

KATK910039172022



**IN THE COURT OF THE SENIOR CIVIL JUDGE &
JMFC., AT Tiptur**

Present : **Sri. MOHAMED ARIFULLA**, B.Sc., LL.B.,
Senior Civil Judge & JMFC, Tiptur

Dated : This the 30th day of March 2023.

O.S. No. 27/2022

Plaintiffs :

1. Jayamma W/o Late Nataraju,
Aged about 48 years,
R/o.Y.T.Road, Goragondanahalli,
Kasaba Hobli, Tiptur Taluk.
2. Lavanya.G.N. D/o Late Nataraju,
W/o Shankar.A.V.
Aged about 22 years,
R/o.Garden House,
Anagondanahalli, Kasaba
Hobli, Tiptur Taluk.

(By Advocate Sri. B.S.)

Vs.

Defendant : Kumaraswmay S/o
Late Chikkabasavaiah,
Aged about 62 years,

R/o.Goragondanahalli,
Kasaba Hobli, Tiptur Taluk.

(By Advocate Sri.T.K.R.)

Parties in I.A No.1

APPLICANTS

(Plaintiffs) : Jayamma and another

Vs.

OPPONENT

(Defendant) : Kumaraswamy

ORDER ON IA. No.1

The plaintiffs have filed this application U/Order 39 rule 1 and 2 of CPC for the grant of temporary injunction against defendant restraining him from alienating the suit schedule properties till the disposal of the suit.

2. The plaintiff No.1 has sworn to the affidavit on behalf of 2nd plaintiff also, who is her daughter and they have filed the above suit against the defendant for partition and separate possession of ½ Share in the suit schedule properties. That one Chikkabasavaiah was the propositus and Manager of the joint family and said

Chikkabasavaiah is having 2 children and they are 1)Kumara Swamy(defendant) and 2) Nataraju, who is the husband of the 1st plaintiff and father of the 2nd plaintiff and the suit schedule properties are the ancestral and joint family properties belonging to plaintiffs and defendant and they were in joint possession and enjoyment of the suit schedule properties along with their father Chikkabasavaiah and said Chikkabasavaiah died about 15 years back, leaving behind his wife-Jayamma, said deceased Nataraju and defendant as his legal heirs and said Jayamma, Nataraju and defendant were in joint possession and enjoyment of the suit schedule properties. That the khata of the item No.1 and 2 of the suit schedule properties are standing in the name of Propositus Chikkabasavaiah.

3. That the said Chikkabasavaiah had executed a sale deed dated 02.08.1977 in favour of his wife-Jayamma, defendant and Nataraju jointly with respect to item No.3 and 4 of suit schedule properties and the khata of the said properties were in joint name of said

Jayamma, defendant and Nataraju but, the defendant had concocted some document and got changed the khata of item No.3 in his name alone.

4. The husband of the plaintiff No.1 died on 19.10.2019 and the mother in law of the plaintiff No.1 died on 09.10.2021. Thereafter, the plaintiffs requested for partition of the suit properties but, he refused to partition and trying to alienate the suit properties. Hence, this application is filed. The plaintiffs have got prima-facie case and balance of convenience lies in their favour. If the temporary injunction is not granted the plaintiffs will be put to hardship and inconvenience.

5. The defendant has filed his written statement and adopted it as objections to IA-1 and he has contended that the suit of the plaintiffs is not maintainable under law or fact. Further contended that the suit item No.1 and 2 have divided between the said Jayamma, defendant and Nataraju. In the said oral partition suit item No.2 was fallen to the share of

Nataraju and suit item No.1 was fallen to the share of defendant.

6. Further contended that the suit item No.3 property was acquired by the said Jayamma through a sale deed dated 02.08.1977 from her husband and she has executed a gift deed in favour of the defendant on 03.06.2016 during the life time said Nataraju. The said Nataraju received Rs.5 lakh from the defendant to performing the marriage of plaintiff No.2, as share amount of in respect of suit schedule item No.3 property. Hence, the present application and suit are not maintainable and hence prays to reject the application.

7. Heard both sides.

8. Point for my consideration.

1. Whether the plaintiffs prove that they have got prima-facie case?
2. Whether the plaintiffs prove that they have got balance of convenience is in her favour?

3. Whether the plaintiffs prove that they will be put to irreparable loss or hardship if the temporary injunction is not granted?

4. What order?

9. My answer to above points.

Point No.1 to 3 : In the Affirmative.

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

REASONS

10. **Point No.1:** The plaintiffs have filed the suit against the defendant for the relief of partition and separate possession in respect of the suit properties by claiming that the suit properties are the joint family properties of the plaintiffs and defendant.

