

KAUK310008782023



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND  
J.M.F.C., BHATKAL**

**Dated this 3<sup>rd</sup> day of November 2023**

**PRESENT : SRI. FAWAZ P.A., B.A., LL.B.**

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

**O.S.No.28/2023**

**Plaintiffs :**

1. Madevi W/o Venktappa Naik,  
Aged about : 82 years,  
R/o: Kelaginamane,  
Chowthani, Mundalli,  
Bhatkal Taluk-581320,  
Uttara Kannada.
2. Vasudev S/o Venktappa Naik,  
Aged about : 49 years,  
R/o: Kelaginamane,  
Chowthani, Mundalli,  
Bhatkal Taluk-581320,  
Uttara Kannada.
3. Rukmini W/o Manohar Naik,  
Aged about : 42 years,  
R/o: Naykaramne Hdeen,  
Sodigadde, Bhatkal,  
Bhatkal Taluk-581320,  
Uttara Kannada.

4. Dayananda S/o Venktappa Naik,  
Aged about : 40 years,  
R/o: Kelaginamane,  
Chowthani, Mundalli,  
Bhatkal Taluk-581320,  
Uttara Kannada.

**(By Sri. M.G., Advocate)**

**V/s**

**Defendants :**

1. Durgamma W/o Kuppayya Naik,  
Aged about : 90 years,  
R/o: Kelaginamane,  
Chowthani, Mundalli,  
Bhatkal Taluk-581320,  
Uttara Kannada.
2. Suresh Jattayya Naik,  
Aged about : 45 years,  
R/o: Kelaginamane,
3. Laxman Jattayya Naik,  
Aged about : 43 years,  
R/o: Kelaginamane,
4. Manjunath Jattayya Naik,  
Aged about : 41 years,  
R/o: Kelaginamane,
5. Maruthi Jattayya Naik,  
Aged about : 39 years,  
R/o: Kelaginamane,  
(Serial No.2 to 5 are residing at  
Bailamane Puravarga,

Bhatkal Taluk-581320,  
Uttara Kannada.

6. Padmavati W/o Lachmayya Naik,  
Aged about : 45 years,  
R/o: Kelaginamane,  
Chowthani, Mundalli,  
Bhatkal Taluk-581320,  
Uttara Kannada.
7. Laxmi W/o Sankus Naik,  
Aged about : 48 years,  
R/o: Kayamanamane,  
Kudre Beerappa Road,  
Chowthani, Bhatkal,  
Bhatkal Taluk-581320,  
Uttara Kannada.
8. Nagamma W/o Mohan Naik  
Aged about : 46 years,  
R/o: Dasimane Purvarga,  
Sarpanakatte, Bhatkal Taluk-581320,  
Uttara Kannada.
9. Gangamma W/o Mastappa Naik,  
Aged about : 44 years,  
R/o: Murdeshwar,  
Bhatkal Taluk-581320,  
Uttara Kannada.
10. Savitri W/o Gajanan Naik,  
Aged about : 42 years,  
R/o: Hosadu, Honnavar,  
Bhatkal Taluk-581320,  
Uttara Kannada.

11. Manjunath S/o Lachmayya Naik,  
Aged about : 38 years,  
R/o: Nagolli, Sagar Taluk,  
Shivamoga.  
**(D1 and D6 By Sri. V.F.G., Advocate,  
D2,3,4,5,7 and 8 placed on Exparte)**

**Parties to the I.A.No.III AND V :**

**Applicant :** Madevi Ventappa Naik and others

V/s

**Respondent :** Durgamma Naik and others

**ORDERS ON I.A NO.III AND V**

The Plaintiffs filed the suit for the relief of partition and injunction against the Defendants.

