

KARN020009692021



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, RAMANAGARAM**

Dated This 14th day of October 2022

PRESENT:

Sri. Mahesh B.T.,

B.Com., LL.M.,

**Addl., Senior Civil Judge and JMFC,
Ramanagara.**

O S 382/2021

Plaintiff :- Sri. Channappa

V/s

Defendants :- Sri. Hanumaiah and others

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I.A No.1 and 2

Applicant :- Sri. Channappa **(Plaintiff)**

V/s

Opponents :- Sri. Hanumaiah and others

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ORDERS ON I.A No.1 AND 2 FILED BY THE PLAINTIFF
BOTH U/O 39 RULE 1 AND 2 R/W SEC.151 of CPC

The plaintiff has filed I.A No.1 U/o 39 Rule 1 & 2 r/w Sec.151 of CPC praying to restrain the defendants from alienating or creating third party interest over the suit schedule property and another I.A No.2 U/o 39 Rule 1 and 2 r/w Sec.151 of CPC praying to restrain the defendants from doing any activities in the suit schedule property other than agriculture, till the disposal of the suit.

2. In the accompanied affidavits the plaintiff stated that, the suit schedule properties are the ancestral and joint family properties of him and defendant No.1 to 3. Further, it is stated that, he and the defendant No.1 to 3 are the members of the joint Hindu family and till today there is no partition taken place in the family.

3. It is stated that, one Muniyappa was the original propositus and he had two wives by name Muthamma and Galamma. It is stated that, he is the first wife son and defendant No.1 to 3 are the second wife children. Further, it is stated that, during the life time of the Muniyappa they were enjoying the suit schedule property jointly. Thereafter, after the death of Muniyappa, the plaintiff and defendants were in

possession and enjoyment of the suit schedule property. Due to the misunderstanding between womens in the family, they were living separately but they were enjoying the suit schedule property jointly. Now, after the death of Muniyappa, defendant No.1 without the knowledge of the plaintiff has mutated his name and his mother name i.e. Galamma in the suit schedule property. Thereafter, without the knowledge of this plaintiff, defendant No.1 and his mother have sold the suit schedule property to the defendant No.4 and 5, which is not binding on the plaintiff. Further, it is stated that, now taking the advantage of the name appearing in the suit schedule properties, defendant No.1 to 3 are trying to create the third party right over the suit schedule property. Further, it is stated that, after coming to the knowledge of the plaintiff he has enquired the defendant No.1 to 3 and ask for his share in the suit schedule property for that defendants have denied his right over the suit schedule property. Hence, he has filed the suit against the defendants for the relief of partition and declaration and also the instant applications.

4. The defendant No.1 appeared through his counsel and filed written statement and objection and also files memo to adopt written statement as

objection to the I.A No.2 and contended that, plaintiff is unknown to him. Further contended that, the plaintiff has filed false suit against the defendants without having any right title over the suit schedule property. He has also contended that, plaintiff and defendant No.1 to 3 were no point of time lived jointly and enjoying the suit schedule property jointly. Further, it is contended that, plaintiff without having any right come with the instant applications and also contended that, his father had only one wife and defendant No.1 to 3 are the only legal heirs of his father. The plaintiff has without having any relation with the defendant No.1 to 3 come up with the false and fictitious story to harass these defendants. Hence, prays to dismiss the applications.

5. Heard both the learned advocates for the parties. Perused the materials available on record.

6. Upon careful perusal of materials available on record, following points that arise for my consideration:

POINTS

1. Whether the Plaintiff has made out a *prima-facie* case to allow the I.A No.1 & 2 ?

2. Whether the plaintiff has got balance of convenience in his favour ?
 3. Whether the plaintiff would be put to loss and injury if the I.A's are not allowed ?
 4. What Order?
7. After careful scrutiny of material available on the file, my findings to the above Points are as follows:
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|------------|---|---|
| Point No.1 | : | In the “negative” |
| Point No.2 | : | In the “negative” |
| Point No.3 | : | In the “negative” |
| Point No.4 | : | As per final order
for the following ; |

REASONS

8. **Point No.1:-** I have already set out in brief as to what the case of the plaintiff and as to what the stand taken by the defendant No.1. It is well settled principles of law that the following prepositions are to be established in order to invoke the jurisdiction of the court to get an interlocutory order of injunction U/o.39 Rule 1 and 2 of CPC. (1) Plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable injury if an injunction is refused. The ingredients are to be

established by the party, who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the court so that the court will be satisfied about the prima-facie case in favour of the party seeking the order. It is no part of courts function at this stage of the litigation to try to resolve difficult question of facts and law, which require elaborate evaluation of evidence to be recorded at the trial. The conduct of the parties is also plays an important and vital role in considering the application of this nature.

