



**IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C., AT SIRA.**

Dated this the 9th day of June 2022

PRESENT

**SMT. G. GEETHANJALI , B.A., LL.B.,
SENIOR CIVIL JUDGE AND J.M.F.C., SIRA.**

O.S.No.69/2019

Plaintiff: Hanumantharayapa.

- versus -

Defendants: B.M. Lakshmikanthaiah
and others.

PARTIES TO I.A.NO.II

Applicant/Plaintiff: Hanumatharayappa,
S/o late Dasappa,
Aged about 72 years,
Rep. By P.A.Holder
Smt. Sarojamma,
W/o Hanumantharayappa,
Aged about 63 years,



R/o “Thaiyaa Madilu” A.M.
Palya road, opposite to
S.B.I. Bank, Siragate
branch, Tumakuru District.

- versus -

Opponents/Defendants:

1. B.M.
Lakshmikanthaiah,
S/o Late B.
Mahalingappa,
Aged about 56 years.
2. Lakshmakka, first
daughter of late B.
Mahalingappa, W/o
Erakyathappa,
3. B.M. Gopalaiah,
S/o Late B.
Mahalingappa, Craft
Teacher, 11th main 3rd
cross, Channappa
Layout, R/o
Jyothinagara, Sira
Town.
4. Lakkamma,
W/o Shankarappa,
second daughter of Late
B. Mahalingappa, R/o
Huchagirinahalli



village, Kasaba Hobli,
Sira Taluk.

5. Sakamma,
W/o Late Rangappa,
Aged about 68 years.
 6. B.R. Ramakrishnaiah,
Aged about 51 years.
 7. B.R. Jaganatha,
Aged about 44 years.
- Defendants No.6 and 7 are
sons of Late Rangappa.
8. B.R. Shanthamma,
W/o Ravi,
D/o late Bandakunte
Rangappa,
Aged about 40 years,
R/o Kotta village,
Kasaba Hobli, Sira
Taluk.
 9. Balamma,
W/o Late Mahalingappa,
Aged about 68 years,
D/o Late Dasappa.

Defendants No.1, 5 to 7
and 9 are residents of



Bandakunte village at post,
Gowdagere Hobli, Sira
Taluk, Tumakuru District.

10. Narasamma,
W/o Ramachandra,
D/o Late Ramlingappa,
Aged about 30 years,
R/o Karemadenahalli
village, Thuppadakona
post, Bukkapatna
Hobli, Sira Taluk.

11. Kenchamma,
W/o Narasimhaiah,
Aged about 70 years,
D/o Late Dasappa of
Bandakunte village,
R/o Chikkadasarahalli
village, Chikkanahalli,
Mazare Kallambella
Hobli, Sira Taluk.

12. Nataraju,
S/o Erakyathappa,
Major.

Defendants No.2 and 12
are residents of
Nimbemaradahalli village,
Vaddanahalli village,



Bukkapatna Hobli, Sira
Taluk, Tumakuru District.

ORDERS ON I.A.NO.II filed U/O 39 Rule 1 & 2 OF CPC

The P.A. Holder of Plaintiff/applicant has filed this application on behalf of plaintiff seeking an interim order of temporary injunction restraining opponents/defendants from alienating the suit schedule properties till disposal of the suit in the interest of justice.

2. It is stated in the annexed affidavit that, the defendants are secretly and illegally attempting to alienate the schedule properties taking undue advantage of illegal revenue entries in their names in respect of suit schedule properties created in collusion with local revenue authorities behind the back of the plaintiff. This act of the defendants is arbitrary, capricious, illegal and against to law. There is prima facie case, possession and balance of



convenience is in favour of plaintiff. If the application is allowed no hardship or inconvenience will be caused to the defendants in any manner. On the other hand if the application is not allowed, plaintiff will be put to much hardship and inconvenience which cannot be compensated by any means. Accordingly, plaintiff prayed to grant the relief of interim order of temporary injunction.

