

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT CHANNAPATNA

PRESENT: SRI.MAHENDRA.M B.A, LL.B.,
Prl. Civil Judge & JMFC,
Channapatna.

Dated this 23rd day of September-2021

O.S. NO.217/2020

PLAINTIFFS : Smt.Mangalagowramma & Others

-V/s-

DEFENDANT : Sri.N.Boregowda

I.A.No.II

**APPLICANTS/
PLAINTIFFS**

- :
1. Smt.Mangalagowramma,
W/o Late C.Kumar @ Mariswamy,
Aged about 46 years,
 2. Smt.Shobha,
D/o Late C.Kumar @ Mariswamy,
Aged about 28 years,
 3. Sri.Suhasan,
S/o Late C.Kumar @ Mariswamy,
Aged about 46 years,

All are R/at Kunthurudoddi Village,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri.P.K.V., Advocate)

-V/s-

**OPPONENT/
DEFENDANT:**

Sri.Boregowda,
S/o Late Narayanagowda,
Aged about 68 years,

R/at Kunthurudoddi Village,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(By Sri.P.L.N., Adv.,)

ORDERS ON I.A No.II FILED U/O XXXIX RULE 1 AND 2

R/w Sec.151 OF CPC BY THE PLAINTIFFS

The learned counsel for the plaintiffs has filed I.A. No.II u/O 39 rule 1 and 2 R/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendant alienate the suit schedule property pending disposal of the suit.

2. The plaintiff No.1 filed sworn to an affidavit in support of I.A. No.II and stated that, the suit schedule property originally belongs to the husband of the plaintiff No.1 by name C.Kumar @ Mariswamy S/o Chikkahydaiah. He was purchased the suit schedule property from father of the defendant by name Narayanagowda through registered sale deed dtd.26.07.1983. After purchased the said property Sy No.383 phoded as Sy No.383/4. The said C.Kumar died on 26.11.1998. The extent wrongly entered in the name of 1st plaintiff measuring 180x80 instead of 150x50. The defendant illegally phoded the property and illegally mutated the Khatha into his name. The defendant trying to alienate the suit schedule property in favour of 3rd person. **Hence prayed that grant on temporary injunction against the defendant by allowing the I.A. No.II.**

3. The defendant appear before this court through his counsel and filed a memo seeking written statement may be treated as objection to I.A No.II, the same is allowed. The defendant contented that and admitted that, the husband of the 1st plaintiff purchased the property from father of the defendant through sale deed. The extent mentioned in the sale deed by way of feet not for guntas. After Phodi the family members of defendant are in possession over the property in Sy No.383/17 to the extent of 7.04 guntas. The plaintiffs not have any right over the said property. The plaintiffs filed false suit against the defendant. Hence prayed that dismiss I.A No.II filed by the plaintiffs.

4. Now the following points arise for consideration of this court:-

POINTS

1. Whether the plaintiffs have made out prima-facie in their favour?
2. Whether the plaintiffs made out balance of convenience in their favour?
3. Whether this I.A. No.II is rejected, the plaintiffs will be put to irreparable loss and injury which can not be compensated?
4. What order?
5. Heard both sides.

6. This court has perused the materials on record and answer the above said 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 the final order
for the following:-

R E A S O N S

7. **POINT NO.1 to 3:-** These three points are interrelated, hence they are taken together for discussion to avoid repetition.

8. The learned counsel for the plaintiffs argued that, the husband of the plaintiff No.1 was purchased the property in Sy No.383 measuring 188/80. The plaintiffs are in possession over the suit schedule property. The defendant illegally mutated the Khatha into his name. Hence allow the I.A No.II. The counsel for the defendant argued that, the defendant is denied the plaint averements and stated that, the defendant is in possession over the suit schedule property. Hence dismiss the I.A No.II.

9. The plaintiffs produced the documents that, the certified copy of sale deed dtd.26.07.1983, encumbrance certificate, hand written RTC, mutation register extract, genealogical tree affidavit, computerized RTC's, Akar Band, photo and CD.

10. The defendant produced the documents that, the xerox copies of agricultural pass Book, computerized RTC, Survey Sketch, Mahazar, Akar Band and Pakka Book.

11. The counsel for the plaintiffs relied upon one decision of Hon'ble High Court of Karnataka in Writ Petition No.26175/2019 between Chikkkanarayanappa and State of Karnataka And Others. With great respect this decision is not applicable to present stage.

12. The documents produced by the plaintiffs it is prima-facie reveals that, the Khatha of the suit schedule property standing in the name of defendant. Prima-facie also shows that, the husband of the 1st plaintiff purchased the suit schedule property. The plaintiffs alleged that, the defendant is trying to alienate the suit schedule property in favour of third person. Till the disposal of the suit the preservation of the suit schedule property is required. If the defendant has alienate the suit schedule property the rights of the plaintiffs is defeated in case of decree the suit in favour of the plaintiffs. The plaintiffs made out prima-facie case and balance of convenience in their favour. If this application is dismissed the plaintiffs will be put to irreparable loss and injury which can not be compensated. To avoid multiplicity of proceedings the I.A. No.II is deserved to be allowed. **With these observations this court has answered the Point No.1 to 3 in the Affirmative.**

13. **Point No.4:-** For the above discussion on point No.1 to 3, this court proceeds to pass the following :-

ORDER

I.A.No.II u/O 39 Rule-1 and 2 r/w
sec.151 of CPC., is hereby allowed.

No order as to cost.

Restraining the defendant and his
agents or servants or any other persons
to alienate and encumbrance the suit
schedule property till disposal of the
suit.

(Dictated to the Stenographer and transcribed by her, Order corrected
and signed by me, then pronounced by me in the Open Court on this the 23rd
day of September-2021).

Sd/-
Prl.Civil Judge & JMFC.,
Channapatna.

Order pronounced in open court
(Vide Separate Order sheet)

ORDER

I.A.No.II u/O 39 Rule-1 and 2 r/w
sec.151 of CPC., is hereby allowed.

No order as to cost.

Restraining the defendant and his
agents or servants or any other persons
to alienate and encumbrance the suit
schedule

Sd/-
Prl.Civil Judge & JMFC.,
Channapatna.