

KAUP400012002023



**IN THE COURT OF CIVIL JUDGE AND JUDICIAL MAGISTRATE
FIRST CLASS AT BAINDURU.**

PRESENT

Smt. Vidya, A.S. B.A.,LL.B.
Civil Judge & J.M.F.C.,
Bainduru.

Dated: This the 12th day of July, 2023.

Original Suit No.238/23

Plaintiffs:	<p>1.Sri.Chandrashekhar P., Aged about 48 years, S/o. Late Parameshwar, R/at: Alivegadde,Shiroor Village and Post, Bainduru Taluk,Udupi District.</p> <p>2. Sri. Dasharath,Aged about 26 years, S/o. Janardhan, R/at: Sarpana Mane, Shiroor Village and Post, Bainduru Taluk,Udupi District.</p>
Defendants:	<p>1.Sri. Durgambika Seva Sangha (R) Kotemane, Shiroor Village and Post, Baomdiri Taluk,Udupi District, Reptd. By its Secretary, Sri. Vittal,S/o. Nagappa,</p> <p>2.Nagaraj, Aged about 43 years, S/o. Venkappa,R/at: Sankadagundi,</p> <p>3. Prakash, Aged about 62 years, S/o. Venkappa,R/at: Aramanehaklu,</p> <p>4. Manjunatha, (Major), S/o. Nagesh,R/at: Naginagudde,</p>

- 5. Krishna**, Aged about 50 years,
S/o. Narasimha,R/at: Aramanehaklu,
- 6. Venu**, Aged about 49 years,
S/o. Narasimha,R/at: Kalihithlu,
- 7. Vittal**, Aged about 65 years,
S/o. Dargayya,R/at: Hadavinahaklu,
- 8. Rama**, Aged about 53 years,
S/o. Appanna,R/at: Alivegadde,
- 9. Ravi, (Major)**,
S/o. Ganapathi,R/at: Hadavinakone,
- 10. Gajendra Kumar**,Aged about 41 years,
S/o. Umesh,R/at: Alivegadde,
- 11. Prabhakar**, Aged about 35 years,
S/o. Panduranga,R/at: Kashi,
- 12. Venkatappa, (Major)**,
S/o. Manjunatha,R/at: Naginagudde,
- 13. Vishnu D., (Major)**,
S/o. Babu,R/at: Naginagudde,
- 14. Vasantha, (Major)**,
S/o. Nagesh,R/at: Naginagudde,
- 15. Sridhar, (Major)**,
S/o. Ganapathi,R/at: Kotemane,
- 16. Nagaraj**, Aged about 35 years
S/o. Govinda,
- 17. Ramachandra, (Major)**,
S/o. Babayya,R/at: Kotemane,
- 18. Ramesh, (Major)**,
S/o. Babayya,R/at: Kotemane,
- 19. Nagesh, (Major)**,
S/o. Govinda,R/at: Naginagudde,
- 20. Nagaraj, (Major)**, S/o. Govinda,

	21. Kiran, Aged about 35 years, R/at: Hadavinakone, All are R/at: Shiruru Village and Post, Bainduru Taluk, Upupi District.
	<u>Rank of the Parties On I.A.II</u>
Applicants/Plaintiffs	Chandrashekhar P. and another
	(Rep.by Sri. K.C.S.-Advocate)
opponents/defendats	Durgambika Seva Sangha,(R)Kotemane & others,
	(Rep.by Sri. M.M.H.-Advocate)

ORDERS ON I.A. NO.II

The plaintiffs along with suit has filed IA No.II under Order XXXIX Rules 1 and 2 R/w. Sec.151 of CPC., seeking the relief of temporary injunction in favour of the plaintiffs and thereby temporarily restraining the defendant, its men, agents, servants, and all other persons claiming through it from publishing/printing of any items or correspondences referring to the defendant temple under the name and style of "Charodi Mestha Samaja" till the final disposal of the suit.

2. In the accompanying affidavit, applicant has stated that, present secretary of the defendant temple is publishing or printing items relating to the defendant temple under the

name and style of “Charodi Mestha Samaja” in spite of the objections of its devotees including themselves. In case the same is carried out, it will hurt the feeling of the devotees of other community people as well as it may lead to reduce the number of its devotees as well as its income. With these averments the plaintiff has sought for allowing the application.

3. The defendant has stated that the written statement may be treated as objection to the I.A.No.II and also files notes of written arguments along with decision reported in **AIR 1969 Madras 42: S. Krishnaswamy and others Vs. South India Film Chamber of Commerce and others.**

4. Heard both sides and perused the materials on record.

5. Now, the following points arise for consideration of this Court are:

Point No.1: Whether the applicants have made out prima facie case?

Point No.2: Whether the plaintiffs establishes that balance of convenience lies in their favour ?

Point No.3: Whether the plaintiffs establishes that if temporary injunction is not granted, they will be put to great loss or hardship?

Point No.4: What order?

