

**IN THE COURT OF THE CIVIL JUDGE AND JMFC AT
KORATAGERE**

Dated this the **19th** day of **June 2017**

P R E S E N T

SRI. PRAKASH V, *BA.L., LL.B.*,
Civil Judge and JMFC,

O.S.No.220/2016

Plaintiff : Hanumanthaiah @ Hanumantha
S/o Hanumanthaiah,
aged about 85 years,
R/o Borappanahalli, Channarayanadurga
Hobli, Koratagere Taluk.

Versus

Defendants : 1. B.H. Shivakumar
S/o Late Hanumantharayappa @ Badagi
Hanumantharayappa,
aged about 39 years,
2. Peddaraju S/o Siddappa,
aged about 45 years,
Both are R/o Borappanahalli,
Channarayanadurga Hobli,
Koratagere Taluk.

PARTIES TO IA. No.I

Applicant : Hanumanthaiah Plaintiff

Versus

Opponents: B.H. Shivakumar & Ors. ... Defendants

ORDERS ON I.A. NO.I

The plaintiff has filed I.A.No. I, under Order 39 Rule 1 and 2 of CPC with a prayer to pass an order of temporary Injunction restraining the 1st defendant, his agents or servants or anybody claiming under him from alienating the suit schedule property to anybody in any manner, pending disposal of the suit for the reasons sworn in the annexed affidavit.

2. The plaintiff has sworn affidavit annexed to the application and contended that, the averments of the plaint may be read as part and parcel of this affidavit. The documents produced by the plaintiff prima facie shows right, title and possession over the suit schedule property. The 1st defendant taking advantage the khatha of suit property stands in his name, trying to alienate the suit schedule property to defeat and defraud the right of the plaintiff. If the 1st defendant is succeeded in his act, the plaintiff will be put to irreparable loss and injury, which cannot be compensated by any means, and prays to allow the application.

3. In pursuance of the suit summons, the defendant No.2 placed Exparte. The defendant No.1 appeared through his counsel, but not filed any objections and written statement.

4. Heard arguments.

5. The following points that arise for my consideration ;

P O I N T S

1. Whether plaintiff made-out prima facie case ?
 2. Whether balance of convenience lies in favour of plaintiff ?
 3. If an order is not granted whether plaintiff will be put to irreparable loss and injury which cannot be compensated by any means?
 4. What order ?
6. The findings of the above points are

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 :

R E A S O N S

7. **Points No.1 to 3** : These three points are connected with each, hence they are taken-up together for common discussion in order to avoid repetition of facts.

The plaintiff has filed this suit against the defendants for the relief of declaration declaring that the plaintiff is the absolute owner and for permanent injunction restraining the defendants, their agents, servants or anybody claiming under

them, from interfering with the peaceful possession and enjoyment of the suit schedule property and for costs and such other reliefs in respect of suit schedule property Sy.No.112/1 to an extent of 1 acre 39 gunta of Kurihalli village, Channarayanadurga Hobli, Koratagere Taluk.

8. The plaintiff averred in the plaint that the suit schedule property was ancestral property of his father Hanumanthaiah. About 55 years back his father was died. Thereafter, the schedule property acquired by the plaintiff through ancestors, since then the plaintiff is the absolute owner and in possession and enjoyment of the same. The plaintiff is an illiterate person. The defendants have no manner of right, title, interest or possession over the suit schedule property. Inspite of that the 1st defendant in collusion with the revenue officials got mutated the property to an extent of 0-26gunta in his name vide M.R.No.8/05-06. Now, on the basis of revenue documents, the 1st defendant is trying to alienate the suit schedule property in favour of 2nd defendant and they are powerful person in the locality. They are proclaiming in the village and that they have sell the suit schedule property and after verification of the document it is learnt the same and the defendants denying the title of the plaintiff over the suit schedule property and threatening the plaintiff. Hence, the suit is filed for the relief of declaration and permanent injunction.

9. On perusal of revenue documents 1 acre 12 gunta is stands in the name of plaintiff, 0-26 gunta stands in the name of 1st defendant vide M.R.No.8/05-06. Record of rights and Index of land in respect of suit schedule property was stands in the name of Hanumanthaiah S/o Chikkahanumantha through inheritance. Earlier record of rights in respect of suit schedule property was stands in the name of plaintiff. As per M.R.No.8/05-06 to an extent of 0-26 gunta transferred in the name of 1st defendant through inheritance. The plaintiff questioning the rights of defendants over the suit schedule property. In order to resolve the dispute between the parties, a complete adjudication is required.

10. Now the suit schedule property to an extent of 0-26 gunta is stands in the name of 1st defendant. Taking that advantage, if first defendant alienates the suit schedule property, it will lead multiplicity of proceedings and great harm to the plaintiff. The defendants not filed any written statement and objections to the application. The relief claimed by the plaintiff in the application is an equitable relief. If an order is granted, no harm or injury will be caused to the defendants. If an order is not granted, taking that advantage if the 1st defendant alienates the suit property, it will lead multiplicity of proceedings and great harm to the plaintiff, which cannot be compensated by any means. The plaintiff made out prima facie case and balance of convenience lies in favour of the plaintiff. If

these two points are in favour of plaintiff, it can be considered that the 3rd point is also in favour of plaintiff. The plaintiff made out sufficient grounds to allow the application. Hence, I answer this points No.1 to 3 in the affirmative.

11. **Point No.4** : In view of discussion made above and under the facts and circumstances of the case, I proceed to pass the following :

ORDER

I.A.No.I, under Order 39 Rule 1 and 2 of CPC filed by the plaintiff is hereby allowed.

It is further ordered that the defendant No.1 or his agents, servants or anybody claiming under him, are hereby temporarily restrained from alienating the suit schedule property to anybody in any manner, pending disposal of the suit by granting Temporary injunction.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by him, printout taken, corrected, signed and then pronounced by me in the open court on the **19th day of June 2017**)

(Prakash V)
Civil Judge & JMFC,
Koratagere

19.06.2017

Plaintiff : HHM,

D-1 : KNP,

D-2 : Exparte,

For Orders on I.A.No.I,

(Vide separate order is passed and pronounced in the open court)

ORDER

I.A.No.I, under Order 39 Rule 1 and 2 of CPC filed by the plaintiff is hereby allowed.

It is further ordered that the defendant No.1 or his agents, servants or anybody claiming under him, are hereby temporarily restrained from alienating the suit schedule property to anybody in any manner, pending disposal of the suit by granting Temporary injunction.

No order as to costs.

(PRAKASH V)
Civil Judge & JMFC,
Koratagere.