

**IN THE COURT OF THE CIVIL JUDGE & JMFC,  
HALIYAL**

**DATED THIS THE 23RD DAY OF MARCH, 2023**

**PRESENT:- DESHABHUSHAN KOUJALAGI,  
Civil Judge and J.M.F.C., Haliyal**

**OS. No.08/2019**

**BETWEEN : SMT. SUSHILA W/O SAHADEV  
RANGOJI AND ANOTHER.**

**...PLAINTIFFS**

**AND : SMT. KAMALAVVA W/O KALAPPA  
MATTI AND OTHERS.**

**...DEFENDANTS**

**PARTIES TO I.A NO.1**

**BETWEEN : SMT. SUSHILA W/O SAHADEV  
RANGOJI AND ANOTHER.**

**...PLAINTIFFS/APPLICANTS**

**(By: Sri. C.V.N, Advocate)**

**AND : SMT. KAMALAVVA W/O KALAPPA  
MATTI AND OTHERS.**

**...DEFENDANTS/OPPONENTS**

**(Def No.1 to 5 by Sri. M.B.P and Def No.6 to  
9 Sri. S.D.J, Advocates)**

**ORDER ON I.A. NO.1**

The instant application is filed by the plaintiffs under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C. against the defendants for the relief of temporary injunction to restrain the defendants from alienating the suit properties or changing revenue records of the suit schedule properties in any manner till final disposal of the suit.

**02.** The plaintiff No.2 has filed the affidavit in support of the instant application wherein, she has stated that, suit schedule properties are joint family properties of themselves that defendants No.1 to 5 who constitute the members of HUF. One Sri. Kallappa Hanamantappa Matti was the manager of the said joint family and he was the father of plaintiffs, defendants No.2 to 5 and husband of defendant No.1. Said Kallappa Matti was expired on 09-05-1993 and thereafter, the plaintiffs and defendants No.1 to 5 are in joint possession and enjoyment of the suit schedule properties.

**03.** It is further stated in the affidavit that, said Kallappa Matti during his life time had applied for the grant of Item No.3(a) of the suit schedule property but before the grant, he was expired. As such, the said property was granted in the name of defendant No.1 for herself and plaintiffs and defendants No.2 to 5. Accordingly, the name of defendant No.1 was mutated to the revenue records of said property as per ME No.1348. In spite of having no manner of rights in the suit schedule properties, the defendants No.6 to 9 who are distant relatives of the plaintiffs by colluding with defendant No.1 to 5 have created a bogus partition deed without the knowledge and consent of the plaintiffs and

thereby attempting to mutate the names of defendants No.5 to 9 to Item No.3(a) of the suit schedule property through MR No.H13/2018-19 of Sivapur Village. To the said proposed mutation, the plaintiffs have filed their objections before Tahashildar, Haliyal in RTS No.27/2018.

**04.** It is further stated in the affidavit that, the mutation register bearing No.H13/2018-19 of Shivapur Village is not binding on the plaintiffs who have 1/7th share each in the suit schedule properties. No partition is effected between plaintiffs and defendants No.1 to 5 in respect of suit schedule properties and the defendants are attempting to alienate the suit schedule properties and also attempting to change revenue records of the suit schedule properties and as such, the plaintiffs are constrained to file the present application.

**05.** After service of suit summons the defendant No.1 has filed written statement which is adopted by defendants No.2 to 5. The defendant No.7 has filed written statement which is adopted by defendants No.6, 8 & 9. The defendants have filed memos to adopt their written statement as objections to I.A.No.I. Hence, it is necessary to consider the contents of written statement of the defendants.

**06.** All defendants have taken more or less similar contentions. The defendants No.1 to 5 have pleaded in their written statement that, defendants No.6 to 9 are the brother-in-laws of defendant No.1. It is further contended that, the father of defendants No.6 & 7, the father of defendants No.8 & 9 and the husband of defendant No.1 are brothers. The defendants No.1 to 5 have further contended that, Item No.3(b) of the suit schedule property is only the joint family property of plaintiff No.2 and defendants No.1 to 5 and Item No.3(a) of the suit schedule

property is not joint family property of plaintiffs and defendants No.1 to 5.

**07.** It is further contended by defendants No.1 to 5 that, Item No.3(a) of the suit schedule property is granted to defendant No.1 as per ME No.1348 and as per order of DC, Karwar dated 04-07-1994. Accordingly, said property is in exclusive possession and enjoyment of the defendant No.1 and the same is self-acquired property of defendant No.1. It is further contended that, the defendants No.6 to 9 are the sons of brother-in-laws of defendant No.1 and they have looked after the family of plaintiffs and defendants No.1 to 5 after the death of Sri. Kallappa Matti. It is further contended that, Item No.3(a) of the suit schedule property was allotted to Sri. Kallappa Matti & at that time, said Kallappa and his two brothers i.e., fathers of defendants No.6 to 9 were living jointly. Even at the time of grant of Item No.3(a) of the suit schedule property in the name of defendant No.1, no objections were raised by the defendants No.6 to 9. Therefore, the two brothers i.e., father of defendants No.6 & 7 by name Sri. Kedarappa Matti and the father of defendants No.8 & 9 by name Sri. Mahadev Matti have equal share in the Item No.3(a) of the suit schedule property.

