

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

Present

Sri Yamanappa Kare Hanumanthappa,B.A.LL.B.,
Civil Judge, Hoovinahadagali.

Dated this the 6th day of December 2016.

O.S. No.92/2016

1. Shri.Shankarappa S/o Mallappa Mulkiwodeyar,
...Plaintiff/Petitioner.
(By Sri R.B.Kori, Advocate)

V/s.,

1. Shri.Ningappa S/o Mallappa Mulkiwodeyar and others.,
...Defendants/Respondents.
(By Sri Suresh M.Soppina, Advocate)

INTERIM APPLICATION NO.I

APPLICANT : 1. Shri.Shankarappa M.Mulkiwodeyar
(Ori.Plaintiff)

V/S.,

OPPONENT : 1. Shri.Ningappa M.Mulkiwodeyar
(Ori.Defendants) & Others.,

ORDER ON I.A.No.I

This I.A.No.I is filed by the plaintiff/petitioner U/O. XXXIX
Rule 1 and 2 R/W sec.151 CPC and prayed for the Court to grant
the exparte ad-interim temporary Mandatory injunction directing
the defendant NO.4 to forthwith pay/deposit the monthly rentals of

the suit property in the court pending disposal of the suit in the interest of justice and equity.

2. Along with the application, the plaintiff has filed the affidavit stating that defendants in collusion with each other have usurped the rental of the suit property since 16.12.2014 and will continue to do the same excluding him and denying him legitimate right over the suit property and he has not authorized the defendant No.4 to pay the rentals to the defendant No.3 alone and further stated that he having 1/4th share over the suit property. As such it is just proper and necessary to direct the defendant No.4 to depositing the rentals of the suit property in the court. Further stated that he has prima face case and balance of convenience and if the T.I.is not granted in their favour, he will be put to irreparable loss and injustice. Hence, he prayed the Court to allow the application in I.A.No.I.

3. After service of copies to the defendant, the defendant appeared before the court and filed a memo stating that the contents of the written statement may be treated as objection to I.A.No.I. The defendant No.4 in the written statement has denied the entire averments of the plaint. Further contended that actually

there is no partition between mother Mallamma and plaintiff and defendants as alleged by the plaintiff. The document produced before the court is an unregistered one and created by the plaintiff. Therefore, the allegation with regard to the partition dated 12.10.2001 is false. On these grounds, the defendant NO.4 has prayed the Court to dismiss the application.

4. Heard.

5. The following points arise for my consideration:

- 1) Whether the plaintiff/petitioner proves that there is prima-facie case?
- 2) Whether the plaintiff/petitioner proves that the balance of convenience lies in their favour?
- 3) Whether the plaintiff/petitioner proves that if injunction is not granted, he put to heavy and irreparable loss?
- 4) What order

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

Point No.1: Is in the Affirmative,
Point No.2: Is in the Affirmative,
Point No.3: Is in the Affirmative,
Point No.4: Is as per final order for the following reasons;

REASONS

7. Points No.1 to 3:- Since these points inter-linked with each other, they are taken together for discussion to avoid repetition.

I have carefully perused the plaint, written statement and documents produced by both the parties. The plaintiff has filed this suit against the defendant's partition and separate possession in respect of the suit property. Further stating that the suit property is joint family property of the plaintiff and defendant NO.1 to 3. The plaintiff and defendant NO.1 to 3 partition their family properties on 12.10.2001, as per partition deed their enjoying in their respective properties. As per partition deed dated 12.10.2001 a life interest was created in the name of Smt.Mallamma W/o Mallappa Mulkiwodeyar to enjoy the rentals of the suit property until her life time without any semblance of right whatsoever nature to alienate, gift it or otherwise. The mother of the plaintiff is expired on 16.12.2014. The defendant No.4 was inducted as tenant in the suit property during the lifetime of Smt.Mallamma, as Smt.Mallamma was deriving the rentals from the defendant No.4 until her death. After her death of the Smt.Mallamma the plaintiff and defendant NO.1 to 3 are equally entitled to the rentals to the extent of their legitimate shares. Now the defendant NO.3

alone is illegally enjoying the rental amounts. Hence plaintiff is filed this application.

8. I have carefully perused the defendant denied averments of the plaint, further stated that there is no partition taken place between the plaintiff and defendant No.1 to 3. There is not dispute between the plaintiff and defendant NO.1 to 3 with regarding to there is no disputing that defendant NO.4 is tenant property. The advocate for plaintiff has filed one partition deed reveals that “ಎ-ಷೆಡ್ಡೂಲ್ ಆಸ್ತಿಯು ತನ್ನ ತಾಯಿಯಾದ ಶ್ರೀಮತಿ. ಮಲ್ಲಮ್ಮ ಇವರ ಜೀವನಾರ್ಥಕ್ಕೆ ತೆಗೆಯಲಾಗಿದೆ.” that is suit property. Whether the partition deed acted are not it need to be try to decide the facts. Now the non-disputed that defendant NO.4 is tenant property if the rental amount is deposited in the court no harm to the both respective parties. Under the facts and circumstances of the case and looking into the materials available on record, at this stage, the plaintiff has made out the prima facie case, balance of convenience lies in his favour and if temporary injunction order is not granted, the plaintiff would be put to irreparable loss and in justice. Hence, I have answered the Point No.1 to 3 in the Affirmative.

9. **Point No.4:-** For the discussion made above, I proceed to pass the following order.

ORDER

The I.A.No.I filed by the petitioner/plaintiff U/O.39 Rule 1 and 2 R/W.151 of CPC is hereby allowed.

The defendant No.4 is hereby directed to deposit the rental amounts in the court from the next date of hearing.

No order as to costs.

(Dictated to the stenographer, transcribed by him, corrected by me and then order pronounced in the open court on this the 06th day of December 2016.)

(Yamanappa Kare Hanumanthappa),
Civil Judge, Hadagali.