

KAUK620013542020



IN THE COURT OF PRL CIVIL JUDGE & JMFC

AT: HONNAVAR

**Present: Chandrashekhar E Banakar,
B.A.LL.B.LL.M,**

Prl. Civil Judge & JMFC, Honnavar

Dated this the 11th day of April, 2023

O.S. No.85/2020

Plaintiffs:

01. UFM Subray Venkappa Hegde,

Aged about 63 years,
Occupation: Agriculturist,
R/o. Hosakuli Gramada Paiki Guddebala,
Tq: Honnavar.

02. UFM Giridhar Subba Hegde,

Aged about 40 years,
Occupation: Agriculturist,
R/o. Hosakuli Gramada Paiki Guddebala,
Tq: Honnavar.

(By Advocate Sri.GGB)

//Vs//

Defendants:

01. Ganapati Ramachandra Hegde,

Aged about 50 years,
Occupation: Agriculturist,
R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.

02. Ganapati Yane Vinoda Venkappa Hegde,

Aged about 60 years,
Occupation: Agriculturist or Service,

R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.

03. Gajanan Venkappa Hegde,

Aged about 58 years,
Occupation: Agriculturist or Service,
R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.

(By Advocate Sri.GVB)

Parties to I.A. No.I:

Applicants:-

01. UFM Subray Venkappa Hegde,

Aged about 63 years,
Occupation: Agriculturist,
R/o. Hosakuli Gramada Paiki Guddebala,
Tq: Honnavar.

02. UFM Giridhar Subba Hegde,

Aged about 40 years,
Occupation: Agriculturist,
R/o. Hosakuli Gramada Paiki Guddebala,
Tq: Honnavar.

//Vs//

Opponents/defendants:

01. Ganapati Ramachandra Hegde,

Aged about 50 years,
Occupation: Agriculturist,
R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.

02. Ganapati Yane Vinoda Venkappa Hegde,

Aged about 60 years,
Occupation: Agriculturist or Service,
R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.

03. Gajanan Venkappa Hegde,

Aged about 58 years,
Occupation: Agriculturist or Service,

R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.

Parties to I.A. No. IV:

Applicants/defendants:

- 01. Ganapati Ramachandra Hegde,**
Aged about 50 years,
Occupation: Agriculturist,
R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.
- 02. Ganapati Yane Vinoda Venkappa Hegde,**
Aged about 60 years,
Occupation: Agriculturist or Service,
R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.
- 03. Gajanan Venkappa Hegde,**
Aged about 58 years,
Occupation: Agriculturist or Service,
R/o.Salkod Gramada Paiki Kaikatkeri,
Tq: Honnavar.

//Vs//

Opponents/plaintiffs:

- 01. UFM Subray Venkappa Hegde,**
Aged about 63 years,
Occupation: Agriculturist,
R/o. Hosakuli Gramada Paiki Guddebala,
Tq: Honnavar.
- 02. UFM Giridhar Subba Hegde,**
Aged about 40 years,
Occupation: Agriculturist,
R/o. Hosakuli Gramada Paiki Guddebala,
Tq: Honnavar.

ORDER ON I.A. NOS. I & IV

The plaintiffs/applicants have filed I.A. No.I under Order 39 Rule 1 and 2 of CPC praying this Court to issue an order of temporary injunction against the defendants restraining them from alienating the suit schedule property and from creating encumbrance over the suit schedule property till the disposal of this suit. On the contrary, the defendants have filed I.A.No. IV under order 39 rule 4 of CPC, seeking to vacate the exparte temporary injunction granted in favour of plaintiffs.

2. The I.A.No. I is supported with the affidavit of the plaintiff No.1, wherein he deposed he and his ancestors are in the actual possession and enjoyment of the suit schedule property. Even though the name of the defendant No. 1 and name of the father of the defendant Nos. 2 and 3 are appearing in the revenue records pertaining to the suit schedule property, the actual possession of the said property is with these plaintiffs.

2.1. The plaintiffs and defendants are relatives. The fathers of the defendants have delivered the actual possession of the suit schedule property prior to 1951. Since from then, the predecessors of these plaintiffs started cultivating the suit schedule property. As the houses of these defendants are for from the suit schedule property, the fathers of the defendants have delivered the possession to the predecessors of the plaintiffs.

2.2. After getting the possession of the suit schedule property, earlier the predecessors of the plaintiff and later the plaintiffs have invested their money and developed the suit schedule property.

2.3. In the year 1951, the suit schedule property was also added as joint family property of these plaintiffs in the registered partition deed.

2.4. Again in the year 1980, the suit schedule property was shown as joint family property and allotted to the share of these plaintiff by virtue of registered partition deed. The said partition deed was prepared under the leadership of father of the defendant No.1 and even he signed to the said partition deed.

2.5. Now the defendants by misusing their names in the revenue records are trying to alienate the suit schedule property. Therefore, the plaintiffs have filed this suit along with this application.

3. In pursuance of the suit summons, the defendants appeared before the Court through their advocate and filed their objection to the present application.

