



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

Smt.Ranjitha G.B, B.B.A, LL.B. (Hons)

II Addl. Civil Judge & JMFC,
Magadi

Dated this 4th day of August, 2023

OS No.347/2022

PLAINTIFFS

- : 1. Smt.Shivamma
W/o Late.Gangaramaiah,
Aged about 61 years,
2. Sri.Sanjeevaiah
S/o Late.Gangaramaiah,
Aged about 44 years,
3. Sri.Ramanna
S/o Late.Gangaramaiah,
Aged about 42 years,

All are R/at
Huchahanumegowdanapalya,
Kalari Post,
Kasaba Hobli, Magadi Taluk,
Ramangara District.

-Vs-

DEFENDANTS

- : 1. Sri.Kariyanna



S/o Late Kempahanumaiah,
@ Motaiah,
Aged about 81 years,

2. Sri.Rangaswami
S/o Kariyanna,
Aged about 51 years,
Both are R/at
Huchahanumegowdanapalya,
Kalari Post,
Kasaba Hobli, Magadi Taluk,
Ramangara District.

IA No.I

APPLICANTS/

PLAINTIFFS : Smt.Shivamma & others

-V/s-

OPPONENTS /

DEFENDANTS : Sri.Kariyana & another

ORDER ON IA No.I FILED BY THE PLAINTIFFS
UNDER ORDER XXXIX RULE 1 AND 2 READ WITH
SEC.151 OF CPC

This Application filed at the time of filing the suit. The Plaintiffs have 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

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from interfering with the possession of the Plaintiffs over the suit schedule properties.

2. The Plaintiffs have filed the present suit as against the Defendants 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 suit schedule properties are the ancestral properties of the Plaintiffs. The Plaintiffs are the joint owners and in possession of the suit schedule properties. Originally, Sy.No.70/6, measuring to an extent of 28 guntas belonged to great grandfather of the Plaintiffs No.2 & 3 by name Sri.Kariyanna. Sri.Kariyanna and his wife Smt.Shenamma had five children namely Muddaiah, Kempahanumaiah @ Motaiah, Sanjeevaiah, Kalaiah and Kempaiah. After the death of the great grandfather of the Plaintiffs No.2 & 3, Sri.Muddaiah, who is the grandfather of the Plaintiffs No.2 & 3 was looking after the family affairs.

3. It is submitted that, 80 years ago, there was a oral partition between the grandfather of the Plaintiffs No.2 & 3 and his brothers. As per the said partition, the suit schedule properties were fallen to the share of the grand

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father of the Plaintiffs No.2 & 3. Accordingly, the remaining 14 guntas in Sy.No.70/6 were fallen to the share of the father of the Defendant No.1. As per the said partition, the grandfather of the Plaintiffs No.2 & 3 and the father of the Defendant No.1 were in possession. After the death of the father-in-law of the Plaintiff No.1 and the grandfather of the Plaintiff No.2 & 3, the suit schedule properties were obtained by the father of the Plaintiffs No.2 & 3 and he was in possession of the same and accordingly revenue documents were mutated in the name of the husband of the Plaintiff No.1 as per MR No.38/2018-19. After the death of the husband of the Plaintiff No.1, the suit schedule properties were acquired by the Plaintiffs. The Defendant No.1 had colluded with the revenue officials and filed a case before ADLR in respect of suit schedule properties in Case No.16/2022-23. On 20.09.2022, the Defendants who are strangers and having no manner of right, title or interest over the suit schedule properties, have interfered with the possession of the Plaintiffs over the suit schedule property. In this regard, the Plaintiffs have lodged a complaint before the jurisdictional police in order to resist the act of the Defendants. In turn, the jurisdictional police gave endorsement stating to seek remedy by way of filing the suit

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before the jurisdictional Civil Court. Hence, prayed to allow the application.

