



**IN THE COURT OF PRL. SENIOR CIVIL JUDGE
AND JMFC., AT MADHUGIRI.**

Dated this the 1st day of February 2024

PRESENT

**SMT.SHILPA.H.A.
B.A.L., LL.B.,
Prl. Senior Civil Judge & J.M.F.C.
Madhugiri.**

O.S No.111/2019

PLAINTIFFS: T.K. Shivanna Dead by Lrs.,

**a) Rangamma
W/o Late T.K. Shivanna,
Aged about 29 years,
residing at Tungoti village,
Kasaba Hobli,
Madhugiri Taluk and Others**

(By Sri. M.M., Advocate)

-Vs-

**DEFENDANTS: 1. Sri. Rangashamaiah
S/o Late Kotappa,
Aged about 70 years,
R/o Tungoti village,
Kasaba Hobli,
Madhugiri Taluk and Others.**

(By Sri. S.R.A., Advocate for D.1)

I.A.No.X/2022**APPLICANT: Lakshmana****V/s****OPPONENT: Rangashamaiah & Others****: ORDER ON I.A.No.X:**

The plaintiff has filed I.A.No.X under Order XXXIX Rule 1 and 2 of CPC., seeking an order of temporary injunction restraining defendant No.1, 5 to 9 and their agents, servants or anybody claiming under them from alienating/encumbering in respect of the suit schedule item No.1, 4, 5, 8, 9, 12 to 17, 19 to 22, 24, 25, 27 to 29, 31 and 34 in any mode or manner till the disposal of the suit.

2. The Plaintiff No.1(b) has sworn to an affidavit in support of this I.A and contended that her father has filed the suit for partition and separate possession in respect of suit schedule properties. The Lrs., of plaintiff are entitled for share in the suit schedule properties. Whether they are entitled partition or not requires trial, till then statusquo has to be maintained. Taking undue advantage of revenue entries standing the in the name of defendant No.1

and 5 to 9 on the basis of inheritance, they are trying to alienate/encumbering the suit item No.1, 4, 5, 8, 9, 12 to 17, 19 to 22, 24, 25, 27 to 29, 31 and 34 for the purpose of defeating the right of the plaintiff. If the defendants succeeds in their act, it leads to multiplicity of proceedings and the same requires to be prevented by the order of this court. Hence, prays to grant an order of temporary injunction till the disposal of the suit. If the I.A. is rejected, plaintiffs will be put to irreparable loss and damage which cannot be compensated by any means. Plaintiffs have made out prima facie case and balance of convenience lies in their favour. Hence, prays to allow the application in the ends of justice.

3. Defendant No.1 has filed objection to this I.A and denied entire I.A and affidavit averments as false. According to him one Gaviyappa has purchased item No.1 to 3 from one Thimmaiah @ Hanumaiah under registered sale deed dated 16.06.1949. By virtue of said sale deed, khata and pahani was mutated in his name. Thereafter said Gaviyappa has purchased suit item No.4 to 6 from one Chikkanna S/o Marikyathappa under registered sale deed dated 12.07.1971. On the basis of sale deed, khata and pahani of suit item No.4 to 6 came to be mutated in the name of Gaviyappa

and he was in possession of the same. Said Gaviyappa has purchased item No.9 of the suit property from one Veerappa S/o Rangappa through registered sale deed dated 16.11.1960. He had also purchased item No.29 and 30 under registered sale deed dated 30.08.1955 from one Kambakka W/o Thimmaiah. The said Gaviyappa had also purchased suit item No.31 from one Rangaiah and Rangappa under registered sale deed dated 19.06.1956. One Ujjanamma W/o Gaviyappa who is the mother of defendant No.5 to 9 and mother-in-law of defendant No.2 and grandmother of defendant No.3 to 4 has purchased suit item No.25 and 26 from the income derived from her maternal side under registered sale deed dated 20.11.1972. She had also purchased suit item No.34 and 35 from one Srinivasarao under registered sale deed dated 03.07.1974. By virtue of said registered sale deeds, khata and pahani changed in her name. Therefore, the above said properties are the self acquired properties of Gaviyappa and Ujjanamma. Plaintiffs at no point of time have challenged the said sale transaction and revenue entries before any competent court of law. Plaintiff has not come to the court with clean hands. Plaintiff has no prima facie case and balance of convenience does not lie in her favour. If the I.A. is allowed

defendants will be put to irreparable loss and injury. There are no bonafides in the I.A. Hence, prays to dismiss the I.A. with exemplary cost in the interest of justice.

