

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

Dated this the **3rd** 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. 231/2014

Plaintiff : R. Ganganna S/o Late. Rangadasappa,
aged about 56 years,
R/at T. Venkatapura Village,
Holavanahalli Hobli,
Koratagere Taluk and Tumakuru District.

Versus

Defendants : 1. Thimmakka W/o Late Rangadasappa,
aged about 80 years,
R/at T. Venkatapura Village,
Holavanahalli Hobli,
Koratagere Taluk and Tumakuru District.

2. Krishnamma D/o Late Rangegowda,
aged about 80 years,
Madhuvara Village,
Kasaba Hobli, Koratagere Taluk.

3. R.Gangappa S/o Rangegowda,
aged about 70 years,

4. R. Giriyappa S/o Late Rangegowda,
aged about 68 years,

5. V.R. Marirangegowda S/o Rangegowda,
aged about 55 years,
Defendants No.2 to 4 are residing
At T. Venkatapura Village,
Holavanahalli Hobli,
Koratagere Taluk and Tumakuru District.

6. Sree Rangamma D/o Rangegowda
w/o Shivalingaiah,
aged about 60 years,
R/at Thanganahalli Village,
Kolala Hobli, Koratagere Taluk.
7. Gangamma D/o Late Rangegowda
W/o Ranganathapapa,
aged about 40 years,
R/at Kotta Village,
Bhukapatna Hobli,
Sira Taluk and Tumakuru District.
8. Siddagangamma W/o Late Srirangaiah,
aged about 60 years,
9. Aravinda S/o Late Srirangaiah,
aged about 38 years,
10. Manohar S/o Late Srirangiaah,
aged about 32 years,
Defendants No.8 to 10 are
Residing at T. Venkatapura Village,
Holavanahalli Hobli,
Koratagere Taluk and Tumakuru District.
11. Lakshamma W/o Late Thimmegowda,
aged about 62 years,
12. U.P. Gangamma W/o Late Krishnamurthy,
aged about 60 years,
13. Anupama D/o Late. Krishnamurthy,
aged about 40 years,
14. Dr.Santhosh S/o Late Krishnamurthy,
aged about 35 years,
15. Venkatachalaiah S/o Late Govindappa,
aged about 50 years,
16. V.N.Narasimhamurthy
S/o Narasimhaiah,

aged about 60 years,
defendants No.10 to 16 are
residing at T. Venkatapura Village,
Holavanahalli Hobli,
Koratagere Taluk and Tumakuru District.

PARTIES TO IA. No.I

Applicant : R. Ganganna Plaintiff

Versus

Opponent : Thimmakka & Ors. ... Defendants

ORDERS ON I.A. NO.III

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 defendants 1 to 14 from alienating the suit schedule properties, 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, this suit is filed for partition and separate possession in respect of suit schedule properties. The averments of the plaint may be read as part and parcel of this affidavit. The plaintiff and defendants No.1 to 14 are Class-1 heirs of the deceased Marirangegowda. During the life time of the said Propositor Marirangegowda was in possession and enjoyment of the suit schedule properties. He was died leaving behind the plaintiff and

defendants No.1 to 14, and they are constitute Hindu undivided joint family member governed by Mitakshara School of Law. The suit schedule properties are in joint possession and enjoyment of the co-parceners having right, title.

3. It is further contended that the defendants No.1 to 14 have joined with hands of defendant No.15 got created some documents with collusion for the purpose of dispose the suit schedule properties to defeat and defraud the legitimate share of the plaintiff. If any alleged documents stands in the name of defendant No.15 is not binds on the plaintiff's share. The defendants No.1 to 14 taking undue advantage of the revenue documents stands in their names, mismanaged the affairs of the joint family properties and trying to alienate the same for their illegal gains to defraud the share of the plaintiff over the suit schedule properties. The plaintiff requested the defendants to allot his legitimate share, but the defendants No.1 to 14 refused to allot his share. If the application is allowed, no prejudice or hardship will be caused to the defendants. The plaintiff has prima facie case and balance of convenience in his favour. Hence, prays to allow the application.

4. In pursuance of suit summons, the defendants No.1 to 5, 8, 9, 11, 15, 16 appeared through their counsel. The defendants No.6, 7, 10, 12, 13 and 14 are placed Exparte. The defendants No.11, 15, 16 are filed their written statement and adopted as objections to I.A.No.I. Remaining defendants are not filed their objections or written statement.

