

**IN THE COURT OF THE CIVIL JUDGE & JMFC AT  
HUVINAHADAGALI**

**Present: J.R.Priya, B.Com, LL.M.,  
Civil Judge & JMFC,  
Huvinahadagali.**

***Dated: 12<sup>th</sup> of October 2017***

**O.S.No.74/2014**

PLAINTIFF : Smt.Neelamma W/o Kotragouda  
Patil, Aged about 67 years, House  
Hold and Agriculturist, R/o  
Hiremalleri Village, Hadagali  
Taluk, Ballari District.

(Repd. by Sri.K.P.M.,Advocate)

-V/s-

DEFENDANTS: Shri.Hanumanthappa S/o  
Shivamurteppa Hudar, Aged about  
65 years, Retired, r/o Hanamapur  
Village, Ranebennur Taluk, Haveri  
District & 3 others.

(D.1- Dead, D.2 Repd.by Sri.A.R.J., Advocate)  
(D.3 by S.P.M and D.4 by S.M.S)

**ORDERS ON IA NO.VI**

The plaintiff has filed an application U/o 39 Rule 1  
& 2 of CPC, to restraining the defendant No.3 and 4 to  
alienate the suit schedule properties in any manner till  
the disposal of the suit.

**2.** The above application is accompanied by an affidavit sworn to by the plaintiff. The suit schedule properties are ancestral properties of the plaintiff and husband of the defendant No.1. He got share in the suit schedule properties on the basis of partition and he started living separately. The defendant No.1 is the wife of the son of the plaintiff. After his marriage with in a short period of two months the son of the plaintiff by name Sanganagouda died. Thereafter the defendant No.1 was the owner of the suit schedule properties. She executed the Palu Patti and given her undivided share in favour of the plaintiff. The defendant No.2 is the father of the defendant No.1 and he had created a General Power of Attorney and executed the registered sale deed in favour of the defendant No.3 who is the son of the defendant No.4. The defendant No.4 is being practicing advocate at Mundargi and he used undue influence and misrepresenting against the defendant No.1 and colluding with the defendant No.2 created alleged Power of Attorney and also created the sale deed in order to grab the suit schedule properties. The defendant Nos.3 and 4 have no right, title and interest over the suit schedule properties but they are interfering and trying to alienate the suit schedule properties to the 3<sup>rd</sup> parties. Hence filed this application.

**3.** Per contra, defendant No.3 has filed objection to the IA-VI, he specifically denies all the allegation made in the above interim application. He contended that he is the bona-fide purchaser of the suit schedule property. The defendant No.1 due to the Dangu Fever died in the Bapuji Hospital, Davanagere but the plaintiff filed false case against the defendant Nos.2 to 4, stating that they had committed murder of the defendant No.1. The attitude of the plaintiff is in order to grab the properties of the defendant Nos.3 and 4, she had filed one or another cases against the defendant Nos.2 to 4. The defendant Nos.3 and 4 expended huge amount in the suit schedule properties. Therefore the plaintiff has mala-fide intention to the grab the suit schedule properties of the plaintiff. In this regard the plaintiff along with her daughter Thayavva. They had interfering in the suit schedule properties and also Thayavva once again filed the criminal case against them in Criminal No.93/14. Hence the application filed by the plaintiff is not maintainable. Hence liable to be dismissed.

**4.** I have heard both sides. The following points arise for my consideration.

**POINTS**

1. Whether the plaintiff has made out prima facie case to grant temporary injunction?

2. Whose favour the balance of convenience lies?
3. Whether the irreparable loss and injury will be caused to plaintiff if an order of temporary injunction is not granted?
4. What order?
5. My findings on above points are as under:

Point No.1: Negative  
Point No 2: Negative  
Point No.3: Negative  
Point No.4: As per final order for the following:

### **REASONS**

#### **POINT No.1 & 2:**

6. Both points are taken up together for common discussion to avoid repetition. The plaintiff has brought this suit against the defendant and filing interim application against the defendant for seeking the relief of temporary injunction. The plaintiff is supposed to establish the existence of prima facie. For the purpose of granting temporary injunction, existence of prima facie case is imperative. With this background, now I wish to ascertain whether the plaintiff has making out prima facie case or not.