9. This is a suit filed by the plaintiff seeking the relief of partition, declaration and other consequential reliefs against the defendants. It is stated that, the suit schedule properties are the ancestral and joint family properties of him and defendant No.1 to 3. He and the defendant No.1 to 3 are the members of the joint family and the said properties have not partitioned between him and defendant No.1 to 3 till today.

10. It is stated that, one Muniyappa was the original propositus and he had two wives by name Muthamma and Galamma. He is the first wife son and defendant No.1 to 3 are the second wife children.

Further, it is stated that, during the life time of the Muniyappa they were enjoying the suit schedule property jointly. After the death of Muniyappa, the plaintiff and defendant No.1 to 3 were in possession and enjoyment of the suit schedule property. After the death of Muniyappa, defendant No.1 without the knowledge of the plaintiff has mutated his name and his mother name i.e. Galamma in the suit schedule property. Thereafter, without the knowledge of this plaintiff, defendant No.1 and his mother have sold some of the suit schedule property to the defendant No.4 and 5.

11. Per contra, the defendant No.1 has contended that, plaintiff without having any right title over the suit schedule property has filed false case against the defendants. Further contended that, his father had only one wife i.e., Galamma and defendant no.1 to 3 are the only children. The plaintiff is no where related to the his family without having any right filed false suit against them.

12. To substantiate the case of the plaintiff has produced the documents i.e., genealogy tree, RTC's, Demand register extract, sale deeds.

13. To substantiate the case of the defendant No.1 has produced the documents i.e., genealogy tree, death certificate of his father and mother, House warming invitation, photos, CD.

14. On careful perusal of the I.A's, affidavits, objections and documents produced by both the parties, it can be seen that, as on the date of the filing of the suit, suit schedule properties are standing in the name of the defendant No.1, Galamma who is the mother of the defendant No.1 to 3 and defendant No.4 to 6. The main crux of the case is that, the plaintiff has stated that, he is the first wife son of one Muniyappa and defendant No.1 to 3 are the second wife children of the said Muniyappa. But, defendant No.1 has denied the same and stated that, his father had only one wife i.e., his mother Galamma and plaintiff is not related to their family and also he was not in joint possession of the suit schedule property along with the defendant No.1 to 3. On careful perusal of the documents, it can be seen that, earlier suit schedule properties were standing in the name of one Muniyappa. Thereafter, suit schedule properties were mutated in the name of the defendant No.1 and his mother. During the year 2005 to 2008, defendant

No.1 and his mother have sold some of the suit schedule property to the defendant No.4.

15. It is to be noted here that, in the instant case relationship is disputed and to prove the same plaintiff has filed the genealogy and Aadhar card to show that he is the son of Muniyappa. But, these documents depicts that, during the year 2017, he has received the same. Since plaintiff has stated that, he is the son of Muniyappa and he and defendant No.1 to 3 are the joint family members, no documents were produced other than the Aadhar card and genealogy like ration card, voter card or school certificates to show that he is the son of the Muniyappa. Moreover, as on the date of filing of the suit, suit schedule properties are not standing in the name of the plaintiff. Further, this plaintiff has stated that, during the year 2005 to 2008 defendant No.1 and his mother have sold some of the suit schedule properties without his knowledge. But, now he has come up with this case after lapse of more than 12 years for the reasons best known to him. It is no part of courts function at this stage of the litigation to try to resolve difficult question of facts and law, which require elaborate evaluation of evidence to be recorded at the trial. Therefore, at this juncture this court opines that

plaintiff has failed to prove the prima-facie case. Accordingly, the point under consideration is answered in the “Negative”.

16. **Points No.2 and 3:** I have already answered to Point No.1 in the negative holding that the plaintiff has failed to make out prima facie case. It is held in the reported decision in between Sri Gowrishankara Swamigalu Versus Siddhaganga Mutt reported in ILR 1989 KAR 1701 that proving of prima-facie case is harbinger to consider the other aspects such as balance of convenience and irreparable loss. If the plaintiff failed to make out the prima-facie case, it is not necessary to consider the other aspects. Hence, I answered to Points No.2 and 3 holding that they do not survive for consideration.

17. **Point No 4:** The observations made above will not come in any way for the disposal of the suit on merits and for the reasons stated above, I pass the following:-

ORDER

I.A No.1 and 2 filed by the plaintiff
U/o 39 Rules 1 and 2 r/w Sec.151
of CPC are dismissed.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open Court on this the 14th day of October 2022)

**Addl., Senior Civil Judge and JMFC,
Ramanagara.**