5. The Defendants filed objection and admits their relationship with the Plaintiffs. The Defendants contended that, along with the suit schedule properties, the great grandfather of the Plaintiff No.2 & 3 also had some other properties and the said properties were orally partition about 90 years ago. Out of 28 guntas in Sy.No.70/6, 14 guntas each was fallen to the share of grandfather of the Plaintiffs No.2 & 3 and the father of the Defendant No.1. On 15.09.1963, the father of the Defendant No.1 divided the property between their children and allotted them as 'A', 'B', 'C' & 'D' schedules. The schedule 'A' property was fallen to the share of Defendant No.1 and as per MR No.41/85-86, the revenue records were mutated in the name of the Defendant No.1 and he is in possession and enjoyment of the same.

6. According to the oral partition, the husband of the Plaintiff No.1 had not got two schedules, instead he got 14 guntas towards southern side of the Sy.No.70/6. Based on Partition Deed dated 15.09.1963, the survey officials

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came to conduct the survey and they noticed that, the Defendants are in possession of 15 guntas, therefore, they did not conduct the survey. The intention of the Plaintiffs is to knock of the valuable property of the Defendants. The Plaintiffs are having no manner of right or title over the suit schedule properties. Hence, prayed to dismiss the application.

7. Heard the arguments on both sides. Perused the material on record. In order to prove the contention of the Defendants, the Counsel for Defendants relied on following decisions:

- 1. Civil Appeal No.4702/2004, between Union of India and others V/s Vasavi Co-operative Housing Society**
- 2. Annamma V/s Pattamma, reported in ILR 1991 KAR 1696**
- 3. P.K.Vasudevan V/s The Deputy Commissioner of Kodagu District and Others, reported in ILR 2002 KAR 4637**
- 4. Annappa V/s Lakshmi Devi Devar Temple and Nulichandayya Devasthan Committee and others, reported in 2016 (5) KCCR 1233**
- 5. Mandali Ranganna & Ors V/s T.Ramachandra & Ors, reported in AIR 2006 SC 2291**



6. Dalpath Kumar and Another V/s Prahlad Singh and Others, reported in (1992) 1 SCC 719

8. This Court arises the following Points for consideration:

1. Whether the Plaintiffs have made out prima-facie case?
2. Whether the balance of convenience lies in favor of the Plaintiffs ?
3. Whether irreparable loss and injury would be caused to the Plaintiffs, if an order of temporary injunction is not granted?
4. What order?

9. 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

10. **POINT NO.1**: The Plaintiffs have filed the present suit seeking for the relief of Permanent Injunction as against the Defendants, along with an application under

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Order XXXIX Rule 1 & 2 read with Section 151 of CPC, to restrain the Defendants from interfering with the possession of the Plaintiffs over the suit schedule properties.

11. The case of the Plaintiff is that, they are the joint owners and in possession of the suit schedule properties. Originally, Sy.No.70/6, measuring to an extent of 28 guntas belonged to great grandfather of the Plaintiffs No.2 & 3 by name Sri.Kariyanna. After the death of the great grandfather of the Plaintiffs No.2 & 3, the grandfather of the Plaintiffs No.2 & 3 was looking after the family affairs. There was a oral partition between the grandfather of the Plaintiffs No.2 & 3 and his brothers and as per the said partition, the suit schedule properties were fallen to the share of the grand father of the Plaintiffs No.2 & 3. Accordingly, the remaining 14 guntas in Sy.No.70/6 were fallen to the share of the father of the Defendant No.1. After the death of the grandfather of the Plaintiff No.2 & 3, the suit schedule properties were obtained by the father of the Plaintiffs No.2 & 3 and he was in possession of the same and accordingly revenue documents were mutated in the name of the husband of the Plaintiff No.1 as per MR No.38/2018-19. After the death of the husband of the Plaintiff No.1, the suit

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schedule properties were acquired by the Plaintiffs. The Defendants who are strangers and having no manner of right, title or interest over the suit schedule properties, have interfered with the possession of the Plaintiffs over the suit schedule property. In order to prove the same, the Plaintiffs have produced the documents such as genealogical tree, RTC extracts, mutation register, tax paid receipts, survey sketch, survey report, notice, mahazar, photographs & CD.

