



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

Present:

Sri.Suresh Annappa Savadi., B.A., L.L.B, (Spl).,

Senior Civil Judge & JMFC, Devadurga.

O.S.No.103/2024

DATED : THIS THE 2nd DAY OF MAY 2025.

Plaintiffs: Yankappa S/o. Narasappa and others.

(By Sri.S.S.I.Q., Advocate)

--V/s--

Defendants: Honnappa S/o. Late Rangayya
and others.

(D.1(a) by Sri.B.S. advocate)
(D.2(a) exparte)

Provision under which the application is filed	U/o.XXXIX rule 1 and 2 R/w.Sec.151 of C.P.C.
Relief sought for	Temporary injunction.
The date on which the application is filed	29.07.2024
Number of the application	IA.No.I
The date on which the objections are filed by different opponent	WS dated 28.01.2025
The date on which the orders were passed on the said application	02.05.2025

**ORDER ON IA NO.I**

The plaintiff filed this application U/o.39 rule 1 and 2 of CPC to restraining the defendant from alienating the suit schedule property till disposal of the suit.

2. In the affidavit contended that the plaintiffs are in possession and enjoyment of the suit schedule land. The schedule land belongs to the grandfather of the plaintiff by name Chandappa S/o. Ramappa. The said Chandappa had a son by name Narasappa and the plaintiffs are the children of said Narasappa. The defendant no.1 and 2 have illegally got mutated their names in the suit schedule property. The illegal mutations has been challenged before the revenue officials. The Assistant Commissioner dismissed the said petition and directed the parties to get the relief through civil court. Taking undue advantage of the name appearing in the revenue records, the defendant no.1(a) and 2(a) are trying to alienate the suit properties. Hence, it is necessary to restrain the defendant from alienating the suit schedule properties. If the application is allowed, no loss will cause to the other side. On the other hand, the plaintiff will put to untold hardship. Hence, prays to allow the application.

3. On the other hand, the defendant appeared through counsel and filed written statement and also filed memo



to consider the written statement as objection to IA no.1. In the written statement, denied the case of the plaintiff and contented that the plaintiff has not approached this court with clean hands and the plaintiffs are not the owners and possession of the suit land. The suit is bad for non-joinder of necessary parties. The suit land was standing in the name of ancestors of the defendant since from 1963-64 till 2001. The suit land bearing Sy.No.244/A, new no.244, measuring 01 acres 39 guntas situated at Nagaragunda village, was not belongs to the ancestors of the plaintiff at any point of time. The suit land was not standing in the name of Chandappa S/o. Ramappa. The said Chandappa S/o. Ramappa was not the owner and possessor of the suit land at any point of time. His name was not shown in the record of right. The question of inheritance by plaintiff does not arise. The suit land was standing in the name of Chandappa S/o. Kamappa, who is ancestor of defendant no.1 and 2. His name was shown in the revenue record since from 1963-64 to 2000-2001. After the death of Chandappa S/o. Kamappa, there was a family partition took place between the defendant no.1, Honnappa S/o. Rangappa and defendant no.2, Honnappa S/o. Ramappa. In that partition, the land to the extent of 1 acre towards southern side allotted to the share of the defendant no.1 and the land to the extent of 39 guntas



towards northern sides allotted to the share of the defendant no.2. i.e. husband of defendant no.1. The possession also handed over to the defendant no.1 and 2 respectively. Hence, the defendants are absolute owners and are in possession of the property. Hence, the plaintiffs are not in possession of the suit property and no way concerned to the suit property. Hence, prays to dismiss the suit.

4. Heard both sides.
5. The following points arises for my consideration;
 1. Whether the plaintiffs have made out the prima-facie case against the defendants ?
 2. Whether the plaintiffs show that the balance of convenience lies in their favour of the plaintiff ?
 3. Whether the plaintiffs show that, application is not allowed, the plaintiff will put to irreparable injury ?
 4. What order ?
6. My answered to the aforesaid points are as under;
 - Point No.1 to 3 : In the affirmative
 - Point No.4 : As per final order
for the following



R E A S O N S

7. **POINT NO.1 to 3:** These points are interlinked with each other and to avoid the repetition of facts and separate discussion taken together for common consideration.

8. The plaintiff filed this suit for declaration and injunction and rectification of record of right in respect of suit schedule property against the defendants. The plaintiff contended that the suit schedule property originally belongs to one Chandappa S/o. Ramappa and the said Chandappa had three sons by name Yankappa, Hanumantha @ Amatyappa and Hanumayya who are the plaintiffs. After the death of the Chandappa the defendant no.1 and 2 are the children of Chandappa S/o. Kamappa of Nagargunda village. The Chandappa was the absolute owner and possession of non-suit property bearing Sy.No.244/3 measuring 1 acre 39 guntas. The defendant No.1 and 2 illegally got mutated the schedule land in their names as per Mutation No.14 dated 28.02.2001, showing that they are the legal heirs of the deceased Chandappa S/o. Ramappa on pouthi basis. Now the defendants are trying to alienate the properties. Hence the plaintiff filed the suit and also filed this application to restrain the defendants from alienating the scheduled property. For



that the defendant appeared and contended that the suit scheduled property bearing Sy.No.244/3 is not belongs to the Chandappa S/o. Ramappa. The said suit land belongs to Chandappa S/o. Kamappa and the revenue record since from 1963-64 to 2001 the name of Chandappa was appearing as son of Kamappa and the said suit property is no way relates to the family of the plaintiff. The defendant also contended that the plaintiff has not sought for any relief of injunction and also not sought for any relief of possession. Hence, the present suit is also not maintainable. The interim applications are also not maintainable. The plaintiff filed this application for stay which is not fall U/o.39 rule 1 and 2. The said provision is in respect of interim injunction. Under the said provision there is no concept of stay. Hence, with these set of contention prays to reject the application.

9. As per the records furnished by the both sides. The name of the Chandappa S/o. Ramappa is appearing in the revenue records furnished by the plaintiff. On the other hand the name of Chandappa S/o Kamappa is appearing in the revenue records furnished by the defendants in respect of suit property only. As per the records the name of the father of the plaintiffs appearing and also the name of the father of the defendant also appearing. Hence at



this stage considering the material this court is of the opinion that it is necessary to restrain the defendants from alienating the suit properties. If the application is not allowed and if the defendants alienates the property then it leads multiplicity of proceedings. Hence in the interest of justice it is necessary to allow the application as the plaintiff as made out prima-facie case. Hence this court answered the Point No.1 to 3 in the affirmative.

10. **POINT NO.4:** For the reasons stated in the Point No.1 to 3, this court proceed to pass the following;

ORDER

I.A.No.I filed by the plaintiffs U/o.
XXXIX Rule 1 and 2 r/w Sec.151 of CPC is
hereby allowed.

The defendants are restrained
from alienating the suit schedule
properties till disposal of the suit.

(Dictated to the stenographer directly on the computer,
typed by him, corrected by me and then pronounced in the
open court on this the 2nd day of May 2025)

(Sri.Suresh Annappa Savadi)
Senior Civil Judge & JMFC.,
Devadurga.