

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.,
AT:HALIYAL.**

P R E S E N T

**Sri.Basavaraj.G Sanadi , B.A.LL.B(spl)
Civil Judge & J.M.F.C., Haliyal.**

ORIGINAL SUIT NO: 06/2019.

Dated this 19th day of March 2019

**Applicant/
Plaintiff**

: 1. Sri. Ashok S/o Basappa Malagali
Age : 50 years, Occ : coolie
R/o Yallapur Road, Haliyal
Dist: Uttar Kannada.

(By Miss. S.R.G., Advocate)

- V/s -

**Respondent/s
Defendant/s**

: 1. Smt. Basava W/o Shivappa Bengalure
Age :72 years, Occ ; Household
R/o. Yellapur Road, Haliyal
Dist: Uttar Kannada. And others
(Defendants by Sri. B .N.R., Advocate)

**ORDER ON IA NO 1 FILED UNDER ORDER 39 RULE
1 AND 2 OF CIVIL PROCEDURE CODE**

The applicant/plaintiff has filed this application with prayer to grant relief of temporary injunction against the defendants restraining them from alienating suit property. In support of the application the plaintiff has filed the affidavit and prayed to allow the application.

2. On the other hand defendants have appeared through counsel and filed objection by denying all the averments of the plaint and application as false and frivolous. Further contended that the plaintiff has no locus standi to file instant suit, as the plaintiff is not a member of Hindu joint family of the defendants. Further submitted that, after the demise of mother of defendatnNo.3 by name Annapurana, the plaintiff had got married to another woman by name Shanta. As such, after the remarriage of the plaintiff, the relationship of the plaintiff is ended with family of the mother of this defendant. As such, the plaintiff has no right to inherit the property of the deceased Annapurna, as her legal heir. The plaintiff knowing fully well and behind the back and without the knowledge and consent of this defendant No.3, the plaintiff himself got created false and bogus heir-ship certificate and on the strength of the said created heirship certificate colluding with the CTS authorities illegally got mutated his name to the suit property. Defendant No.3 being the lone legal heir of the deceased Annapurna having every right, title and interest over the suit property. As such, the plaintiff has no locus standi to file the instant suit for partition and separate possession in respect of the suit property, as the plaintiff is no way concerned to the family of the ancestor Shivappa.

2(a). Further submitted that the plaintiff has filed instant suit by suppressing true material facts and has not approached this court with clean hands. It is submitted that, the property bearing CTS No. 2968A situated at Haliyal, is the inherited property of this defendant No. 3 after the demise of his mother smt. Annupurna. Further submitted that the ancestor Shivappa Bangalore died on 08-06-1985 leaving behind his wife ie. Defendant No.1 and two daughters 1) Chaya @ Vidya i.e defendant No.2 and Annupuran who is also died. It is submitted that after the death ancestor, the names of defendantNo1 and 2 and deceased Annapurna and Majunath have been entered in the city survey records of the suit property. It is submitted that, due to legal wed lock of deceased Annupurna and plaintiff, this defendant No.3 was born, the plaintiff is natural father of this defendant No.3 . and plaintiff has no right in the suit property. Therefore prayed to dismiss the application.

3. The following points arise for my consideration;

1. Whether the applicant/plaintiff has prima facie case in his favour?
2. Whether the balance of convenience lies in favour of applicant/plaintiff?
3. Whether the applicant/plaintiff would

suffer irreparable loss if the prayer for Interim injunction is rejected?

4. What order?

4. I have heard arguments on both side and I have perused the documents on record.

5. My findings on the above said points are as follow;

Point No. 1- : In “Negative”

Point No. 2- : In “Negative”

Point No. 3- : In “Negative”

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

: REASONS :

