



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT MAGADI.**

Present: Sri. Shivakumar R., B.A.L., LL.B.,
Additional Senior Civil Judge & JMFC, Magadi.

Dated: 20th Day of February 2025

ORIGINAL SUIT NO. 10/2015

Plaintiffs

- : 1. Smt. Kariyamma,
D/o late Lakshminarasimhaiah,
Aged about 56 years,
R/at Uddanahalli Village,
Tavarekere Hobli,
Bengaluru South Taluk.
2. L. Narasimhaiah,
S/o late Lakshminarasimhaiah,
Aged about 63 years.
3. L. Narasimhamurthy,
S/o late Lakshminarasimhaiah,
Aged about 52 years.

Plaintiff no.2 and 3 are R/at
Ankaiahayanapalya Village,
Ajjanahalli Dakale, Tavarekere
Hobli, Bengaluru
South Taluk.

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

--V/s--



Defendants : 1. Sri. Siddappa,
S/o late Chikkamuthaiah,
Aged about 62 years.

2. Sri. Narasimhamurthy,
S/o Siddappa,
Aged about 43 years,

Both are R/at:
Somanathapura,
Ajjanahalli Dakale, Tavarekere
Hobli, Bengaluru
South Taluk.

(By Sri. N.S., Advocate)

PARTIES TO I.A.NO.15

Applicant : Smt. Kariyamma & Ors.,

Vs.

Opponent : Sri. Siddappa & Anr.,

ORDER ON I.A.NO.15

The applicants/plaintiffs have filed this interlocutory application under Order XXXIX Rule 1 and 2 r/w. Section 151 of CPC for the relief of temporary injunction restraining the defendants from alienating or creating any type of



encumbrance upon the schedule property and to maintaining status-quo in the suit schedule properties till disposal of this suit.

Note: The plaintiff counsel has filed the memo on 27.01.2025 and submitted that, the plaintiffs have not pressed the relief with regard to restrain the defendants from alienating the suit schedule properties, but the plaintiffs have stick on only relief against the defendants that, the defendants are hereby maintain the status-quo in the suit schedule properties till disposal of the suit. In view of the memo filed by the plaintiffs' counsel, the plaintiffs have sought for the relief to restrain the defendants from maintaining the status-quo order in respect of suit schedule properties.

2. The I.A., supported with the accompanying affidavit of the plaintiff No.3. It is stated in the affidavit that, along with the sister and brother of plaintiffs, they have filed the



above suit for Declaration and Permanent Injunction and for such other relief's against the defendants. The above case is stating posted for further Cross-examination of PW-2 witnesses by the defendants, but pendency of the present suit with intention to changing of nature of the suit properties by pre-planing by getting undue advantage of December Court Vacation leave, by colluding with Layout-Krishnappa's Assistants namely Sri. Yogesh and one another person Sri. Shiva Shankar, on 11.12.2024, the defendants and son-in-law of the Defendant No.1 and their rowdy elements brought 2 JCB to the suit schedule land properties to form layout, but plaintiffs have resisted the same and they went back. On 12.12.2024 the plaintiffs approached Jurisdictional Tavarekere Police Station to save suit schedule land properties and to prevent unnecessary galata from the defendants by forming layout by Siddappa and his henchmen. But, there was no response from Tavarekere Police Station, they asked the plaintiffs to produce any of



recent Court Order in respect of the land disputes, if the plaintiffs needed assistance of law and order to prevent digging and forming sites of land property and hence the plaintiffs have produced copy of Permanent Injunction Order passed in O.S No.449/2011, for which the said DYSP PRAVEEN & Circle Inspector Mohan Kumar and Sub-Inspector Bhaskar asked us to get new Permanent Injunction Order. Hence, the plaintiffs have approached and filed Complaint before SP Office (Superintendent of Police, Ramanagara Dist) and also filed Complaint before Inspector General of Police Bengaluru against Siddappa and others. On 13.12.2024, in spite of giving oral intimation from SP office to the Jurisdictional Tavarekere PS to DYSP and to Circle Inspector not to leave any JCB in the suit schedule properties, by virtue of order of above and also pendency of the present case though there was no response from them. But the defendants and their henchmen by colluding and getting assistance of DYSP/ Sri. PRAVEEN, Circle Inspector



Sri. Mohan Kumar and Police Sub-Inspector Sri. Bhaskar the defendants let 7 JCB and one Tractor in the suit schedule property and started to form layout and sites in the item No.1 of the suit property, but the plaintiffs tried to resist from digging of the land and forming of layout against them.

