



IN THE COURT OF II ADDL.CIVIL JUDGE & JMFC,
AT MAGADI

SMT.RANJITHA G.B, B.B.A, LL.B (Hons.)
II Addl.Civil Judge and JMFC, Magadi

Dated this 19th day of March, 2025

OS No.102/2024

PLAINTIFF : Sri.Ningegowda
S/o Late.Boregowda,
Aged about 70 years,
R/at Shambhugowdanapalya,
Hamlet of Chikkakalya,
Thippsandra Hobli,
Magadi Taluk,
Ramanagara District.

-Vs-

DEFENDANTS :

1. Smt.Ningamma
W/o Late.Ningaiah,
Aged about 64 years,
2. Smt.Bhagyalakshmi
D/o Late.Ningaiah,
Aged about 43 years,
3. Sri.L.Mallesha
S/o Late.Ningaiah,
Aged about 40 years,
All are R/at Mallathalli Village,
Bangalore North Taluk,
Bangalore.



IA No.I

**APPLICANT/
PLAINTIFF** : Sri.Ningegowda

-V/s-

**OPPONENTS /
DEFENDANTS** : Smt.Ningamma & Others

i	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 read with Sec.151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Temporary Injunction</i>
iii	<i>The date on which the application is filed</i>	<i>29.02.2024</i>
iv	<i>Number of the application</i>	<i>IA No.I</i>
v	<i>The date on which the objections are filed by different opponents</i>	<i>10.09.2024</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>19.03.2025</i>

**ORDER ON IA No.I FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 R/w
SEC.151 OF CPC.**

This Application is filed at the time of filing the suit. The Plaintiff has filed this application under Order XXXIX, Rule 1 and 2 read with Sec.151 of CPC, seeking for the relief of temporary injunction by restraining the Defendants



from creating any third party encumbrances or documents in respect of suit schedule property.

2. The Plaintiff has filed the present suit as against the Defendants seeking for the relief of Permanent Injunction. At the time of filing the suit, this Application is filed, along with accompanying affidavit and sworn that, the land bearing Sy.No.12, totally measuring to an extent of 6 acres 28 guntas, including 36 guntas of kharab situated at Chikkakalya Village, Thippasandra village is an ancestral property of father of the Plaintiff by name Sri.Boregowda and his brother Sri.Shambegowda @ Nagaiah. The grandfather of the Plaintiff was in lawful possession of the aforesaid property and during his lifetime, he has not alienated any portion of the said property. The RTC extracts pertaining to the aforesaid property is standing in the name of ancestors of the Plaintiff. During the lifetime of father of the Plaintiff and his uncle, they have not alienated any land in Sy.No.12. During their lifetime, there was an oral partition and in the said partition, property bearing Sy.No.12, measuring to an extent of 4 acres 8 guntas was allotted to the share of uncle of the Plaintiff and 1 acre 20 guntas was allotted to the share of father of the Plaintiff, which is morefully described as the



suit schedule property. Based on the said partition, the father and uncle of the Plaintiff were in possession of their respective property.

3. The father of the Plaintiff had four sons namely Sri.Chikkagangaiyah, Sri.Puttaswamaiah, Sri.Ningegowda and Sri.Madaiah @ Gowdaiah. The Plaintiff and his brothers are in joint possession of the suit schedule property and till today, there is no partition in respect of the suit schedule property. The Defendants are having no manner of right, title or interest over the suit schedule property. The husband of the Defendant No.1 by name Sri.Ningaiyah got changed the khata pertaining to the suit schedule property in his name as per MR No.10/1995-96 by way of giving false genealogical tree. Since, the family of the Plaintiff have not alienated the suit schedule property in favour of husband of the Defendant No.1 or his family members, the Plaintiff have made an enquiry in Taluk Office and there was no clarification with regard to the alleged mutation.

4. On the basis of alleged mutation, the Defendant No.1 is trying to obtain the khata in her name on the basis of IHC. The Plaintiff and his brothers are in continued



possession of the suit schedule property. When such being the situation, on 02.12.2023, the Defendants are trying to interfere with the possession of the Plaintiff over the suit schedule property. The Plaintiff and his brothers have resisted the said act of the Defendants with great difficulty. With no other alternatives, the Plaintiff has filed this application seeking for the relief of temporary injunction by restraining the Defendants from creating any third party encumbrances or documents in respect of suit schedule property. If this application is not allowed, the Plaintiff will be put to great hardship and on the other hand, no hardship will be caused to the Defendants, as they can always contest the matter on merits. Hence, the Plaintiff has filed this Application.

