



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

Present:
Sri.Hanumanth Satwik.,LL.M,

Senior Civil Judge & JMFC, Devadurga.

O.S.No.176/2022

DATED : THIS THE 12th DAY OF OCTOBER 2023

Plaintiffs: Noor Sab S/o. Aayin Sab @ Aayinappa
and others

(By Sri.R.K., Advocate)

--V/s--

Defendants: Haji Sab S/o. Late Yamanur Sab @
Yamanappa and another.

(D.1 by Sri. M.M. Advocate)
(D.2 by Sri. V.M.M. Advocate)

Provision under which the application is filed	U/o.XXXIX rule 1and 2 C.P.C.
Relief sought for	Temporary injunction.
The date on which the application is filed	29.11.2022
Number of the application	IA.No.I
The date on which the objections are filed by different opponent	03.12.2022
The date on which the orders were	12.10.2023



passed on the said application	
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**Senior Civil Judge & JMFC.,
Devadurga.**

ORDER ON IA NO.I

The present suit is for partition and separate possession.

2. The present application has been filed by plaintiff no.2 praying this court to restrain defendant no.1 from alienating the suit property. It is the case of the plaintiff that one Yamanur Sab @ Yamanappa S/o. Ayeen Sab @ Ayyappa is the ancestor of their family. Defendant no.1 and 2 and Aayin Sab @ Aayinappa are the children of the said Yamanur Sab. Plaintiff no.3 is the wife of Aayin Sab @ Ayinappa. Plaintiff no.1 and 2 are the children of plaintiff no.3 and the said Aayin Sab. They are governed by Sunni Succession Law. They and the defendants are in constructive possession of the suit property. They and the defendants are the co-owners of the suit property. Defendant no.2 filed suit bearing O.S.No.144/2022 against plaintiff no.1 and 2 for declaration, injunction and for rectification of RORs. The suit properties of the said suit are the self acquired properties of the father of plaintiff no.1 and 2 including the land bearing Sy.No.116/೨ measuring 05 acres 18 guntas, Sy.No.116/೨ measuring 05 acres 18 guntas and Sy.No.119 measuring 11 acres 15 guntas. The said properties



were purchased by his father. After the death of his father plaintiffs became the owners and possessors of the said properties. Defendant no.1 and 2 got entered their names in the revenue records of the suit property and the revenue record of the self acquired properties of his father illegally. The records of the suit property is illegally standing in the name of defendant no.1. Taking advantage of his name appearing in the records of the suit property, defendant no.1 is attempting to alienate the suit property. In this regard, the plaintiff no.2 prays as above.

3. Defendant no.1 filed memo adopting his written statement as objections to the application. Defendant no.1 in his written statement denied the plaint averments. Defendant no.1 contended that the father of plaintiff no.1 and 2 and the defendants are tenants-in-common with respect to suit property and land bearing Sy.No.116 and 119. The properties bearing Sy.No.116 and 119 were purchased in the name of father of plaintiff no.1 and 2 out of the profits earned from the suit property, which is his family property. Further during the life time of the father of plaintiff no.1 and 2, the father of plaintiff no.1 and 2 and defendant no.1 and 2 got partitioned the family properties. In the said partition the land bearing Sy.No.119 was allotted to the share of the father of plaintiff no.1 and 2, the land bearing Sy.No.116 was allotted to the share of defendant no.2 and the suit property was allotted to the share of defendant no.1. As per the oral partition effected



among the father of plaintiff no.1 and 2 and defendant no.1 and 2, mutation of the records of the properties were effected. The land bearing Sy.No.119 is converted into strips. Among the strips formed in land bearing Sy.No.119, Sy.No.119/*4 measuring 02 acres 35 guntas was sold by plaintiff no.1 in favour of one Shivakumar. Plaintiff no.1 is trying to sell land bearing Sy.No.119/*3 measuring 02 acres 20 guntas. In this regard, defendant no.1 in his written statement prayed to declare that he is the owner and possessor of the suit property and sought for permanent injunction. Defendant no.1 in alternative prayed to allot him 1/3rd share in non-suit lands by way of partition. In this regard, defendant no.1 prays to reject the application.

4. Heard arguments of the learned counsel for the plaintiffs and defendant no.1.

5. Considering the contentions of the parties, following points arise for my consideration.

1. Whether plaintiff no.2 has made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of the plaintiff no.2?
3. Whether plaintiff no.2 will suffer irreparable injury if temporary injunction is not granted?
4. What order?



