



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,
GUBBI.**

Dated on this the 12th day of October, 2023

PRESENT: SMT. POORNIMA .K. YADAV,

B.A.LL.B., LL.M.,

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

ORIGINAL SUIT NO. 08/2021

Plaintiff/s : Doddaiah and others

(By Sri. T.R.M., Adv.)

Vs.

Defendant/s: Mr. Raju and others

(D5 to 7 by Sri P.H.R. Adv.)

(D1 to 3, 8 & 9 Exparte)

PARTIES TO I.A.NO.I

Applicants/ Plaintiff : Doddaiah and others

Vs.

Opponents/Defendants : Mr. Raju and others



Provision under the Application	Under Order 39 Rule 1 and 2 of CPC
Application Relief sought for	Temporary injunction restraining defendants from alienating the suit schedule property.
The date of the application is filed	18.11.2022
Interlocutory Application Number	I
Date of objection filed by the Respondent	14.07.2023
Date of order passed	12.10.2023

Sd/-
(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.

ORDERS ON IA NO.I

The Plaintiffs through his counsel filed this application U/O 39 Rule 1 and 2 of CPC against the defendants restraining them from creating 3rd party right, pending disposal of the suit in respect of the suit schedule property i.e., All the piece and parcel of the agricultural land measuring to an extent of 30 guntas carved out of Sy.No. 24/2, situate at Uddehosakerehalli Village, Nittur Hobli, Gubbi Taluk, Tumkur District.

2. The application is accompanied with the affidavit of the of the



Plaintiff, wherein it is stated that the plaintiff filed the present suit seeking relief of partition and separate possession of the plaintiffs $1/3^{\text{rd}}$ share in the suit schedule property. It is stated that during the lifetime of Eranarasaiah, he acquired land bearing Sy.No. 24 totally measuring 8 acre 8 guntas situated at Huddehosakerehalli, Nittur Hobli, Gubbi Taluk. The said Eranarasaiah had 4 children by name Narasimhanaik, Doddaiah, Chikkanarasaiah, Pathaiah. After the death of the said Eranarasaiah, his children by way of oral partition divided the properties and in the said oral partition, Doddaiah and Chikkanarasaiah jointly inherited 3 acre 10 guntas of land to their share. Revenue entries were changed. One Narasayappa S/o Chikkanarasaiah sold 1 acre of land in favour of one Sadhasivaiah, thereafter remaining extent of 2 acre 10 guntas were jointly enjoyed by Doddanarasaiah and Narasayappa. After Podi land bearing Sy.No. 24/2 to an extent of 30 guntas i.e. suit schedule property came to Doddanarasaiah S/o Doddaiah. The suit schedule property is the ancestral property as such, the plaintiffs are entitled for $1/3^{\text{rd}}$ share in the suit



schedule property. The defendants by taking undue advantage, the defendant No.7 filed suit against the plaintiff in OS No. 94/2020 and by threatening the plaintiffs he obtained signatures to the compromise petition and got changed the revenue entries. It is further stated that the defendants are trying to alienate the suit schedule property. Hence, they sought to allow the application.

- 3.** On the other hand, the counsel for the defendant No.7 filed Objection and contended that the application is not maintainable and it is liable to be rejected. The defendant No.7 admitted the relationship between the parties and contended that land bearing Sy.No. 24/2 measuring 3 acre 10 guntas belonged to Doddanarasaiah S/o Dodda, out of which 1 acre sale made by Eranna S/o Doddaiiah is illegal and revenue entries continued in the name of Doddanarasaiah S/o Dodda to an extent of 2 acre 10 guntas. The defendant No.5 filed Civil Suit in OS No. 94/2020 against the plaintiff, defendant No. 1 to 4, 6 to 8 before the IIIrd Addl. Senior Civil Judge, Tumkur, which came to be compromised and the revenue entries are



effected on the basis of compromise petition. It is further contended that the plaintiffs and the defendant No.9 are strangers to the suit schedule property. It is further contended that the children of Doddaiiah orally partitioned 1 acre 20 guntas of land and remaining extent of 30 guntas of land in Sy.No. 24/2 came to be mutated in the name of Doddanarasaiah S/o Dodda. The said Doddanarasaiah died on 15.10.1973 and his wife Chikkamma died on 10.06.1996, thereafter the said extent of 30 guntas of land is succeeded by the defendant No. 1 to 8. After the death of Doddanarasaiah the defendant No.5 filed suit in OS No. 152/2022 against the defendant No.1 to 4 before the Addl. Senior Civil Judge, Gubbi which came to be compromised. Hence, sought to reject the application.

