

IN THE COURT OF THE SENIOR CIVIL JUDGE AND

J.M.F.C. AT: MAGADI

Present:-

**Sri. Manohara M _{LLM}
Sr. Civil Judge & JMFC, Magadi**

OS. No. 332/2016

Dated this the 11th Day of September, 2020

Plaintiffs : 1 Sri. Jagadisha
S/o Channabasappa C.B.,
Aged about 42 years.

2 Sri. Nagaraja
S/o Channabasappa C.B.,
Aged about 38 years.

3 Smt. Rajamma
D/o Channabasappa C.B.,
W/o Somashekara,
Aged about 55 years,

Plaintiff No.1 to 3 are R/at
Chikkelluru Village,
Tavarekere Hobli,
Bengaluru South Taluk.

- 4 Smt. Gowramma
W/o Lingadevaru,
D/o Channabasappa C.B.,
Aged about 50 years,
R/t Devaragollahalli, Bidadi Hobli,
Ramanagara Taluk & District.
- 5 Smt. Umadevi
D/o Channabasappa C.B.,
W/o Lingadevaru,
Aged about 35 years,
R/at Sompura Hobli,
Nelamangala Taluk,
Bengaluru Rural District.

{ By Sri. G.P., Advocate }

-- V/s --

- Defendants** : 1 Smt. Honnamma
W/o late Puttarudraiah,
Aged about 64 years.
- 2 Sri. P.Basavaraju
S/o late Puttarudraiah,
Aged about 41 years.
- 3 Sri. P.Shivananda
S/o late Puttarudraiah,
Aged about 39 years.

The defendant No.1 to 3 are R/at
Health Layout,
Annapurneshwari Nagara,
Nagarabhavi, Bengaluru.

4 Smt. Manjula
W/o Girish,
D/o late Puttarudraiah,
Aged about 36 years,
R/at Bettasandra Village,
Nelamangala Taluk,
Bengaluru Rural District.

5 Smt. Ammayamma
W/o late Sadashivaiah,
Aged about 65 years.

6 Sri. Prakash
S/o late Sadashivaiah,
Aged about 40 years,

The defendant No.5 and 6 are R/at
No.24/1, Near Suryodaya Kalyana
Mantapa, Behind Petrol Bunk,
Magadi Road Tollgate Circle,
Bengaluru- 48.

7 Sri. Mruthyunjaya @ Jayanna
S/o late Basavegowda,
Aged about 69 years.

8 Smt. Jayamma
W/o Mruthyunjaya,
Aged about 55 years.

9 Sri. Mallikarjuna
S/o Mruthyunjaya,
Aged about 33 years.

10 Smt. Latha D/o Mruthyunjaya,
Aged about 31 years.

11 Sri. Mahesh Kumar
S/o Mruthyunjaya,
Aged about 28 years.

The defendant No.7 to 11 are R/at
Ganigarapalya Village,
Talagattapura Hobli,
Bengaluru South Taluk.

12 Sri. Shivakumar B
S/o late Basavegowda,
Aged about 55 years.

13 Smt. Lalithamma
W/o Shivakumar,
Aged about 55 years.

14 Smt. Pushpa
W/o M.Aradhya,
D/o Shivakumar,
Aged about 35 years.

15 Smt. Mangala W/o Vijay,
D/o Shivakumar,
Aged about 32 years.

- 16 Sri. Basavaraju
S/o Shivakumar,
Aged about 28 years.

Defendant No.12 and 16 are R/at
No.64 Basaveshwara Real Estate
Agency,
Near Bandemaramma Temple,
9th Block, Nagarabhavi,
Bengaluru.

- 17 Sri. B.Puttagangaiah
S/o late Basavegowda,
Aged about 62 years.

- 18 Smt. Suvarna
W/o B.Puttagangaiah,
Aged about 54 years.

- 19 Sri. Nataraj
S/o B.Puttagangaiah,
Aged about 34 years.

- 20 Sri Dakshina Murthy
S/o B.Puttagangaiah,
Aged about 32 years.

Defendant No. 17 to 20 are R/at
No.13, 1st Cross,KSRTC Layout,
Mahadeshwara Nagara,
Magadi Main Road,
Vishwaneedam Post, Bengaluru – 91.

- 21 Sri. Channabasappa
S/o Basavaiah @ Basavegowda,
Aged about 88 years.
- 22 Sri. Manjunatha
S/o Channabasappa,
Aged about 47 years.
- 23 Sri. Nagaraju
S/o Nanjudappa,
Aged about 40 years.
- 24 Smt. Puttamma
W/o late Nanjundappa,
Aged about 70 years.
- 25 Smt. Chandrakala
W/o Shivakumar,
Aged about 50 years,
R/at Vadagere Village, Madhure Hobli,
Nelamangala Taluk
- 26 Sri.Siddalinga Swamy
S/o late Nanjundappa,
Aged about 48 years.
27. Smt Rathnamma
D/o late Nanjundappa,
Aged about 46 years,
R/at Ammalagere Village,
Madhure Hobli, Nelamangala Taluk,
Bengaluru Rural District.

- 28 Smt. Sarvamangala
D/o late Nanjundappa,
Aged about 44 years.
- 29 Smt. Saroja
W/o Siddalinga Murthy
Aged about 43 yearsm
R/at Vadagere Village,
Madhure Hobli, Nelamangala Taluk.
- 30 Smt. Parvathi
D/o late Nanjunadappa,
Aged about 40 years.
- 31 Smt. Susheela
D/o late Nanjundappa,
Aged about 38 years.
- 32 Sri. Basavaraju
S/o late Nanjundappa,
Aged about 36 years,
Defendant No.21 to 24, 26, 28,
30 to 32 are all R/at
Chikkelluru Village,
Tavarekere Hobli,
Bengaluru South Taluk.
- 33 Sri. Paramashivaiah
S/o late Basavaiah @ Basavegowda,
Aged about 60 years,
R/at Kolor Village, Tavarekere Hobli,
Bengaluru South Taluk.

- 34 Smt. L.A.Jayalakshmi
W/o E.B.Vijayakumar,
Aged about 49 years,
R/at No.5, 1st Main A Road,
Behind Binny Mill,
Ganganagara, Bengaluru – 32.
- 35 Sri. B.Somashekar
S/o late Byrappa,
Aged about 41 years,
R/at M/s Sharath Developers,
3rd Floor, Hotel Bojana Shala Building
Opposite to Aralimara Bus Stop,
Outer Rign Road, Nagarabhavi,
Bengaluru.
- 36 Sri. B.Basavaraju
S/o late Basavegowda,
Aged about 64 years,
R/at No.20/2, 1st Main,
4th Cross, Kalidasa Layout,
Srinagara Extension, Bengaluru – 50.
- 37 Sri. V.Krishnappa
S/o late Veerappa,
Aged about 55 years,
R/at No.52/1, Sri. Manikanta Nivasa,
3rd Block, Javaraiah Garden,
Bengaluru – 26.
- 38 Sri. Purushotham
S/o Rama Naidu,
Aged about 54 years,

R/at No.27, Elephant Rock Road,
Bengaluru – 11.

39. Sri. Shivaraj
S/o Channabasappa C.B.,
Aged about 58 years,
R/at No.148, Mahadeshwaranagara,
Bengaluru – 91.

{ D1 to 33, 37 & 38 Exparte }
{ D34 to 36 By Sri. V.S.N., Advocate }

IA Nos. 1 and 2

Sri. Jagadisha and others

Applicants/Pltfs.

Vs

Smt. Honnamma and others

Opponents/ Defts.

IA No. 10

Smt. L. A Jayalakshmi and others

Applicants/Defts. 34 to 36

Vs

Sri. Jagadisha and others

Opponents/ Pltfs.

(Sri. Manohara M).,
Sr. Civil Judge & JMFC.,
Magadi.

ORDERS ON IA Nos. 1, 2 and 10

The plaintiffs have filed IA No. 1 U/o 39 rule 1 and 2 r/w Sec. 151 of CPC for temporary injunction restraining the defendant Nos. 34 to 38 from changing the nature of the suit schedule properties till disposal of the suit, and IA No. 2 U/o 39 rule 1 and 2 r/w Sec. 151 of CPC for temporary injunction restraining the defendant Nos. 34 to 38 from alienating the nature of the suit schedule properties till disposal of the suit.

2. (i) In support of these IAs, the plaintiff No. 1 has sworn to separate affidavits stating that suit is filed for partition and separate possession and permanent injunction with respect to the suit schedule properties; the defendant Nos. 1 to 33 have constituted the members of Hindu Joint Family and the suit schedule properties are ancestral and joint family properties of plaintiffs and defendant Nos. 1 to 33. The propositus of the joint Hindu family Sri. Basappa @ Basavegowda died intestate leaving behind suit schedule properties acquired by him during his life time. The Plaintiff's grandfather i.e Basappa purchased the suit schedule properties from late Muninarasappa s/o late Adappa under registered sale deed dated 14.01.1947 registered in the Sub registrar office Magadi and khata has been mutated in his name.

After his death, of plaintiffs and defendant Nos. 1 to 33 are in joint possession and enjoyment and occupation of the suit schedule properties.

(ii) There is no partition in the family among them, during his life time and after his death. Immediately after the death of Basappa, the properties are devolved upon them and defendant Nos. 1 to 33 and they inherited the properties jointly. In spite of knowing that the suit schedule properties are in joint possession of both of them, and defendant Nos. 1 to 33 and they are having legitimate share in the suit schedule properties, defendant Nos. 1 to 20 have executed registered nominal sale deed in favor of defendant Nos. 34 to 36 on 20.06.2015 without paying any amount to the parties. It is a collusive document to defraud the plaintiffs and some of defendants. The suit properties worth nearly 1 crores 50 lakh per acre and a nominal document has been made for Rs. 26 lakhs per acre. The defendant Nos. 37 to 38 colluded with defendant Nos. 1 to 20 and they have compromised in respect of Sy. No. 75 (item No. 4) which is purchased by the grandfather Basavaiah in the year 1947 and the said compromise is not binding on plaintiff's share. They requested to partition the suit schedule properties on many

times. But they refused by giving reason that they have no right over suit properties. In spite of repeated requests, the defendants have not come forward to execute the deed of partition. But they have illegally executed nominal sale deeds to defendant Nos. 34 to 36 without their knowledge and consent to deprive the legitimate share of plaintiffs.

(iii). The plaintiffs being in joint possession with defendant Nos. 1 to 33, are always abiding the orders of Hon'ble Court in respect of suit schedule properties. The defendants have no manner of right to keep quiet without effecting partition and allotting share to them. After the said alleged and nominal sale deed, the defendants are trying to oust and dispossess them from suit properties for depriving their legitimate share. The plaintiffs, being poor, are not in position to resist defendants' high handed acts. With political power defendants are attempting to evict plaintiffs from suit properties. The defendants have got no right to sell the joint family properties and defendants have no manner of right to purchase the suit properties. They have made out a prima facie case, and balance of convenience lies in their favor. In order to avoid multiplicity of proceedings and to protect their share, it is very just and necessary to grant an order of temporary

injunction. If an order of temporary injunction is granted no hardship would be caused to anybody. On the other hand they will be put to great hardship and injury which cannot be compensated in any means. Hence, these applications are filed.

3. The defendant Nos. 34 to 36 opposed the said applications by filing common objections stating that averments made in the affidavit filed in support of the application is in *peri metria* is one and the same. It is not even alleged that these defendants are making efforts to change the nature of the user of the property. The application is filed only with an intention to harass the honest purchasers and to stall the activities. The elder brother of plaintiffs already suffered an order from the hands of this Hon'ble Court in OS. No. 57/2006. The Misc., Appeal preferred against was also dismissed. In the said suit the elder brother of these plaintiffs viz., Shivaraju had sought for amendment of pleadings to make a claim that the suit schedule properties are ancestral properties in order to bypass the defense of these defendants that Section 8 of the Hindu Succession Act, 1956 applies. In the said application there is no single averments to effect that these defendants are making hectic efforts much less the efforts to alienate the suit schedule property. The plaintiff has not urged

material particulars. The plaintiffs have no subsisting right, title or possession over the property and they filed the suit to coerce them for an unrighteous settlement. In spite of it the plaintiffs got advanced by suppressing material facts and playing fraud and got the interim order. The fraud vitiates all judicial acts. The plaintiffs have chosen to state the facts in the manner suited to them without placing all facts. This court would not have granted the relief to the plaintiffs as the plaintiffs suppressed material facts of pendency of suit in O.S. No. 57/2016 and suffering of order by their elder brother. These defendants have been in possession and enjoyment of the suit schedule property. There is neither joint family nor joint property. The suit schedule properties are neither ancestral nor joint family properties of plaintiffs and defendants No.1 to 33 as the finality of issue as regards joint family property in O.S.133/1974 is reached and in the appeal it is confirmed. It is true that grand father of plaintiffs namely Basavaiah purchased the suit properties from late Sri. Muninarasappa and late Sri. Adappa under a registered sale deed on 14-01-1947 vide registered no.3583/1946-47 registered at the office of Sub-Registrar Magadi. As plaintiffs admitted the said purchase, the same cannot become ancestral properties. It is self acquired and individual properties of said Basavaiah. After purchase khatha

was mutated in the name of said Basavaiah and he was in possession. During his life time, the said Basavaiah executed sale agreement in favour of Hanumaiah in respect of suit schedule properties. The said Hanumaiah filed a suit for specific performance and obtained a decree for specific performance of contract. The said decree was put in execution and sale deed was got in his favour through the process of court. Thus the property was gone out of the family and revenue documents were made out in his name. Subsequently defendant No.1 to 20 filed a suit for declaration and got the revenue documents in their favour and they entered into possession and enjoyment the same as absolute owners. These defendants executed registered sale deed in favour of defendant No.34 to 36 under a registered sale deed dated 18-03-2015 and revenue documents are standing in their names. The plaintiffs are not in possession of suit schedule properties. The plaintiffs have not made out prima facie case, balance of convenience and irreparable loss and injury. These defendants are bonafide purchasers for value from rightful owners i.e., defendants No.1 to 33. They invested crores of Rupees for purchase of other property and for the development. Hence, the balance of convenience is more in their favour and they would suffer irreparable loss and injury in comparison to plaintiff. The

Basavaiah alias Basavegowda sold the property in the year 1962 itself through whom plaintiffs claim their alleged right. The prayer of plaintiff is misconceived. Hence, it is prayed dismiss the applications with exemplary costs.

