



IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
KUNIGAL

-.PRESENT:-

Sri. Manjunath Shivapooji B.A. LL.B.,

Addl. Civil Judge & JMFC., Kunigal.

Dated this the 14th day of August, 2024.

O.S. NO.616/2022

Plaintiff : Rangappa

V/s

Defendants : Rajamma and others

I.A. No. I

Applicant : Rangappa

V/s.

Opponent : Rajamma and other

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C

The plaintiff has filed IA No.1, U/O 39 R 1 and 2 of CPC to restrain the defendant No.10, 15, 17 and 18 from dispossessing the plaintiff from the suit schedule item No.3 till disposal of the suit.



2. The plaintiff in the affidavit annexed to IA No.1 contended that, the plaintiff and the defendants are the members of Hindu Undivided joint family and they are coparceners. The suit schedule properties are the ancestral and joint family properties of plaintiff and the defendants. There is no partition in the family either written or oral between them till today. Previously, the khata and pahani of suit schedule properties stands in the name of his grandfather by name Venkata @ Narasaiah, after his death, his 4th son i.e., Yallaiah, who is the father of defendant No.10, 15 to 19, has colluded together and created some revenue documents in his name behind their back. Plaintiff name also finds place in the RTC extract of the above said property i.e., Sy.No.132/10A.

3. Further submitted that, the defendant No.10,15,17 and 18 are taking advantage of the khata and pahani in the name of their father Yallaiah and are trying to dispossess the plaintiff from the suit schedule item No.3. If the application is



not allowed, the plaintiff will be put to great hardship and irreparable loss. On the other hand, if the application is allowed, the defendants will not suffer in any way. The balance of convenience and prima-facie case is in favour of the plaintiff and defendants. Hence, prayed to allow the application.

4. On the other hand, the defendant No.10,15,17 and 18 have filed memo and stated that, averments of written statement may be taken as objections to the application U/O 39 Rule 1 and 2 of CPC filed by plaintiff. Hence, prayed to dismiss the application.

5. The defendant No.10, 15, 17 and 18 have contended that, there is no joint family remains as contended by the plaintiff to file this above partition suit, the suit schedule properties were exclusively acquired by their father Sri.Yallaiah @ Yallappa from his hard earnings after separated from the joint family since 1958/60 itself shifted to



Bangalore with their family and started independent life as others also started independent life respectively after separated from joint family. Hence, question of joint family to institute the present suit does not arise at all.

6. Further, the conduct and illegal activities of the plaintiff with his concocted, fabricated documents reveals his uncleanness, in the entire averments of the plaint that there is single proof that, the existence of joint family and also about cause of action to file the present suit against them without any right, title, interest over the suit schedule properties. The plaintiff has come before this Hon'ble court with unclean hand by filing the above suit with created cock and bull story, this application is filed with the bonafide and for ends of justice and grave prejudice and harm would be caused to them. Hence, they prayed to dismiss the application.

7. Heard arguments.



8. On basis of the application, plaint, written statement, objections and documents on record, the following points that arise for the determination of this court.

1. Whether the plaintiff has made out prima- facie case in his favour?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will be put to great hardship and irreparable loss if, order of temporary injunction is not granted?

4. What order?

9. Heard arguments. Perused the application, affidavit, objections and records placed before this court.

10. My finding on 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::

11. **Point No.1 to 3**: Since these points are inter connected with each other, they are taken together for the discussion in order to avoid the repetition of the facts and circumstances.

12. On perusal of the pleadings of both parties it appears that, there is no dispute as to the relationship between both parties. Further, the plaintiff has contended that, the suit schedule properties are the joint family properties of plaintiff and defendants. On the other hand, the defendant No.10, 15, 17 and 18 have contended that, all the suit schedule properties are exclusively belongs to their family. Further, they have contended that, their father by name Yallappa had purchased the suit schedule properties from his own hard earnings. The



plaintiff has no right over the suit schedule properties.

13. Plaintiff in support of his case, has produced the RTC's of suit properties. On careful perusal of RTC of item No.3 property it appears that, the name of the plaintiff is entered as a owner and possessor of item No.3 property to the extent of 7 guntas.

14. Further, the plaintiff has filed this suit for the relief of partition and separate possession. Hence, the full fledged trial is required to determine the rights of the parties. The name of plaintiff is entered in the item No.3 of suit property. The defendants have denied the said entries. But, rightly or wrongly the name of plaintiff is entered in RTC of suit item No.3 property. On perusal of RTC of said property prima-facie it appears that, the plaintiff is in possession over the suit item No.3 property. Hence, at this juncture the plaintiff is entitled to protect his possession over the said property. Hence, the suit of the plaintiff is fit case for go for trial, as to determine



the authentication of the said entry.

15. Now, the questions are arised before this court is “Whether the plaintiff is entitled for a share”?. To determine the above said question, evidence is require. The question shall have to be determine after full fledged trial.

16. By considering the pleadings and documents, this court comes to the conclusion that, on prima-facie it appears that, the case of the plaintiff is fit case for go for trial. The plaintiff has succeeded to prove that, the balance of convenience lies in his favour. The plaintiff has also succeeded to get the confidence of this court that, if temporary injunction is not granted irreparable loss will be caused to him. Accordingly Point No.1 to 3 are answered in the ***Affirmative.***

17. Point No.4:: For the above discussed reasons, this court proceeds to pass the following:



::ORDER::

IA No.1 filed by the plaintiff under order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendant No.10, 15, 17 and 18 or their agents or anybody acting on behalf of them are hereby restrained from dispossessing the plaintiff from item No.3 of the suit schedule property till disposal of the suit.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 14th day of August, 2024]

Sd/-

[Shri.Manjunath Shivapooji]
Addl Civil Judge and JMFC,
Kunigal.