

**IN THE COURT OF II ADDL CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS AT KUNDAPURA**

**Present :** SMT. ROHINI. D, *B.A. LL.B.*  
**II Addl. Civil Judge & J.M.F.C.,**  
**Kundapura.**

**Dated this the 12<sup>th</sup> day of August, 2024**

**Original Suit No. 261/2023**

**Plaintiff/s:** A Laxman Naik, 44 years  
S/o Purusha Naik  
R/o Albady Angadimane,  
Albady Village, Belve Post,  
Hebri Taluk, Udupi Distict

**(Rep. by Advocate Sri/Smt. T.G.R)**

*//Vs//*

**Defendant/s:** 1. Annappa Naik, 62 years  
S/o Late Purusha Naik

2. Chandra Naik, 49 years  
S/o Late Purusha Naik  
Defendants No. 1 and 2 are R/a  
Albady Angadimane, Albady Village,  
Belve Post, Hebri Taluk, Udupi District.

3. Parvathi, 60 years  
W/o Puttayya Naik,  
R/o 3/128, Dangura Gudde, Shiriyara Post,  
Brahmavara Taluk, Udupi District.

4. Laxmi @ Gulabi, 56 years  
W/o Krishna Naik,  
R/a #2/5(1), Bukkigudde, Albady Village,  
Belve Post, Hebri Taluk, Udupi District

5. Radha, 52 years  
W/o Shankar Naik  
R/a #1/2(26), 9<sup>th</sup> Mailikallu,

Albady Village, Hebri Taluk, Udupi District

6. Susheela @ Pranati, 50 years  
W/o Pradeep Shenai  
R/o #1/77, Gandhi nagar, Chara,  
Hebri Taluk, Udupi District.

7. Babanna Naik, 58 years,  
S/o Late Purusha Naik,  
R/a Albadi Angadimane, Albady Village  
Belve Post , Hebri Taluk, Udupi District.

8. Saraswati Bai, 67 years  
D/o Late Putta Naik  
W/o Late Ammayya Naik  
R/o #1/2(17) karrapadi, Shedimane,  
Ajri Village, Kundapura Taluk,  
Udupi District

**(Rep. by Advocate Sri/Smt. D.S for D1 to 6, 8 )**  
**(Rep. by Advocate Sri/Smt. H.A.S for D7)**

**I.A. No. II**

**Applicant/s** : A Laxman Naik,  
V/s  
**Opponent/s** : 1. Annappa Naik and others

**ORDER ON I.A. NO. II FILED UNDER ORDER 39**  
**RULE 1 AND 2 R/W SECTION 151 OF CPC.**

The plaintiff has filed this application Under Order 39 Rule 1 and 2 R/w Section 151 of CPC seeking an order of temporary injunction restraining the defendant No. 7, his men or any other persons claiming under him from alienating the suit schedule properties and from

constructing any building over the suit schedule properties till the disposal of this suit.

2. It is stated in the accompanying affidavit that the plaintiff and defendants are governed by mitakshara law. Item No. 1 to 4 of schedule properties are obtained by plaintiff's grand father late Babi Naik under Darskasth Grant No. 141/1962 dated 15-02-1939. After grant he was in possession and enjoyment of the same and constructed a residential house and residing with his wife and children, after death of Babi Nail and his wife, the 8<sup>th</sup> defendant father Late Putta Naik and Late Purusha Naik resided in joint family house. They took responsibility for their sisters marriage and after their marriage living in separately in their matrimonial house. Rukku Bai was resided separately and she is no more. Putta Naik and his son also dead, his daughter in law is the only successors. The item No. 1 to 4 of "A" schedule properties are family properties of Late Putta Naik and Late Purusha Naik, the item No. 5 and 6 are adjacent property and same was granted in favour Late Putta Naik in D.R.No: 763/1971-71 and item No. 7 of "A" Schedule property granted in favour of father of plaintiff and defendant No.1 to 7, Purusha Naik, in his life time he enjoyed and possessed said property, peacefully without any interruption. After his death the plaintiff and defendants No. 1 to 7 are possession and enjoyment of said properties by inheritance. The "A" schedule properties are joint family properties of both plaintiff and defendants No. 1 to 7 are owing by inherence and having equal right over the said properties, and there is a 75 years old Moolamane, family members are worshipping god and celebrating, Suba Karya and also Marriage function etc.