4. The Defendants No.34 to 36 filed IA 10 under Order 39 Rule 4 r/w Section 151 of CPC to vacate exparte ad-interim order dated 24-07-2019.

5. In support of this application the defendant No.35 has sworn to an affidavit stating that the defendant No.34 and 36 also authorized him to swear this affidavit and plaintiffs know the pendency of earlier suit and also dismissal of an application under Order 39 Rule 1 and 2 CPC and dismissal of miscellaneous appeal before Hon'ble District Judge, Ramanagara. The plaintiff therein also filed application for amendment and application for restraining them and during said interregnum the plaintiff herein got advanced the matter from 12-09-2019 to 24-07-2019 and got interim order by playing fraud on this court. There is no joint family of plaintiffs and defendants and the suit schedule properties are not joint family properties. Defendants No.1 to 20 have already alienated the land in question in their favor under a

registered sale deed dated 18-03-2015, and they have been in possession and enjoyment. The father of plaintiffs Chennabasappa executed confirmation deed confirming the sale deeds. Therefore, his children cannot claim partition and possession. The plaintiffs sought to make out the case that Basavaiah @ Basavegowda sold land bearing Sy. No.31/1 and 31/3, situating at Chunchanakuppe Village, Thavarekere Hobli, Magadi Taluk, in favour of Chandrashekaraiah S/o Revanna (Patel) for valuable consideration on 15-12-1946 and Patel Revanna S/o Siddanagowda on 16-12-1946 respectively. It is not known whether the said properties are ancestral properties of Basavaiah @ Basavegowda and the alleged funds were utilized for purchasing suit schedule properties on 14-01-1947. The issues regarding whether suit schedule properties are joint family properties or not, has been attained finality in O.S. No.133/1974 on the file of Prl. Civil Judge Bangalore District, filed by father of plaintiffs along with his family members and it has been categorically held that the suit schedule properties are not joint family properties of plaintiffs and defendants No.1 and 2 therein. The said issue has been confirmed in appeal in RA.8/1974 on file of Hon'ble Addl. District Judge, Bangalore Rural District. Hence, the said issue cannot be considered afresh in this suit and the

doctrine of Res-Judicata under Section 11 CPC applies. The O.S.63/2000 on the file of Addl. Senior Civil Judge, Ramanagara was filed by the Defendants No.1 to 6 on the count of adverse possession and the same has been decreed as per Judgment and Decree dated 17-04-2006. The appeal against the same in RFA No.973/2006 on file of Hon'ble High Court of Karnataka by defendants/appellants is allowed. The SLP No.1363/2010 is preferred before Hon'ble Supreme Court of India which was compromised between the parties. Sri. Paramashivaiah, Sri. Nanjundaiah and Sri. Chennabasavaiah (father of plaintiff) pursued matter before the Land Tribunal by filing Form No.7 in the year 1971. The Land Tribunal confirmed their occupancy right on them as per order dated 03-02-1982. The land owners preferred writ petition in W.P.No.20360/1982 before Hon'ble High Court of Karnataka against said order and the said order has been quashed. Hence, an appeal in Writ Appeal No.1524/1996 was preferred before Hon'ble Division Bench of Hon'ble High Court of Karnataka and the matter was remanded to the Land Tribunal. Thereafter, the Land Tribunal rejected the claim as per order dated 30-03-1999. The writ petition in W.P. No. 2503 and 25444-445/1999 was preferred before Hon'ble High Court of Karnataka which came to be dismissed on 11-11-1999. The Writ Appeal in

W.A No. 8221-23/1999 was preferred which was also dismissed on 03-04-2000. The matter was taken before Hon'ble Apex Court in SLP (civil) No.10172-10174/2000 which was also dismissed on 24-07-2000. Hence, Defendants No.1 to 6 became absolute owners in terms of compromise entered into between parties before Hon'ble Apex court. The plaintiffs are not at all in possession and enjoyment of suit schedule properties. The plaintiffs have not urged material particulars. They suppressed material facts. The plaintiffs must come with clean hands as they sought equitable remedy. If the application is allowed and interim order is vacated, it will not cause any injury or hardship. If the application is dismissed, they would be put to substantial injustice and injury and also pecuniary loss which cannot be reckoned in terms of money. Hence, this application is filed.

6. The 1st plaintiff opposed the said application by filing objection denying the averments made in the affidavit except that the O.S.63/2000 on the file of Addl. Senior Civil Judge, Ramanagara was filed by the Defendants No.1 to 6 on the count of adverse possession and the same has been decreed as per Judgment and Decree dated 17-04-2006; the appeal against the same in RFA No.973/2006 on file of Hon'ble High Court of

Karnataka by defendants/appellants is allowed; the SLP No.1363/2010 is preferred before Hon'ble Supreme Court of India which was compromised between the parties; Sri. Paramashivaiah, Sri. Nanjundaiah and Sri. Chennabasavaiah (father of plaintiff) pursued matter before the Land Tribunal by filing Form No.7 in the year 1971; the Land Tribunal confirmed their occupancy right on them as per order dated 03-02-1982; the land owners preferred writ petition in W.P. No.20360/1982 before Hon'ble High Court of Karnataka against said order and the said order has been quashed. Hence, an appeal in Writ Appeal No.1524/1996 was preferred before Hon'ble Division Bench of Hon'ble High Court of Karnataka and the matter was remanded to the Land Tribunal. Thereafter, the Land Tribunal rejected the claim as per order dated 30-03-1999. The writ petition in W.P.No.2503 and 25444-445/1999 was preferred before Hon'ble High Court of Karnataka which came to be dismissed on 11-11-1999. The Writ Appeal in W.A. No.8221-23/1999 was preferred which was also dismissed on 03-04-2000. The matter was taken before Hon'ble Apex Court in SLP (civil) No.10172-10174/2000 which was also dismissed on 24-07-2000. It is further stated that the plaintiffs are having separate right to agitate and defendant No.1 to 20 do not had any right to alienate suit schedule

properties and alleged alienation is a creation to harass and to avoid the share of plaintiffs and the said alienation does not come in the way of entitling in taking share as the said alienation is nominal one. The registered sale deed is a collusive documents. Under the said sale deed no title has been passed and no amount has been paid. The Sy. No.31/1 and 31/3 are ancestral properties of Basavaiah @ Basavegowda. He purchased suit schedule properties out of the sale amount of said ancestral properties. The parties had not aware about these registered documents in year 1974. The said documents are registered documents. They have got presumptive value. The plaintiffs or their father are not parties in O.S.63/2000. The revenue documents have conclusively got up behind the back of plaintiffs. The case in O.S.57/2016 does not come in the way of the suit. Both the suits are all together different suits and plaintiffs are not in the said suit. There is a serious question to be tried in the trial. If order is continued, no harm or injustice will be caused to other side. Hence, it is prayed to dismiss this application with costs.