3. It is further stated that, again from 25.12.2024 till today the defendants and with their henchmen, rowdy elements, GPA holders etc., by bringing JCB, Tippers and Tractor by getting help of Tavarekere Police the defendants let labours/ tractors JCB for forming of the layout by changing the nature of item No.1 of the suit schedule. On the hand, in spite of furnishing Xerox copy of Order dated: 15.12.2012 of Permanent Injunction in O.S No.449/2011, passed by Addl. Civil Judge and JMFC, Magadi, in respect of the suit schedule property to the Jurisdictional Police Inspector and Circle Inspector, though by getting political influence from Layout Krishnappa and from DYSP, Circle Inspector and Sub-Inspector of Tavarekere Police Station, the defendants are



changing the nature of the suit schedule property by leaving JCB and Tippers in a forceful manner pendency of the suit and also the said DYSP and Circle Inspector are failed to maintain law and order and on the other hand they threatened the plaintiffs to file false case against the plaintiffs and my brother if they seen in the suit schedule property. Hence with no other alternative, under the above said facts and circumstance, for seeking appropriate order from this Court, the plaintiffs have filed the annex. Hence, this I.A.

4. The copy of the I.A., is served to other side. The defendants have filed the detailed statement of objection by denying the entire averments of above I.A., and interalia contended that, the original propositor Late Pooja Arasappa and his wife Sanna Yellamma died leaving behind Sri. Hanumaiah as their successor and the said Hanumaiah became the absolute owner of the properties bearing Khaneshumari No.41/41, measuring East to West 17 feet and



North to South 32 feet, situated at Madigarapalya (A.K. Colony), Ajjanahalli Dhakle, Thavarekere Hobli, Bangalore South Taluk and land bearing Sy.No.96/8, measuring 3 acres 06 guntas and Sy.No.97/5 measuring 2 acres 06 guntas, situated at Ajjanahalli Dhakle, Thavarekere Hobli, Bangalore South Taluk and the defendants were in peaceful possession and enjoyment of the said properties as absolute owners.

5. The defendants further contended that, Sri. Hanumaiah, S/o. Late Pooja Arasappa got married to Smt. Muthamma, D/o. Late Chikkamuthaiah and they were residing along with defendant No.1 who is the younger brother of Smt. Muthamma at Madigarapalya (A.K. Colony), Ajjanahalli Dhakale, Thavarekere Hobli, Bangalore South Taluk and further his elder sister Muthamma, W/o. Hanumaiah died leaving behind Hanumaiah without any issues and further brother-in-law of defendant No.1 Hanumaiah died on 12.12.1999. During lifetime of Hanumaiah and Muthamma and defendant No.1 has looked



after welfare of his sister and brother-in-law and further defendant No.1 has also looked after the agricultural operation of the lands which belongs to deceased Hanumaiah and further defendant No.1 submits that, he has performed last rites and ceremonies of Sri. Hanumaiah and Smt. Muthamma and he has succeeded to estate left behind by Sri. Hanumaiah and Muthamma and further he is in peaceful possession and enjoyment of the properties which was left behind by deceased Hanumaiah as the absolute owner.

6. The defendants further contended that, during the lifetime of deceased Hanumaiah, he has executed Will dated 26.11.1999 in favour of defendant No.1 by bequeathing the properties bearing Khaneshumari No.41/41, measuring East to West 17 feet and North to South 32 feet, situated at Madigarapalya (A.K. Colony), Ajjanahalli Dhakle, Thavarekere Hobli, Bangalore South Taluk and land bearing Sy.No.96/8, measuring 3 acres 06 guntas and Sy.No.97/5 measuring 2 acres 06 guntas, situated at Ajjanahalli Dhakle, Thavarekere



Hobli, Bangalore South Taluk, by virtue of the Will dated 26.11.1999 defendant No.1 became the absolute owner of the said properties.