3. The counsel for defendants No.2 to 4 filed memo stating that the averments of written statement of defendants No.2 to 4 may be treated as objections to I.A. In the objections it is contended that one Kenchamma W/o Linganna during her lifetime got executed Gift Deed dated 24.2.1953 in favour of father of Defendants No.1 to 4 with respect to suit items No.1, 5, 6 to 8, 11, 12, 23, 24 and 27 accompanied with delivery of possession and since from the date of registered Gift Deed father of the defendants No.1 to



4 i.e. B. Mahalingappa is in continuous and exclusive possession of the above said properties and father of defendants No.1 to 4 has also purchased items No.10, 4 and 3 through registered sale deeds dated 19.09.1956, 6.11.1968 and 15.2.1971 respectively. He further purchased item No.28 vide registered sale deed dated 26.07.1972 and item No.26 vide registered sale deed dated 16.09.1974 and item No.9 vide registered sale deed dated 3.8.1976 and katha of the same got transferred into his name and now the defendants No.1 to 4 are in possession and enjoyment of he same. As such, the plaintiffs have no right over the said items No.1 to 12, 23, 24, 26 to 29 and prayed to dismiss the suit and I.A with cost.

4. Heard and perused the records.

5. The points for consideration are as follows:



1. Whether the plaintiff has made out prima-facie case in his favour?
2. Whether the plaintiff shows that, the balance of convenience lies in his favour?
3. Whether the plaintiff will be put to great hardship and injury, if an order of injunction is not granted?
4. What order ?

6. My answer to the above points are as follows:

POINT NO.1 to 3 : In the **Affirmative.**

POINT NO.4 : As per Final order
for the following:

REASONS

7. **POINTS NO.1 to 3:** I have gone through the
plaint averments as well as affidavit annexed to I.A.No.II
and this is a suit for partition and separate possession of
plaintiff's 7/24th share in the suit schedule properties.
Plaintiff in proof of prima facie case relied upon RTC



Extracts with respect to suit schedule properties, 3 mortgage deeds dated 29.3.1963, 30.06.1973 and 25.03.1975, Registered sale deed dated 6.11.2001, M.R. Extracts, Copy of Index of lands in respect of suit schedule properties and Genealogical tree of plaintiff. All these documents being the revenue documents carries presumptive value under Section 74 r/w Section 35 of Indian Evidence Act. These documents are sufficient to show the prima facie case and the question that due execution of gift deed as well as purchasing of suit items by the father of defendants No.1 to 4 as contended by the defendants. Its a matter of evidence. In the absence of trial it cannot be ascertained at this premature stage. However, the defendants No.2 to 4 and 12/contesting defendants have filed memo undertaking that they are not going to alienate the suit schedule properties till disposal of the suit. Therefore, from going through the available



documents and undertaking memo of defendants No.2 to 4 and 12, this court opines that the above said documents are enough to establish prima facie case in favour of plaintiff. Accordingly plaintiff has made out prima facie case. Hence, point No.1 is answered in the Affirmative.

Points No.2 and 3:- As far as balance of convenience and hardship in case of rejection of application is concerned, this being a partition and separate possession suit which involves the right, interest and share of both the parties. As such, till disposal of the matter in issue it is just and necessary to preserve the nature of the suit property in order to avoid multiplicity of proceedings. Hence, I answer the above points No.2 and 3 in the **Affirmative**.

8. **Point No.4:-** For the reasons stated above, I proceed to pass the following:



ORDER

I.A.No.II filed by the plaintiff U/o 39 Rule 1 and 2 of CPC is allowed.

The defendants are hereby restrained from alienating the suit schedule properties till disposal of the suit.

(Dictated to the stenographer directly on computer, typed copy corrected and then pronounced by me in the open court on this the 9th day of June 2022).

(G. Geethanjali)
Senior Civil Judge and
J.M.F.C., Sira.