11. The plaintiffs have filed this application seeking temporary injunction against the defendant restraining them from alienating the suit properties till the disposal of the suit. According to the plaintiffs one

Chikkabasavaiah was the propositus and Manager of the joint family and said Chikkabasavaiah was having 2 children and they are 1) Kumara Swamy (defendant) and 2) Nataraju, who is the husband of the 1st plaintiff and father of the 2nd plaintiff and the suit schedule properties are the joint family properties belonging to Nataraju and defendant and they were in joint possession and enjoyment along with their father Chikkabasavaiah. The said Chikkabasavaiah died about 15 years back, leaving behind his wife-Jayamma, said deceased Nataraju and defendant as his legal heirs and said Jayamma, Nataraju and defendant were in joint possession and enjoyment of the suit schedule properties. That the khata of the item No.1 and 2 of the suit schedule properties are standing in the name of Propositus Chikkabasavaiah.

12. That the said Chikkabasavaiah had executed a sale deed dated 02.08.1977 in favour of his wife-Jayamma, defendant and Nataraju jointly with respect to item No.3 and 4 of suit schedule properties and the

khata of the said properties were in joint names of said Jayamma, defendant and Nataraju but, the defendant had concocted some documents and got changed the khata of item No.3 in his name alone.

13. However, the defendant took a contention that there was an oral partition between this the said Nataraju and defendant and in the said oral partition suit item No.1 property was fallen to the defendant and suit item No.2 was fallen to the share of the said Nataraju. Further he has taken a defence that the suit item No.3 was acquired by their mother Jayamma through a sale deed dated 02.08.1977 executed her husband Chikkabasavaiah. In respect of this property the said Nataraju received Rs.5 Lakh as a share amount from the defendant and moreover, the said Jayamma executed a gift deed in favour of the defendant on 03.06.2016 during the life time of said Nataraju. As such, there is no joint family status as claimed by the plaintiffs.

14. The relationship of the parties is admitted. The only defence of the defendant is that there was already an oral partition took place between the defendant and his brother Nataraju. However, there is no material before this court to say that there was an oral partition held between defendant and his brother Nataraju. The revenue records are still in joint names of plaintiffs and defendant. As such, it cannot be come to the conclusion at the this juncture that there was an oral partition as claimed by the defendant.

15. The defendant has claimed that the suit item No.3 was acquired by their mother Jayamma through a sale deed dated 02.08.1977 executed her husband Chikkabasavaiah. In respect of this property the said Nataraju received Rs.5 Lakh as a share amount from the defendant and moreover, the said Jayamma executed a gift deed in favour of the defendant on 03.06.2016 during the life time of said Nataraju. However, the sale deed dated 02.08.1977 shows that the said Chikkabasavaiah executed sale deed in favour of his

wife Jayamma, his sons Nataraju and defendant. It shows that the said sale deed was not solely executed in favour of the said Jayamma as claimed by the defendant. Such being the case, it cannot be come to the conclusion at this stage that the said Jayamma had exclusive right over the suit item No.3 property to execute gift deed in favour of defendant. All this facts and circumstances of this case and the available records shows that the plaintiffs have got prima-facie case and therefore. I have answered point No.1 in the Affirmative.

16. **Point No.2 and 3:** As already discussed above, the material produced by the plaintiffs discloses that the suit properties are still in the names of the defendant and plaintiff No.1 jointly and moreover, the defendant has not disputed the relationship. As already discussed, the defendant is required to prove that the suit item No.1 and 2 have got partitioned through oral partition by him and the said Nataraju and defendant is required to prove that the suit item No.3 property was

gifted to him by his mother Jayamma. He is also required to prove that the suit item No. 3 property is the self acquired property of his mother Jayamma. As such, the balance of convenience lies in favour of the plaintiffs. If the temporary injunction is not granted there may be a chance of alienation of the suit property and if it is done, the plaintiffs will be the put irreparable loss and hardship. To avoid multiplicity of proceedings, it is just and fair to grant temporary injunction in favour of the plaintiffs. Accordingly, I have answered point No.2 and 3 in the Affirmative.

17. **Point No.4:-** In view of the above discussed reasons. I proceed to pass following:

ORDER

IA. No. 1 filed by the plaintiffs U/o 39 rule 1 and 2 of CPC is hereby allowed.

Temporary injunction is granted in favour of the plaintiffs restraining defendant

from alienating the suit
property to anybody till
disposal of the suit.

No order as to costs.

(Mohamed Arifulla.C.F.)
Senior. Civil Judge & JMFC.,
Tiptur.