5. The Defendants have filed objection and contended that, the Plaintiff is stranger to the suit schedule property. The name of the husband of the Defendant No.1 is Sri.Lingaiah, S/o Madaiah @ Yalavaiah and not Sri.Ningaiah. The Plaintiff is not in possession of the suit schedule property, therefore, without seeking the relief of possession and declaration, the suit for Permanent Injunction is not maintainable.



6. Originally, the property bearing Sy.No.12, measuring to an extent of 6 acres 23 guntas belonged to the father of the husband of the Defendant No.1 and during his life- time, he was in possession of the aforesaid property. On 10.10.1990, there was a partition effected between the father of the husband of Defendant No.1 and his children. In the said partition, the suit schedule property was fallen to the share of the husband of the Defendant No.1. Thus, the husband of the Defendant No.1, along with Defendants was in possession of the suit schedule property as an absolute owner. As per MR No.10/1995-96, the revenue records pertaining to the suit schedule property was mutated in the name of the Defendant No.1.

7. On 19.01.2016, the husband of the Defendant No.1 died leaving behind the Defendants as his legal heirs. The Defendants being an ignorant persons and having no legal knowledge have not made any attempt to change the revenue records pertaining to the suit schedule property in their names. Even today, the Defendants are in possession of the suit schedule property by way of planting coconut trees and growing avare, ragi and jola. The Plaintiff by taking undue advantage had filed this false suit. The



Plaintiff was never in possession of the suit schedule property. If this application is allowed, the Defendants will be put to hardship and the same cannot be compensated in terms of money. Hence, prayed to reject the application.

8. Heard both sides. Perused the material on record.

9. Ongoing through the averments stated in the Application accompanying the affidavit, this Court arises the following Points for consideration:

POINTS

1. Whether the Plaintiff has made out prima-facie case?
 2. Whether the balance convenience lies in favour of the Plaintiff?
 3. Whether irreparable loss and injury would be caused to the Plaintiff, if an order of temporary injunction is not granted?
 4. What order?
10. The 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 | : As per the final order,
for the following:- |



REASONS

11. **POINT No.1:** The Plaintiff has filed the present suit seeking for Permanent Injunction as against the Defendants along with an application under Order XXXIX, Rule 1 and 2 read with Sec.151 of CPC, seeking for the relief of temporary injunction by restraining the Defendants from creating any third party encumbrances or documents in respect of suit schedule property.

12. The case of the Plaintiff is that, during the life-time of father and uncle of the Plaintiff, there was an oral partition and in the said partition, property bearing Sy.No.12, measuring to an extent of 4 acres 8 guntas was allotted to the share of uncle of the Plaintiff and the suit schedule property was allotted to the share of father of the Plaintiff. Based on the said partition, the father and uncle of the Plaintiff were in possession of their respective property. The Plaintiff and his brothers are in joint possession of the suit schedule property and till today, there is no partition in respect of the suit schedule property. The Defendants are having no manner of right, title or interest over the suit schedule property. The



husband of the Defendant No.1 got changed the khata pertaining to the suit schedule property in his name as per MR No.10/1995-96 by way of giving false genealogical tree.

13. On the basis of alleged mutation, the Defendant No.1 is trying to obtain the khata in her name on the basis of IHC. The Plaintiff and his brothers are in continued possession of the suit schedule property. When such being the situation, on 02.12.2023, the Defendants are trying to interfere with the possession of the Plaintiff over the suit schedule property. The Plaintiff and his brothers have resisted the said act of the Defendants with great difficulty. In order to prove the case of the Plaintiff, he has produced the documents such as genealogical tree, RTC extracts, endorsement dated 04.08.2015 issued by the Tahsildar and order passed by the Tahsildar in Case No.RRT(D) 510/2018-9.

