

KAUK210015122022



**IN THE COURT OF
ADDL. CIVIL JUDGE AND JMFC ANKOLA AT , UTTARA
KANNADA**

Presided Over by **ARPITHA B BELLAD**
B.Com., LL.B.,
Addl., Civil Judge and J.M.F.C.,
Ankola.

ORIGINAL SUIT NO.95/2022

Dated this the 2nd day of May 2025

Plaintiffs:-

1. Smt. Prema Honnappa Nayak,
Aged about 65 years,
O/c: Household,
R/o:Hoskeri, Tq. Ankola
2. Smt.Shobha Pramod Nayak,
Aged about 58 years,
O/c: Household,
R/o:Adluru, Tq. Ankola
3. Smt. Rajamma Umesh Nayak,
Aged about 54 years,
O/c: Teacher,
R/o:Shedgeri, Tq. Ankola

[By Sri. R.N.H., Advocate]

V/s

Defendants:-

1. Sri. Devanna Subraya Nayak,
Aged about 59 years,
O/c: Agriculturist
R/o:Belekeri, Tq. Ankola

2. Sri. Narayan Bin Ramachandra
Nayak,
Aged about 60 years,
O/c: Agriculturist
R/o: Belekeri, Tq. Ankola

[D1 By: Sri. G.T.N., Advocate]
[D2 By: Sri. N.B.K., Advocate]

**ORDERS ON IA NO. IV FILED BY PLAINTIFFS UNDER ORDER
XXXIX RULE 1 and 2 R/W Section 151 OF CODE OF CIVIL
PROCEDURE, 1908**

1. Plaintiffs have filed IA-I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 restraining the defendant No.1 from selling the water of the well existed in Sl.No.1 of the suit schedule property till the disposal of the suit.

2. The said application is accompanied with an affidavit of plaintiff No.1 wherein she stated that she has filed the present suit seeking the relief of partition and separate possession against the defendants. It is averred that their grand mother deceased Devamma Devanna Nayak acquired moolgeni rights by virtue of Gift deed dated 30/03/1944 executed by Timmakka Bommayya nayak in respect of the Sl.No.1,2 and 5 of the suit properties and Mutation Entry No.2572 is certified in this regard. There exists a well of 18 feet width and 30 feet depth towards eastern side of the Sl.No.1 of the suit property since prior to 1950. The said well has

been using jointly by the plaintiffs and defendant No.1 from several years and the defendant has been doing water servicing business by using the water from the well situated in the said property and defendant No.1 is getting minimum income of sum of Rs.5,000/- per day from the said water servicing business and accordingly, the defendant No.1 is selling the water of the well to different places by taking upto 5 – 6 tanker lorry per day and defendant No.1 is charging Rs.3,000/- per lorry and thereby earning Rs.18,000/- per day by sending the water by filling up the tanker lorry and the plaintiffs and defendant No.1 are having joint rights over the well, and the sate of the water of the well may lead to water scarcity for development and irrigation of the property. The defendant No.1 with an intention to cause loss to the plaintiffs, have been selling the water to third persons and earning Rs.18,000/- and the plaintiffs who are also having right over the well are also entitled to the sale proceeds of the well water but the defendant No.1 has not given any sale proceeds as on today. he has not given any amount to the plaintiffs though they are also having right over the well. If the said application is allowed, no loss or harm would be caused to the defendant No.1, otherwise the plaintiff would suffer loss which cannot be compensated in terms of money. Hence, prays to grant an injunction.

3. Per contra, the defendant No.1 has resisted the said application by filing statement of objections contending that the defendant No.1 never sold the water from the well as stated by

the plaintiffs in their application and no iota of evidence or documents are produced to show that the defendant No.1 is selling the water from his well. It is further contended that the defendant No.1 has never used the water of the well for his water servicing business and he is earning more than Rs.5,000/- per day and it is further denied that he is selling the water to some third parties and 5-6 tankers carrying the said water and it is further denied that defendant No.1 is charging Rs.3,000/- per tanker and thereby earning Rs.18,000/- per day. Absolutely no documents have been produced to show the same. On all these grounds prays to dismiss the said application.