6. My findings for the above points are as follows.

Point No.1 : In the affirmative

Point No.2 : In the affirmative

Point No.3 : In the affirmative

Point No.4 : As per final order

For the following;

REASONS

7. **Point No.1**:- It is the case of plaintiff no.2 that one Yamanur Sab @ Yamanappa S/o. Ayeen Sab @ Ayyappa is the ancestor of their family. Aayin Sab @ Aayinappa, defendant no.2 and 1 are the children of the said Yamanur Sab. Plaintiff no.3 is the wife of Aayin Sab @ Ayinappa. Plaintiff no.1 and 2 are the children of plaintiff no.3 and the said Aayin Sab. They and the defendants are in constructive possession of the suit property. They and the defendants are the co-owners of the suit property. In this regard, defendant no.1 in his written statement admitted that the father of plaintiff no.1 and 2 and defendant no.1 and 2 are tenants-in-common with respect to the suit property. He further contended that their took place oral partition among the father of plaintiff no.1 and 2 and defendant no.1 and 2. In the said partition the suit property was allotted in his favour.

8. Be it stated, going by the written statement of defendant no.1, it is prima-facie clear that plaintiffs and defendant no.1 and 2 are tenants-in-common with respect to the suit property



at an undisputed point of time. This being the case, whether there has been a partition among the father of plaintiff no.1 and 2 and defendant no.1 and 2 as alleged is a triable issue. The said issue can be decided by taking evidences and in a full-fledged trial.

9. Thus seen, the present suit is one for partition and separate possession. In the present case it is necessary to determine whether plaintiffs and defendants are tenants-in-common with respect to the suit property. Further, for the aforesaid reasons it is prima-facie clear that the plaintiffs and defendants are tenants-in-common with respect to the suit property at an undisputed point of time. It is further held that the question of partition as alleged by defendant no.1 is a subject matter of trial. In these circumstances, considering the issues that are required to be answered in the present suit I am of the view that, there is a prima-facie case for trial. In this view of the matter, considering the application, pleadings and materials on record I am of the further view that plaintiff no.2 has made out a prima-facie case. Accordingly, I answer issue no.1 in the affirmative.

10. **Point No.2:-** In the case on hand, for the above said reasons it is held that there is a prima-facie case for trial. In these circumstances, if temporary injunction is not granted and if defendant no.1 alienates the suit property as alleged, plaintiff no.2 will suffer inconvenience, as plaintiff no.2 will be



put into multiplicity of litigation. Such being the case, if temporary injunction is not granted the inconvenience which will be suffered by plaintiff no.2 is more than the inconvenience which may be caused to defendant no.1. Further, during the pendency of the suit, if defendant no.1 alienates the suit property as alleged by plaintiff no.2, the very purpose of the suit will be frustrated. Therefore, as defendant no.1 has an opportunity to contest the matter and get the matter decided on merits, I am of the view that balance of convenience with respect to suit property is in favour of plaintiff no.2. Resultantly, point no.2 is answered in the affirmative.

11. **Point No.3**:- In the case on hand, it is held that there is a prima-facie case for trial with respect to suit property. In these circumstances, if temporary injunction is not granted and if defendant no.1 alienates the suit property as alleged, plaintiff no.2 will suffer irreparable injury and such injury cannot be compensated in terms of money, as plaintiff no.2 will be put into multiplicity of litigation. Further, during the pendency of the suit if defendant no.1 alienates the suit property as alleged by plaintiff no.2, the very purpose of the suit will be frustrated. In these circumstances, plaintiff no.2 showed that he will suffer irreparable injury, if temporary injunction is not granted with respect to suit property. Resultantly, point no.3 is answered in the affirmative.

12. **Point No.4**: - In view of reasons on point No.1 to 3 and in



the interest of justice and equity, I proceed to pass the following,

ORDER

IA No.1 filed by plaintiff no.2 U/o.XXXIX
Rule 1 & 2 of CPC is hereby allowed.

Defendant no.1, his agents, servants or
anybody claiming on his behalf are hereby
temporarily restrained from alienating the suit
property till the disposal of the suit.

Parties to bear their own cost.

(Dictated to the stenographer directly on the computer, typed
by him, corrected by me and then pronounced in the open court on
this the 12th day of October 2023.)

(Hanumanth Satwik)
Senior Civil Judge & JMFC.,
Devadurga.