3. It is further stated that the 7<sup>th</sup> defendant is B.S.N.L employee and he avoiding them, and no care on them, he constructed a residential house over 'A' schedule property and living separately in said house. The 7<sup>th</sup> defendant is neglecting the plaintiff even though he is a driver by professional. The 1<sup>st</sup> defendant is managing joint family and doing mamol Daiva Karya without any helping by him. The 3<sup>rd</sup> defendant is IL-literate person and unemployed, all are financially poor. Putta Naik was executed a registered will in favour of this 7<sup>th</sup> defendant dated 14-04-2006, said fact came to knowledge of plaintiff during mutation proceedings, at that time plaintiff and other defendants objected for mutation but not considering their objection with men and money power changed Khatha in his favour. Due to said impact the plaintiff and other defendants are suffered heavy loss. The intervention of local Panchayatdars and well wisher of plaintiff and defendants arrived conclusion and then decided in the family meeting over said 'A' schedule properties this defendant agreed to distribute respective share of children of late Purusha Naik and Putta Naik. But 7<sup>th</sup> defendant is refused continued to obstruct the plaintiff and other defendants without giving any share as agreed by him and he constructed a small house roofed by cement sheet and obtained power connection to said house in the name of Saraswathi. The plaintiff lodged police complaint before the SRO Shankaranarayana dated 18-04-2023. Hence prays to allow the application.

4. The defendant No. 7 has adopted the written statement as objection to above application, wherein he stated that item No. 1 to 6 schedule properties are absolute properties of one Late Putta Naik. After

his death, 7<sup>th</sup> defendant is in possession and enjoyment of the said properties. The late Putta Naik during his life time had executed will dated 18-04-2006 in favour of this defendant bequeathing the said properties dated. The only item No. 7 of schedule property is joint family property, the plaintiff and all the defendants having equal right over the said property, but the defendant No. 7 having absolute right over the item No. 1 to 6 of plaint schedule properties. The Putta Naik was the paternal uncle of the 7<sup>th</sup> defendant Babanna Naik the said will was executed by Sri Putta Naik when he was good health putta naik was died on 12-07-2009. The 7<sup>th</sup> defendant has filed an application before the Tahsildar Kundapura for mutation of said properties in his name on the strength of the said will. The Thahasildar Kundapura refused to change the khatha in his name due to objection raised by the plaintiff and other defendants and issued an endorsement dated 25-01-2014. The 7<sup>th</sup> defendant filed a suit for declaration before the Prl. Judge and JMFC at Kundapura in OS No. 70/2014. The Putta Naik had no male issues and he had only daughter by name Saraswathi, she was not appeared before the Court. The court has passed decree in his favour. On the basis of said decree, he mutated the schedule properties in his name. The 7<sup>th</sup> defendant is the absolute owner of 1 to 6 of the schedule properties, and possessing and enjoying the same. Nobody having any right, title, over said properties. The plaintiff colluded with other defendants started to obstruct and disturb the peaceful possession and enjoyment of this defendant. Hence prays to reject the application.

5. Heard the arguments on both sides and perused the records.

6. On the basis of the application and the objection the points that arise for the consideration of the Court are:

**//POINTS //**

1. **Whether the plaintiff has made out a prima facie case in his favour?**

2. **Whether the plaintiff shows that balance of convenience lies in his favour ?**

3. **Whether the plaintiff further shows that irreparable loss and injury will be caused to him, if an order of temporary injunction is not granted?**