3.1. In their objection, the defendants have contended that the application filed by the plaintiffs is not maintainable.

3.2. The plaintiffs have filed this suit and application only with an intention to grab the suit schedule property.

3.3. The plaintiffs are not in the actual possession and enjoyment of the suit schedule property and they have not acquired any right over the suit schedule property.

3.4. By the order of the exparte injunction, the defendants have sustained irreparable loss and therefore, vacating the exparte injunction is very much necessary. Hence, they prayed to dismiss the application filed by the plaintiff.

4. The defendants have filed I.A.No. IV under Order 39 rule 4 seeking for vacate or to raise the exparte injunction granted in favour of plaintiffs. The application is supported with the affidavit of the defendant No.1, wherein he deposed that the plaintiffs are his relatives. Further he contended that the suit schedule property is his ancestral property and the plaintiffs are have no right and title over the suit schedule property.

4.1. The predecessors of the plaintiffs have shown the suit schedule property as their property in their partition deed. But, they have no right over the suit schedule property.

4.2. The plaintiffs have trespassed into the suit schedule property and fixed a board over the suit schedule property. Therefore, he prayed to vacate the exparte injunction granted in favour of the plaintiffs.

5. I have heard the arguments of learned Advocate for the plaintiffs and learned Advocate for defendants.

6. The points which are arising for my consideration are:

- 1.** Whether the plaintiffs made out a prima facie case for the grant of temporary injunction against the opponents/defendants?
- 2.** Whether the plaintiffs prove that the balance of convenience lies in their favour?
- 3.** Whether the plaintiffs prove that they will be put to great loss and hardship if temporary injunction is not granted?
- 4.** Whether the defendants are made out grounds to vacate the temporary injunction granted in favour of plaintiff?
- 5.** What order?

7. By considering the materials on record, my answers to the above points are as follows:

Point No.**1**: in the affirmative.

Point No.**2**: in the affirmative.

Point No.**3**: in the affirmative.

Point No.**4**: in the negative.

Point No.**5**: as per final order, for the following:

REASONS

8. Point Nos.1 to 4:- These points are interconnected and interlinked with each other, to avoid repetition of facts, these points are answered in common.

9. Point Nos. 1 to 3:- These point required are interconnected with each other, to avoid repetition of facts, these points are answered in common.

10. In order to prove their case, the plaintiffs have produced the RTC pertaining to the land bearing Sy.No.51 of Salakod village. This property is none other than the suit schedule property of this suit. On perusal of this document, it appears that the name of the defendant No.1 and father of the defendant Nos. 2 and 3 are shown in the column No. 9. Further the plaintiffs have produced copies of the registered partition deeds dated 18/06/1951 and 04/02/1980. On perusal of these documents, it appears that the suit schedule property was partitioned among the family members of the plaintiffs. Further, it appears that to those documents, Sri. V.G.Hegde, who is the father of the defendant Nos. 2 and 3 has also signed to those documents. Further the plaintiffs have produced the RTC pertaining to the land bearing Sy.No. 241/2, wherein the plaintiffs and other persons have shown as actual possessors of the said land.

11. At this point of time, it is proper and necessary to cite the following judgment. In the **State of Karnataka and others v/s S. Venkatraj**, reported in **AIR 1975 KANT 119**, the Hon'ble High Court of Karnataka has held as follows,

"5. I do not want to express any opinion as to the merits of the plaintiff's case as that may prejudice one or other of the

parties in the trial of the suit. The object of an interim injunction is to keep things in status quo, so that if at the hearing the plaintiff obtains a judgment in his favour, the defendants will have been prevented in the meantime from dealing with the property in such a way as to make that judgment ineffectual — vide *Preston v. Luck*, (1884) 27 Ch. D 497. A temporary injunction maintaining the status quo may properly issue whenever the question of law or fact to be ultimately determined in a suit is grave and difficult and injury to the moving party will be immediate, certain and great if denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if granted. The party who seeks the aid of the Court in that behalf must as a rule, be able to satisfy the Court on three points; (a) that there is a serious question to be tried at the hearing and there is a probability that he is entitled to the relief sought by him, or in other words, that he has a prima facie case to go to the trial; (b) that the Court's interference is necessary to protect him from that species of injury which the Court calls irreparable before his legal right is established at the trial; and (c) that the comparative mischief or the inconvenience which is likely to arise from withholding the injunction will be greater than that which is likely to arise from granting it."

12. Further in *Thimappa Basappa vs Krishnappa Gangadharappa Naikar*, reported in 2000 SCC OnLine Kar 642, the Hon'ble High Court of Karnataka has held as follows,

“11. What is prima facie case in a suit for injunction or with reference to matter of grant of temporary injunction has been explained by the Court in various cases and in the case of Nagaraj, this Court has observed and laid down as under:

“Prima facie case has always got to be distinguished from prima facie title. The prima facie case really means that there is a case which requires trial and that the case is not the one based on erroneous and vexatious grounds. When deciding the question prima facie case, it is generally not desirable and open for the Court to record a decision on the merits of the pleas taken in the suit.....Whatever findings have been recorded by the Courts below — Whether the Appellate Court or the Trial Court, those findings will not have any binding effect on the parties at the time of the final hearing of the case and it shall always be open to raise respective contentions and it is for the Court to decide according to law at that stage”.