**2. The nutshell of the Plaintiffs suit is that:**

The suit schedule property are acquired by late. Kuppayya, Lachmayya and Venkatappa Naik, by way of varisa entry No. 427 of Chowthani Village. The Land Tribunal Bhatkal granted the same in LRM No.14/295. The Plaintiffs are the LRs of Venkatappa, Defendant No. 1 to 6 are LRs of Kuppayya and Defendant No. 7 to 11 are LRs of Lachmayya. After the death of the father of the parties to the suit, the properties were mutated in the name of the parties to the suit. Hence they are joint owners in possession over the suit schedule property. The suit schedule properties were developed

jointly by them. The suit schedule properties are not divided between the parties by meets and bounds. On 03/03/2023, the Sixth Defendant, cleared the Item No.I property of 'B' schedule in order to construct a shop without the permission of the joint family members. On 04/03/2023, he ignored the words of the Plaintiff and stored the construction materials. The Plaintiffs on 15/03/2023, requested to stop the construction work. The Defendant No.6 continued with her works to curtail the right of the Plaintiffs and Defendants contined the same over SL N.1 of 'B' schedule property. Hence they prayed to restrain her from continuing till the properties are separated by meets and bounds. The Plaintiffs also prayed to partition the suit schedule properties and allot their 1/3rd share in the suit schedule properties.

**3.** The Plaintiffs filed these applications and prayed before this court to restrain all the Defendants from alienating, transferring or creating any charge or putting up any construction over the suit schedule properties till the disposal of the suit.

**4.** The Defendant No.1 and 6 filed their written statement. They denied the Plaint averments. These Defendants submitted that, there was a oral partition

among the ancestors of the Plaintiffs and Defendants. On the basis of the said oral partition the Defendant No.1 to 6 are put in half share in Sy No.23/1 and 23/2 of Chowthani Village, Bhatkal Taluk as shown in SL. No.1 and 2 of the 'B' schedule property. In pursuance of the said partition, the Plaintiffs constructed their residential house and are in possession of the same. The Defendant No.1 has constructed a residential house in the year 2004, a shop, a Naga Bana and also planted Coconut and other valuable trees. The son of the Defendant No.6 constructed a new shop much prior to the institution of the suit, because, due to flood and to save the shop from flood. These Defendants are in possession of Item No.1 and 2 of the suit 'B' schedule property. The Plaintiff's suit is liable to be dismissed for non-joinder of necessary parties. These Defendants also paid the court fee and prayed the allot their share and to decree the suit.

**5.** The Defendant No.1 and 6 filed their objections to I.A No.III and V. The Defendant No.1 and 6 objected that, the contents of the affidavit are all false and are denied. The Plaintiffs did not appear before the court with clear hands. They have suppressed material facts with regard to oral partition. They have no prima facie case, nor balance of convenience in their favor. There

would be no hardship and in justice caused to the Plaintiffs if this I.A is not allowed. This I.A is not maintainable either under the law or on the facts of this suit. Hence, they prayed to dismiss the applications.

6. On perusal of the materials placed on record, following points arise for my consideration;

**Point No.1** : Whether Plaintiffs have made out a prima-facie case against the Defendants?

**Point No.2** : Whether the Plaintiff have made out a balance of convenience, lies in their favour?

**Point No.3** : Whether Plaintiff have made out grounds to prove that in case, if the Defendants dispossess them, they will be put to irreparable loss?

**Point No.4** : What Order?

7. My findings on the above points are as follows;

Point No.1 : **In the Negative**

Point No.2 : **In the Negative**

Point No.3 : **In the Negative**

Point No.4 : **As per final Order,**  
for the following:-

**REASONS**

**8. Point No.1 to 3 :** The Plaintiffs filed the suit for the relief of partition and injunction against the Defendants. The Plaintiffs admits that, the suit schedule property are joint family properties. They are not divided between them. The Defendants are planing to construct a building in the suit 'B' schedule property to defeat the rights of the Plaintiffs. Hence they filed this suit.