7. The learned counsel for plaintiff argued that the relationship is an admitted fact and Basappa alias Basavegowda sold property and purchased the properties as he was eldest member of family;

the property were sold to purchase property stated in sale deed dated 04-01-1948 and hence purchased the properties are the ancestral properties and plaintiffs are not the parties and the said sale deed in favour of defendants is a nominal sale deed and nowhere it is stated that the said alienation has been made on behalf of all the plaintiffs and as per the compromise before Hon'ble Apex Court in SLP, suit of trial court stands and in the three referred cases plaintiffs are not parties, and share is not allotted to them, and in O.S.57/2016 plaintiffs herein are not parties; there are series questions to be investigated regarding the nature of the properties and right of the parties; in O.S.63/2000 plaintiffs and their father are not parties and the declaratory decree is decree in personam and not in rem; and defendant No.1 to 31 have no right to execute sale deed without joining plaintiffs; hence, plaintiffs are entitled to the relief of temporary injunction as prayed for.

8. The learned counsel for defendant Nos. 34 to 36 argued that there is no cause of action for plaintiffs as Basavegowda @ Basavaiah purchased the suit schedule properties under Registered sale deed dated 14.01.1947, and as subsequently, the suit for Specific Performance filed by Hanumaiah was decreed and the legal heirs of Hanumaiah sold the suit schedule properties

in favor of defendant Nos. 37 and 38 under registered sale deed dated 24.07.1996, and the legal heirs of Puttarudraiah, Sadashivaiah, Mruthyunjaiah, B Shivakumar and B. Puttagangaiah have been in possession of suit schedule properties, though, the sale deed was executed in favor of said Hanumaiah through the process of Court in an Execution Proceedings and hence, they filed a suit for declaratory relief of possessory title in the OS. No. 63/2000 and the said suit was decreed and in appeal before Hon'ble High Court of Karnataka in RFA No. 973/2006 the said Judgment and decree of said suit have been set aside and the matter has been carried before Hon'ble Supreme Court in SLP No. 1363/10 where the compromise entered into and the legal heirs of Honnamma and others paid 1 crore to defendant Nos. 37 and 38, and hence, SLP was dismissed as not pressed and during that days the plaintiffs have not been in picture and now they are wrongly claiming without any right, and RTC entries have presumptive value, and there is no cause of action for this suit, and suit filed by the brother of plaintiff and this suit are one and same; multiplicity of proceedings is not a ground in the applications; and from the voluminous proceedings the conduct of plaintiffs could be gathered; as the suit itself is not maintainable, the relief sought in the application being ancillary relief cannot be granted in the aid

of main relief; there is no mischief to be remedied; once the property is gone out of the family and hence, there is no joint family properties and only illegal possession has been observed in the Judgment; hence, this Court could not put the seal of entitlement of plaintiffs to the illegal possession; only those who have knocked the door of Hon'ble Apex Court, have only got benefit of compromise before Apex Court; the doctrine of estoppel is applicable.

9. He relied on the following decisions: **(i)** (2007) 10 SCC 571 Subhodh Kumar and others Vs. Baghavantnamdeorao Meheta and others to support his contention that though law confers a right on coparcenar to challenge the alienation made by the kartha, but that right is not inclusive of the right to obstruct alienation; **(ii)** (2016) 6 SCC 725 Narayana Vs. Baba Saheb and others to support his contention that the limitation for setting aside alienation by guardian will start from the date of minor attaining majority and it is 3 years; **(iii)** (2015) 8 SCC 428, Ravish chand Jain Vs. Rajarani Jain, to support his contention that since the question of ownership had already been decided in the earlier suit, the said issue could not be decided afresh. Hence, IA No. I and II are liable to be dismissed by allowing IA No. 10.

10. I have perused the materials on record.
11. The points that arise for my consideration are as under:-
1. Whether the plaintiffs have made out prima facie case in their favor ?
 2. Whether the balance of convenience lies in favor of plaintiffs ?
 3. Whether the plaintiffs would be put to hardship and injury, which cannot be compensated in terms of money, if injunction is not granted ?
 4. Whether the defendants 34 to 36 made out ground to vacate interim order of temporary injunction as prayed for ?
 5. To what order ?
12. My findings to the above 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 | In the negative |
| Point No.5 : | As per the final order,
For the following |

REASONS

13. POINT Nos. 1 :- According to plaintiffs, late Basappa @ Basavegowda is propositus of Hindu Undivided family of plaintiffs and defendant No.1 to 32 and 39, and the said Basappa had 8 children namely Channabasappa, Nanjundappa, Paramashivaiah, Puttarudraiah, Sadashivaiah, Mrityunjaya, Shivakumar and Puttagangaiah (defendant No. 17) ;father of plaintiff is his eldest son; defendant No.1 to 4 are legal heirs of Puttarudraiah, and defendant No.5 and 6 are the legal heirs of said Sadashivaiah; defendant No.7 is the 6th son of said Basavaiah and defendant No.8 to 11 are the wife and childrens of defendant No.12 and defendant No.14 to 16 are children of Shivakumar and defendant No.18 to 20 are the wife and children of defendant No.17; defendant No.21 is the 1st son and defendant No.22, plaintiffs and defendant No.29 are his children and defendant No.22 to 32 are the children of Nanjundappa; defendant No.33 is the 3rd son of Basavaiah the plaintiff and defendant No.1 to 33 are the coparcenors. The suit schedule properties are their ancestral and joint family properties. On 13-12-1946 Basappa @ Basavegowda had agreed to purchase property situating at Chikkelluru Village from Adappa and Muninarasappa and hence

said Basappa @ Basavegowda sold valuable property value 31/3 of Chunchanakuppe village, Tavarekere Hobli, Magadi Taluk (presently Bengaluru South Taluk) on his behalf and on behalf of minor children in favour Chandrashekaraiah son of Revanna for valuable sale consideration on 15-12-1946 to purchase the said property from said Adappa and Muninarasappa. He also sold land in Sy. No.31/1 of Chunchanakuppe village in favour of Patel Revanna son of Saddannagowda on 16-12-1946 on his behalf and on behalf of his minor children. Hence the suit schedule properties are ancestral and joint family properties which are not the properties of said Basappa @ Basavegowda alone. Thereafter the said Basappa @ Basavegowda being the eldest member of the family purchased under sale deed on 14-01-1947. But plaintiffs are having the shares in the suit schedule properties. The khatha was also mutated in the name of Basappa @ Basavegowda. After his death plaintiffs and defendant No.1 to 33 and 39 are in joint possession of suit schedule properties. There is no partition even after his death. A nominal and illegal sale deed in respect of suit schedule properties was executed in favour of defendant No.34 to 38 on 26-02-2015. No payment has been made under said sale deed. It is a collusive document. The said properties worth nearly 1 crore 50 lakhs per acre. The nominal sale deed was made for 26

lakhs per acres. The compromise in respect of item No. 4 of suit schedule property between defendants No.1 to 20 and 37, 38 is not binding on the share of plaintiffs.

14. There is no dispute that late Basavaiah @ Basavegwoda is the propositus of plaintiffs and defendant No.1 to 33 and he had 8 sons and suit schedule properties are situated Chikkelluru Village, Tavarekere Hobli, Bengaluru South Taluk and on 13-12-1946 Basavaiah agreed to purchase at Chikkelleuru village from Adappa and Muninarasappa and the Basavaiah purchased suit schedule properties from late Muninarasappa and Adappa under registered sale deed dated:14-01-1947 and khatha was mutated in his name.