7. In the instant case the plaintiff contends that, The suit schedule properties are ancestral properties of the plaintiff and husband of the defendant No.1. He got

share in the suit schedule properties on the basis of partition and he started living separately. The defendant No.1 is the wife of the son of the plaintiff. After his marriage with in a short period of two months the son of the plaintiff by name Sanganagouda died. Thereafter the defendant No.1 was the owner of the suit schedule properties. She executed the Palu Patti and given her undivided share in favour of the plaintiff. The defendant No.2 is the father of the defendant No.1 and he had created a General Power of Attorney and executed the registered sale deed in favour of the defendant No.3 who is the son of the defendant No.4. The defendant No.4 is being practicing advocate at Mundargi and he used undue influence and misrepresenting against the defendant No.1 and colluding with the defendant No.2 created alleged Power of Attorney and also created the sale deed in order to grab the suit schedule properties. The defendant Nos.3 and 4 have no right, title and interest over the suit schedule properties but they are interfering and trying to alienate the suit schedule properties to the 3<sup>rd</sup> parties. Hence filed this application.

**8.** In support of the contention of the plaintiff, she has produced the documents, Death certificate of the son of the plaintiff by name Sanganagouda Patil, Memorandum of the partition, Wedding card of the son of

the plaintiff No.1 and defendant No.1. The application given by the defendant No.1 into the Tahasildar, Legal notice dated: 02.12.2016. General Power of Attorney, Certified copy of the registered sale deeds.

**9.** On the other hand the defendant No.3 contended that he is the bona-fide purchaser and he used huge amount in the suit schedule properties for the improvement of the suit schedule properties. In order to grab the properties of the defendant Nos.3 and 4, the plaintiff filed false case against the defendants. The application is not maintainable.

**10.** In this regard the defendant produced the order copy of the Criminal Petition No.100056/2015 passed by the Hon'ble High Court of Karnataka, Dharawad Bench. B-report had been given by the Huvinahadagali Police station in Crime No.150/14. KSBC/C/1/49/14 complaint drop intimation, KSBC/C/147/14 complaint drop intimation. Government of Karnataka Department of Law and Parliament Officers, Bengaluru under Secretary, Law Department. The plaintiff's complaint closed intimation.

**11.** On care perusal of the documents produced by the plaintiff, it is shows that on the basis of the sale deed

dated: 07.09.2011, the suit schedule properties were sold out by the General Power of Attorney Holder of the defendant No.1 (who is the defendant No.2) in favour of the defendant No.3 under registered sale deed for sale consideration amount of Rs.1,99,000/- and Rs.1,36,000/-. According to sale deed the suit schedule properties are mutated into the name of the defendant No.3. The sale deed produced by the plaintiff itself shows that the General Power of Attorney Holder executed the registered sale deed in favour of the defendant No.3 and also he had given possession of the suit schedule properties in favour of the defendant No.3. It is duty of the plaintiff is that prove that possession over the suit schedule properties. The documents produced by the plaintiff is sufficient to show that the defendant No.3 is in possession and enjoyment of the suit schedule properties.

**12.** The plaintiff is not produced any single documents with respect to she is in possession and enjoyment of the suit schedule properties. Therefore the plaintiff cannot claim the temporary injunction order against the defendants at this stage before conclusion of trial. Without the completion of the evidence this court has not come to the conclusion that, the defendant No.3 and 4 are trying to alienate the suit schedule properties.

The plaintiff has totally failed to prove prima facie case appears against the defendant No.3 and 4 and she is possession and enjoyment of the suit schedule properties. Accordingly, I answer point No.1 & 2 are in the **Negative.**

**POINT No.3:-**

**13.** I have already discussed that, the plaintiff has totally failed prove that, she is in possession and enjoyment of the suit schedule properties. Therefore if the injunction order is not granted it will not cause irreparable loss and injuries to the plaintiff. On the other hand if the injunction order is granted in favour of plaintiff it will cause irreparable loss and injuries to the public. Accordingly, I answer Point No. 3 in the **Negative.**

**POINT No.4:**

**14.** In the result, I proceed to pass the following;

**ORDER**

IA No.VI filed U/o.39 rule 1 and 2  
of CPC is hereby dismissed.

*(Dictated to the Stenographer and transcribe by him and on computer typed by him, corrected by me and then pronounced in the open Court on this the 12<sup>th</sup> October 2017).*

Civil Judge & JMFC,  
Huvinahadagali.



