

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

Dated this the **12th** 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.278/2016

Plaintiff : Smt. Hanumakka W/o Nagappa,
aged about 50 years,
R/o Hulavangala, Koratagere Taluk,
At present R/o No.1023, 9th Cross,
Shanthinagar, Doddaballapur.

Versus

Defendants : 1. Nagahanumaiah S/o Late Nagappa,
aged about 42 years,
2. Hanumantarayappa S/o Late Nagappa,
aged about 39 years,
3. Krishnappa S/o Late Nagappa,
aged about 36 years,
4. Rangaraju S/o Nagappa,
aged about 30 years,
defendants No.1 to 4 are
R/o Hulavangala, Kolala Hobli,
Koratagere Taluk.
5. H.N. Nagaraju S/o Nagappa,
aged about 62 years,
R/o Nagashri Nilaya, 3rd Cross,
B.A. Gudipalya,
Near Raghavendraswami Mutt,
Hanumanthapura, Tumakuru Town.

PARTIES TO IA. No.I

Applicant : Smt. Hanumakka Plaintiff

Versus

Opponents: Nagahanumaiah & 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 grant an ad-interim order of temporary Injunction restraining the defendant No.5 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 the affidavit annexed to the application and contended that, the suit is filed for the relief of declaration and recovery of possession and plaint averments of the plaint may be read as part and parcel of this affidavit. The sale deed in respect of suit schedule property is in the name of Marakka, who is none other than the mother of the plaintiff. She is only legal representative as her daughter. The said Marakka was an illiterate. Taking that advantage Nagappa and his sons defendants No.1 to 4 playing fraud on her with active collusion of the revenue authorities, got changed the revenue entries in his name. But, the possession of the said land was in

her under. The said Nagappa along with defendants No.1 to 4, illegally sold to an extent of 2 acres 20 gunta in favour of 5th defendant under a registered sale deed dated 07.05.1993. But, the said Nagappa and his sons have no right, title to sell the schedule property in favour of defendant No.5. Now khatha and pahani to an extent of 2 acres 20 gunta is stands in the name of defendant No.5. Taking that advantage, he is trying to alienate the portion to an extent of 2 acres 20 gunta in the suit schedule property to 3rd parties. If an order of Temporary injunction is granted, no harm or injury will be caused to the defendant. On the other hand, the plaintiff will be put to irreparable loss, damage and injury, which cannot be compensated by any means. The plaintiff has got prima facie case and balance of convenience in her favour and prays to allow the application.

3. In pursuance of the suit summons, the defendants appeared through their counsel, but they have not filed their written statement and objections to the application.

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. My 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 final order,
for the following :

REASONS

7. **Points No.1 to 3** : These three points are connected with each other, 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 No.1 to 5 for the relief of declaration declaring that the plaintiff is the owner of the suit schedule property and for recovery of possession of the suit schedule property from the defendants No.1 to 5, and for costs and such other reliefs in respect of suit schedule property Sy.No.97, extent 5 acres including karab of

land of 1 acre 30 gunta situated at Hulavangala village, Kolala Hobli, Koratagere Taluk.

8. The plaintiff averred in the plaint that originally the suit schedule property is belongs to Smt.Marakka, the mother of the plaintiff. She acquired the same under a registered sale deed dated 19.01.1968. During her life time, the revenue entries are in her name and she was in lawful possession and enjoyment of the same. The plaintiff is one and only the legal representative as her daughter,the said Smt. Marakka. Except the plaintiff, no other Legal representative are there. During her life time, herself or plaintiff or husband never conveyed or transferred nor sold the suit schedule property to anybody nor in favour of deceased Nagappa, the father of the defendants No.1 to 4.