4. Heard the counsel for the plaintiffs and defendants.
5. Upon hearing both the counsel and on perusal of the materials available on record, the points that arise for my consideration are;

1. ***Whether the plaintiffs have made out a prima facie case in their favour ?***



2. *Whether the plaintiffs will be put to irreparable loss ?*
3. *Whether the balance of convenience lies in favour of the plaintiffs?*
4. *What order?*

6. My findings to the above points are as under:

Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.3: In the Negative

*Point No.4: As per the final order,
for the following:*

REASONS

7. **POINT NO.1 :** The materials on record discloses that the plaintiffs are claiming their 1/3rd share in the suit schedule property on the ground that it is their ancestral and joint family property which is denied by the defendants on the ground that there is already partition by way of compromise decree between the plaintiff and the defendant No. 1 to 8 in OS No. 94/2020 and 156/2022.

8. At this juncture, I would like to place reliance on the ratio of



the Hon'ble High Court of Rajasthan in **AIR 2003 RAJ 21** between **Sukka Singh Vs. Mahal Singh**, wherein it is held that,

“ While considering the question of prima facie case, it is not to be confused with prima facie title. What is required is that the plaintiff has to show that he has bonafide raised a substantial question, which needs to be adjudicated at the trial of the suit.”

9. Hence, it is clear that prima facie case means showing that there is dispute between the parties which has to be decided in a full fledged trial. The pleadings on record shows that the right asserted by the plaintiffs is denied in toto by the defendants which shows existence of a dispute between the parties that requires adjudication by trial. This shows existence of a prima facia case for trial. Accordingly, Point No.1 is answered in the **Affirmative.**

10. **POINT NO.2 & 3:** These points are taken up for discussion together as they are inter related to each other.



- 11.** Mere existence of prima facie case is not the ground for grant of temporary injunction and existence of balance of convenience as well as irreparable injury in favour of the plaintiff is mandatory to grant such an order. Hence, it is necessary to examine if in this case there is balance convenience and irreparable injury in favour of the plaintiffs.
- 12.** The plaintiffs through this application sought for an order of Temporary injunction restraining the defendants or anybody claiming through them from creating 3rd party right over the suit schedule property.
- 13.** Order 39 Rule 1 of CPC, provides for grant of Temporary Injunction when the subject matter of the suit is in the danger of being alienated, damaged or wasted by the defendant for the purpose of staying and preventing such alienation, damage or wastage, until the disposal of the suit. Order 39 Rule 2 of CPC provides for grant of injunction in respect of breach of contract.
- 14.** The application of the plaintiffs states that the defendants are making attempts to create 3rd party rights in the suit schedule



property. On perusal of the materials on record, it is seen that there is no dispute between the parties about the proceedings in OS No. 94/2020. The defendants claim that the said suit came to be compromised whereas the plaintiff allege that the said compromise was under threat by the defendants wherein they forced the plaintiffs to put their signatures to the compromise petition in the said suit. When the plaint averments are read, the plaintiffs are not sought for any relief in respect of the decree either in OS No. 94/2020 or OS No. 156/2022. This shows that the compromise decree of both the suits are still in force.

- 15.** That apart when the revenue documents of the suit schedule property which is on record are considered, it shows that the said property is standing in the name of Doddanarasaiah S/o Daddaiah.
- 16.** The present suit came to be registered on 19.11.2022 and IA No. 1 which was filed along with suit is taken up for disposal in the year 2023 and between the said period, there is no material on record by the plaintiffs to show that the defendants are



trying to create 3rd party rights in respect of the suit schedule property. Further, as per Section 52 of the Transfer of Property Act , 1882 there is bar for transfer of property during pendency of the suit which is subject matter of such suit and such transfer does not affect the rights of the party under any decree or order.

17. In the circumstances of the present suit when the compromise decree of OS No. 94/2020 and 156/2022 are still in force and by considering the principles of Section 52 of the Transfer of Property Act, this Court is of the opinion that the plaintiffs neither showed balance of convenience nor irreparable injury in their favour. Accordingly, Point No. 2 and 3 are answered in the **Negative**.

18. POINT NO.4: In view of the reasons assigned above, I proceed to pass the following;

ORDER

***The IA No.I filed by the plaintiffs
under Order 39 Rule 1 and 2 of CPC
are hereby rejected.***



Parties to bear their own Costs.

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the **12th day of October, 2023**)

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi.