

KABI200007242023



IN THE COURT OF THE CIVIL JUDGE & JMFC.,

AT: HAGARIBOMMANAHALLI

DATED THIS THE 4th DAY OF DECEMBER 2024

: **PRESENT:**

SRI. **SAYED MOHIUDDIN URF KHAWAJA PEERAN.**, BA. LLB.,(Spl.)

CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.

O.S.No.92/2023

- PLAINTIFF/s** : 1) **Smt.Kumbar Kamalamma W/o
Late K.Dyamappa,**
Aged about: 60 years, Occ:Agriculturist,
- 2) **Smt.D.Shakunthala W/o
C.Halesh D/o Late K.Dyamappa,**
Aged about: 30 years, Occ:Agriculturist,
- 3) **Smt.Shashikala W/o Hemanth Raj
D/o Late K.Dyamappa,**
Aged about: 28 years, Occ:Agriculturist,
- 4) **Kum.D.Shashi Rekha D/o
Late K.Dyamappa,**
Aged about: 25 years, Occ:Agriculturist,

All are R/o Benakallu Village,
Hagaribommanahalli Taluk, Vijayanagara
District.

Vs

- DEFENDANT/s :** 1) **Sri.Kumbar Shivappa @ Shivanna
S/o Late Hanumanthappa,**
Aged about: 55 years, Occ:Agriculturist,
- 2) **Smt.Kumbar Lekkamma W/o Kumbar
Shivappa @ Shivanna,**
Aged about: 45 years, Occ:Agriculturist,
- 3) **Kumbar Gangamma D/o Kumbar
Shivappa @ Shivanna,**
Aged about: 25 years, Occ:Village Accountant,
- All are R/o Benakallu Village,
Hagaribommanahalli Taluk,
Vijayanagara District.

I.A.No.I

**APPLICANTS/PLAINTIFFS: Smt.Kumbar Kamalamma W/o
Late K.Dyamappa and others,**

(Rep. by Sri.**A.M.K.**, Advocate)

V/s

**RESPONDENTS/DEFENDANTS:Sri.Kumbar Shivappa @ Shivanna
S/o Late Hanumanthappa and
others,**

(Rep. by Sri.**K.H.M.**, Advocate)

ORDER ON I.A.No.I

The plaintiffs have filed the IA No.I under Order 39 Rule 1 R/w Sec.94 and 151 of CPC seeking the relief of temporary injunction to restrain the defendants from interfering with their peaceful possession and enjoyment over the suit

schedule properties bearing Sy.No.99/1 measuring 0.88 cents, Sy.No.100/1 measuring 1.72 acres, Sy.No.101/C measuring 0.50 cents, Sy.No.102/D measuring 0.47 cents, Sy.No.117/4 measuring 0.65 cents, Sy.No.543/1 measuring 0.30 cents and Sy.No.543/2 measuring 0.80 cents situated at Benakallu Village, Hagaribommanahalli Taluk till disposal of the suit.

2. In the accompanying affidavit to the IA., it is stated by the plaintiff No.4 that, the plaintiff No.1 is her mother, plaintiff No.2 and 3 are her elder sisters, they have filed the present suit against the defendants for the relief of permanent injunction with respect of suit schedule properties. They are the absolute owners and in possession of the suit schedule properties. The suit schedule properties are their ancestral properties. Partition was effected between the plaintiffs under the registered partition deed dated 19.05.2018, as per the said partition deed, necessary changes were effected in the records of the suit schedule properties. Her father Dyamappa was filed the suit O.S.No.50/1997 on the file of Hon'ble Addl.Sr.Civil Judge and JMFC, Hosapete for declaration and

possession with respect of suit schedule properties against the defendants and other family members. After full fledged trial on 28.03.2005 the said suit was decreed with cost and directed the defendants of that suit to deliver the possession of the suit schedule properties to the plaintiff of that suit i.e., Dyamappa within two months. The defendants of that suit were not obeyed the order of the Hon'ble Court, therefore the father of the plaintiffs Dyamappa filed the Execution Petition No.218/2006 before the same Hon'ble Court for delivery of possession of the suit schedule properties. As per the order of the Hon'ble Court in the said Execution Petition the defendants of that suit were delivered the possession of the suit schedule properties in favour of the plaintiff of that suit i.e., father of the plaintiff No.2 to 4 Dyamappa. The plaintiffs are in actual possession and enjoyment over the suit schedule properties. The RTC extracts of the suit schedule properties are standing in their names. The defendants have no manner of right, title and interest over the suit schedule properties, but they are illegally trying to interfere with the plaintiffs peaceful possession and enjoyment over the suit schedule

properties. On 28.06.2021 and 16.06.2022 the defendants were attempted to trespass over the suit schedule properties and attempted to dispossess the plaintiffs from the suit schedule properties, in this regard the plaintiffs were filed the complaint before the jurisdictional police station in D.P.No.134/2021 dated 28.06.2021 and D.P.No.196/2022 dated 16.06.2022. The police were summoned the defendants and warned them not to interfere with the plaintiffs lawful possession and enjoyment over the suit schedule properties. After that they were kept quite for some days, later on they have again started to interfere with the plaintiffs peaceful possession and enjoyment over the suit schedule properties. Hence, they have filed the present suit along with the I.A. They have made out prima facie case, balance of convenience lies in their favour. If the temporary injunction order is granted no injustice will be caused to the defendants. If the temporary injunction order is not granted they will be put to hardship. Hence, they prays to allow the IA.

3. After registration of the suit, suit summons and emergent notice on I.A.No.I have been issued to the

defendants. The defendants served with the same. In response to the same, they have appeared before the Court through their respective Counsel. They have not filed any written statement, but they have filed objections to the I.A.No.I by denying the contentions of the plaintiffs, and further contended that one Kumbara Yankappa is the Propositor of the family of the plaintiffs and defendants. The said Kumbara Yankappa had two sons by name Kumbara Hanumanthappa and Kumbara Dyamappa. The defendants herein are the legal heirs of Kumbara Hanumanthappa. The said Propositor Kumbara Yankappa was owning movable and immovable properties. The father of the defendants had two wives by name K.Gangavva and Shivalingavva. Shivalingavva had nine children. The husband of the plaintiff No.1 had filed the suit in O.S.No.50/1997 on the file of Hon'ble Addl.Sr.Civil Judge and JMFC, Hosapete for the relief of partition and separate possession with respect of joint family properties against the defendant No.1, Shivalingavva and her children. After contest, the said suit was decreed in favour of the husband of plaintiff No.1 Kumbara Dyamappa. Thereafter the

said Kumbara Dyamappa was filed Execution Petition No.218/2006. In the above said Execution Petition the possession of the suit schedule properties were delivered in favour of K.Dyamappa by the Court Commissioner as per the decree of the Hon'ble Court. The defendant No.1 had filed the suit for permanent injunction with respect of his properties which are adjacent to the suit schedule properties in O.S.No.93/2011 before the Hon'ble Civil Judge and JMFC, H.B.Halli against the husband of plaintiff No.1 K.Dyamappa, the said suit was decreed on 19.03.2012, hence the present suit is not maintainable. As per the judgment and decree of O.S.No.50/1997 half share in the suit schedule properties were allotted to the husband of plaintiff No.1, and remaining half share was allotted to the late Kumbara Hanumanthappa including the defendant No.1, Smt.Shivalingavva and her nine children. As per the O.S.No.50/1997 suit item No.8 was open site and house property which was also allotted to the Kumbara Dyamappa and late Hanumanthappa. Unfortunately Kumbara Dyamappa was mutated the said property Door No.69 and 70 into his name in the

Gramapanchayath records. After that the plaintiffs were changed the records of the said properties and alienated the said properties to 3rd parties, the said fact was came to the knowledge of the defendant No.1 and he was filed the objections before the concerned Gramapanchayath requesting them to not mutate the name of the purchaser in the records of the said properties, the said mutation proceedings are pending. Meanwhile, the present suit is filed by the plaintiffs against the defendants with an intention to harass them. The plaintiffs were given the suit schedule properties for lease to the 3rd parties and the said persons are in possession and enjoyment over the suit schedule properties. The plaintiffs are making false allegations that the defendants are trying to interfere with their peaceful possession and enjoyment over the suit schedule properties. Smt.Shivalingavva and her children are also necessary parties to the present suit. The plaintiffs have not made out prima facie case for granting of temporary injunction. If the temporary injunction order is granted they will be put to hardship. If the temporary

injunction order is not granted no injustice will be caused to the plaintiffs. Hence they pray to dismiss the IA.

4. Heard Both the side. Perused the records.

5. The following points arise for my consideration:

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

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

3. Whether the plaintiffs will be put to irreparable loss and injury, if the order of Temporary Injunction is not granted?

4. What order?

6. My answers to the above points are as under:

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

7. **Point No.1 to 3**:- As the facts involved in point No.1 to 3 are interlinked together, hence they are taken up together for common consideration.

8. The present suit is filed by the plaintiffs against the defendants for the relief of permanent injunction with respect of the suit schedule properties.

According to the plaintiffs, they are the absolute owners and in actual possession and enjoyment over the suit schedule properties and the suit schedule properties are their ancestral properties. Partition was effected between the plaintiffs with respect of the suit schedule properties under the registered partition deed dated 19.05.2018, as per the said partition deed, mutation was effected in the names of plaintiffs for their respective shares and they are in possession and enjoyment over the same. The father of the plaintiffs No.2 to 4 and husband of plaintiff No.1 deceased K.Dyamappa was filed the suit against the present defendants and other family members in O.S.No.50/1997 on the file of Hon'ble Addl.Sr.Civil Judge and JMFC, Hosapete, and the said suit was decreed on 28.03.2005, but the defendants of that suit were not delivered the possession of the suit schedule properties in favour of K.Dyamappa, therefore the father of the plaintiffs K.Dyamappa filed the Execution

Petition No.218/2006 before the same Hon'ble Court, in the said Execution Petition the possession of the suit schedule properties were delivered as per the decree of O.S.No.50/1997 in favour of father of the plaintiff No.2 to 4 and husband of plaintiff No.1 Kumbara Dyamappa. The defendants have no manner of right, title and interest over the suit schedule properties, but they are illegally trying to interfere with the plaintiffs peaceful possession and enjoyment over the suit schedule properties. Hence, they have filed the present suit along with the present application.

9. The contention taken by the defendants is that, as per the decree of O.S.No.50/1997, the suit item No.8 was the open site and house property. In the above said O.S.No.50/1997 the said property was allotted to the father of the plaintiff No.2 to 4 and husband of plaintiff No.1 Kumbara Dyamappa and late Hanumanthappa, but the father of the plaintiff No.2 to 4 Kumbara Dyamappa got changed the records of the said property into his name. Then after the plaintiffs were changed the records of the said property in their names and alienated the same to the 3rd parties. When

the said fact was came to the knowledge of the defendant No.1, he has filed objections before the concerned Gramapanchayath. The said mutation proceedings were pending before the concerned Gramapanchath. The plaintiffs with an intention to harass the defendants filed the false suit. The plaintiffs are not in possession of the suit schedule properties. They given the suit schedule properties under lease to the 3rd parties and the said persons are in possession of the same. Smt.Shivalingamma and her children are also necessary parties to the present suit, with an intention to harass the defendants the plaintiffs have filed the false suit against them. Hence they prays to dismiss the I.A.

10. I have perused the documents produced by the plaintiffs and defendants. At this stage the plaintiffs have produced the RTC extract of suit item No.1 Sy.No.99/1, on going through the same, prima facie it appears that the said property is standing in the name of plaintiff No.4. The plaintiffs have produced the RTC extracts of suit item No.2 Sy.No.100/1 and suit item No.6 Sy.No.534/1, on going through the same, prima facie it appears that the said

properties are standing in the name of plaintiff No.3. The plaintiffs have produced the RTC extracts of suit item No.3 Sy.No.101/C, suit item No.4 Sy.No.102/D and suit item No.5 Sy.No.117/4, on going through the same prima facie it appears that the said properties are standing in the name of plaintiff No.2. The plaintiffs have produced the RTC extract of suit item No.7 Sy.No.543/2, on going through the same prima facie it appears that the said property is standing in the name of plaintiff No.4. Further the plaintiffs have produced the M.R.No.H68. The plaintiffs have produced the certified copies of the decree of O.S.No.50/1997, copy of the Execution Petition No.218/2006 and delivery receipt of Execution Petition No.218/2006, on going through the same it appears that the father of the plaintiffs Kumbara Dyamappa was filed the said suit with respect of present suit schedule properties, Sy.No.520B and house property open site Door No.70, and the said suit was decreed with respect of suit item No.1 to 8 of that suit. As per the pleadings of the parties, the fact that the father of the plaintiff No.2 to 4 and husband of plaintiff No.1 late Kumbara Dyamappa was filed the suit in

