

KARN320012072018



IN THE COURT OF THE I ADDL.CIVIL JUDGE & J.M.F.C.,
AT KANAKAPURA.

Present: Sri. Krishnamurthy.N., *B.A., LL.B.*,
I Addl. Civil Judge & JMFC.,
Kanakapura.

Dated: This 26th day of November 2021

O.S. No. 232/2018

Plaintiff/s : 1. Smt. Sannamma
W/o Bhadragirigowda
Aged about 65 years,

2. Smt. Vedavathi
D/o late C.B.Byrappa
Aged about 35 years,

3. Sri. Kantharaju
S/o late C.B. Byrappa
Aged about 28 years,

4. Sri. Kiran
S/o late C.B.Byrappa
Aged about 26 years,

5. Smt. Jayasheela
W/o late C.B.Byrappa
Aged about 48 years,

All are R/a:
Chakanahalli Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri.K.Madegowda, Adv.)

-V/S-

- Defendant/s:** : 1. Smt. Thimmamma
W/o Muniyappa @ Kempegowda
Aged about 60 years,
2. Sri. Kariyappa
S/o Muniyappa @ Kempegowda
Aged about 69 years,
3. Smt. Gowramma
D/o Muniyappa @ Kempegowda
Aged about 45 years,
- All are R/a:
Chakanahalli Village,
Kasaba Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri. E.Swamygowda, Adv.)

I.A.

Applicant/s : Smt. Sannamma and Other
Plaintiff/s

//Vs.//

Opponent/s: Smt. Thimmamma and others
Defendant/s

COMMON ORDER ON I.A. UNDER ORDER
XXXIX RULE 1 & 2 R/w Sec. 151 OF CPC

The instant I.A. U/o XXXIX Rule 1 & 2 R/w Sec.151 of CPC has been filed by the plaintiffs seeking temporary injunction restraining the defendants from alienating the suit schedule properties in favour of third person pending disposal of suit.

2. In the affidavit it is stated that, father-in-law of the plaintiff No.1 and grandfather of the plaintiff No. 2 to 4 and father of the plaintiff No.5 namely Sri. Chikkamunigowda became absolute owner and in possession of suit schedule properties and same are their ancestral and joint family properties. After the purchase of suit schedule properties under registered sale deed dated 14.08.1963 from its owner Sri. Munikempegowda @ Koomegowda son of Sri. Huklegowda, due to ignorance he could not change the katha into his name but the defendants who do not concerned with the properties in collusion with the Revenue Officials got changed the

katha in their favour. The plaintiffs have been in possession and enjoyment of suit schedule properties and defendants are making attempts to alienate the suit schedule property based on katha standing in their name. Therefore, if the defendants are succeeded in their illegal acts, the rights of plaintiff will be frustrated hence, this application.

3. On the other hand, the defendant No.1 to 3 have filed their written statement denying the claim made by the plaintiffs contending that, the grandfather of defendant No.2 and 3 and father-in-law of the first defendant namely Sri. Chikkamunikempa son of Huklegowda had executed the sale deed in favour of his wife Smt. Muddi @ Muddamma and her minor son Sri. Munigempa through registered sale deed dated 25.05.1923 in respect of various properties including the suit schedule properties and the katha got mutated in their joint names by virtue of sale deed. The revenue appeal preferred in RRT (Dis) No.11/2010-11 before Tahasildar, Kanakapura and in R.A. No.212/2011-12 before Assistant Commissioner, Ramanagara, challenging the katha stood in favour of defendants which came to be dismissed.

4. It is further stated that Sri. Chikkamuni Kempegowda and his son Sri. Munikempegowda have no exclusive right, title to execute alleged sale deed dated 31.07.1952 in favour of Sri. Munigempegowda @ Koomegowda son of Sri. Huklegowda, who is

the alleged vendor of Sri. Chikkamuni Kempegowda and the same is null and void and as such, subsequent sale deed dated 14.08.1963 executed in favour of Sri. Chikkamunigowda @ Sannahydegowda who is the father-in-law of first plaintiff, grandfather of plaintiff No.2 to 4 and father of plaintiff No.5 has no sanctity in the eye of law hence, prays to dismiss the application.

5. Heard and perused the materials placed on record.

6. The following points that arise for my consideration;

1) Whether the plaintiffs have makes out a prima-facie case in their favour?

2) Whether the plaintiffs prove that the balance of convenience lies in their favour?

3) Whether plaintiffs prove that they will be put to irreparable loss and injury if temporary injunction is not granted as sought for?

4) What Order?

7. My findings on the above Points are as under;

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 to 3:** In order to avoid repetition of facts and for convenience of the court these points taken up for discussion since they are interlinked with each other at one stretch.

9. The plaintiff have stated in the plaint that, originally one Sri. Chikkamuni Kempegowda and his son Sri. Munikempegowda were the owners of suit schedule properties, they had sold the same in favour of Sri. Munikempegowda @ Koomegowda son of Sri. Huklegowda through registered sale deed dated 31.07.1952 who in turn, sold the same in favour of first plaintiff's father-in-law, grandfather of plaintiff No.2 to 4 and father of plaintiff No.5 namely Sri. Chikkamunigowda @ Sannahydegowda could not changed the katha in his favour and died. But the plaintiffs by cultivating crops such as, growing Ragi, Ground Nut have been in possession and enjoyment of suit schedule properties jointly which are the ancestral of joint family properties of them.

10. Along with suit, RTC extracts, certified copy of Sale deed dated 14.08.1963, 31.07.1952, Encumbrance Certificate, certified copy of order passed in Revenue appeal are produced by the plaintiff. As per RTC extracts produced in this case suit schedule properties are standing in the name of first defendant by way of pouthi varasu even during in the year 2018-19. It is also pertinent to note that, name of Smt. Muddamma wife of Sri. Chikkamuni Kempegowda and Sri.

Munikempa son of Sri. Chikkamuni Kempegowda find in place at the concerned column of xerox copy of RTC Extracts produced by the defendants for the year 1997-98 to 2001-02. According to plaintiff, Sri. Chikkamunigowda @ Sannahydegowda had purchased the suit schedule properties from Sri. Munigempegowda @ Koomegowda through registered sale deed dated 14.08.1963 as per xerox copy of sale deed produced in this case. But it is pertinent to note here itself that, the defendants have disputed the entire plaint averments including relationship of plaintiff with the said Sri. Chikkamunigowda @ Sannahydegowda. In order to show the relationship of plaintiffs with the said Sri. Chikkamunigowda @ Sannahydegowda, the plaintiffs have not produced any piece of documents.

11. It is also pertinent to here itself that, one Sri. Chikkamunigowda @ Sannahydegowda is the son of one Sri. Munikempegowda as found in the recital of alleged will dated 30.06.2000 which produced by the plaintiff. It is pertinent to note that, name of father of Sri. Chikkamunigowda @ Sannahydegowda has not been mentioned either in the plaint averments nor in the affidavit filed by the plaintiff. The plaintiff has never stated in the plaint averments with regard to alleged will dated 23.06.2000 wherein suit schedule properties of which one of the subject matter under the said will which produced by the plaintiff for the best reasons known to them. When the defendants have seriously

disputed the claim of plaintiff and set up a title in their favour, in their written statement and for the aforesaid reasons the plaintiffs have not make out prima-facie case to grant interim order as sought for. However, it is settled that, during pendency of suit any transaction taken place in respect of subject matter in question by the parties to suit would hit by doctrine lies pendency as contemplated under Sec. 52 of T.P. Act and such, transactions and rights of any person who derive from the said transaction is subservient to the decree passed in the suit on merits. Therefore, for the aforesaid reasons I answered **Point No.1 to 3** in the **Negative**.

12. **Point No.4:** Hence, I proceed to pass following.

ORDER

I.A. under Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC filed by the plaintiffs is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this 26th day of November, 2021)

I Addl. Civil Judge & JMFC.,
Kanakapura.