6. Point No. 1; plaintiff has filed this suit against the defendants for partition and separate possession in respect of suit property. Further contended that the ancestor by name Shivappa Bangalore died on 08-08-1985 leaving behind, his wife i.e., defendant No.1 and 2 daughters 1) Chaya @ Vidya i.e., defendant No.2, 2) Annapurna and son by name Majunath who is also died unmarried. After death of ancestor the names of defendant No.1,2 and deceased Annupurna and Manjunath have entered in the city survey records of the suit property. Thereafter, the daughter of Shivapa i.e. Annapurna Married to the plaintiff. Annupurna wife of plaintiff also died

on 26-11-1993 leaving beyond her husband plaintiff and son Channabasavaraju defendant No.3. Thereafter defendant No.3 gone in adoption to Shri. Rudrappa S/o Basappa Malagali, the brother of plaintiff. The defendant NO.3 is now residing along with his adopted father and he is in possession and enjoyment of the properties of adopted family. Now the plaintiff and defendant Nos. 1 and 2 are in the possession of the suit property jointly. That the suit property is ancestral property of deceased wife of plaintiff. Hence, the plaintiff inherited the suit property in accordance with Hindu succession. Act and became joint owners of the suit property. But defendant is not ready to make the partition in the suit property and trying to alienate it. Therefore plaintiff is constrained to file the present suit along with I A No.1

7. In support of the application plaintiff has filed affidavit and reiterated averments of the plaint and in support of his case plaintiff has produced the property extract of suit property and birth certificate of children of plaintiff.

8. Learned advocate for the plaintiff has vehemently argued that suit property is ancestral and joint family property of plaintiff and defendant and plaintiff has got share in the suit property. Further submitted that plaintiff has prima facie case in his favour. Further argued that defendant No.3 has

gone in to adoption to Shri. Rudrappa S/o Basappa Malagali, the brother of plaintiff. The defendants No.3 is now residing along with his adopted father and he is in possession and enjoyment of the properties of adopted family. If IA is not allowed then the plaintiff will be put into great loss and hardship and the irreparable loss will be caused to the plaintiff which will not be compensated in terms of money therefore prayed to allowed the I.A.

9. On the other hand learned advocate for the defendants has vehemently argued that the plaintiff has no locus standi to file instant suit, as the plaintiff is not a member of Hindu joint family of the defendants. Further submitted that, after the demise of mother of defendatnNo.3 by name Annapurana, the plaintiff had got married to another woman by name Shanta. As such, after the remarriage of the plaintiff, the relationship of the plaintiff is ended with family of the mother of this defendant. As such, the plaintiff has no right to inherit the property of the deceased Annapurna, as her legal heir. Further submitted that plaintiff has not approached the court with clean hands. Accordingly prayed to dismiss the application.

10. On perusal of material placed by the both parties on record, it appears that it is specific contention of the plaintiff that suit property is inherited by him after demise of his wife

who is mother of defendant No.3. and he has got share in the suit property. But it is the defense of the defendants that plaintiff has got remarried to another woman. Therefore he is not having any right in the suit property and he has illegally and without consent of defendants got entered his name in the suit property. The documents produced by the plaintiff i.e property extract go to show that the name of plaintiff is entered in the property extract of suit property as a minor guardian of defendant No.3. Therefore he is not having any independent right in the suit property. Moreover the property is belonged to deceased wife of plaintiff and mother of defendant No.3 and said property came to her from her father. Therefore plaintiff is not entitle for share while her son defendantNo.3 is alive. However plaintiff can prove his case by adducing cogent and reliable evidence. Therefore all these questions will be decided after the trial. But at the stage if the I A is allowed then defendants will be put in to hardship. Therefore I am of the considered view that plaintiff has no prima facie case in his favour. Accordingly I answer Point No.1 in the Negative.

11. Point no 2: That at the present status of the case prima facie case is not existing in favour of the plaintiff, and balance of convenience is also not lies in favour of plaintiff. Hence I answer point No. 2 in the Negative.

12. Point no 3: In the present case, where the prima facie case and balance of convenience are not in favour of the plaintiff, hence question of loss or hardship does not arise. Hence I answer point No, 3 in the Negative.

13. Point no 4: In view of my findings on Point No. 1 to 3 as discussed above, I proceed to pass the following;

ORDER

I.A. No. I filed U/o 39 Rule 1 and 2
R/w. 151 of CPC by plaintiffs is hereby
dismissed.

No order as to cost.

(Dictated to the stenographer directly on computer, typed by him, revised by me and then pronounced in the open court, on this 19th day of March 2019)

Civil Judge And JMFC.,
Haliyal.