

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

**AT:MAGADI**

**Present:**

**Sri. Hanumanth Satwik., LL.M.,  
Addl. Senior Civil Judge & JMFC., Magadi**

**DATED: THIS THE 4<sup>TH</sup> DAY OF DECEMBER 2020**

**O.S.No.336/2019**

- Plaintiff** : 1. Mohammad Riyazulla,  
S/o late Ali Jan,  
Aged about 60 years.
2. Mohammed Nurulla,  
S/o late Alijan,  
Aged about 55 years.
3. Mohammad Chand Pasha,  
S/o late Alijan,  
Aged about 48 years.

All are R/at Sunnakallu Beedi,  
Ward No.22, Magadi Town,  
Ramanagara District.

{By Sri. **H.N.S.**, Advocate}

**V/s**

- Defendants** : 1. Smt. Shameen @ Shameemtaj,  
W/o late Shaffiulla,  
Aged about 55 years.
2. Mohammad Mujamil,  
S/o late Shaffiulla,  
Aged about 28 years.

3. Smt. Najiya Bhanu,  
D/o late Shaffiulla,  
Aged about 27 years.
4. Smt. Ayesha Anjum,  
S/o late Shaffi Ulla,  
Aged about 25 years.

Defendant No.1 to 4 are R/at  
New Masjid Mohalla,  
B.K.Road, Magadi Town,  
Ramanagara District.

5. Sri. J.P.Chandregowda,  
S/o Puttarangaiah,  
Aged about 38 years,  
R/at Juttanahali Village,  
Kempasagara Post,  
Kasaba Hobli, Magadi Town,  
Ramanagara District.

{By Sri. **R.S.**, Advocate}

**ORDER ON IA NO.I**

The present suit is for declaration of ownership and permanent injunction. The plaintiffs further pray to declare the sale deed dated:22.08.2019 executed in favour of defendant no.5, as not binding on them.

2. The present application has been filed by the plaintiffs U/o. XXXIX rule 1 and 2 R/w. Sec.151 of CPC praying to temporarily

restrain defendant no.5 from alienating 'B' schedule property. It is the case of the plaintiffs that originally their great grand-father by name Mastan Sab was the owner of land bearing Sy.No.28 measuring 3 acres 22 guntas including kharab land of 4 guntas. Subsequently, partition was effected between the sons of Mastan Sab by name Abdul Sathar Sab and Mohiddin Sab. In the said partition their grand father by name Abdul Sathar Sab was allotted 2 acres 15 guntas of land and Mohiddin Sab was allotted 1 acre 3 guntas of land in the land bearing Sy.No.28. Accordingly, Abdul Sathar Sab and Mohiddin Sab were cultivating the properties allotted to them in the said partition. The property measuring 2 acres 15 guntas which was allotted to Abdul Sathar Sab in partition was again partitioned by the sons of Abdul Sathar Sab by name Ali Jan and Ameer Jan. Accordingly, each of them got 1 acre 7 ½ guntas to their share. Subsequently, Ameer Jan executed release deed dated:17.01.1972 in favour of Ali Jan. Further, Ameer Jan sold land bearing Sy.No.26 measuring 18 guntas and Sy.No.28 measuring 38 guntas in favour of Ali Jan. In the suit bearing O.S.No.480/2012 they and their sisters entered into compromise. During that time, they came to know that khatha was

effected only with respect to 1 acre 29 guntas of land instead of 2 acres 15 guntas in the land bearing Sy.No.28. It was also found that land measuring 26 guntas stood in the name of Shafi Ulla S/o Gulam Hussain. The khata of land measuring 1 acre 29 guntas standing in the name of Shafi Ulla is wrong, instead it should be 1 acre 3 guntas. The said Shaffi Ulla is the husband of defendant no.1 and father of defendant no.2 to 4. In the partition between Abdul Sathar Sab and Mohiddin Sab, the later was allotted 1 acre 3 guntas in the land bearing Sy.No.28. The defendants illegally created Sy.No.28/1 measuring 1 acre 29 guntas and Sy.No.28/2 measuring 1 acre 29 guntas. Defendant no.1 to 4 created illegal sale deed in favour of defendant no.5 with respect to land bearing Sy.No.28/2 measuring 1 acre 29 guntas. The mutation and khatha of land bearing Sy.No.28/1 measuring 1 acre 29 guntas is standing in the name of plaintiff no.2 and 3. Defendant no.1 illegally got mutated land bearing Sy.No.28/2 to an extent of 1 acre 29 guntas. In the land bearing Sy.No.28/2, defendant no.1 to 4 are entitled for 1 acre 3 guntas and the remaining land measuring 26 guntas should be mutated in their name. Defendant no.5 is trying to alienate the suit schedule property on the

strength of the alleged sale deed. In this regard the plaintiffs pray as above.

3. Defendant no.1 to 4 filed memo and adopted the written statement of defendant no.5. Defendant No.1 to 5 filed memo adopting the written statement of defendant no.5 as objection to IA No.I. The defendants in their written statement denied the plaint averments. The defendants contended that in the partition effected by Mastan Sab between his sons Mohiddin Sab and Abdul Sathar Sab, each of his sons was allotted 1 acre 29 guntas to their share. The land bearing Sy.No.28 measuring 1 acre 29 guntas was allotted to Shaffi Ulla, the husband of defendant no.1, in the partition which took place among the husband of defendant no.1 and his brothers. After the death of Shaffi Ulla, the said property was mutated in the name of defendant no.1. The family of defendant no.1 sold land bearing Sy.No.28 measuring 1 acre 29 guntas in favour of defendant no.5 on 22.08.2019. Defendant no.5 is in possession of the said property. The sons of Abdul Sathar Sab, namely Ali Jan and Ameer Jan, partitioned the property measuring 1 acre 29 guntas in the land bearing

Sy.No.28, which was allotted to their father, and each one of them got 34.08 guntas to their respective shares. The plaintiffs have no rights over the suit schedule properties. They are not parties to O.S.No.480/2012. The present suit is barred by law of Limitation. The present suit is not maintainable without seeking the relief of possession. Plaintiffs created documents. In this regard the defendants pray to reject the application.