4. Heard and perused the materials placed before me.

5. The points that arise for my consideration are as follows;

:POINTS:

1. Whether the plaintiff has made out prima-facie case to grant temporary injunction in their favour?
 2. Whether balance of convenience lies in favour of the plaintiff?
 3. Whether the irreparable loss or hardship will be caused to the plaintiff, if injunction is not granted?
 4. What order?
6. My findings to the above points are as follows;

Point No.1 : In the Affirmative

Point No.2 &3 : In the Affirmative

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

:REASONS:

7. **POINT No.1:** The plaintiff has filed this suit for the relief of partition and separate possession seeking his 1/3rd share in the suit schedule properties. It is the case of the plaintiff that suit schedule properties are the ancestral and joint family properties of himself and defendants. The original propositus Kotappa had 3 sons by name Kotappa, Gaviyappa and Rangashamaiah. The plaintiff is the son of Kotappa and defendants are the Lrs., of Gaviyappa and Rangashamaiah. By taking undue advantage of the some of the suit schedule properties standing in the name of Gaviyappa, his Lrs., are trying to alienate those properties. Hence, this I.A.

8. Plaintiff has sought share in respect of 34 agricultural lands which are mentioned in suit schedule. The plaintiff has led evidence and got marked the documents as Ex.P.1 to 44. Ex.P.1 and 2 are the certified and notarized copies of G-Tree which prima-facie goes to show that original propositus Kotappa had 3 sons by name Kotappa, Gaviyappa and Rangashamaiah and plaintiff is the son of Kotappa and defendant No.1 is the 3rd son, Rangashamaiah and other defendants are the Lrs., of Kotappa and Gaviyappa. Ex.P.3 is the order passed by the

Tahasildar of RRT Dis.221/2017-18 which goes to show that some defendants have submitted objection to the Tahasildar in respect of changing khata pertaining to 20 suit properties and case was registered against the present plaintiff and 2 others and Tahasildar has passed an order to mutate the names of Rangaraju and others as the Lrs., of Gaviyappa. Ex.P.4 is the endorsement issued by A.C. stating that appeal is preferred against the order of Tahasildar and since civil suit is pending he has dismissed the appeal and directed the parties to agitate their dispute before civil court.

9. 33 RTCs are marked as Ex.P.5 to 38 pertaining to the suit schedule properties which goes to show that some of the suit properties stands in the name of Gaviyappa S/o Kotappa, whereas in column No.10 it is mentioned as ancestral property. Some of the RTCs stands in the name of Gaviyappa whereas in column No.10 it is mentioned as partition. Some of the RTCs pertaining to the suit property jointly stands in the name of Gaviyappa and Kotamma W/o Nagappa. Some suit properties stands in the name of wife of Gaviyappa through sale deed. Plaintiff has also produced old hand written M.R. extracts which goes to show that after the death of original propositus

Kotappa, 6 properties came to be mutated in the name of his 3 sons. Some earlier RTC extracts stood in the name of original propositus Kotappa and the same has been mutated in the name of Gaviyappa and now khata of those properties stands in the name of Gaviyappa. Some of the defendants have seriously contested the I.A stating that the properties mentioned in I.A. No.10 are self acquired properties of Gaviyappa and his wife Ujjanamma and therefore temporary injunction cannot be granted in respect of their self acquired properties.

10. Defendants have produced number of sale deeds pertaining to those properties along with M.R. extracts and RTC. It is true that based on sale deed the khata of those properties came to be mutated in the name of Gaviyappa and his wife, but defendants have not placed any documents to show that partition has been effected between 3 sons of original propositus Kotappa and there is no existence of joint family. Since this is a suit for partition pertaining ancestral and joint family properties and the documents relied by the plaintiff also prima-facie goes to show that there is still existence of joint family status between the parties and at this stage if temporary injunction is rejected, by taking undue

advantage of khata standing in the name of Lrs., of Gaviyappa and Ujjanamma they may alienate the same which leads to multiplicity of proceedings. If the plaintiff succeeds in the suit, then it is difficult for him to execute the decree, if the suit schedule properties are alienated to 3rd parties. Whether properties included in I.A. No.10 are self acquired properties of Gaviyappa and his wife requires full fledged trial. At this stage it is just and necessary to protect and preserve the nature of the suit properties till the disposal of the suit. Hence, plaintiff has made out prima-facie case by granting an order of temporary injunction Accordingly, I answer **Point No.1 in the Affirmative.**

11. **POINTS No.2 & 3:** Both the points are interconnected in order to avoid repetition of facts they are taken together for discussion.

The plaintiff has made out prima-facie case in his favour, hence the balance of convenience also lies in his favour. If the temporary injunction is rejected plaintiff will be put to irreparable loss and injury and on the other hand, if the I.A. is allowed no hardship or injury will be caused to the defendants. Accordingly, I answer **Points No.2 and 3 in the Affirmative.**

12. **POINT No.4:** For the aforesaid reasons, I pass the following;

:ORDER:

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

The defendant No.1, 5 to 9 and their agents, servants or anybody claiming under him are hereby restrained by an order of temporary injunction from alienating the suit schedule item No.1, 4, 5, 8, 9, 12 to 17, 19 to 22, 24, 25, 27 to 29, 31 and 34 in any mode or manner till the disposal of the suit.

No order as to cost.

(Dictated to the Stenographer transcribed, typed and printout taken by her, corrected by me and then pronounced in the open court on this the 1st day of February 2024)

**Sd/-
(SHILPA.H.A)
Prl. Senior Civil Judge & JMFC.,
Madhugiri.**