12. On the other hand, the Defendants contended that, along with the suit schedule properties, the great grandfather of the Plaintiff No.2 & 3 also had some other properties and the said properties were orally partitioned about 90 years ago. Out of 28 guntas in Sy.No.70/6, 14 guntas each were fallen to the share of grandfather of the Plaintiffs No.2 & 3 and the father of the Defendant No.1. On 15.09.1963, the father of the Defendant No.1 divided the property between their children and allotted them as 'A', 'B', 'C' & 'D' schedules. The schedule 'A' property was fallen to the share of Defendant No.1 and as per MR No.41/85-86, the revenue records were mutated in the name of the Defendant No.1 and he is in possession and enjoyment of the same. The intention of the Plaintiffs is to knock of the

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valuable property of the Defendants. The Plaintiffs are having no manner of right or title over the suit schedule properties. In order to prove the same, the Defendants have produced documents such as Partition Deed dated 15.09.1963, RTC extracts, mutation register, Hiduvali certificate, photographs & CD.

13. On perusal of the material on record, the genealogical tree demonstrates that the Plaintiffs and Defendants are the joint family members. The RTC extract for the year 1975 to 2002, stands in the name of the Plaintiff No.2 & 3 in respect of suit schedule properties. On perusal of Partition Deed dated 15.09.1963, it shows that there was a partition between the father of the Defendant No.1 and his brothers. In the said partition, schedule 'A' property was fallen to the share of the father of the Defendant No.1. The Defendants in their pleadings have specifically given the boundaries and extent of the property which was fallen to the share of the father of Defendant No.1. As per the said pleadings, it is important to note that, the boundaries of the said property and the boundaries of the suit schedule properties are different. As per MR No.H38/2018-2019, the RTC extract for the year 2021-22

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and the tax paid receipts stands in the name of the Plaintiff No.1. Further, both the Plaintiffs and Defendants have produced the RTC extract bearing Sy No.70/6 for the year 2022-23, wherein it is noticed that, 14 guntas each stands in the name of the Defendant No.1 & Plaintiff No.1.

14. It is pertinent to note that, total extent of Sy.No.70/2 is 28 guntas and both Plaintiffs and Defendants are in possession of 14 guntas and the same is reflected in the notice dated 27.10.2021, 20.09.2022 and the sketch. Therefore, the aforesaid documents and the boundaries pleaded by the Defendants in respect of Sy.No.70/2 itself demonstrates that the schedule 'A' property as per Partition Deed dated 15.09.1963 is not the suit schedule properties. With due respect, the decisions relied by the Defendants are not applicable to the present case on hand as the facts and circumstances are different. Further, the documents produced by the Defendants does not disclose that, they are in the possession of the suit schedule properties. This being the case, the Defendants are nowhere connected to the suit schedule properties. This Court cannot rely on the pleadings of the Defendants without any proof of documents. By considering all the above reasons, this Court

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is of the opinion that, the Plaintiffs have prima-facie established their case that, they are in possession of the suit schedule properties. Hence, this Court proceeds to answer Point No.1 in the **“Affirmative”**.

15. **Point No.2 & 3:** In respect of balance of convenience and irreparable loss is concerned, if the Defendants try to interfere with the suit schedule properties, it will cause hardship and injustice to the Plaintiffs and same cannot be compensated in terms of money. If the Defendants continued to interfere with the peaceful possession of the Plaintiffs in respect of suit schedule properties, the right of the Plaintiffs to enjoy the suit schedule property will be curtailed. By considering all these circumstances, the balance of convenience is in favor of the Plaintiffs and if this act of the Defendants is continued, then it will cause irreparable loss to the Plaintiffs. Hence, this Court proceeds to answer Point No.2 and 3 in the **“Affirmative”**.

16. **Point No.4:** In view of the aforesaid reasons, this Court proceeds to pass the following :-



ORDER

IA No.I filed by the Plaintiffs under Order XXXIX Rule 1 and 2 read with Section 151 of CPC, restraining the Defendants, their agents, servants henchmen or anybody acting on their behalf from interfering with the suit schedule properties, 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 4th day of August, 2023.)

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

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