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**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL  
AT: HALIYAL, UTTARA KANNADA**

**DATED THIS THE 18<sup>th</sup> DAY OF JANUARY, 2024**

**PRESENT:- DESHABHUSHAN KOUJALAGI,  
B.A.,LL.B  
Civil Judge and J.M.F.C., Haliyal  
O.S. No.77/2023**

**BETWEEN : 01. SHRI. HANAMANTH S/O APPARAO  
MIRASHI AND OTHERS.**

**...PLAINTIFFS**

**AND : 01. SMT. LAXMI W/O SURESH  
CHAPOLKAR AND OTHERS.**

**...DEFENDANTS**

**PARTIES TO LA NO.I**

**BETWEEN : 01. SMT. LAXMI W/O SURESH  
CHAPOLKAR AND OTHERS.**

**...APPLICANTS/ DEFENDANTS**

**(By: Sri. G.V.K, Advocate)**

**AND : 01. SHRI. HANAMANTH S/O APPARAO  
MIRASHI AND OTHERS.**

**...OPPONENTS/ PLAINTIFFS**

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

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

The instant application is filed by the defendants under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C. for the relief of temporary injunction to restrain the plaintiffs or anybody acting on their behalf from obstructing the cultivation of the suit schedule property or trespassing into the suit schedule property till final disposal of the suit.

2. The defendants No.1 has filed an affidavit in support of the instant application wherein, he has stated that, originally, the suit schedule property was granted to her father-in-law by name late Sri. Honnappa S/o Parasappa Chapolkar by the Land Tribunal on 02-11-1977 and mutation was also certified to that effect as per ME No.1153. After the death of Sri. Honnappa Chapolkar, his only son i.e., the husband of the defendant No.1 continued the cultivation of the suit schedule property mutation was also certified as per ME No.1336. The husband of the defendant No.1 was died on 10-11-2006 and thereafter, his legal heirs i.e., the defendants started to cultivate the suit schedule property.

3. It is further stated in the affidavit by the defendant No.1 that, the plaintiffs are not at all concerned to the family of the defendants and the suit schedule property. The husband of the defendant No.1 is the only son to late Sri. Honnappa S/o Parasappa Chapolkar and after his death, the defendants acquired rights in the suit schedule property. The plaintiffs by furnishing false genealogy have filed the present suit and by colluding with revenue officials, the plaintiffs have got entered their names to the RTC of the suit schedule property behind the back of the defendants. It is further deposed in the affidavit that, the defendants have

requested the plaintiffs on many times to get delete their names from the RTC of the suit schedule property but the same was not considered by the plaintiffs. The plaintiffs are obstructing the cultivation of the suit schedule property by the defendants and Police complaint was also given by the defendants against the plaintiffs on 03-06-2023.

4. It is further deposed in the affidavit that, adjudication of the main dispute will consume its own time and in the meanwhile, there are every chances of obstruction by the plaintiffs to the possession and enjoyment of the suit schedule property of the defendants and as such, the defendants are constrained to file the present suit.

5. On the other hand, the plaintiffs have filed the objections to the instant application wherein, they have contended that, the defendants have not cultivated the land from the last five years and now they are obstructing the cultivation of the suit schedule property by the plaintiffs with an intention to grab the crops grown by the plaintiffs. Apart from the above, the plaintiffs in their objections have contended that, plaint averments could be considered as objections to instant application and as such, it is necessary to look into the averments made in the plaint.

6. It is pleaded in the plaint that, the suit schedule property is joint and ancestral property of the plaintiffs and the defendants which was originally belonged to late Sri. Honnappa Parasappa Chapolkar who was died on 21-10-1988 and after his death, his daughters and one son have acquired rights in the suit schedule property as his Class-I legal heirs. Late Smt. Vittabai W/o Apparao Mirashi and the plaintiff No.4 are the daughters of late Sri. Honnappa Parasappa Chapolkar and said Vittabai is the mother of the plaintiffs No.1 to 3 who was died on 27-09-2009. The

son of late Sri. Honnappa by name Sri. Suresh was also expired by leaving behind him the defendants as his Class-I legal heirs. As such, the plaintiffs and the defendants are the joint owners in joint possession and enjoyment of the suit schedule property wherein, the plaintiffs No.1 to 3 have got 1/3rd share together, the plaintiff No.4 has got 1/3rd share and the defendants have got 1/3rd share together. It is also pleaded that, no partition by metes and bounds has taken place between the plaintiffs and the defendants in respect of the suit schedule property. It is further pleaded in the plaint that, the plaintiffs have approached the defendants and requested for the partition but the same was not considered and as such, the plaintiffs are constrained to file the present suit for the relief of partition.

7. Heard on both sides. The defendants in support of their case have relied on documents such as, Photographs, Tax Paid Receipts, certified copies of M.E Nos.1072, 1153, 1336, 1358, Tax No Due Certificate, Letter submitted to Tahasildar. Haliyal by defendant No.1 dated 13.12.2023

8. On the other hand, the plaintiffs have relied on documents such as, RTC of land bearing Survey No.1/2 of Anthrolli Village of Haliyal Taluka of the year 2022-23, certified copy of M.E No.1358, copy of MR No.H12/2013-14, xerox copy of Certificate of Death of Honnappa Chapolkar, Surviving Family Legal Heirs Certificate, Notice, Tax Paid Receipts, Receipt for Payment of Assessment, xerox copy of Aadhaar Card.