5. The defendants No.11, 15, 16 contended in their written statement that the suit schedule properties originally belongs to Marirangegowda. He had not only the suit schedule properties, but he had many other landed properties and house properties in Kambadahalli bearing Sy.No.55/7, 7/4, 4/1 etc., and in Malenahally bearing Sy.No.16, 17, 26 etc., and house and site property in T.Venkatapura village. Out of Marirangegowda's sons, 1st son Rangegowda got separated from the joint family in the year 1964 itself by taking more than 10 and odd acres of land in Sy.No.No.27 and 29 of Malenahally village, some portion in Sy.No.7/4, 4/1 of Kambadahally and some portion in Sy.No.31, 22 and 2/2 of T.Venkatapura villages and some portion in house at T.Venkatapura. The remaining sons continued in joint family till 1981. In 1981 the plaintiff and his uncles, i.e., Sreerangaiah, Thimmegowda and Krishnamurthy got partitioned their ancestral and joint family properties orally and subsequently, within about a month, they got written a Palupatti to that effect. Since then they are in possession and

enjoyment of their respective shares, not only in the suit schedule properties, but also in other properties.

6. It is further contended that the plaintiff and his uncles have sold their shares of lands in some of the properties and other properties. The revenue entries are made out in the names of plaintiff and defendants jointly as they are not got separately phoded their respective shares as per partition. The plaintiff colluding with other defendants has filed this suit with ulterior motive to harass these defendants.

7. It is further contended that the suit item No.3 is the separate property of Late Thimmegowda, i.e., husband of 11th defendant purchased from Puttaranganna and it is exclusively in the name of 11th defendant. Item No.8 was exclusively given to the share of Krishnamurthy in a partition. He was in exclusive possession and enjoyment. Thereafter he was sold to the 16th defendant under registered sale deed dated 09.01.1995. The plaintiff himself has sold his share to an extent of 25½ guntas in Sy.No.55/7 in favour of one Narasimahaiah S/o Narasappa under registered sale deed dated 07.11.1994. Further he has also sold his share of 18¼ guntas land in Sy.No.7/4 of Kambadahalli village in favour of one Rangappa S/o Venkatappa under a registered sale deed dated 10.10.1996.

8. It is further contended that the plaintiff, Thimmegowda, Sreerangaiah and Krishnamurthy have sold their respective shares of lands in Sy.No.16 and 26 of Malenahally village in favour of Sreenivasarao K.V. S/o Krishnarao. Thimmegowda has also sold his share of 0-19 guntas in Sy.No.4/1 of Kambadahally in favour of 5th defendant. The defendants No.3 to 5 have also sold lands in Sy.No.27 and 29 of Malenahally village to one Narasaraju in 2005 and their share in Sy.No.7/4 of Kambadahally village. After the death of Thimmegowda, his wife 11th defendant succeeded to his share of properties in suit schedule properties and other properties. The 11th defendant has executed a registered Will dated 17.12.2009 in favour of her foster daughter in respect of suit item No.3 in respect of her share in suit items No.1, 5 to 7 and Sy.No.4/1, 7/4 of Kambadahalli village and further 11th defendant has agreed to sell her share in suit item No.2 in Sy.No.2/2 of Venkatapura and also executed sale agreement on 29.05.2013 in favour of 16th defendant. Due to this acts, 11th defendant, the plaintiff and other defendants are deprived of probability of succeeding to properties of 11th defendant. Hence, they have colluded together filed this false and malicious suit with ulterior motive to harass 11th, 15th and 16th defendants, and there is no cause of action for the suit. The plaintiff has no right to seek partition in the suit properties and it is not

maintainable under law, and the suit is also barred by limitation and also the suit is bad for non-joinder of necessary parties and prays to dismiss the suit with costs.

9. Heard arguments.

10. 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 ?
11. 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 :

REASONS

12. **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 relationship between the plaintiff and defendants No.1 to 14 is an admitted fact and also it is an admitted fact that the suit schedule properties are belongs to Marirangegowda, who is the propositior of plaintiff and defendants No.1 to 14. The contents of the plaintiff is that there was no partition between the plaintiff and defendants. They are in joint possession and enjoyment of the suit schedule properties. The defendants No.1 to 14 colluding with each other creating some documents, just to defraud the right of the plaintiff and mismanaging the joint family properties.