4. **What order?**

7. My answer 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 final order,  
for the following:**

**//REASONS//**

8. **POINT NO. 1:** The plaintiff has filed this suit against the defendants for the relief of partition in respect of suit schedule properties. The specific case of the plaintiff that the suit schedule properties are joint family properties. The item No. 1 to 4 of suit schedule are acquired by the grand father of plaintiff Late Babi Naik under the Dharkasth grant. Item No. 5 and 6 was granted in favour of Late Putta Naik and item No. 7

was granted in favour of father of plaintiff and defendants No. 1 to 7 Purusha Naik. After the death of his grand father the Putta Naik and Purusha Naik, the plaintiff and defendants are in joint possession and enjoyment over the suit properties by inheritance. The defendant No. 7 contended that only the item No. 7 is joint family property. The item No. 1 to 6 of suit schedule properties are absolute properties of Late Putta Naik. He bequeathed the said properties in favour of defendant No. 7 under the registered will dated 18-04-2006. Due to objection filed by the plaintiff khatha was not changed in his name by virtue of will. HE filed suit in OS No. 70/14 before the Prl Civil Judge and JMFC. The said suit was decreed. On the basis of decree his name was mutated in the RTC.

9. On perusal of the documents on record it appears that item No. 1 to 4 are granted in favour of Late Babi Naik under the Dharkasth as per special D form. Item No. 7 was granted in favour of father of plaintiff as per Form 4 in DR No. 763/71-72. The record of rights for the year 2022-23 pertaining to item No. 1 to 6 are stood in the name of defendant No. 7 and the item No. 7 was stood in the name of mother of plaintiff and defendants No. 1 to 7. The record of rights for the year 2013-14 pertaining to suit property was stood in the name of Putta Naik S/o Babi Naik and RTC was mutated based on inheritance. The said Putta Naik executed a will dated 18-04-2006 in favour of defendant No. 7 in respect of item No. 1 to 6. The plaintiff filed an objection for changing the Khatha, the Thahasildar issued notice to defendant in this regard. The MESOM has also issued notice to one Smt. Saraswathi seeking explanation pursuant to the objection made by the plaintiff for taking electric connection to the house. She has also given reply to the notice.

**10.** According to the plaintiff the suit properties are joint family properties and the defendant No. 7 contended except item No. 7, he is the absolute owner in respect of item No. 1 to 6 of suit property. To decide the controversy between the parties it requires full fledged trial. Therefore it is necessary that the suit property has to be preserved and protected till the determination of rights of the parties over the suit schedule properties. If the defendant No. 7 sell the suit property it will leads to multiplicity of litigations. Considering all this Court of the opinion that the plaintiff has made out prima facie case. **Hence I answers the point No. 1 in the AFFIRMATIVE.**

**11. POINT NO. 2:** In view of the discussion on the point No. 1 the plaintiff has made out a prima facie case. If the defendant sell the suit property it will cause damages to the plaintiff which cannot be compensated in terms of money. Therefore, the balance of convenience lies in favour of the plaintiff. **Hence, I answers the Point No. 2 in the AFFIRMATIVE.**

**12. POINT NO. 3:** If the application is not allowed the plaintiff will be put to irreparable , loss and injury. On the other hand if the application will allowed it will not cause any loss or injustice to the defendants **Hence, I answers Point No. 3 in the AFFIRMATIVE.**

**13. POINT NO.4 :** For the discussions made above the Court is of the opinion that the plaintiff is entitled to the relief claimed in the IA No. 2. Hence this Court proceed to pass the following:

**//O R D E R//**

**I.A. No. II filed by the applicant/ plaintiff under Order 39 Rule 1 and 2 R/w Sec. 151 CPC is hereby allowed.**

**The defendant No. 7, his agents, heirs or any other persons claiming under him are hereby restrained from alienating or creating any charge over the suit schedule properties till disposal of the suit by way of Temporary Injunction**

**No order as to cost.**

(Dictated to the Stenographer, typed by her, corrected and signed by me and then pronounced in the Open Court on this 12<sup>th</sup> day of August, 2024)

**(Rohini. D)  
II Addl. Civil Judge & J.M.F.C.,  
Kundapura.**