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

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

**10.** Findings of the Court on the above points are as under:

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:**

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

**12.** 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, he has every chance of succeeding in his case if, the Court decides the matter on merits.

**13.** In the present case, the present application for the relief of temporary injunction is filed by the defendants by contending that, the plaintiffs are not at all concerned to the family of the defendants and suit schedule property is exclusively cultivating by them which was originally granted to the father-in-law of the defendant No.1 by name late Sri. Honnappa Parasappa Chapolkar. On the other hand, the plaintiffs contend that, the mother of the defendants No.1 to 3 by name Smt. Vittabai, the defendant No.4 and the husband of defendant No.1 i.e., Sri. Suresh are the children of late Sri. Honnappa Parasappa Chapolkar and as such, the suit schedule property is joint and ancestral property.

**14.** In the background of aforesaid rival contentions, the Court has gone through the documents relied upon by both parties. The defendants have relied upon ME No.1153 dated 02-11-1977 which discloses that, the suit schedule property was originally granted to late Sri. Honnappa S/o Parasappa Chapolkar. The defendants have relied upon another mutation entry bearing No.1336 dated 04-11-1988 which discloses that, the name of the only son of the Honnappa Chapolkar i.e., Sri. Suresh was ordered to be entered in the RTC of Sy. No.1/2 i.e., the suit schedule property in view of death of Sri. Honnappa Chapolkar. Said Suresh Chapolkar is none other than the husband of the defendant No.1

and the father of the defendants No.2 to 4. Based on ME No.1336, the defendants are contending that, Sri. Suresh Chapolkar is the only issue to late Sri. Honnappa Chapolkar and plaintiffs are no way concerned to the late Sri. Honnappa Chapolkar.

**15.** On the other hand, the plaintiffs have relied upon ME No.1358 dated 01.07.1989 and the said mutation entry discloses that, earlier mutation entry bearing No.1336 dated 04.11.1988 was cancelled as per the order of the Tahasildar, Haliyal in Takarari Vahi No.19/88-89 and further ordered for entry of joint names of Sri. Suresh Honnappa Chapolkar i.e., the husband of defendant No.1 and father of defendants No.2 to 4, Smt. Vittabai Mirashi who is the mother of the plaintiffs No.1 to 3 and the name of Smt. Sushila i.e., the plaintiff No.4. Therefore, the mutation entry bearing No.1336 which is relied upon by the defendants has been cancelled as per M.E No.1358. In view of the same, the defendants cannot contend that, after the death of Sri. Honnappa Chapolkar, his only son i.e., late Sri. Suresh became absolute owner of the suit property on the basis of M.E No.1336 for the reason that, the said mutation entry has been cancelled by the Tahasildar, Haliyal.

**16.** Apart from M.E No.1358, the plaintiffs have also relied upon Surviving Family Legal Heirs Certificate dated 19.05.1989 which shows that, Smt. Vittabai and the plaintiff No.4 are also the children of late Sri. Honnappa S/o Parasappa Chapolkar. The learned counsel for the defendants has argued that, the revenue officials have no authority to issue Surviving Family Legal Heirs Certificate but, the Court opines that, at this stage, the Court cannot hold a mini trial to find out as to who are the legal heirs of deceased Sri. Honnappa S/o Parasappa Chapolkar.

Admittedly, M.E No.1336 which is relied upon by the defendants has been cancelled and the defendants have not produced any documents to show that, the order passed by the Tahasildar, Haliyal has been set aside by the Appellate authority. This apart, at present, the RTC of the suit schedule property is standing jointly in the name of plaintiffs and defendants. Hence, the contention of the defendants that, they are exclusively cultivating the suit schedule property is not supported by any cogent documents. Though the defendants have relied upon Tax Paid Receipts which are standing in the name of late Sri. Suresh Chapolkar and defendant No.1 but, the plaintiffs have also produced Tax Paid Receipts which are standing in the name of the plaintiff No.4. Hence, at this stage, the Court does not find any prima-facie case and balance of convenience on the side of the defendants.

17. Apart from the above, as per Order 39 Rule 1(a) of C.P.C., either plaintiff or the defendant can seek the relief of temporary injunction only under three circumstances i.e., if the property in dispute is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree. Admittedly, the present application is filed by the defendants seeking the relief of temporary injunction to restrain the plaintiffs from obstructing the cultivation of the suit schedule property or trespassing into the suit schedule property. The said relief which are sought by the defendants do not come under the purview of Order 39 Rule 1(a) of C.P.C. On this count also, the defendants are not entitled for the relief of temporary injunction as sought for. The relief claimed by the defendants falls under purview of Order 39 Rule 1(b) and (c) of C.P.C., which could be availed only by the plaintiff

and not the defendant. In view of aforesaid discussion, the Court opines that, the defendants are not entitled for the relief of temporary injunction. Hence, Points No.1 to 3 are answered in the **NEGATIVE**.

**18. 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 defendants under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer, computerized by her corrected, signed and then pronounced by me in the Open Court on this the *18<sup>th</sup> day of January, 2024.*)

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