**08.** It is further contended that, the defendants No.6 to 9 have never asked for partition or share in Item No.3(a) of the suit schedule property but as a responsible woman and on account of gratitude towards the care taken by them, the defendant No.1 was decided to give share in the Item No.3(a) of the suit schedule property and the same was informed to plaintiffs and defendants No.2 to 5. They have given their consent for the same and thereafter, partition deed was registered on 04-

09-2018 wherein 01A-01G-05A each has been given to defendants No.6 to 9 and 02A-02G-11A is given to defendants No.1 & 4 jointly as the defendant No.1 is looking after by her daughter i.e., defendant No.4.

**09.** It is further contended that, the plaintiff No.1 has no manner of rights in the suit schedule properties as she has already relinquished her rights on 23-09-2014 through a registered relinquishment deed. Whereas, the plaintiff No.2 has only right in Item No.3(b) of the suit schedule property. The plaintiff No.1 has no manner of rights in Item No.3(a) of the suit schedule property as it is self-acquired property of defendant No.1. With these facts and pleadings, the defendants No.1 to 5 pray to reject the instant application. As already stated above, the defendants No.6 to 9 have also taken similar contents and as such, there is no necessity to reproduce the same once again.

**10.** Heard on both side. The plaintiffs in support of their case have relied upon documents such as, RTC extract of Sy No. 151C of Shivapur Village, RTC extract of Sy No. 140 of Shivapur Village, RTC extract of Sy No.151 of Murkwad Village of the year 1965 to 1984, copy of objections addressed to the Tahashildar, Haliyal dated 10-10-2018 by the plaintiffs, copy of notice issued by the Tahashildar, Haliyal in RTS/Takarari No.27/2018-19, notice issued by Tahashildar, Haliyal under Rule 65 in Form-21 and Death Certificate of Nagappa Kedrappa Matti.

**11.** On the other hand, the defendants No.1 to 5 have relied upon the documents such as, certified copies of MR Nos.1270, 1348, 1464, copy of Wantani Patra, copy of RTC extract of Sy No. 151 ₹ of Shivapur Village, copy of relinquishment deed dated 23-09-2014, RTC extract of

Sy. No.151 ½ of Shivapur Village of the year 2018-19, copy of Hakku Bittu Kotta Patra, copy of Mutation entry No. H9 of Shivapur Village and copy of RCT extract of Sy No.140 of Shivapur Village.

**12.** Under the above circumstances, the following points arise for the consideration of the Court:

- POINT NO.1: Whether plaintiffs have made out a prima-facie case?
- POINT NO.2: Whether balance of convenience lies in favour of the plaintiffs?
- POINT NO.3: Whether if TI is not granted, plaintiffs would be put to untold hardship and irreparable loss?
- POINT NO.4: What Order?

**13.** Findings of the Court on 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 final order for the following:

**:REASONS:**

**14. POINT NO.1 TO 3 :** Since these points are interlinked with each other, they are taken together for common discussion to avoid repetition of facts.

15. To get an order of temporary injunction, it is necessary to make out a prima facie case by the applicant. The prima facie case means, the party who is seeking temporary injunction must have a triable case. In other words, the applicant must have a strong case for trial and there are every probabilities of establishing her case by undergoing a trial. However, this does not mean that, the applicant must have a cent percent case. The applicant from the face of it has to convince the Court that, she has every chance of succeeding in her case if, the Court decides the matter on merits.

16. The Learned counsel for the plaintiffs has argued that, the suit schedule properties are joint family properties of plaintiffs and defendants No.1 to 5 but by taking undue advantage of standing of name of defendant No.1 in the Item No.3(a) of the suit schedule property, the defendants No.1 to 5 by colluding with defendants No.6 to 9 are attempting to alienate and to change the revenue records of the suit schedule properties and as such, plaintiffs have filed the instant application.

17. On the other hand, the learned counsels for the defendants have argued that, Item No.3(a) of the suit schedule property is self-acquired property of defendant No.1 who was under care and custody of defendants No.6 to 9. It is further argued that, when Item No.3(a) of the suit schedule property was granted in the name of defendant No.1, here husband Sri. Kallappa and fathers of defendants No.6 to 9 i.e., Sri. Kedarappa and Sri. Hanamant were jointly residing and as such, considering all these aspects, partition deed was executed on 04-09-2018

in respect of Item No.3(a) of the suit schedule property. It is further argued that, plaintiff No.1 has already executed a registered relinquishment deed dated 29-09-2014 and as such, she is not entitled for the relief sought in the instant application.