12. This Court laid down that where there is a case in which pleas are required to be answered, then it is said to be a prima facie case which requires trial and decision, while prima facie title of the parties had to be determined at the trial and final disposal of the suit. As regards possession whether possession had actually been delivered in terms of the agreement, no doubt, that has also to be decided at the time of final decision, but prima facie if documents reveal that possession had been delivered, then a person who is prima facie found to be in

possession is entitled to protect his possession. In this case, I find that the lower Appellate Court has not considered the question whether the plaintiff prima facie was shown to be in possession and whether the finding recorded by the Trial Court was correct or incorrect. That finding remains intact and had not been interfered with by the Appellate Court. The lower Appellate Court appears to have embarked enquiries and proceeded with the decision as if it was deciding the claim made in the suit on merits which it was not open to it at this stage."

13. The Hon'ble High Court of Karnataka in the above cited judgment has held that the object of an interim injunction is to keep thing in status quo, so that if at the hearing the plaintiff obtains judgment in his favour, the defendants will have been prevented from dealing with the property in such a way as to make that judgment ineffectual. Further held that for grant of temporary injunction, whether the plaintiff has a prima facie case, and the existence of a triable question, are to be considered, and is not to involve an enquiry into the merits of the case. Further it is held that the party who seeks the aid of the court in that behalf must as a rule, be able to satisfy the court on three points;

A. That there is a serious question to be tried at the hearing and there is a probability that he is entitled to the relief sought by him, or in other words,

that he has a prima facie case to go to the trial.

B. That the court's interference is necessary to protect him from that species of injury which the court calls irreparable before his legal right is established at the trial.

C. That the comparative mischief or the inconvenience which is likely to arise from withholding the injunction will be grater than that which is likely to arise from granting it.

14. The party to the litigation, who seeks an injunction, must satisfy the court that **there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie is in his favour.** Here prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Prima facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits. Satisfaction of court that there is a prima facie case by itself is not sufficient to grant injunction. The court has to further satisfy that non-interference by court would result in **"irreparable injury"** to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of

apprehended injury or dispossession. "Irreparable injury" however does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be material one, namely one that **cannot be adequately compensated by way of damages.** The third condition is that the **"balance of convenience"** must be in favour of grant of interim injunction. The court while granting or refusing to grant injunction **should exercise sound judicial discretion** to find the amount of substantial mischief of injury which is likely to be caused to the parties if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury, the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. These principles are laid down in **Dalpat Kumar and another vs Prahlad Singh and others**, reported in **(1992)1 SCC 719** and in **Maria Margarida Sequeira Fernandes and others Vs Erasmo Jack De Sequeira(dead) through LRs, reported in (2012) 5 SCC 370.**

15. Therefore, the party to the litigation, who seeks an injunction, must satisfy the court that there is a serious question to be tried at the hearing of the suit and every probability tilts in his favour for the relief sought for i.e. prima facie is in his favour. The prima facie case may not

be confused in prima facie success, but simply if there is serious question to be tried the test of prima facie is satisfied and further court's interference is necessary without which a right accrued in favour of the party concerned, cannot be protected from species of injury which is known as irreparable injury and comparative mischief which is likely to cause in the absence of the injunction will be greater and not compensable, thus the balance of convenience also tilts in his favour.

16. However, the names of the defendants are shown in the RTC and it is settled principle of law the based the contents of the RTC, Court can presume about the contents of the RTC unless and until it is rebutted by the defendant. On the other hand, the plaintiffs have produced two registered partition deed of the years 1951 and 1980. It is settled principle of law that the registered documents are also having presumptive value. Now, the question is whether the contents of the RTC are true or the contents of the registered partition deeds of the years 1951 and 1980 are true. For this, a full fledged trial is required.

17. So on perusal of the records, it appears that there is a triable question in this suit. In this case, the plaintiffs have made out grounds for trial, thereby they have made out prima facie case. Further if this Court refuses to grant the relief sought in this application, obviously it is the plaintiffs, who will suffer irreparable injury. Because, if the defendants alienate the suit schedule property, then it will

cause irreparable injury to the plaintiffs. Further, on comparing the inconvenience, it is the plaintiffs who will suffer greater inconvenience on refusal of the relief sought in the application. On the other hand, no injustice will cause to the defendants. Hence, I answered point Nos. 1 to 3 in the **affirmative** and point No.4 in negative.

18. Point No.5:- In view of findings on point Nos. 1 to 3, I proceed to pass the following:

ORDER

The I.A. I filed by the plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants are restrained from alienating and created any encumbrance over the suit schedule property till the disposal of this suit.

In view of above order, the I.A.No. IV filed by the defendants under Order XXXIX Rule 4 of CPC is hereby dismissed.

No order as to costs.

(Typed by me in my laptop, corrected and signed by me and then pronounced in the open Court on this 11th day of April, 2023).