4. Heard learned counsel for the plaintiffs and learned counsel for the defendant No.1.

5. Upon hearing arguments and on perusal of materials placed on record, the following points arise for consideration:

- 1. Whether plaintiffs have established prima facie case?**
- 2. Whether balance of convenience tilts in favour of plaintiffs?**
- 3. Whether irreparable loss or injury will be caused to the plaintiffs, if the injunction is not granted?**

4. **What order?**

6. My answers to the above points are as under:

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

7. **POINT NO.1 to 3:** Admittedly, the suit has been instituted by the plaintiffs seeking the relief of partition of their 1/4th share each in suit schedule properties. It is the case of the plaintiff that the suit properties original belonged to deceased Devamma, grandmother of plaintiffs and defendant No.1 and after her demise the name of her son Subray Nayak, father of plaintiffs and defendant No.1 came to be mutated as per varasa in respect of the suit properties on behalf of the family. No partition has been effected by metes and bounds as on today and the alleged registered partition deed said to have been executed between their parents and defendant No.1 behind their back is null, void and not binding on their share and the suit properties being family properties of plaintiffs and defendant No.1, plaintiffs are having 1/4th share over the said properties.

8. Per contra, the defendant No.1 has contended that the suit properties were acquired by deceased Devamma from her

maternal home and after her demise, her son Subraya has filed an application before the Land Tribunal in his individual capacity and after due enquiry, the Land Tribunal has conferred occupancy rights in favour of deceased Subraya and during the life time of their father and mother, partition was effected which came to be registered and Sy.No.296/10 was fallen to the share of defendant No.1 and deceased Subraya executed Willnama in favour of his grandson Ashwat in respect of remaining properties and the plaintiffs have no right over the suit schedule properties.

9. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

10. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused

to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

11. This Court has carefully perused the materials on record in order to ascertain whether the Plaintiffs have made out prima facie case for grant of temporary injunction as sought for. Admittedly, there is no dispute in respect of the relationship of the parties. The present application is moved by the plaintiffs seeing a temporary injunction restraining the defendant No.1 from selling the water of the well existed in Sl.No.1 of the suit schedule property. At the prime outset, it is to be noted here that the defendant No.1 in his objections nowhere denied the existence of the well situated in suit schedule property. It is merely denied that the defendant No.1 is selling the water as contended by the plaintiffs which itself shows that defendant No.1 has impliedly admitted the existence of well in Sl.No.1 of the suit property and while addressing the arguments the counsel for the defendant No.1 vehemently argued that the suit property is self acquired property of husband of defendant No.1 who has filed an application before the Land Tribunal and accordingly, occupancy rights were granted in his favour and during life time of their parents, there effected a registered partition deed and the suit

properties are not joint family properties. However, the plaintiffs pleaded that the registered partition which got effected is behind their back and the same is not binding on the share of the plaintiffs.

12. This Court has carefully perused the list of documents produced by the Plaintiff. The list of documents of the Plaintiff consists of Record of Rights and Mutation Entries in respect of suit schedule properties. The case of the plaintiffs is that the suit property originally belonged to their grandmother Devamma and after her demise, the name of their father Subraya came to be effected as per varasa entry. In this regard, on perusal of Mutation Entry No.2572 dated 12/06/1948, the name of Devamma can be seen in respect of suit property bearing Sy.No.296/10. On perusal of the old Record of Rights in respect of the said property from the year 1952 to 1982, the name of Devamma is forthcoming in kabsedar column as Moolgenidar and after her demise, the name of her son Subraya came to be entered in respect of the said property as per Mutation Entry No. 3633 dated 26/04/1964 which is a varasa wherein he became a tenant of the said property. Record of Rights for the year 2022-23 pertaining to item No.1 and 2 are standing in the name of the defendant No.1, item No.3 is standing in the name of defendant No.2 and record of rights in respect of remaining suit properties that is item No.4 to 6 depicts the names of Subraya Nayak and Shanti Nayak, parents of plaintiffs and defendant No.1 which

prima facie signifies that the suit properties are joint family properties of plaintiffs and defendant No.1.

13. The aforesaid documents produced by the plaintiffs corroborates the averments of the plaint. However, the defendant No.1 has contended that there was a partition during the life time of their parents Subraya and Shanti and the suit property bearing Sy.No.296/10 was fallen to the share of defendant No.1. When the defendant No.1 has taken a plea of prior partition, then the said plea itself signifies that the suit properties are joint family properties of plaintiffs and defendant No.1 and the burden lies on the party who raises the plea of prior partition. However, at this stage, the defendant No.1 has not produced an iota of document much to say a registered partition deed to show prima facie that partition was effected among them. However, on perusal of Mutation Entry No. 6489 dated 11/02/1998, it appears that the said entry came to be certified based on alleged partition said to have been effected between defendant No.1 and his parents Subraya and Shanti and on the basis of the said mutation entry, the name of defendant No.1 came to be entered in record of rights in respect of item No.1 and 2 of the suit properties. It is well settled law that the mutation entries neither create nor extinguish any title or interest over the property and the same are made only for the fiscal purpose of recovering the revenue and do not constitute a document of which title is created or has been conferred. Mutation entries are not the conclusive proof of the partition and partition cannot be presumed on mere strength of