4. Heard arguments of counsel.

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

1. Whether plaintiffs have made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of the plaintiffs?
3. Whether plaintiffs will suffer irreparable injury if temporary injunction is not granted?
4. What order?

6. My findings for 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 : As per final order  
For the following;

**REASONS**

7. **Point No.1**:- It is the case of the plaintiffs that their great grand father by name Mastan Sab was the owner of land bearing Sy.No.28 totally measuring 3 acres 22 guntas including kharab land measuring 4 guntas. The said Mastan Sab partitioned the property between his sons by name Abdul Sathar Sab and Mohiddin Sab. In the said partition Abdul Sathar Sab was allotted 2 acres 15 guntas and Mohiddin Sab was allotted 1 acre 3 guntas of land in the land bearing Sy.No.28. In the case at hand the defendants admitted the partition that took place between Abdul Sathar Sab and Mohiddin Sab. However, the defendants denied the extent of land that was allotted to Abdul Sathar Sab and Mohiddin Sab in the said partition. According to the defendants in the partition each of the sons of Mastan Sab was allotted 1 acre 29 guntas of land in the land bearing Sy.No.28.

8. In the case at hand the partition effected between Abdul Sathar Sab and Mohiddin Sab is admitted by the defendants. As such, the question that is required to be answered in the present suit is as to,

whether in the said partition between Abdul Sathar Sab and Mohiddin Sab, each of them was allotted 1 acre 29 guntas to their respective shares. The present suit is one for declaration and permanent injunction. In the case on hand it is necessary to determine whether the plaintiffs are the owners of 'B' schedule property, whether they are in possession of the suit schedule properties and as to the alleged interference by the defendants. Be it stated, in the present case the partition between Abdul Sathar Sab and Mohiddin Sab is admitted by the defendants. As such having regard to the questions that need to be determined in the present suit, I am of the view that the contentions raised by the defendants in the written statement are the subject matter of trial.

9. In the case at hand the defendants though admitted the partition that took place between Abdul Sathar Sab and Mohiddin Sab, they disputed the extent of land each of them was allotted, in the said partition. As such, the question that is required to be determined in the present suit is as to, whether in the said partition between Abdul Sathar Sab and Mohiddin Sab, each of them was allotted 1

acre 29 guntas to their respective shares. As such, regard being had to the admission by the defendants about the partition effected between Abdul Sathar Sab and Mohiddin Sab and the questions that need to be determined in the present suit, I am of the view that there is a prima facie case for trial. In this circumstances considering the pleadings, documents, application and objection, I am of the view that the plaintiffs have made out prima-facie case. Accordingly, point no.1 is answered in the affirmative.

10. **Point No.2:** - In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial. In these circumstances, if temporary injunction is not granted and if defendant no.5 alienates 'B' schedule property as alleged, the plaintiffs will suffer inconvenience, as the plaintiffs will be put into multiplicity of litigations. Such being the case, if temporary injunction is not granted the inconvenience which will be suffered by the plaintiffs is more than the inconvenience which may be caused to defendant no.5. Further, during the pendency of the suit, if defendant no.5 alienates 'B' schedule property as alleged by the plaintiffs, the

very purpose of the suit will be frustrated. Since defendant no.5 has an opportunity to contest the matter and get the matter decided on merits, I am of the view that balance of convenience with respect to 'B' schedule property is in favour of the plaintiffs. Resultantly, point no.2 is answered in the affirmative.

11. **Point No.3**:- In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial with respect to 'B' schedule property. In these circumstances if temporary injunction is not granted and if defendant no.5 alienates 'B' schedule property as alleged, the plaintiffs will suffer irreparable injury and such injury cannot be compensated in terms of money, as the plaintiffs will be put into multiplicity of litigations. Further, during the pendency of the suit if defendant no.5 alienates 'B' schedule property as alleged by the plaintiffs, the very purpose of the suit will be frustrated. In these circumstances, the plaintiffs showed that they will suffer irreparable injury, if temporary injunction is not granted with respect to 'B' schedule property. Resultantly, point no.3 is answered in the affirmative.

12. **Point No.4** : - In view of reasons on point No.1 to 3 and in the interest of justice and equity, I proceed to pass the following,

**ORDER**

**IA No.I U/o.XXXIX Rule 1 & 2 r/w Sec.151 of  
CPC filed by the plaintiffs is hereby allowed.**

**Defendant no.5, his agents, servants or  
anybody claiming through him are hereby  
temporarily restrained from alienating 'B' schedule  
property till the disposal of the suit.**

**Parties to bear their own cost.**

(Dictated to the stenographer, directly on the computer typed by her corrected by me and then pronounced in the open court on this the **4<sup>th</sup> day of December 2020**)

**(Hanumanth Satwik)  
Addl. Senior Civil Judge & JMFC.,  
Magadi.**