



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT:MAGADI**

Present:

**Sri. Sandeep S. Reddy, B.A., LL.B.,
Addl. Senior Civil Judge & JMFC., Magadi**

DATED: THIS THE 16th DAY OF APRIL, 2024
O.S.No.402/2022

PLAINTIFFS : Sri. Narayanappa & Ors.,
(By Sri. L.P.S. Advocate)

V/s

DEFENDANTS : Sri. Venkateshaiah & Anrs.,
(D1 & 2 by Sri. N.K.K. Advocate)

ORDER ON IA NO.1 & 2 U/O.39 R.1 & 2 r/w. S.151 of C.P.C.,

The I.A.No.1 is filed by the plaintiffs U/O. 39 R.1 & 2 praying for an order of temporary injunction restraining the defendants, their agents, servants, supporters or anybody claiming through them from alienating or transferring or creating charge over suit schedule property pending disposal of the suit.

2. The I.A.No.2 is filed by the plaintiffs U/O. 39 R.1 & 2 praying for an order of temporary injunction restraining the defendants, their agents,



servants, supporters or anybody claiming through them from interfering with 'B' schedule property pending disposal of the suit.

3. The aforesaid suit is filed by the plaintiffs praying for the relief of partition, declaration, permanent injunction and other consequential reliefs.

4. The plaintiff has stated in the accompanying affidavit to I.A.No.1 & 2 that, one Sri. Venkatappa S/o. Kempamma was the Mulapurusha of the joint family. That, he had three children Sri. Giriyappa, Rangappa and Sri. Kalaiah. That, the said Sri. Rangappa had wife by name Akkajamma through whom he had a daughter by name Muniyamma, who died without any issues. The plaintiffs are claiming that they are class-II legal heirs of Sri. Rangappa, Akkajamma and Smt. Muniyamma. That, the second son Sri. Giriyappa had a wife by name Rangappa and had only one son by name Thimmarayappa who also died without issues. That, the plaintiffs are the class-II legal heirs of deceased Thimmarayappa. That, the plaintiffs are the children of Kalaiah and they are claiming their rights as legal heirs through Kalaiah. That, the defendants are no way concern to the joint family of plaintiffs. That, the old Sy.No.126/1A, new Sy.No.126/1 measures to an extent of 0.19 acres, 0.38



guntas. That, the land measuring 6 acres had been sold in the aforesaid survey numbers to some other persons. That, the possession to an extent of 2 acres and 8 guntas were kept by the plaintiffs. That, the land measuring to an extent of 1 acre and 0.3 guntas actually measuring to an extent of 1 acre is the schedule 'B' property. That, plaintiffs are in possession of the schedule 'B' property. That, the defendants having no semblance of right, had colluded with the revenue officials and got transferred the khata and also got executed a registered Gift Deed dated: 19.11.2003 in favour of defendant No.2. That, after the execution of Gift Deed defendants tried to interfere with the plaintiffs' peaceful possession of the schedule property and hence they have filed the aforesaid applications.

5. The defendant No.2 has filed objections stating that, the aforesaid application is not maintainable. That, he is the absolute owner of the schedule property and has acquired the schedule property through a registered gift deed dated: 19.11.2003 executed 20 years back. That, originally Rangaiah S/o. Venkatappa had owned and possessed 1 acre 30 guntas of land. That, Sri. Maregowda had two wives Smt. Muniyamma and Akkajamma. First wife Smt. Muniyamma had only one daughter Akkajamma.



That, the 2nd wife Mayamma had five children Rangaiah, Lakkanna, Lakkamma, Venkateshappa and Kempegowda. That, Akkajamma had married Rangaiah. The said Rangaiah and Akkajamma had one daughter Smt. Muniyamma. The defendant No.1 is the fourth son of late. Maregowda and got married to said Muniyamma. That, one son and one daughter were blessed to said Muniyamma. The said children and Muniyamma are dead. That, during the life time of Akkajamma the partition deed had taken place and defendant No.1 was allotted Sy.No.126/1A, measuring 1 acre 30 guntas of dry agricultural land in favour of Smt. Muniyamma and defendant No.1 has got possession of the said land by way of succession through the partition dated: 20.08.1978. That, subsequent to the death of Smt. Muniyamma defendant no.1 was a sole successor and he inherited the said properties from Smt. Muniyamma. That, defendant no.1 had executed a Gift Deed dated: 19.11.2003 in favour of the 2nd wife Smt. Sarojamma. The defendant No.1 and 2 have developed the land from the year 2003-04 together. That, plaintiffs have no semblance of right and the plaintiffs genealogy produced clearly shows that the properties divided amongst the brother. That, Kalaiah and Rangaiah had sold 3 acres in Sy.No.126 in favour of Sri. Gangaiah and had alienated the properties acquired by him. That, the aforesaid suit is



instituted by the plaintiff at the instigation of plaintiff No.10, who is influential. That, the schedule described in the plaint is totally misconceived and the plaintiff has failed to produce the documents necessary to prove their possession and ownership.