15. According to defendant No.34 to 36, the suit schedule properties are the absolute properties of Basavaiah @ Basavegowda as he purchased the same under registered sale deed dated:14-01-1947. The said Basavaiah executed sale agreement in favour of Sri.Hanumaiah who filed suit for specific performance of contract in OS No.39/1969. The said suit has been decreed as per judgment and decree dated:30-03-1971. The said decree was put in execution in Ex. No. 343/1971 and got conveyance in his

favour in respect of suit schedule properties on 16-11-1971. The said Basavaiah died on 27-07-1974; after his death his sons sought to set aside the said judgment in OS No.133/1974 which came to be dismissed and appeal in RA No.8/1978 was preferred which was also dismissed. In 1979, the sons of said Basavaiah namely Paramashivaiah, Nanjundappa and Channabasavaiah filed form No.7A before Land Tribunal on the premise that they are tenants. The Land Tribunal allowed the said application as per dated:03-02-1982. The said order was questioned before Hon'ble High Court of Karnataka in WP No.1013/1983 renumbered to 20360/1982 and said appeal was allowed. The writ appeal was preferred in WA No.1524/1996 which came to be allowed and remanded to Land Tribunal for fresh consideration. The said Land Tribunal rejected. Hence the said order was challenged in WP No.2543/1999 and 25444 to 25445/1999 which came to be dismissed. The writ appeal was also dismissed. Hence the matter was carried before Hon'ble Supreme Court of India in SLP No.10170/2000 to 10174/2000 which was dismissed on 24-07-2000. Thereafter they never participated in any proceedings. The Hon'ble High Court of Karnataka in RFA No.973/2006 overturned the findings in OS No.133/1974 and RA No.8/1978 regarding joint possession of plaintiffs and defendant No.1 to 6 over the suit

schedule property which attained finality as SLP preferred came to be compromised on 24-01-2015. Hence defendant No.1 to 6 became absolute owners in terms of the said compromise petition and plaintiffs have no semblance of right in respect of suit schedule property. The OS No.57/2016 filed by defendant No.39 on the file of this court is based on same cause of action for similar reliefs. The defendant No.39 is elder brother of plaintiffs. The said defendant No.34 to 36 are bonafide purchasers for value who have invested crores of rupees to purchase suit schedule properties under registered sale deeds dated:18-03-2015. The revenue records are made out in their name. They are in peaceful possession and enjoyment of their respective portion of lands.

16. The Plaintiffs produced RTC Extract for the year 2015-16 in respect of item No.1 standing in the names of Honnamma W/o late Puttarudraiah, Basavaraju S/o Puttarudraiah, Ammayamma W/o late Sadashivaiah, Shivakumar S/o Basavaiah @ Basavegowda, B.Puttagangaiah S/o late Basavaiah @ Basavegowda and Mruthyunjaya S/o late Basavaiah @ Basavegowda as per MR.H17/2014-15 and RTC Extract in respect of item No.2 standing in the name of V.Krishnappa S/o

Veerappa and K. Purushotham S/o Ramanaidu as per MR.H.10/2014-15. The Xerox copy of Sale Deed dated 04-01-1947 recites that Muninarasappa S/o Narasappa, Adappa adopted son of Kotlaiah sold land measuring 30 acres in favor of Basavegowda S/o Muddubasappa.

17. The certified copy of sale agreement dated 25-11-2013 recites that the defendant Nos. 21 and 22, plaintiff Nos. 2 to 5, defendant Nos. 1 and 2 and some other defendants and others agreed to sell suit item No.1 in favour of defendant No. 35 B. Somashekar, E.B.Vijaykumar and R. Manu. The vendors stated therein are shown as co-owners of item No. 1 and they are in physical possession and enjoyment of the same. However, plaintiff No. 1 is not party to it.

18. The certified copy of absolute sale deed dated:18-03-2015 recites that defendant Nos. 1 to 20 sold land bearing Sy. No. 73 measuring 5 acres 30 guntas in item No. 1 situating at Chikkelluru Village, Tavarekere Hobli, Bengaluru South Taluk bounded on East by land in Sy. No.81 and 77, West by Road, North by land in Sy. No.82 and South by land in Sy. No.75, 74 and 72 in favor of B.Basavaraju.

19. The another certified copy of registered sale deed dated:18-03-2015 recites that defendant Nos. 1 to 20 sold land bearing Sy. No.82 measuring 7 acres 06 guntas in item No. 1 situating at Chikkelluru Village, Tavarekere Hobli, Bengaluru South Taluk bounded on East by land in Sy. No.81 and 84, West by land in Sy. No.88 and Road, North by land in Sy. No.83 and South by land in Sy. No.72 and land in Sy. No.83 measuring 5 acres 18 guntas in item No. 1 bounded on East by land in Sy. No.84, West by land in Sy. No.88, North by Road and South by land in Sy. No.82 situating at Chikkelluru Village, Tavarekere Hobli, Bengaluru South Taluk in favour of B. Somashekar.

20. The another certified copy registered sale deed dated:18-03-2015 recites that the defendant Nos. 1 to 20 sold land bearing Sy. No.72 measuring 2 acres 24 guntas in item No. 1 situating at Chikkelluru Village, Tavarekere Hobli, Bengaluru South Taluk bounded on East by land in Sy. No.74, West by Road, North by land in Sy. No.73 and South by Torehalla land and land in Sy. No.74 measuring 36 guntas item No. 1 bounded on East by land in Sy. No.75, West by land in Sy. No.72, North by land in Sy. No.73 and South by Torehalla situating at Chikkelluru Village,

Tavarekere Hobli, Bengaluru South Taluk in favour of L.A. Jayalakshmi.

21. The plaintiffs also produced copy of Hissa Tippani of Sy. No.31 and Records of rights of Sy. No. 31 showing the name of Muddabasaiah s/o Basavaiah as per partition in respect of Sy. No. 31/2 and 31/3. The xerox copy of sale deed dated:15-12-1946 recites that the Basavegowda s/o Muddabasaiah on behalf of his minor children sold Sy. No.31/3 1 acre 15 gunta of Chunchanakuppe village, Tavarekere Hobli, Magadi Taluk in favour of Chandrashekaraiah s/o Shivanna. The xerox copy of sale deed dated:12-12-1946 recites that Basavegowda on his behalf and on behalf of his minor children sold land in Sy. No.31/1 measuring one acre two guntas of Chunchanakuppe village, Tavarekere Hobli, Magadi Taluk. According to learned counsel for plaintiffs the above documents corroborate the selling of ancestral properties to purchase the suit schedule properties.

22. The defendants No.34 to 36 produced following documents. The Copy of sale deed dated: 04-01-1947 is produced by them but plaintiffs also produced the said document. There is no dispute the purchase of suit schedule properties by Basavaiah @ Basavegowda.

23. The xerox copy of judgment in OS No.39/1969 filed by Hanumaiah against Basavaiah, Rudraradhya and Basavaiah for specific performance of contract before Prl. Civil Judge, Bengaluru District and the said suit was decreed. The Xerox copy of judgment in OS No.133/1974 on the file of Prl. Civil Judge, Bengaluru recites that the said suit was filed by Rudramma Channabasavaiah, Anandappa, C.R.Basavaraju and others against C.R.Rudraradhya and others to set aside judgment in OS No.39/1969 and Ex. No.343/1971 and for permanent injunction was dismissed. The xerox copy of judgment in RA No.8/1978 on the file of 3rd Addl. District Judge, Bengaluru recites that, the said appeal was filed against the judgment in OS No.133/1974 and the said appeal was dismissed.