7. The defendants further contended that, defendant No. 1 had instituted petition bearing P & SC No. 5/2012 before the Presiding Officer, Fast Track Court, Ramanagar for issuance of probate in respect of the Will dated 26.11.1999 executed by deceased Hanumaiah in favour of defendant No.1 and the Hon'ble court was pleased to allow the said petition after holding enquiry and issued probate order in respect of the Will dated 26.11.1999 executed by the deceased Hanumaiah in favour of defendant No.1 by issuing the probate and Succession certificate in favour of defendant No.1.

8. The defendants further contended that, the plaintiffs have filed the Misc. Petition No.15/2012 against defendant No.1 under order 9 Rule 13 R/w section 151 CPC to set aside



the judgment and order of probate dated 30.06.2012 passed in P & SC 5/2012 before the 1st Addl. District and Sessions Judge, Ramanagara. The Hon'ble Court after hearing the both the parties and after holding detailed enquiries was pleased to dismissed the Misc. Petition 15/2012 filed by the Plaintiffs vide order dated 08.11.2013 as not maintainable.

9. The defendants further contended that, the plaintiffs being aggrieved by the order dated 08.11.2013 passed in Misc. Petition 15/2012 on the file of the Hon'ble 1st Addl. District and Sessions Judge, Ramanagara, the plaintiffs have preferred MFA No. 9940/2013 (CPC) before the Hon'ble High Court of Karnataka at Bangalore and further the Hon'ble High Court of Karnataka at Bangalore was pleased to passed judgment on 07.02.2014 by dismissing the MFA No.9940/2013 (CPC) filed by the plaintiffs by confirming order dated 08.11.2013 passed in Misc. Petition No. 15/2012 on the file of the Hon'ble 1st Addl. District and Sessions Judge, Ramanagara.



10. The defendants have contended that, the plaintiffs have filed the Misc. Petition No.10/2014 against defendant No. 1 under section 263 Indian succession act to set aside the judgment and order of probate dated 30.06.2012 passed in P&SC 5/2012 before the 1st Addl. District and Sessions Judge, Ramanagara. The Hon'ble Court after hearing the both the parties and after holding detailed enquiries was pleased to dismissed the Misc. Petition 10/2014 filed by the plaintiffs vide order dated 23.09.2019 as not maintainable.

11. The defendants have further contended that, the plaintiffs have filed the above suit against defendants for the relief of declaration, permanent injunction and order of probate dated 30.06.2012 passed in P&SC 5/2012 on the file of the 1 Addl. District and Sessions Judge, Ramanagara before this court.

12. The defendants further contended that, by virtue of the WILL dated 26.11.1999 and the probate order issued by



the 1 Additional District and Sessions Judge, Ramanagara the defendant No.1 has filed a petition before the Special Tahasildar, Bangalore South Taluk for effecting khatha in his name pertaining to the lands bearing Sy. No. 96/8, measuring 3 acres 06 guntas and Sy. No. 97/5 measuring 2 acres 06 guntas, situated at Ajjanahalli Dhakle, Thavarekere Hobli, Bangalore South Taluk. The petition filed by defendant No.1 was allowed on 19.12.2014 by ordering to effect khatha in favour of defendant No.1. By virtue of the order dated 19.12.2014 the concerned revenue authorities have effected khatha in favour of defendant No.1 vide M.R No.H39/2014-15 with respect to the Item No.1 of the suit schedule properties. And further, plaintiffs have filed a revenue appeal before the Assistant Commissioner, Bengaluru South Sub-Division in RA(S) No. 57/2014-15. The Assistant Commissioner dismissed the revenue appeal filed by the plaintiffs. Plaintiffs have filed the revision petition before the Deputy Commissioner, Benglauru Urban District in RP No.



500/2015-16. The Deputy Commissioner dismissed the revenue appeal filed by the plaintiffs.

13. The defendants further contended that, the plaintiffs have no right, title and interest over the plaint schedule properties and they are not in possession and enjoyment of the same. The Plaintiffs have colluded together with the only intention to knock off the properties belongs to defendants filed this false suit by fabricating and forged alleged documents with the dishonest intention. On this ground, plaintiffs are not entitle for any relief from this court. Hence, the defendants pray to dismiss the above I.A.

14. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the plaintiffs have made out a prima-facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiffs?



