



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

Present:

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

DATED: THIS THE 8th DAY OF FEBRUARY, 2024
O.S.No.588/2021

Plaintiffs : Sri. Muthaiah @ Mutthuraj & Ors.,

(By **Sri. K.N.S.** Advocate)

---V/s---

Defendants : Smt. G. Parvathi & Ors.,

(D1 to 8, 25 to 28, 31 to 34 & 37 **Exparte**)
(D19 to 23 & 30 by **Sri. M.M. Advocate**)
(D4 & 2 by **Sri. A.B.P. Advocate**)
(D29 by **Sri. C.D.P. Advocate**)

ORDER ON IA NO.8 U/O.39 R.1 & 2 r/w. S.151 of C.P.C.,

The I.A.no.8 is filed by the plaintiff under order 39 rule 1 and 2 praying for an temporary injunction restraining the defendant no.37 his agents or anyone acting on behalf of him from alienating the schedule property.

2. The aforesaid suit is for partition, Declaration and consequential reliefs.



3. The Plaintiff has stated in the accompanying affidavit that the defendant no.37 was trying to alienate Item no.9 of the schedule property. That the schedule property is his ancestral property. That the plaintiffs have rights in the said property and hence they have filed the aforesaid application praying for the aforesaid relief.

4. Heard learned advocate for plaintiff. The defendant no.37 is placed exparte.

5. 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?

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 Negative,



Point No.2: In the Negative,
Point No.3: In the Negative,
Point No.4: As per final order.
For the following,

REASONS

7. **POINT NO.1:-** The Plaintiff has stated in the accompanying affidavit that the defendant no.37 was trying to alienate the schedule item no.9 illegally just because the katha was standing in the name of defendant no.9. The plaintiff has not assigned any reasons as to how the katha was changed in the name of Defendant no.37.

8. The plaintiff has not given the reasons nor produced any documents to show that the defendant no.37 was trying to alienate the schedule property.

9. The plaintiff has not assigned any grounds to show that the defendant no.37 was alienating the schedule property. The plaintiff has infact no given any reasons except for the mere statement that the defendant no.37 was alienating the schedule property as katha stands in the name of Defendant no.37.



10. The plaintiff has stated in the plaint that the Item no.9 was sold in favour of defendant no.35 and 36 on 24.07.1995. The plaintiff has further stated in the plaint that the said item was in turn sold by Defendant no.35 and 36 in favour of Defendant no.37 through a registered Sale Deed dated 24.04.2014. Admittedly the aforesaid suit was filed the year 2021. The plaintiff either in the plaint nor in the accompanying affidavit has not stated the reasons as to why he did not question the alienations at the earliest point of time. No reasons are assigned whatsoever.

11. The name of the Defendant no.37 has been reflected in the RTC since 2014 and even the latest RTC of suit schedule property reflects the name of defendant no.37. The plaintiff has kept quite since 1995. The entries in the Record of rights , register of records presumes correctness of the entries. Section 133 of Karnataka Land Revenue Act, which reads as under;

"133. Presumption regarding entries in the records.- An entry in the records of rights and a certified entry in the register of mutation or in a patta book shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore."



12. The revenue entries made with respect to the RTCs and mutation should have to be presumed to be true until the contrary is proved. The said entry in question was made in the year 2014. The numerous years has elapsed.

13. The plaintiff has not made out a prima facie case as to how he would suffer if injunction is not granted. There are other items in the schedule property. Some of the items in the schedule properties are alienated. Of all the items in the schedule property, the plaintiffs is seeking injunction only against defendant no.37 and item no.9 of the schedule property. The plaintiff has not assigned the reason as to why he is seeking the order only against the present defendant and not against other defendants. The reasons assigned by the plaintiff does not make out a prima-facie case. The plaintiff has not made out a prima-facie case. Hence I answer point no.1 in the negative.

Point no.2:-

14. The plaintiff has not proved the balance of convenience. The plaintiff has not stated or assigned any reasons as to how the balance of convenience tilts in his favour. Though the defendant no.37 has not appeared before the court and has not filed the objections. It is the duty cast on the plaintiff to show



how the balance of convenience tilts in his favour. The plaintiff has not shown in his accompanying affidavit as to how the defendant no.37 was effecting him. How the defendant no.37 was effecting the nature of the property. No photographs are produced. No documents are produced. In the absence of there being any reasons the plaintiff has not made out a case for balance of convenience. Hence I answer point no.2 in the Negative.

Point no.3:-

15. The plaintiff has not made out prima facie case. The plaintiff has not given the reasons as to how he would suffer irreparable injury.

16. On the other hand the defendant no.37 has purchased the schedule property through a registered sale deed dated 24.04.2014. The Registered sale deed is not challenged by the plaintiffs. The vendors of Defendant no.37 got the property through a registered sale deed on 24.07.1995.

17. The plaintiff has not stated the reasons for not seeking declaration with respect to said alienation since the year 1995. The plaintiff has not given any reasons as to how they would suffer if injunction is not granted and how it



will injure them legally. Hence plaintiff has not made out a case of hardship. Hence I answer point no.3 in the Negative.

18. **POINT NO.4:** In view of reasons on point No.1 to 3, I proceed to pass the following,

ORDER

**IA No.8 U/O.39 Rule 1 and 2 of C.P.C., filed by
plaintiff is hereby rejected.**

Parties to bear their respective cost.

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **8th day of February, 2024.**)

**(Sandeep S. Reddy)
Addl. Sr. Civil Judge & JMFC.,
Magadi.**