24. The xerox copy of order of Hon'ble High Court of Karnataka in WP No.25403 and 254444-445/1999 recites that, Paramashivaiah, Nanjundappa and Channabasavaiah preferred said writ against state of Karnataka Land Tribunal, Bengaluru South Taluk, Nagaraj since dead by his Legal heirs and held the appellants cannot be held to the deemed tenants and hence dismissed. The xerox copy of order of Hon'ble Supreme Court in

SLP (Civil) No.10172-10174/2000 recites that, the special leave petitions are dismissed.

25. The xerox copy of judgment and decree in OS No.63/2000 on the file of Addl. Civil Judge, Ramanagara (Sr. Division) recites that Honnamma and others filed the suit for declaration of title and for permanent injunction against Lakshmamma and others in respect of Sy. No. 72 to 75 and 82 and 83 of Chikkelluru Village, Bengaluru South Taluk and said suit is decreed and plaintiffs are declared to be the owners of suit schedule properties by adverse possession and the defendants are restrained by way of permanent injunction from interfering the possession and enjoyment of plaintiffs. The xerox copy of judgment in RFA No.973/2006 recites that, the defendants of said suit in 63/2000 preferred appeal against judgment and decree of said suit and Hon'ble High Court of Karnataka allowed the appeal and set aside the decree of trial court and dismissed the suit.

26. The xerox copy of order of Hon'ble Supreme court of India, SLP(Civil) No.1363/2010 recites that, learned counsel appearing for petitioners prays and is permitted to delete respondent No.1 to 8; He further states that, he has entered into compromise with

respondent No. 9 and 10 and in view of subsequent facts and developments, he does not want to press the special leave petition; In view of the settlement we do not, need to consider the case on merit we also make it clear a person who is not party before us shall not be bound by any order passed by the court. No orders on application for impleadment; the special leave petition is accordingly dismissed as not pressed; and the said special leave petition has been preferred by Honnamma and others against Lakshamma and others in respect of judgment in RFA No.973/2006.

27. The xerox copy of plaint in OS No.57/2016 on the file of this court recites that Shivaraju filed the said suit for partition, enquiry for mesne profit and permanent injunction and to declare the sale deed dated:20-06-2015 as not binding. The xerox copy of order sheet in said suit recites that IA No.1 filed by the plaintiff U/o XXXIX rule 1 and 2 of CPC is dismissed. The xerox copy of order on IA No. 1 filed U/o. XXXIX rule 1 and 2 of CPC recites that in the said suit the said IA was dismissed. The xerox copy of order of Hon'ble 1st Addl. District & Session Judge, Ramanagara in MA No.21/2016 recites that, the miscellaneous appeal preferred by plaintiff of said suit on order on IA No.1 is also dismissed.

28. As stated above the plaintiffs in the objection to IA No. 10 admitted that the defendant Nos. 1 and others have filed suit in O.S No. 63/2000 against legal heirs of Hanumaiah, Krishnappa and K. Purushothama for the relief of Declaration of their title by adverse possession and for permanent injunction in respect of suit schedule properties which was decreed by Addl. Civil Judge, Sr. Division, Ramanagara. The defendants of said case challenged the said Judgment and Decree before Hon'ble High Court of Karnataka in RFA No. 973/2006 which was allowed by the Hon'ble High Court of Karnataka, and the same was set aside and the said suit was dismissed. Hence the plaintiffs of said suit preferred Special Leave Petition to appeal in no. 1363/2010 before Hon'ble Apex Court against the Judgment in RFA 973/2006 which was dismissed as not pressed in view of compromise between plaintiffs and defendant No.9 and 10. It is also admitted by plaintiffs in their objection that the findings in form No. 7 of the year 1971 confirming occupancy right has been challenged in Writ Petition No. 20360/82 before Hon'ble High Court of Karnataka and the said occupancy right has been quashed and a writ appeal No. 1524/1996 has been preferred and the Hon'ble High Court of Karnataka allowed the said Writ appeal

and remanded matter to the Land Tribunal and subsequently, Land Tribunal rejected the claim and the said Order was challenged before Hon'ble High Court of Karnataka in writ petition which was dismissed and against the said Order a writ appeal was preferred which was also dismissed and though the said matter was carried before Hon'ble Apex Court, the same was also dismissed.

29. According to defendant Nos. 34 to 36, the said appeal in Special Leave to appeal (Civil No. 1363/2010) has been ended in a compromise dated 24.01.2014 where under the defendant Nos. 37 and 38 herein represented by his G.P.A holder defendant No. 37 gave up and relinquished their right, interest in respect of suit schedule property except Sy. No. 75 measuring 6 acres 15 guntas in favor said Honnamma and others by receiving Rs. 80 lakh as full and final settlement of dispute. In the sale deed of defendant Nos. 34 to 36, it is stated the above said facts and also “thus the vendors being the legal heirs of Basavaiah @ Basavegowda are the absolute owners in joint physical possession and enjoyment of the schedule property and entire revenue records in respect of the same stand in the names of vendors number 1, 2, 6, 11, 16 and late Sadashivaiah; whereas, the vendors who are the legal heirs of

late Basavaiah @ Basavegowda, having right, title and interest in the schedule property had earlier collectively agreed to sell schedule property in favor of the purchaser herein”.

30. In this way, the sellers clearly stated that they are the legal heirs of late Basavaiah @ Basavegowda. The plaintiffs have stated in their objection that the alleged compromise is not on behalf of defendant Nos. 1 to 6 and it is on behalf of entire joint family and hence, they have no right to compromise independently as there was no partition in the family. It is also the argument of learned counsel for plaintiffs that if the compromise between defendants Nos. 1 to 6 and the defendant Nos. 37 and 38 before Hon'ble Apex Court is considered, the alleged Judgment and decree in earlier suit have no binding nature; the finding of possession of the father of plaintiffs and other sons of Basavaiah @ Basavegowda in OS. No. 133/1974 and 8/1978 and also the Order of Tribunal are considered with the findings of OS No. 63/2000 and the said compromise, it is very clear that the possession of plaintiffs is in no way disturbed.

31. The Hon'ble High Court of Karnataka in RFA No. 973/2006 observed that though, the Ex.P48 and 49 are the extracts from the

findings recorded by Trial Court in OS. No. 133/1977 and RA No. 8/1978 regarding the illegal possession of suit schedule property by the plaintiff, in the absence of plaintiffs establishing other ingredients of the adverse possession, I am of the opinion that the Trial Court could not have decreed suit of the plaintiff. As observed above, the Hon'ble Apex Court also dismissed the said Special Leave Petition as not pressed. But, the said Special Leave Petition was not allowed as per the prayer in the above said compromise petition.

32. According to defendant Nos. 34 to 36, the title already passed to defendant Nos. 37 and 38 as per the decree in OS. No. 39/1969 and Execution Petition, and the compromise petition filed before Hon'ble Apex Court in SLP No. 1363/2010 conferred absolute right, title and possession of suit schedule properties in favor of their sellers. The plaintiffs contentions are that the suit schedule properties were purchased by their ancestor i.e., Basavaiah @ Basavegowda out of sale proceeds of ancestral properties, and subsequent compromise and the above said suits have not taken back their joint possession over the suit schedule properties. The said aspects and passing of absolute title and possession to the vendors of defendant Nos. 34 to 36 over the suit

schedule properties on the basis of compromise petition filed before the Hon'ble Apex Court as the said Special Leave Petition being dismissed, are also serious questions to be adjudicated. As per the Transfer of Property Act, for the transfer of ownership over the suit schedule properties, a registered document in writing is required.