3) Whether the plaintiffs will be put to irreparable loss and injury, if the temporary injunction is not granted as prayed in the I.A.?

4) What order?

15. My answer to 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 the Order,

for the following:

REASONS

16. **POINT NO.1 TO 3:** As these points are interconnected and interlinked with each other, these points are taken up together for common discussion to avoid repetition of facts. It is the urge of the plaintiffs that, the plaintiffs are in possession and enjoyment of the suit schedule properties by virtue of the sale agreement dated: 10.02.1996, 30.06.1999 and Will dated: 15.11.1989 executed



by deceased Hanumaiah with respect to the application schedule properties. That, Late. Sri. Hanumaiah who was the earlier owner of the schedule property had executed a Will dated: 15.11.1999 in favour of the plaintiffs. That, after the death of Sri. Hanumaiah the defendants with malafide intention has been claiming themselves to be legal successors to deceased Hanumaiah in a fraudulent manner and created a Will in their favour. That, the Will dated: 26.11.1999 created by defendant No.1 in his name. That, vide Order dated: 30.06.2012 the probate and succession certificate was issued in favour of defendant No.1. The plaintiff further states that, the probate and succession certificate is not binding on him. That, there is a Judgement of Hon'ble Addl. Civil Judge & JMFC., Magadi in O.S.No.449/2012 passing permanent injunction order dated: 15.12.2012. That, defendant No.1 had filed application seeking conversion of the suit schedule land properties and was trying to change the nature of the schedule property.



17. On the other hand, the defendants have contended in their written statement that, late. Hanumaiah was looked after by defendant No.1. That, late. Hanumaiah during his last days has executed a Will dated: 26.11.1999 in favour of defendant No.1. That, the Hon'ble District and Sessions, Ramanagara in P & SC No.5/2012 had issued the probate and succession certificate in favour of defendant No.1. That, the miscellaneous petition No.10/2014 filed by the plaintiffs challenging the probate was dismissed. That, the plaintiff had being interfering with the possession of the schedule properties and that the plaintiff has been interfering and unnecessarily trying to dispossess the defendants. That, defendant No.1 is the absolute owner of the schedule properties and has filed the representation before DC for converting the land to non-agricultural purpose.

18. At this stage, without going through the merits of the case and conducting mini trial, the court is considering



the aspect of prima-facie. At this stage, this court makes very clear that this court is looking towards prima-facie case and not for the prima-facie title. I have carefully perused the pleadings and documents adduced by both the parties. In the instant I.A., the plaintiffs have sought for the relief of temporary injunction restraining the defendants to maintain the status-quo in respect of suit schedule properties till disposal of the suit. The plaintiffs are claiming their rights over the suit schedule properties by virtue of the Agreement of Sale and Will, which is not even proved to be last Will of Sri. Hanumaiah. Plaintiffs and defendants are claiming their rights over the suit schedule properties through the Will dated: 26.11.1999. At this stage the rights of the parties cannot be adjudicated, it needs full fledged trial.

19. It is very relevant to note that, the plaintiffs have filed the I.A.No.12 U/O.39 Rule 1 & 2 of C.P.C., in the above matter for the relief of temporary injunction restraining the



defendants, their agents or anybody claiming under them from changing the nature of the suit till disposal of the suit. The said I.A., was came to be rejected vide Order dated: 19.04.2024, the plaintiffs have not challenged the orders on said I.A., before any competent court of law. Hence, it attains finality. The plaintiffs have filed this I.A., to restrain the defendants to maintain the status-quo till disposal of the suit. On perusal of the materials placed on record, it appears that, the relief sought in the both I.As., are similar in nature.

20. Looking into the pleadings and documents adduced by both the parties, at this stage it appears that, the plaintiffs have not made out the prima-facie case and balance of convenience is also not lies in favour of the plaintiffs. If this I.A., is not allowed, the plaintiffs will not be put to great hardship and injury. For considering all these reasons the Point No.1 to 3 in the Negative.

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O.S.No.10/2015(Or.)

21. **POINT NO.4** : In the light of the above discussion on Point No.1 to 3, I proceed the following :

ORDER

I.A.No.15 filed by the plaintiffs/applicants under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Typist directly on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of **20th day of February 2025.**)

**(SHIVAKUMAR R.,)
ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., MAGADI.**