mutation entries. It can also be given a consideration to the fact that the plaintiffs are not the parties to the said partition nor their signatures are forthcoming. However, the question whether there was prior partition or not and whether the Land Tribunal has conferred occupancy rights in favour of deceased Subraya in his individual capacity or the grant enures to the benefit of the family are the matter of the trial which requires complete adjudication and at this stage only prima facie case has to be looked into.

14. On perusal of the documents Ex.P.7 to Ex.P.9 and Ex.P.11 and Ex.P.12 which are the certified copies of mutation entries and old record of rights pertaining to suit property, it prima facie shows that the suit properties are joint family properties in which the interest of the plaintiffs is also included and the plaintiffs can seek an injunction in order to prevent violation of his rights over the suit properties as well as the things attached to the said joint family properties. Prima facie case cannot be equated with prima facie title. Prima facie case is a triable issue. At this juncture, Court is not expected to hold a mini trial. At this juncture, the plaintiffs have made out a triable issue.

15. It is already observed above that the defendant No.1 has not denied the existence of well in Sl.No.1 of the suit property and simply denied that he is not selling the water. The plaintiffs have also produced the photos which discloses that the water tanker lorry is taking the water and admittedly the said property is an

agricultural property and if the water from the well is being sold in large quantity to third persons every day, then there is every possibility of water scarcity and also summer is approaching which may be difficult for irrigation and development of the land due to which the plaintiffs may suffer huge loss which cannot be compensated in terms of money and on the other hand, the defendant No.1 has nowhere stated what harm or loss will be caused to him if the injunction is granted and in fact he stated that he is not selling the water, under such circumstances, absolutely no prejudice would be caused to the defendant No.1 if the injunction is granted. Though it is well settled law that injunction cannot be granted against co-owner but when an act of one co-owner is detrimental to the interest of other co-owners, then a co-owner can sue for an injunction to prevent such act which is detrimental to his interest. The core question to be determined is whether the suit property is the joint family property or self acquired property and whether the plaintiffs are entitled for 1/4th share over the suit property requires full pledge trial. Unless this question is determined, the suit property is required to be kept intact without affecting it. To maintain status quo, it is just and necessary to grant temporary injunction. If the defendant No.1 keeps selling the water from the well situated in Sl.No.1 of the suit property, it will certainly cause much hardship to the plaintiffs for irrigation of the property as well as for its development. And also defendant No.1 has taken any strong and cogent grounds giving the reasons for rejecting the

application. As such, I can safely hold that the plaintiffs have made out an arguable case.

16. At this juncture, the affidavit of the plaintiffs, coupled with documentary evidence placed on record, the plaintiffs have established a triable issue i.e. Prima Facie case. If the injunction is not granted and the defendant No.1 sells the water of the well, the hardship will be caused to the plaintiffs. Balance of convenience also tilts in favour of plaintiffs. Hence considering over all circumstances of the case, Points No.1 to 3 is answered in the **Affirmative**.

17. Point NO.4: For the foregoing reasons, this Court proceeds to pass the following:

ORDER

Interim Application No. IV filed by the plaintiffs U/O XXXIX Rules 1 and 2 R/W 151 of the Code of Civil Procedure, 1908 is hereby allowed.

The defendant No.1 or anybody acting on their behalf are hereby restrained from selling the water of the well existed in Sl.No.1 of the suit schedule property.

Note : Any observations/findings made in this order is confined only to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations of this order during the course of trial or for any other purposes.

(Prepared and typed by myself, then corrected by me and printed through stenographer, then pronounced in the open court on this the 2nd day of May- 2025)

(Arpitha B Bellad)
Addl. Civil Judge and J.M.F.C.,
Ankola.

(Order Pronounced by in the open court vide separate order)

ORDER

Interim Application No. IV filed by the plaintiffs U/O XXXIX Rules 1 and 2 R/W 151 of the Code of Civil Procedure, 1908 is hereby allowed.

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For hearing on IA No.III.

**Addl. Civil Judge and J.M.F.C.,
Ankola.**