6. Heard learned counsel for plaintiffs and defendant No.2.

7. Considering the contentions of the counsel, following points arise for my consideration.

1. Whether plaintiff has made out prima-facie case for grant of temporary injunction restraining the defendants from alienating the 'B' schedule property?
2. Whether plaintiff has made out prima-facie case for grant of temporary injunction restraining the defendants from interfering with plaintiffs' possession of 'B' schedule property?
3. Whether balance of convenience is in favour of the plaintiffs with respect to alienation of 'B' schedule property?
4. Whether balance of convenience is in favour of the plaintiffs with respect to interference to 'B' schedule property?
5. Whether plaintiffs will suffer irreparable injury if temporary injunction of not to alienate is not granted?
6. Whether plaintiffs will suffer irreparable injury if



temporary injunction of not to interfere is not granted?

7. What order?

8. My findings for the above points are as follows.

Point No.1: In the Negative,

Point No.2: In the Negative,

Point No.3: In the Negative,

Point No.4: In the Negative,

Point No.5: In the Negative,

Point No.6: In the Negative,

Point No.7: As per final order.

For the following,

REASONS

9. **POINT NO.1 & 2:-** As these points are interconnected with each other, taken up together for common discussion to avoid repetition of facts.

10. The plaintiff has filed the aforesaid suit seeking for the declaration that plaintiff is the absolute owner of the suit schedule property. He has further sought for declaring the registered Gift Deed dated: 19.11.2003 executed by defendant No.1 in favour of defendant No.2 as illegal and not binding on the



plaintiffs. He has further sought for permanent injunction and other consequential reliefs.

11. It is the case of the plaintiff that, one Sri. Venkatappa had three children by name Sri. Giriyappa, Rangappa and Kalaiah. That, Rangappa had one daughter by name Muniyamma and the plaintiffs state that, Muniyamma died without issues and they are the class-II legal heirs of deceased Rangappa. The plaintiff has further stated that, the another son of Venkatappa, Sri. Giriyappa had a son by name Thimmarayappa that Sri. Thimmarayappa died without issues and hence they are claiming that, they are class-II legal heirs of deceased Thimmarayappa as well.

12. The defendants on the other hand submit that, deceased Thimmarayappa has wife and daughter. That, the Thimmarayappa's wife and daughter are not made parties to the aforesaid suit. That, plaintiffs cannot claim to be the class-II legal heirs of deceased Thimmarayappa.

13. The defendant No.1 on the other claims that, he is the husband of Late. Muniyamma. He further submits that, he has inherited the schedule



property from Muniyamma on her death and he has become the absolute owner of the schedule property. That, the question of plaintiffs becoming class-II legal heirs does not arise.

14. On perusal of the RTCs., with respect to the schedule property, there is a clear reference to the division of properties between the parties. The RTCs., disclose that the family of Sri. Venkatappa, his sons Sri. Rangappa, Sri. Giryappa and Kalaiah have got divided the schedule properties.

15. The plaintiffs are claiming their rights over the schedule property as class-II legal heirs. The defendants on the other hand have produced the copy of partition deed dated: 20.08.1978 that had taken place between Muniyamma and Akkajamma. The relevant entries with respect to the partition of the schedule properties are also reflected in the RTC as per M.R.No.13/1989-90.

16. The plaintiff is claiming that, he is the class-II legal heir. The fact relating to the plaintiff being the class-II legal heir has been disputed by the defendant No.1. The plaintiff has simply claimed that, Smt. Muniyamma did



not have any issues and hence they are the class-II legal heirs to Smt. Muniyamma. Admittedly, the schedule property was divided between the children of Late. Venkategowda. The property in the hands of Late. Akkajamma is in the nature of independent property. The defendant claims that, Smt. Akkajamma and Smt. Muniyamma had got divided the schedule property through an unregistered partition deed dated: 20.08.1978. If the said partition is taken into consideration, then the schedule property falling to the share of Smt. Muniyamma would be her independent property and the Muniyamma's husband would inherit the property fallen to the share of Smt. Muniyamma as per Sec.15(1)(a) of Hindu Succession Act.