9. It is further averred that Smt. Marakka was an illiterate. Taking that advantage, the father of the defendants No.1 to 4, who is none other than the brother of the said Marakka playing fraud on her, and with active collusion of revenue authorities got the revenue entries in his name fraudulently. The said Nagappa along with defendants No.1 to 4 have illegally sold to an extent of 2 acres 20 gunta in the suit schedule property in favour of defendant No.5 under a registered sale deed dated 07.05.1993. The said Nagappa and defendants No.1 to 4 did not have any vested right, title to

convey the suit property in favour of defendant No.5. In turn, the 5th defendant did not get any right, title and interest over the suit schedule property. The sale transaction is void abinitio and no legal sanctity and it is not binding on the plaintiff over the suit schedule property.

10. It is further averred that at no point of time Smt. Marakka or the plaintiff have not handed over the possession of the suit schedule property. During the life time of Smt. Marakka, she was in possession and after her death, till the month of September 2016, it is the plaintiff was actual in possession and enjoyment of the same. But, in the last week of September, defendants No.1 to 5 have trespassed into the plaintiff's land and started to cultivate the land. When the plaintiff questioned, they claimed they have purchased the said land and claims to be the owner. The defendants are not entitle right, title over the suit schedule property. They bound to deliver the possession of suit land to the plaintiff. The plaintiff came to know about the fraudulent act of the defendants No.1 to 4 and their father in the month of September 2016 when the defendants have trespassed into the suit land. On these grounds, claiming declaration and recovery of possession.

11. The copy of the sale deed dated 19.01.1968 produced by the plaintiff shows that the Marakka W/o Anjinappa of

Hulavangala Village, purchased the property Sy.No.97 to an extent of 5 acres of Hulavangala village from Smt. Muddarangamma W/o Kenchaiah of Hulavangala village. Another copy of registered sale deed dated 07.05.1993 discloses that one Nagappa and his wife Chikkamma and their children Nagahanumaiah, Hanumantharaya, Krishna and Rangaraju sold the property Sy.No.97 to an extent of 2 acres 20 gunta in favour of Nagaraju H.N. S/o Nagappa of Chikkanahally village. Mutation extract bearing No.1/93-94 shows to an extent of 3 acres 10 gunta was stands in the name of Nagappa through inheritance after the death of his father. Another mutation extract bearing No.7/93-94 shows to an extent of 2 acre 20 gunta transferred in the name of H.N.Nagaraj through a registered sale deed dated 12.05.1993. The sale deed dated 19.01.1968 shows the entire property Sy.No.97 to an extent of 5 acres purchased by Marakka W/o Anjinappa. The defendants not filed any written statement or objections to the said application.

12. The plaintiff claiming that she is only Legal representative of deceased Marakka and claiming entire suit schedule property. Now the registered sale deed in respect of suit schedule property to an extent of 2 acre 20 gunta is stands in the name of 5th defendant and revenue documents are also stands in his name. The plaintiff challenging the validity of

registered sale deed executed by defendants No.1 to 4 and their father Nagappa in favour of 5th defendant. Under these circumstances, if the 5th defendant sold the suit schedule property to an extent of 2 acres 20 gunta in favour of 3rd person, it will lead multiplicity of proceedings and great harm to the plaintiff. The plaintiff claiming equitable relief against the defendant No.5. He has not filed any objections to the said application. The plaintiff made out prima facie case are present. The pleadings of the plaint and documents produced by the plaintiff and circumstances of the case made out the balance of convenience in favour of the plaintiff. When these two points are in favour of the plaintiff, the irreparable loss and injury is also in favour of the plaintiff. If an order is granted, no harm or injury will be caused to the defendant No.5. In view of any angle, there are no material grounds to reject the claim of plaintiff and plaintiff made out sufficient grounds to allow the application. Hence, I answer these points No.1 to 3 in the affirmative.

13. **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.5 or his agents, servants or anybody claiming under him, are hereby temporarily restrained from alienating the suit schedule property to an extent of 2 acre 20 guntas to anybody in any manner during the pendency 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 **12th day of June 2017**)

(Prakash V)
Civil Judge & JMFC,
Koratagere

12.06.2017

Plaintiff : HRR,
D-1 to 3 : MLS,
D-4 : HVS,
D-5 : Exparte

For Orders on I.A.No.I,

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

ORDER

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(PRAKASH V)
Civil Judge & JMFC,
Koratagere.