13. The defendants No.1 to 10, 12, 13, 14 have not filed their written statement and objections to the applications. The defendants No.11, 15 and 16 are alone filed their written statement. In the written statement, they contended that they setup prior partition in the year 1981 and also contended that the first son Rangegowda separated from the joint family in the year 1964 by taking more than his share in Sy.No.27, 29, 7/4, 4/1, 31, 32 and 2/2 as contended in the written statement para No.4. The RTC extracts in respect of suit schedule properties are shows all the RTC

extracts in respect of suit schedule properties are stands jointly in the name of defendants except Sy.No.43/13 and ½ of Venkatapura village. The defendants produced Xerox copy of Palupatti dated 18.04.1981. It is unregistered one. But, on the basis of Palupatti, the said properties are not transferred in their names. It prima facie shows the Palupatti is not acted upon. At present, the suit schedule properties are stands in the name of plaintiff and defendants jointly. The 11th defendant contended at para 10 that she executed a registered Will in favour of her foster daughter and also agreed to sell suit item No.2 in favour of defendant No.16. Item No.2, Sy.No.2/2 consists of 2 acres 32 gunta. Admittedly, this property is also ancestral and property of plaintiff and defendants No.1 to 14. The said property is jointly in the name of 1st defendant and other defendants. It was transferred in their names through inheritance. Under the law unless and until, the properties are divided by metes and bounds it is deemed to be joint family property and it is joint possession. If taking advantage the revenue documents are stands in their names, if alienates it will lead multiplicity of proceedings and great harm to the plaintiff and also other defendants.

14. The 11th defendant contended in their written statement that the plaintiff and other defendants have sold their shares. This fact is to be considered during the trial

under what circumstances, the properties were sold. Whether those properties are necessary to the suit or not is to be decided during the course of trial. The defendants produced original registered sale deed dated 09.01.1995 executed by Krishnamurthy S/o Late Marirangegowda in favour of V.N.Narsimhamurthy S/o Late Narasimhaiah in respect of Sy.No.1/2 of Venkatapura village to an extent of 0-24 gunta and also copy of registered sale deed dated 23.05.2005 executed by Rangappa, Giryappa, Marirangegowda, sons of Range gowda in favour of K.L. Nagaraj S/o Lakshminarasappa in respect of Sy.No.27 to an extent of 6 acres 11 gunta and Sy.No.29 to an extent of 4 acres 14 guntas, and sale deed dated 21.12. 2005 executed by Thimmegowda S/o Late Marigowda in favour of K.Ramanujam in respect of Sy.No.16 to an extent of 1 acre 34 gunta and Sy.No.17 to an extent of 22 gunta and Sy.No.26 to an extent of 7 acres 23 gunta, and also General Power of Attorney dated 21.08.2014 executed by Lakshamma W/o Thimmegowda and Sowbhagya W/o Devraj in favour of Venkatachalaiah S/o Govindappa and also sale deed date 07.11.1994 in respect of Sy.No.55/7 and sale deed dated 10.10.1996 in respect of Sy.No.7/4.

15. The 11th defendant further contended that the suit is bad for non-joinder of necessary parties. This fact is to be decided during the course of trial. In order to decide these

facts the trial is required. The plaintiff claiming equitable relief of Temporary injunction restraining the defendants from alienating the suit schedule properties. Undisputedly, the suit schedule properties are jointly in the names of defendants and plaintiff. Under these circumstances if the defendants No.1 to 14 alienates the suit schedule properties, it will lead multiplicity of proceedings. If an order is granted, no harm or injustice will be caused to the defendants. Under these circumstances, the plaintiff made out prima facie case and balance of convenience lies in favour of the plaintiff. When these two points are in favour of the plaintiff, the 3rd point, i.e., irreparable loss and injury is also in favour of the plaintiff and he is entitled for the relief claimed in the application. Hence, I answer this points No.1 to 3 in the affirmative.

16. **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 defendants No.1 to 14 or their agents,

servants or anybody claiming under them, hereby temporarily restrained from alienating the suit schedule properties 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 **3rd day of June 2017**)

(Prakash V)
Civil Judge & JMFC,
Koratagere

03.06.2017

Plaintiff : GBR,
D-1,3,8,9 : SNM,
D-2,4,5 : NSH,
D-11 & 15 : HKM,
D-10,12,13,14,16 : 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 defendants No.1 to 14 or their agents, servants or anybody claiming under them, hereby temporarily restrained from alienating the suit schedule properties 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.