17. Admittedly, the M.R.No.31/1989-90 was changed with respect to schedule property in pursuance of the said partition. The name of Muniyamma was also reflected in M.R.No.26/1997-98 along with her husband. It is also clear that, registered gift deed was executed on 19.11.2003 by defendant No.1 in favour of defendant No.2. It is further clear that, the plaintiffs have not challenged any of the entries in the revenue records from 1989-90 till date. Hence, the probability of defendant No.1 and



2 being in possession of the schedule property is more than the plaintiffs being in possession.

18. The plaint and written statement does not disclose the date of death of Smt. Akkajamma and Smt. Muniyamma. It is not sure as to who died first. The plaintiff has only taken the contention that, he is the class-II legal heir. The burden is on the plaintiff to show that, he is class-II legal heir. The plaintiff is also required to show that, he is legally entitled to succeed to the estate of Smt. Muniyamma and Smt. Akkajamma. The burden is on the plaintiff to show as to when Smt. Akkajamma and Smt. Muniyamma died. It is also burden on the plaintiff to show as to how he is the sole surviving class-II legal heir. The plaintiff is also required to show as to why the plaintiff did not get the khata of the schedule property changed atleast from the year 2003 onwards or from the date of death of Smt. Muniyamma or Akkajamma. This being the case, the plaintiff has failed to prove the prima-facie case. Hence, I answer Point No.1 & 2 in the Negative.

19. **Point No.3 & 4:-** As these points are interconnected with each other, taken up together for common discussion to avoid repetition of facts.



20. The plaintiffs are claiming as class-II heirs to Smt. Muniyamma. The defendant on the other hand is claiming the right as husband of Smt. Muniyamma. The plaintiff has not given the date of death of Smt. Muniyamma. It is not sure whether Smt. Muniyamma predeceased her mother Smt. Akkajamma.

21. The documents on record clearly shows that, the defendant No.1 has got the khata mutated to his name in the year 1997 itself and has also gifted the schedule property in the year 2004 to his wife. It seems that, defendant No.1 is in possession of the schedule property. At this stage of the suit the plaintiffs have not shown as to how they are class-II legal heirs. They have also not shown how Sec.8 is applicable to a female hindu who had inherited the schedule property as a sole coparcener. The application of Sec.15 of Hindu Succession Act is also not properly pleaded by the plaintiff. Any interim orders would adversely affect defendants. The plaintiff has not proved their right as class-II heirs and they have neither shown that, they are entitled for succession to the estate of Smt. Muniyamma. Hence, the plaintiff has not made out prima-facie case. The balance of convenience does not lie in favour of plaintiff. Hence, I answer point No.3 & 4 in the Negative.



22. **Point No.5 & 6:-** As these points are interconnected with each other, taken up together for common discussion to avoid repetition of facts.

23. The plaintiffs have approached this Court praying for declaration, permanent injunction. The defendant has contended that, he has made improvements to the schedule property and any order of injunction would adversely affect him. The defendant has got the khata mutated in his name in the year 1989 and defendant No.1 has also executed a Gift Deed in the year 2004 in favour of defendant No.2.

24. The Hon'ble Supreme Court of India in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1 : 1999 SCC OnLine SC 774 at page 13:

24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

(i) extent of damages being an adequate remedy;



(ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;

(iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;

(iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;

(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.

25. It can be deduced from the aforesaid judgement that, the circumstances which ought to be weighed is a suitably applicable to the aforesaid case.



Further the losses that, the defendants could suffer more and they cannot be compensated by suitable cost if any. Hence, I answer point No.5 & 6 in the Negative.

26. **POINT NO.7:** In view of reasons on point No.1 to 6, I proceed to pass the following,

ORDER

The I.A.No.1 filed by the plaintiffs U/O. 39 R.1 & 2 praying for an order of temporary injunction restraining the defendants, their agents, servants, supporters or anybody claiming through them from alienating the suit schedule property pending disposal of the suit is hereby rejected.

IA No.II U/O.39 Rule 1 and 2 of C.P.C., filed by plaintiff praying for an order of temporary injunction restraining the defendants, their agents, servants, supporters or anybody claiming through them from interfering with the plaintiff possession



**over the suit schedule property pending disposal of
the suit is hereby rejected.**

Parties to bear their respective cost.

Call on for issues by 01.06.2024.

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **16th day of April, 2024.**)

(Sandeep S. Reddy)

**Addl. Sr. Civil Judge & JMFC.,
Magadi.**