O.S.No.50/1997 against the defendants and other family members with respect of suit schedule properties, the said suit was decreed and possession of the suit schedule properties were delivered in favour of father of the plaintiff No.2 to 4 and husband of plaintiff No.1 Kumbara Dyamappa is not in dispute. The plaintiffs have produced the acknowledgments issued by the H.B.Halli police station dated 28.06.2021 and 16.06.2022. The plaintiffs have produced the copy of the registered partition deed, on going through the same it appears that in between the plaintiff No.2 to 4, their sister Kumbar Shankamma, father of plaintiff No.2 to 4 and Shankamma i.e., Kumbara Dyamappa partition was effected with respect of suit schedule properties, in the said partition deed suit item No.3, 4 and 5 were allotted to the plaintiff No.2, 0.30 acres of land in Sy.No.543/1 and suit item No.2 were allotted to the plaintiff No.3, 0.80 acres of land in Sy.No.543/1 and suit item No.1 were allotted to the plaintiff No.4. Sy.No.520/B measuring 1.41 acres of land was allotted to the sister of plaintiff No.2 to 4 Smt.Kumbara Shankamma

and said Kumbara Dyamappa was received Rs.1,00,000/- towards his share.

11. On going through the documents produced by the plaintiffs prima facie it appears that the plaintiffs are in possession and enjoyment of the suit schedule properties as explained above in detail. At this stage the defendants contended that the plaintiffs are not in possession of the suit schedule properties, they have leased the suit schedule properties to the 3rd parties, the 3rd parties are in possession and enjoyment of the same, and further contended that the suit item No.8 of O.S.No.50/1997 was allotted to the father of the plaintiff No.2 to 4 and husband of plaintiff No.1 late Kumbara Dyamappa and late Hanumanthappa, the said Kumbara Dyamappa got mutated the said properties into his name, later on the plaintiffs were got changed the said properties into their names and alienated the said properties to the 3rd parties. For proving the said contentions at this stage the defendants have not produced any documents before the Court. The defendants have produced the copy of the judgment of O.S.No.93/2011, on going through the same,

prima facie it appears that the defendant No.1 has filed the said suit against the father of the plaintiff No.2 to 4 and husband of plaintiff No.1 Dyamappa with respect of his properties, in that suit the said Dyamappa was appeared and not filed any written statement, the said suit was decreed and injunction was granted in favour of defendant No.1. In that suit the plaintiffs are not the parties. At this stage prima facie it appears that the plaintiffs are in possession and enjoyment over the suit schedule properties. During the pendency of the suit if the defendants have interfere with the plaintiffs peaceful possession and enjoyment over the suit schedule properties it cause injustice to the plaintiffs. The plaintiffs have made out prima facie case for granting of temporary injunction and balance of convenience lies in their favour. If the temporary injunction is not granted plaintiffs will be put to hardship. If temporary injunction is granted no injustice will be caused to the defendants. On the basis of above reasons and discussions I hold **Point No.1 to 3** in the **AFFIRMATIVE.**

12. Point No.4 :- For the aforesaid reasons and discussions made above, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiffs under Order 39 Rule 1 R/w Sec.94 and 151 of CPC is hereby allowed.

The defendants are hereby restrained from interfering with the plaintiffs peaceful possession and enjoyment over the suit schedule properties till disposal of the suit.

*(Dictated to the Stenographer, transcribed and computerized by her, corrected by me, and then pronounced in the open court on this the **4th day of DECEMBER 2024.**)*

(SAYED MOHIUDDIN URF KHAWAJA PEERAN)
CIVIL JUDGE & JMFC., HAGARIBOMMANAHALLI.