

KAUK810000392023



IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,

AT: MUNDGOD

PRESENT: Smt. Akshatha C.R.

B.B.A., L.L.B.(Hons.)

Civil Judge & J.M.F.C-Mundgod.

ORIGINAL SUIT NO.10/2023

Dated: 30th Day of November 2024

Plaintiffs :

Sri.Mahesh S/o Basavaraj Kamplikoppa

@ Madivalar and others.

(By Sri.M.B.P/S.K.K., Advocate)

V/s

Defendants :

Sri.Basavaraj S/o Lingabasappa Kamplikoppa

@ Madivalar and others.

(By Sri.N.A.N., Advocate)

I.A.No.II

Applicants :

Sri.Mahesh S/o Basavaraj Kamplikoppa

@ Madivalar and others.

... (Plaintiffs)

Vs.

Opponents : Sri.Basavaraj S/o Lingabasappa Kamplikoppa
@ Madivalar and others.

.... (Defendants)

ORDERS ON I.A.No.II

1. The plaintiffs have moved this application under Order XXXIX Rule 1 and 2 of C.P.C r/w Sec.151 of CPC seeking to restrain the defendants by way of temporary injunction from creating charge or encumbrance over the suit schedule property and by alienating the suit schedule property till the disposal of the suit.

2. In the accompanying affidavit it is stated that, 'A' suit schedule properties are the ancestral properties of the plaintiff and defendant No.1 to 19 i.e., said property has come to the plaintiffs from his great grandfather by name Basappa Ningappa Madivalr @ Kamplikoppa. That the grandfather of the plaintiffs by name Lingabasappa Madivalar had 1/3rd

share in the suit properties. In the said property plaintiffs along with their father i.e., defendant No.1 have $1/7^{\text{th}}$ share in the $1/3^{\text{rd}}$ share of Late Sri. Lingabasappa Basappa Madivalar. Similarly, defendant No.2 has $1/7^{\text{th}}$ share, defendant No.3 to 5 together have $1/7^{\text{th}}$ share, defendant No.6 and 7 have $1/7^{\text{th}}$ share each, defendant No.8 to 12 together have $1/7^{\text{th}}$ share, defendant No.13 has $1/7^{\text{th}}$ share and defendant No.14 to 17 being the children of Late Sri. Sahadevappa Basappa Madivalar are together entitled for $1/3^{\text{rd}}$ share of their father. Defendant No.18 and 19 being the legal heirs of Late Sri. Virupakshappa Basappa Madivalar are together entitled for $1/3^{\text{rd}}$ share. Such being the case defendants are hurry to sell the suit property in favour of others. Hence, it is just and necessary to restrain the defendants from creating any charge or encumbrance and from alienating the suit schedule property. With these contentions plaintiffs prayed to allow their application.

3. The counsel appearing for defendant No.2 to 7, Defendant No.13 to 19 and defendant No.9 to 12 submitted that, they have filed written statement. The contents of the written statement may be treated as objections to the I.A. Respective counsel would argue that, even the defendants to whom they are representing are also claiming their respective share in the suit schedule property. Hence, necessary orders may be passed in that regard. So far as defendant No.20 is concerned though he subsequently appeared before the court and moved an application U/O IX rule 7 of CPC seeking to recall and set aside the order placing him ex-parte, he has not come up with his pleadings along with I.A. Nevertheless sufficient time and opportunity have been granted to defendant No.20 to file his pleadings and objections to I.A.No.II. However, he choose not to file the same.

4. Heard the respective counsel appearing for the parties. Perused the documents placed fore of this court.

5. In view of the aforesaid assertions and contentions, the following points arise for the consideration of this Court.

1. Whether the plaintiffs have made out prima facie case?

2. Whether balance of convenience leans in favour of the plaintiffs?

3. Whether dismissal of this application would cause irreparable loss to the plaintiffs?

4. What order?

6. 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: As per the final order for the following.