14. On the other hand, the Defendants have contended that, on 10.10.1990, there was a partition effected between the father of the husband of Defendant No.1 and his children. In the said partition, the suit schedule property was fallen to the share of the husband of the Defendant No.1. Thus, the husband of the Defendant



No.1, along with Defendants was in possession of the suit schedule property as an absolute owner. As per MR No.10/1995-96, the revenue records pertaining to the suit schedule property was mutated in the name of the Defendant No.1.

15. On 19.01.2016, the husband of the Defendant No.1 died leaving behind the Defendants as his legal heirs. The Defendants being an ignorant persons and having no legal knowledge have not made any attempt to change the revenue records pertaining to the suit schedule property in their names. Even today, the Defendants are in possession of the suit schedule property. The Plaintiff was never in possession of the suit schedule property. To prove the contentions of the Defendants, they have produced the documents such as mutation registers, genealogical tree, death certificate, RTC extracts and aadhar card.

16. As per genealogical tree, the Plaintiff is the son of Sri.Boregowda and Smt.Ningamma and Defendant No.1 is the wife of Sri.Lingaiah and Defendants No.2 and 3 are the children of Defendant No.1. The RTC extracts from the year 1981 to 1986 reflects that, the property bearing Sy.No.12, measuring to an extent of 6 acres 28 guntas is standing in the name of grandfather of the Plaintiff. The



learned Counsel for Defendants had argued that, the suit schedule property belongs to the husband of the Defendant No.1. On perusal of MR No.10/1995-96, it reveals that, the husband of the Defendant No.1 had acquired the suit schedule property through Partition Deed dated 10.10.1990. Accordingly, the RTC extracts from the year 1995 to 1997 reflects that, the suit schedule property is standing in the name of husband of the Defendant No.1.

17. Further, MR No.H60/2014-15 also demonstrates that, the suit schedule property is standing in the name of husband of the Defendant No.1. As per death certificate, the husband of the Defendant No.1 died on 19.01.2016. On perusal of order passed by the Tahsildar in Case No.RRT(D) 510/2018-19, it reveals that, the Defendant No.1 had filed an application seeking to transfer the suit schedule property in her name on the basis of pouthi khata. To the said application, the Plaintiff has filed objection, therefore, an order was passed directing to maintain status-quo in respect of the suit schedule property. Further, the RTC extracts from the year 2005 to 2007 and 2023-24 also demonstrates that, the suit schedule property is standing in the name of the husband of the Defendant No.1.



18. The learned Counsel for Defendants had argued that, the Plaintiff was never in possession of the suit schedule property. It is important to note that, without conducting the full-fledged trial, this Court cannot decide who is in actual possession of the suit schedule property. By considering the nature of suit and also the relief sought in the application, this Court is of the opinion that, the very purpose of granting temporary injunction is to preserve the property till the disposal of the suit intact. If this application is not allowed, then it will lead to multifarious suit. Hence, in the interest of justice and equity and by considering the above reasons, this Court proceeds to answer Point No.1 in the “**Affirmative**”.

19. **POINT No.2 & 3:** In respect of balance of convenience and irreparable loss is concerned, if the Defendants try to create any third party encumbrances of documents in respect of suit schedule property, it will cause hardship and injustice to the Plaintiff and the same cannot be compensated in terms of money. If the Defendants are not restrained from creating encumbrances in respect of suit schedule property, the right of the Plaintiff will be curtailed. By considering all these reasons, the balance of convenience is in favor of the Plaintiff and if



the Defendants create encumbrances in respect of suit schedule property, irreparable loss will be caused to the Plaintiff. Hence, this Court proceeds to answer Point No.2 and 3 in the “***Affirmative***”.

20. **POINT No.4:** In view of the aforesaid reasons, this Court proceeds to pass the following:

ORDER

IA No.I filed by the Plaintiff under Order XXXIX Rule 1 and 2 read with Sec.151 of CPC, restraining the Defendants, their agents, servants, henchmen or anybody acting acting on his behalf from creating any third party encumbrances or document in respect of the suit schedule property, is hereby allowed till the disposal of the suit.

No order as to cost.

(Dictated to the stenographer directly on computer, corrected, signed and then pronounced by me in Open Court on this 19th day of March, 2025)

(Smt.Ranjitha G.B)
II Addl.Civil Judge & JMFC,
Magadi