**9.** The Defendants No.1 and 6 appeared before this court and they submitted that, they are also entitled for 1/3rd share jointly in the suit schedule property alon with Defendants no 2 to 5. They prayed to decree the suit. The Defendants submitted that, in order to save their shop in suit 'B' schedule property from the natural calamities such constructions are made. There was oral partition between Plaintiffs and Defendants. As per the oral partition they are in possession of the same.

**10.** The Plaintiffs submitted that, the suit schedule properties are joint family properties. The suit schedule properties are not partitioned between the parties. The Defendants are trying to put construction and also trying to alienate the suit

schedule properties. Hence, the Plaintiff filed this application.

**11.** The Defendant No.1 and 6 filed common objections to I.A No.III and V. They denied the application averments. They submitted that, they are putting some construction in which they are in actual possession and also to save their construction from the natural calamities. Hence they prayed to dismiss the application.

**12.** On perusal of the entire materials, it is understandable that, they are joint owners of the suit schedule properties. The averments with regard to oral partition setup by the Defendant No.1 and 6 have to be decided on merits. It is to be noticed that, the Plaintiffs and Defendants are in possession of certain portion of land and they are in occupation of the same.

**13.** The counsel for the Plaintiff submitted that, he would stick on to the prayer of restraining the Defendants from constructing a building in suit 'B' schedule property. Thereafter, he submitted that, there is a citation with respect to multi prayers sought in application.

He relied upon a Judgment of The Hon'ble High Court of Karnataka in **WP. No: 109761/2016(GM-CFC)**

**Between Sri. AllaBaksh V/s Imam Hussain:para No.9:- The application filed in the present matter seeking for injunction, restraining the Defendant from transferring, alienating, mortgaging, creating gift or any right in changing nature of the suit land, in my considered opinion would not amount to distinct prayers being sought for since all thee said prayers are related to each other and filling of the single application seeking for a said relief would not be in violation or come within a mischief of Rule 23 of the Civil Rules of Practice 1967.**

On perusal of the materials available on record, it is quiet evident that, the prayers sought by the Plaintiffs is to restrain the Defendants from alienating, transferring or create any charge or putting up any construction over the suit schedule property. But The Hon'ble High Court of Karnataka in the above Writ Petition has laid down that transferring, alienating, mortgaging, creating gift or any right in changing the nature of the suit land can be considered and it would not violate or cause mischief of Rule 23 of the Civil Rules of Practice 1967. It is to be noticed that -any right in changing the nature of the suit land is nothing but conversion of the land from agricultural to non agricultural purposes. Hence -any right in changing the nature of the suit land and putting up any construction over the suit land are not one and the same. Thereby , said judgment would not apply to the facts of this suit. Whereas, the submission of the learned counsel for the Plaintiffs with regard to, he

would stick on to the prayer of restraining the Defendants from putting any construction would suffice the ingredients of Rule 23 of the Civil Rules of Practice 1967.

**14.** According to the Plaintiffs, the Defendants are constructing a shop in the suit B schedule property. But the Plaintiffs have not specified in the application with regard to the exact portion of the land. In such circumstances, injunction restraining the Defendants cannot be granted. Thereby, considering the relationship between the parties and admissions, the materials placed by the Plaintiffs does not disclose any prima-facie case and balance of convenience in their favour. It is to be noticed that, when the Plaintiffs have no case in their favour at this movement, the fact of irreparable loss and injury would not arise. Thereby, I don't find any case on the part of the Plaintiffs to grant injunction at this movement in their favour. Hence **I answer Point No.1 to 3 Negatively.**

**15. Point No.4 :** In view of answering above points, I proceed to pass following;

**ORDER**

**The I.A. No.III and V filed by the Plaintiffs U/Order 39 Rule 1 and 2 are dismissed.**

**No order as to cost.**

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in the open Court on this **3<sup>rd</sup> day of November 2023.**)

**Sd/-**

Addl. Civil Judge and  
J.M.F.C. Bhatkal.