**18.** Having regard to the rival submissions on both side, Court has once again gone through the entire materials. There is no dispute with regard to relationship of the parties. Late Sri. Kallappa Matti is the husband of defendant No.1 & father of plaintiffs and defendants No.2 to 5. Deceased Kallappa had two brothers i.e., late Sri. Kedarappa & late Sri. Hanamanth. The defendants No.6 & 7 are the children of late Sri. Kedarappa. Whereas, the defendants No.8 & 9 are the children of late Sri. Hanamanth.

**19.** According to plaintiffs, the suit schedule properties are joint family properties of themselves and defendants No.1 to 5. If pleadings on both side are taken into consideration, the main dispute exists between the plaintiffs and defendants is with regard to Item No.3(a) of the suit schedule property. The plaintiffs have taken a consistent stand that, Item No.3(a) of the suit schedule property was granted in the name of defendant No.1 for herself and on behalf of plaintiffs and defendants No.2 to 5.

**20.** On the other hand, the defendants have taken dual contentions. At one breath, they contend that, Item No.3(a) of the suit schedule property is self acquired property of defendant No.1 as it is granted to her in her individual capacity. At another breath, they contend that, Item No.3(a) of the suit schedule property was allotted to husband of defendant No.1 i.e., late Sri. Kallappa and at that time, Kallappa and his

02 brothers i.e., father of defendants No.6 & 7 and father of defendants No.8 & 9 were living jointly and they have given their consent for mutation of name of defendant No.1 alone to the revenue records and as such, they too have equal share in the said property.

**21.** Therefore, from the pleadings of defendants, it could be culled out that, the defendants have taken two contradictory stands at same time in respect of Item No.3(a) of the suit schedule property. It is also pleaded in the written statement of defendants No.6 to 9 that, they have looked after the defendants No.1 to 5 and plaintiffs after the death of their uncle i.e., late Sri. Kallappa and because of such gratitude service of defendants No.6 to 9, the defendant No.1 has partitioned her self acquired property i.e., Item No.3(a) of the suit schedule property and allotted 01A-01G-05A each to defendants No.6 to 9 and remaining extent of land measuring 02A-02G-11A was retained by defendant No.1 with defendant No.4 as defendant No.4 is taking care of defendant No.1.

**22.** The pleadings of the defendants itself creates doubts with regard to nature of Item No.3(a) of the suit schedule property. The defendants themselves are not having clarification as to whether the Item No.3(a) of the suit schedule property is self acquired property of defendant No.1 or it is joint family property of plaintiffs and defendants. On the contrary, the plaintiffs have taken consistent stand that, both the suit properties are joint family properties of themselves and defendants No.1 to 5. Admittedly, RTC of Item No.3(a) of the suit schedule property of the year 1965-66 to 1983-84 discloses the sole name of husband of defendant No.1 and father of plaintiffs and defendant No.2 to 5 i.e., Sri. Kallappa Matti at cultivator's column. Thereafter, it is granted in the

name of defendant No.1. Admittedly, the name of father of defendants No.6 & 7 and the father of defendants No.7 & 9 have not been entered in the revenue records of Item No.3(a) of the suit schedule property. Under these circumstances, the stand taken by the plaintiffs appears to be the most convincing one rather than the multi-fold stands taken by the defendants.

**23.** So far as Item No.3(b) of the suit schedule property is concerned, the defendants have contended that, the plaintiff No.1 has relinquished her rights over the said property through a registered relinquishment deed. Whether the plaintiff No.1 has relinquished her rights or not is a matter of trial and the same could not be decided at this stage by holding a mini trial. Even if for the sake of arguments, it is considered that, the plaintiff No.1 has relinquished her rights in the suit schedule property but, the plaintiff No.2's grievance could not be ignored here. If the plaintiff No.1 would have alone filed the present suit then the matter could have been different. But both the plaintiffs have alleged there are apprehension of disposing of the suit schedule property and change of revenue records by the defendants. Under such circumstances, if the entire pleadings and documents of both parties are taken into consideration, Court opines that, the plaintiffs have made out prima facie. Not only the prima facie case but also balance of convenience lies on the side of plaintiffs. If at this stage, TI is not granted in favour of the plaintiffs, it would leads to multiplicity of litigations and also causes greater hardship and loss to the plaintiffs rather than the defendants. In view of aforesaid factors, Court opines that, the plaintiffs are entitled for

the relief of temporary injunction. Hence, Points No.1 to 3 are answered in the **AFFIRMATIVE**.

**24. POINT NO.4:** In view of the findings on Points No.1 to 3, Court proceeds to pass the following:

**ORDER**

The application filed by the plaintiffs under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

Consequently, the defendants or anybody acting on their behalf are hereby restrained temporarily from alienating the suit schedule properties or changing revenue records of the suit schedule properties in any manner till final disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on computer, computerized by her corrected and then pronounced by me in the Open Court on this the 23<sup>rd</sup> Day of March, 2023.)

**(DESHABHUSHAN KOUJALAGI)**  
Civil Judge and J.M.F.C., Haliyal