33. According to defendant Nos. 34 to 36, the brother of plaintiffs filed suit for partition in respect of the suit schedule properties wherein the application filed under 39 Rule 1 and 2 for restraining from dispossessing him from suit schedule properties is dismissed. But the documents produced by them to that effect disclose that the plaintiffs herein are not the parties to the said suit. The plaintiffs of OS. No. 60/2000 claimed their possession stating that they are in possession of suit land from 1974 to 1975 to 1975 to 1976 and the said finding has been confirmed in RA No. 8/1978; after death of Hanumaiah the said Basavaiah @ Basavegowda took possession of the lands and thereafter continued the possession and after his death it is continued by the plaintiffs. In this way, they asserted the earlier possession of Basavaiah @ Basavegowda. Moreover, as observed above, the sale deeds recitals also state that vendors are the legal heirs of

Basavaiah @ Basavegowda. Admittedly, the plaintiffs being the legal heirs of Basavaiah @ Basavegowda are not parties to the said sale deeds. The reasoning for the mention of the said aspect in the said sale deeds is a fact which is to be adjudicated. The plaintiffs being the children of son of said Basavaiah @ Basavegowda naturally come to the possession of properties which are in the possession of said Basavaiah @ Basavegowda after his death. Moreover, their father Chennabasappa also claimed occupancy right over the suit schedule properties along with his 2 brothers which was initially allowed by Land Tribunal Magadi and after remand the said application claiming occupancy right was dismissed which was confirmed by Hon'ble High Court of Karnataka and also Hon'ble Supreme Court. But there is no factual assertion from defendants that their possession has been taken back by the sellers of defendant Nos. 34 to 36 nor the defendant Nos. 34 to 36 have been taken possession from them through procedure established by law. The Hon'ble Apex Court also held in the said Special Leave to appeal (Civil) No. 1363/2010 that we also make it clear that a person who is not a party before us shall not be bound by any Order passed by the Court. Admittedly, the plaintiffs are not the parties. Hence, they are not bound by the said Order. The purchasers of suit

schedule properties from Hanumanthaiah i.e., defendant Nos. 37 and 38 relinquished their right by executing said compromise petition. Hence, it is very clear that they admitted the earlier right of the appellants of the said case i.e., defendant Nos. 1, defendant No. 2, the father of defendant Nos. 4 and 6, defendant No. 7, defendant No. 12 and defendant No. 17.

34. The father of plaintiffs is also one of the parties before Land Tribunal and in OS. No. 133/1974, and the contention of vendors of defendant Nos. 34 to 36 in OS. No. 63/2000. The contention of father of plaintiffs and other parties in said OS. No.132/1974 are that they are continued in possession of suit schedule properties as the Basavaiah @ Basavegowda died on 27.07.1974. Hence, the arguments of the learned counsel for defendants that plaintiffs have not been in picture and now they are wrongly claiming without any right, have got no merit. Though, RTC entries have presumptive value, the said presumption is rebuttable presumption. Moreover, the revenue documents neither create any title nor extinguishes right, title and possession. The plaintiffs clearly averred the cause of action for suit arose on 20.06.2015 when sale deed was executed and also subsequently, when the defendants came near the suit schedule property to

disposes them. Hence, the argument that there is no cause of action for the suit, is not merit.

35. The alienation of property during the pendency of suit leads to multiplicity of proceeding. Hence, that ground could be inferred from the contention that the defendants will not hesitate to do any illegal acts and prayer is sought to grant temporary injunction restraining from alienation and changing nature of suit schedule property.

36. According to the learned counsel for defendants No. 34 to 36, this suit is hit by the principles of resjudicata in view of above said Judgment and decree in the above said suits. But the plaintiffs have not admitted the said Judgment and decree. Moreover, the compromise between the defendant Nos. 37 and 38 and the defendant Nos. 1 and others before Hon'ble Apex Court has been changed the earlier findings. As the principles of resjudicata has to be proved by leading evidence, now it cannot be inferred at this stage. As the plaintiffs claim their joint possession and right over the suit schedule property, failure to state the filing of suit and form No. 7 itself do not establish their conduct of way of approach before this Court.

37. The arguments of learned counsel for defendants No. 34 to 36 that the properties are gone out of the family and hence, there is no joint family properties and only illegal possession has been observed in the Judgment; and hence, this Court could not put the seal of entitlement of plaintiffs to the illegal possession, have got no merit. Thereby, the defendant Nos. 34 to 36 admitted the possession of plaintiffs by saying the said possession as a illegal possession. Such being the case, it is not the contention of defendant Nos. 34 to 36 that their possession has been taken back by legal mode. Moreover, the defendant Nos. 34 to 37 have got their sale deed not directly from defendant Nos. 38 and 39. Hence, the said aspect is to be decided only on merit. Though, the plaintiffs or their father have not approached before Hon'ble Apex Court, the possession of Basavaiah @ Basavegowda and after his death, their possession have not been taken back by legal mode as there is no such pleading from defendants. The said illegal possession is not taken back by them through due process of law unless and until the said illegal possession is taken back through the process of law, the defendant Nos. 34 to 36 would not squat upon the suit schedule properties by exercising their right of alienation and changing the nature of the suit. The doctrine of

estoppel is also to be proved by leading evidence. Now, at this stage the plaintiffs have come up with their case regarding right of share over the suit schedule properties and the interference of defendants by means of threat of alienation and changing the nature of suit. The ratios of decisions reported in (2007) 10 SCC 571 Subhodh Kumar and others Vs. Baghavantnamdeorao Mehetra and others and (2016) 6 SCC 725 Narayana Vs. Baba Saheb and others and (2015) 8 SCC 428, Ravish chand Jain Vs. Rajarani Jain, are evolved out of different facts and circumstances. Hence, with great respect to said ratios, the said ratios are not helpful to the contention of learned counsel for Defendants.

38. The above discussed sale deeds executed in favor of defendant Nos. 34 to 36 recite the defendant No. 21 and defendant No. 35, B.E Vijaykumar and Sri. R. Manu as consenting witnesses in respect of sale deeds of defendant Nos. 34 and 36 and the F.B Vijaykumar R. Manu and Manjunath as a consenting witnesses of sale deed of defendant No. 35. But the plaintiffs and defendant Nos. 22 have not joined either as the executants nor as a consenting witnesses. The sale agreement executed in favor of defendant Nos. 35, Vijaykumar V.B and Manu dated 25.11.2013

recites that the plaintiff Nos. 2 to 5 and defendant Nos. 21 and 22 are also co-owners along with other vendors stated therein. The plaintiff No. 1 is not the party either in sale deeds or said sale agreement. Hence, the above aspects are serious questions to be decided in the Trial. The claim of title, interest and possession of defendant Nos. 34 to 36 over the suit schedule properties on the basis of the possession and title of their vendors under compromise petition without any registered document, the claim of plaintiff over the suit schedule properties as a ancestral properties, the binding nature of the findings of earlier suits, the claim of possession of both the parties and without executing any registered document for transfer of ownership, the passing of right and title on the basis of compromise petition only by relinquishing right and title over suit schedule properties are serious questions to be investigated in this case. The prima facie case is not to be confused with prima facie title. The prima facie case is not frivolous or vexatious, but it involves a serious questions to be investigated. The existence of serious questions to be decided is important and not the probability of success of the plaintiff. The above discussed facts and circumstances and documents of both the parties establish the existence of serious question to be decided. In result, I am of the opinion

that the plaintiffs have made out prima facie case in their favor.