6. The findings of this Court on the above said 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

7. **Point No.1** This Court has already narrated the facts stated in the affidavit annexed to the application. On perusal of case file, it is seen that the plaintiffs have sued the defendants for seeking the relief of permanent injunction.

8. It is the specific case of the plaintiff that, the immovable property bearing S.No.42/1 extent 0.23 acres of Shiroor Village originally belongs to Sri. Durgambika Devi Temple at Kotemane of Shiroor Village. In the year 1984 a managing committee was formed under the leadership of Sri. Gangappa Achar under the name and style of "Sri. Durgambika Seva Sangha" Kotemane Shiroor of Kundapura Taluk. Under said committee a by-law was formed and was duly registered before the Registrar of Co-operative society under the Mysore societies Registration Act 1960 in the year 1984.

9. Further pleaded that, in the year 1990 renovation of the said temple was done from the contribution of its devotees of various places and various community people and on 09.04.1990 Sri.Bharathi Thirtha Mahaswamy, Sri.Sharada Peeta Shringeri performed the Punarprathista and Kumbabhisheka of the said temple. In the year 2018-19 a sum of Rs.2,00,000/- was also invested for the betterment of the said temple under the local MLA's Fund.

10. Further pleaded that, the plaintiffs and their family members are the devotees of the said temple. In all the pamphlets, receipts, representations, correspondences etc name of the defendant has been referred as "Sri. Durgambika Devastana/Sri. Durgambika Seva Sangha (R)". Now the present committee of the temple is trying to refer the defendant temple for a group of community called "Charodi Mestha Samaja" without the consent of its devotees. If the said thing is carried out it will hurt the feelings of devotees belongs to other community. It will also lead to diminish the number of its devotees as well as may lead to reduce the income of the temple.

11. Further pleaded that, on 25-09-2019 the present committee issued a receipt under the name and style of "Sri.

Durgambika Seva Sangha ® Charodi/Mestha Samaja Kotemane to one Sri. Nagayya Shetty, Managing partner, Sri. Nidhi Finance Shiroor in spite of the objections of majority devotees of the said temple including the plaintiffs. The said Act is unauthorized, illegal and against the interest of the defendant temple as well as its devotees.

12. It is the specific case of the defendant that, as per the Government notification the Mestha Community of No.1 Shiroor Village and other places are called as "Charodi Mestha" as such a decision taken by the Managing committee of Sri. Durgambika Seva Sangha (Regd) in the year 2017 to mention the name of 'Charodi/Mestha' in all their correspondences and references. The decision taken by the Managing committee of their correspondences and references. The decision taken by the Managing committee of the defendant association is in the best interest of the Mestha community. The decision taken above by the Managing committee was approved and resolved in the meeting of the Managing Committee held on 30-04-2018 which is in accordance with the bye-law of the Sangha. The decision of the Managing Committee was executed long ago and no one challenged the said act of the committee till the date of suit.

13. The plaintiffs and other persons have been pressuring the managing committee to mention the name of "Vishwakarma" along with the name of "Charodi Mestha" in all the correspondence and reference relating to the temple Sri. Durgambika for the last few months. The said request of the plaintiffs and others are not in the best interest of the Temple and its devotees as such the defendant Managing Committee has refused to heed to the said request. Enraged with the said refusal, the plaintiffs are instigated by some members who are closely nexus with "Vishwakarma/Mestha" community of No.1 Shiroor village to institute this suit by making false and baseless allegations.

14. This Court has carefully perused the materials on record in order to ascertain whether the plaintiffs have made out prima facie case for grant of temporary injunction as sought for. On careful reading of the pleadings of both parties it appears that, the managing committee of the defendant sangha has already commenced to call the name of the defendant sangha as Sri.Durgambika Seva Sangha (R) Charodi/Mestha Samaja Kotemane. Further on perusal of all documents prima facie it appears that, the defendant sangha is recited as Charodi/Mestha

in all their pamphlets and receipts. The main purpose of temporary injunction application itself has been infructuous. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of prima facie case. The plaintiff has not made out prima facie case. The contentions raised by the plaintiff and defendant are all matter of trial, hence required full fledged trial. With these observations, this court has answered point No.1 in the Negative.

15. Point No.2 and 3: Point No.2 and 3 are inter-connected; hence in order to avoid the repetition of discussion, the above said points are taken up together for common discussion. Since the plaintiffs have not made out prima facie case in their favour, the question of balance of convenience lying in their favour and irreparable injury may be caused to them requires no discussion at this stage. Therefore, the balance of convenience does not lie in favour of the plaintiffs. With these observations, this Court answer point No.2 and 3 in the Negative.

16. Point No.4: For the aforesaid discussion on point No.1 to 3 this Court proceeds to pass the following:

ORDER

I.A.No.II filed by the applicant under order XXXIX Rule 1 and 2 R/w. 151 of CPC is hereby rejected.

The plaintiffs is hereby directed to file amended plaint.

For amendment and amended plaint

Call on: 15-09-2023.

(Dictated to the stenographer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this **12th day of July, 2023**)

**(Smt.Vidya A.S.)
Civil Judge & J.M.F.C., Baiduru.**