

defendants 6 and 7 are
residing at Hadinaru Village,
Chatra Hobli, Nanjangud Taluk.

8. Sannamma D/o late Madegowda,
aged about 48 years,
residing at Kadavekattehundi
Village, Siddaramaiahnahundi Post,
Varuna Hobli, Mysuru Taluk.

9. Mallegowda S/o late Madegowda,
aged about 68 years,
Hadinaru Village,
Chatra Hobli, Nanjangud Taluk.
10. Ravi S/o Mallegowda,
aged about 40 years,

Both are residing at Portion of
Assessment No.1240, Property
No.1040, Hadinaru Village,
Chatra Hobli, Nanjangud Taluk,
Mysuru District.

(By Sri. M.A.Shanmukha, Adv. for D.1 to 8
Sri. P.N.G., Adv. for D.9
D.10 - exparte)

I.A. I

Applicant : Mahadeva
.... Plaintiff

-V/s-

Opponents : Gurubasavegowda and others
... defendants

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

The plaintiff filed the present I.A., along with the suit
for an order of temporary injunction against the defendants
restraining them from interfering with possession of the

plaintiff over the suit 'B' schedule properties till disposal of the suit.

2. The defendants have not filed statement of objections.

3. Heard both sides. The learned counsel for the plaintiff has relied on the following decisions:

- 1) ILR 1992 KAR 3772 – M/s Patel Enterprises Vs. M.P.Ahuja
- 2) 1998(5) Kar.L.J.601 – M/s Albahar Shipping Company, Mangalore and others Vs. The Karnataka State Financial Corporation, Mangalore Branch and another

Perused the pleadings, decisions furnished by the learned counsel for the plaintiff and materials on record.

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

1. Whether the plaintiff has made out a prima facie case ?
2. Whether the balance of convenience lies in favour of plaintiff ?

3. Whether the plaintiff 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.

The present suit is instituted for the relief of declaration of title of plaintiff over the suit 'B' schedule properties and for further declaration that the judgment and decree dated 16.06.2011 passed in O.S.No.17/2009 and for stay of operation of F.D.P.11/2002 on the file of Prl. Civil Judge and J.M.F.C., Nanjangud and for permanent injunction.

7. Case of the plaintiff is that, he is the son of second wife of the defendant No.9. Defendant No.10 is the son of first wife of defendant No.9. That the 'A' schedule properties originally belonged to Masanegowda of Hadinaru village. Madamma @ Madi was the wife of Masanegowda. They had no issues. As such, they brought up the 9th defendant as their adopted son. After the death of Masanegowda, his widow while in sound disposing state of mind executed a Will on 25.07.1983 in favour of the 9th defendant. She died on 30.12.1991. After the death of Madamma @ Madi the defendant No.9 became the absolute owner in possession of 'A' schedule properties. He got changed the khatha of the properties in his name.

That the defendant No.9 had one brother and 3 sisters. The brother died as bachelor. Maramma mother of the defendants No.1 to 3, Mahadevamma mother of defendants 4 to 7 and Sannamma the 8th defendant are the sisters. They are all married.

That the defendant No.9 on 13.02.2009 prepared palupatti in the presence of witnesses and divided his entire estate out of which suit 'C' schedule properties are allotted to the share of plaintiff which are the suit 'B' schedule properties. That the plaintiff is residing separately in a portion of R.C.C. house. He has invested lakhs of rupees by borrowing money and has improved the suit 'B' schedule properties. Plaintiff has been in possession and enjoyment of the 'B' schedule properties for more than 13 years without interruption from anyone.

That the court notice in F.D.P.11/2022 was issued against the 9th defendant was served on the house of the plaintiff on 18.08.2022. Then the plaintiff came to know of O.S.17/2009. That suit 'A' schedule properties are not the ancestral joint family properties of family of Madegowda. That the plaintiff is the absolute and exclusive owner in possession of plaintiff 'B' schedule properties. On the strength of collusive decree in O.S.17/2009 the defendants have filed F.D.P. proceedings for division of the present 'B'

schedule properties. Therefore, the plaintiff is seeking order of temporary injunction against the defendants from interfering with his possession and enjoyment of the suit 'B' schedule properties.

8. Plaintiff has produced Hissa Survey Tippani books, R.T.Cs., endorsement issued by the office of Deputy Tahasildar, Will dated 25.07.1983, death certificate of Madamma, M.R. extracts, genealogy tree, palupatti dated 13.02.2009, tax paid receipt, patta book, copy of judgment and decree passed in O.S.17/2009 and copy of petition in F.D.P.11/2002.

9. Learned counsel for the plaintiff argued that, suit schedule properties originally belonged to Masanegowda and Maadi who had no issues. As such they adopted defendant No.9. Maadi bequeathed suit schedule properties in favour of defendant No.9. Plaintiff is the son of defendant No.9. In the family partition suit 'B' schedule properties fell to the share of plaintiff and he is in

possession and enjoyment of the said properties. That plaintiff was not a party to appeal, Regular Second Appeal, therefore judgment does not bind the plaintiff. Therefore, he is entitled for the relief.

10. Learned counsel for the defendants argued that, R.S.A.236/2012 was disposed off on 08.04.2022 confirming the judgment passed in O.S.17/2009. Plaintiff has not made his sister and his father's second wife's children as parties to the suit. That the Will is created. That Special Leave Petition was disposed off, thereafter the present suit was filed. Therefore, the plaintiff is not entitled for the relief.

11. The plaintiff is claiming right over the suit 'B' schedule properties by virtue of the alleged Will of Madamma @ Maadi dated 25.07.1983 and palupatti dated 13.02.2009. The due execution of the said documents is yet to be proved. Whether the plaintiff is the rightful owner in possession and enjoyment of the suit 'B' schedule

properties or not, has to be decided at the full dressed trial. On the other hand the defendants have court decree in their favour. Therefore, when the plaintiff has challenged the judgment and decree passed in O.S.No.17/2009 he has to go for trial, without which at this juncture it cannot be said that plaintiff is the owner of the suit 'B' schedule properties though the R.T.Cs. stand in the name of the plaintiff. Because as per the copy of the judgment furnished by the defendants, the Hon'ble High Court of Karnataka in R.S.A.236/2012 has confirmed the judgment passed in O.S.No.17/2009. Therefore, if temporary injunction is granted then the defendants will suffer hardship. Therefore, this court is of the view that, plaintiff has not made out a prima facie case and balance of convenience does not lie in his favour and he will not suffer irreparable loss if temporary injunction is not granted in his favour. Therefore, the point for consideration is answered in the **Negative**. Hence, the following:-

ORDER

I.A. I filed by the plaintiff under Order
XXXIX Rules 1 and 2 C.P.C. is dismissed.

*(Dictated to the Stenographer directly on computer, revised, corrected
and then pronounced by me in open Court on this the 20th day of April
2024).*

(B.Anupama Lakshmi)
Senior Civil Judge, Nanjangud.