Hence, I answered point No. 1 in the affirmative.

39. Point No. 2:- As observed above, the plaintiffs established prima facie case and the above said serious questions are to be decided on Trial. It is to be considered as to the balance of convenience between the plaintiffs and defendants and the result of imminent disadvantage to the plaintiffs by denying the relief of temporary injunction. The plaintiffs claim their right of share, interest and possession over the suit schedule properties as ancestral and joint family properties on the basis of title of their grandfather acquired out of the sale proceeds of ancestral properties. The object of interim injunction is to keep things in status-quo, so that if at the hearing, when the plaintiffs obtained Judgment in their favor, the defendants will in the meanwhile have to be prevented from dealing with the properties in such a way as to make the plaintiffs detriment. Admittedly, the question of facts and law raised by both the parties are to be ultimately determined in this suit and hence, the maintaining of status-quo in respect of suit schedule properties is very much important. This suit being the suit for partition is a comprehensive suit and hence, all issues could be decided in this

case. Under these circumstances, when the above aspects are considered with the contention of both parties, I am of the considered opinion that the balance of convenience lies in favor of plaintiffs. **Consequently, I answered point No. 2 in the affirmative.**

40. Point No. 3:- The plaintiffs sought for restraining defendant Nos. 34 to 38 and their agents, servants, followers, henchmen, supporters, power of attorney holders, family members or anybody claiming through them from alienating, and changing the nature of the suit schedule properties during the pendency of this suit. If the said defendants succeeded in their attempt of alienation and changing the nature of suit schedule properties, certainly it would lead to multiplicity of proceedings and thereby plaintiffs would be put to more hardship. As the right of alienation and changing the nature of suit schedule properties by defendant Nos. 34 to 38 is only be postponed and not their right absolutely. They could exercise said right if they succeed in Trial. As observed above, objects of granting interim injunction is to keep the suit schedule property in status-quo and the question of law and facts are to be ultimately determined in this suit. Hence, the alienation and changing the

nature of suit schedule properties during the pendency of suit would not keep the things in status-quo. If plaintiffs succeeded and the defendants exercised the said right without they being restrained, definitely plaintiff will be the real victim of agony, loss and injury. The said right of plaintiff is a statutory right which cannot be equated with any means. Moreover, the suit schedule properties are to be kept intact during the pendency of this suit for the benefit of both the parties. Hence, the injury likely to be caused to the plaintiffs will be imminent and certain and great hardship will be caused to them if relief is denied. Under these circumstances, I am of the considered opinion that the plaintiffs is put to loss, injury and hardship if injunction is not granted. **Consequently, I answered point No. 3 in the affirmative.**

41. Point No. 4:- According to learned counsel for defendants 34 to 36, the plaintiffs have not clearly stated that the defendant Nos. 34 to 38 are attempting to alienate and in what manner the nature of suit schedule properties to be changed. Admittedly, the plaintiffs prayed to restrain them from alienating and changing the nature of suit schedule properties. But, the plaintiff No. 1 has stated in his affidavits that the defendants being financially, politically and physically strong, will not hesitate to any illegal

acts and we being poor helpless and the law abiding citizen are not in position to resist their illegal and high handed acts without the assistance of this Court. He also stated that in order to preserve their right and to obtain their definite share, they filed this suit. If entire affidavit averments are considered with the prayers of the annexed applications, it could be seen that the plaintiff impliedly stated and referred the acts of defendant to the acts of changing the nature of suit schedule properties and attempt of alienation.

42. It is also the contention of the learned counsel for defendants that the above discussed suits are decided against the father of plaintiff and also the Land Tribunal also dismissed the tenancy claim, and suppression of said facts would go against plaintiff at this stage. But the nature of suit schedule properties being claimed as a ancestral property in view of purchase by selling ancestral property has to be decided in merit. Moreover, the plaintiffs are not the parties to any of the said suit. This suit is filed claiming their shares.

43. The contention of the defendant Nos. 34 to 36 regarding attainment of finality to the factum of nature of suit schedule

property is to be considered with the findings of facts of subsequent possession of Basavaiah @ Basavegowda as observed in OS. No. 133/1977 and 8/1978 and the observation of Hon'ble High Court of Karnataka in RFA No. 973/2006 as to illegal possession of suit schedule properties by the plaintiffs of OS. No. 63/2000 and subsequent development by way of compromise before Hon'ble Supreme Court with the sum of legal heirs of said Basavegowda @ Basavaiah by defendant Nos. 37 and 38 herein. Moreover, it is also not the case of defendant Nos. 34 to 36 that the plaintiffs herein are the parties in OS. No. 57/2016 and the plaintiff of said suit is filed the said suit on behalf of the plaintiffs herein also. Moreover, as per the copy of orders on IA No. 1 under Order 39 Rule 1 and 2 of CPC in said suit, it is clear that the said IA has been filed to restrain the defendants of said suit from dispossessing the plaintiff of said suit and the said suit is for partition and the defendants of said suit are vendors as well as purchasers of suit schedule properties. As the purchasers being stepped into the shoes of sellers in respect of suit schedule properties, are also having the undivided right of their sellers. According to plaintiffs of this suit, the sellers are also joint family members of plaintiffs herein. As the said IA in suit in OS. No. 57/2016 has been rejected and the plaintiffs of this suit are not

parties to said suit, the said findings could not be considered as a bar to grant interim injunction prayed in these two applications. Hence, the said facts of earlier suit are not much relevant if the plaintiffs are able to establish their right of share on the basis of urged facts. Hence, the tenor of factum of earlier suit could not be considered to deny the relief at this stage as this suit is for comprehensive suit for partition. The right of shares of plaintiff has been agitated by filing this suit. As stated above, maintaining the status-quo of suit schedule properties till deciding this suit is the object of granting temporary injunction and the right of alienation and changing the nature of suit schedule properties is only postponing till deciding of this suit. Hence, the plaintiffs are entitled for relief of temporary injunction as prayed in both applications. Under these circumstances, the prayer of defendant Nos. 34 to 36 to vacate the interim order of restraining them from alienating suit schedule properties dated 13.06.2019 is not sustainable. **Consequently, I answered this point in the negative.**

44. POINT No.5:- In view of my findings to point Nos.1 to 4 and the reasons stated therein, I proceed to pass the following:-

ORDER

The IA Nos. 1 and 2 filed under Order 39 Rule 1 and 2 of CPC r/w Section 151 of CPC by plaintiffs are hereby allowed.

The defendant Nos. 34 to 38 are restrained from alienating and changing the nature of the suit schedule properties by way of temporary injunction pending disposal of this suit.

IA No. 10 filed under 39 Rule 4 r/w Section 151 of CPC by defendant Nos. 34 to 36 is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed by him, corrected and signed by me and then pronounced in the open court on this the **11th Day of September 2020**)

(Sri. Manohara M).,
Sr. Civil Judge & JMFC.,
Magadi.