REASONS

7. Issue No.1 to 3: Since these points are interconnected with each other they are taken together for common discussion for the sake of brevity and convenience. The plaintiff by virtue of this application seeking to restrain the defendants from creating any charge or encumbrance over the suit schedule property. It is the assertion of the plaintiffs that suit schedule property is their ancestral property. Such being the case, defendant No.20 with a ulterior intention of prejudicing the legitimate rights of plaintiff's, defendant No.1 to 7 and defendant No.9 to 19 purchased the suit schedule property from defendant No.8 in their back without their consent and knowledge. Hence, they have come up with this suit seeking the relief of partition, separate possession and the consequential relief of declaration to the effect that, impugned Will dated 08.02.2011 said to be executed by one Smt.Kamalabai Chikkappa Ganjigatti in favour of defendant No.8 does not bind their rights

and the impugned Sale Deed said to be executed by defendant No.8 in favour of defendant No.20 dated 05.12.2023 does not bind their rights over the suit schedule property.

8. The plaintiffs in support of their case have produced RTC pertaining to the suit schedule property for the year 2022-23, copy of the old RTC pertaining to the suit schedule property for the year 1965-66 to 1972-73, copy of Will dated 08.02.2011, copy of the sale deed dated 05.12.2013 and mutation entry at ME.No.1802 of Indur village.

9. Upon perusal of the documents available on record it can be seen that, name of Late Sri.Basappa Ningappa Madivalar is appearing in the old RTC pertaining to the suit schedule property. Further, the mutation entry at ME.No.1802 produced by the plaintiffs states that, Lingabasappa Basappa Kamplikoppa, Sahadev Basappa Madivalar, Savitri

Basappa Madivalar and Kamalabai Chikkappa Ganjigatti have paid the loan amount of Rs.1013.75 vide challen No.17 dated 17.12.1976 and as per the order of the Hon'ble Deputy Commissioner Karwar and Tahashildar Mundgod, kabulayath is granted in their favour subject to the conditions cited at shej. Therefore, it is crystal clear that, said Lingabasappa, Sahadevappa, Savitri and Kamalabai had succeeded to the suit property after Late Sri.Basappa Madivalar. The parties to the suit except defendant No.20 are the legal heirs of successors of Late Sri.Basappa Madivalar. Such being the case, the parties to the suit except defendant No.20 do have legitimate rights over the suit schedule property. Whether the suit schedule property is divided among the successors of Late Sri.Basappa Lingappa Madivalar or not is not forthcoming. Besides, no documents are available on record to that effect. Defendant No.8 and defendant No.20 are the contesting parties to this suit. It is

ordered that, suit will be heard ex-parte against defendant No.8. So far as defendant No.20 is concerned though he appeared through his counsel, he has not come up with his pleadings and objections to I.A.No.II. No doubt it is true that, the Sale Deed in question executed by defendant No.8 in favour of defendant No.20 is dated 05.12.2013. However, the plaintiffs have instituted this suit in the year 2023 after lapse of 10 years. The plaintiffs in their pleadings have asserted that they got to know about the Will and the Sale Deed only on 25.10.2022. Whether the point of limitation comes in the way of suit of the plaintiffs or not is a matter of trial. This court for the purpose of disposal of this application cannot hold mini trial. Therefore, in order to protect the legitimate rights of the plaintiffs and the concerned defendants over the suit schedule properties, this court answers point No.1 to 3 in the **Affirmative**.

10. Point No.4: In light of answering point No.1 to 3 as aforesaid, this Court proceeds to pass the following.

ORDER

I.A.No.II filed by the plaintiffs U/O. XXXIX Rule 1 and 2 read with Section 151 of C.P.C. is hereby allowed.

Accordingly, the defendants are hereby restrained by way of temporary injunction by creating charge or encumbrance over the suit schedule property or alienating it in favour of anybody.

Costs are made easy.

(Dictated to the Stenographer directly on computer, corrected, signed by me and then pronounced the Order in the open Court on this the 19th day of December 2024)

-Sd-

**Civil Judge and JMFC.,
Mundgod.**