

KAVP210038492021



**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC,
BASAVANA-BAGEWADI**

**PRESENT: Smt. SAUMYA HOOLI
B.A.,LL.B.
Addl. Civil Judge & JMFC,
BASAVANA-BAGEWADI**

O.S.No.680/2021

Dated this the 20th day of April-2024

PLAINTIFFS:

1. Sumitra @ Ballavva W/o Nandabasayya Gudi
and others.

//Versus//

DEFENDANTS:

1. Parayya S/o Rudrayya Kannal @ Sangamad
and others.

PARTIES IN I.A.I

Applicants/plaintiffs:

1. Sumitra @ Ballavva W/o Nandabasayya Gudi
and others.

(By Sri P.P.Sanganavvar, advocate)

//Versus//

Opponents/Defendants:

1. Parayya S/o Rudrayya Kannal @ Sangamad
and others.

(D-1 & 2 By Sri G.N.Bevinamarad, advocate)
(D-3 By Sri V.S.Hiremath, advocate)
(D-5 By Sri R.S.Pawar, advocate)

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ORDERS ON IA NO.I

Stage:

IA No.I is filed U/O: 39 Rule 1 and 2 of CPC. The instant application is filed seeking relief of temporary injunction against the defendant No.1 to 5 and their follower. The instant suit is filed for the relief of Partition and Separate Possession. The I.A.No.I is filed on 16.09.2021. The number of applications in this suit are 4. Defendants have filed objections. The date on which the orders on IA No.I passed is 20.04.2024. The current stage is for compliance U/Sec. 89 of CPC.

The applicants/plaintiffs have filed I.A.No.I U/O 39 Rule 1 and 2 of CPC, seeking ad interim Temporary Injunction against defendant No.1 to 5 and their followers to restrain them from alienating the suit properties bearing Sy.No.154/2 measuring 5-Acres 00-Guntas and Sy.No. 154/7 measuring 6-Acres 38-Guntas both situated at Ukkali village, till the disposal of the suit.

2. In the affidavit annexed to IA No.I, it is averred that, the plaintiffs and defendant No.1 are the daughters and

son of the defendant No.2 respectively, while defendant No.3 is the wife of defendant No.1 and Defendant No.4 and 5 are the sons of defendant No.1 and 3. Further averred that, the suit properties were purchased by the father of plaintiffs and defendant No.1 out of his own earnings on 19-08-1979 and accordingly the name of Rudrayya got entered in the Record of Rights of suit as per M.E.No.7420. Since, the date of purchase, Rudrayyya became the absolute owner and possessor of the suit lands. Further after the death of Rudrayya, the names of plaintiffs, defendant No.1 and 2 got entered in the revenue records as warasas as per M.E.No. 423 and from then, the plaintiffs and defendant No.1 and 2 are in the joint possession of the suit properties. Further, defendant No.1 behind the back of plaintiffs gave waradi to the revenue officials and got the names of defendant No.1 and 2 entered in the RTC extract of the suit lands. Further, again the defendant No.1 and 2 behind the back of plaintiffs by colluding with the revenue officials got entered the names of defendant No.3 to 5. When the said Rudrayya died intestate, the plaintiffs are also entitled

to their share in the suit lands. Thus, prayed to allow IA No.I.

3. On the other hand, defendant No.3 filed memo stating that, the contents of written statement may be treated as objections to IA No.I. In the objections, defendant No.3 denied the entire averments of plaintiffs except the relationship and except that, the suit properties had been purchased by Rudrayya out of his own earnings. Further contended that, as per the oral family arrangements, waradi was given to revenue authorities, and after issuance of notice the names of defendant No.1 and 2 were entered as owners and after oral family arrangement the names of defendant No.3 to 5 were entered as owners of the suit land to the extent of 5-Acres 00-Guntas and remaining 6-Acres 38-Guntas out of total 11-Acres 38-Guntas remained in the names of defendant No.1 and 2, as a result of which M.R.No. H95/2016-2017 was approved. As the plaintiffs have not availed the efficacious remedy available to them, the instant application is not maintainable. Hence, prayed to dismiss the IA No.I.

4. Heard both Counsel and perused the entire materials placed on record.

5. Upon hearing the arguments and on perusal of materials placed on record, the following points that arise for consideration are;

(1) Whether the plaintiffs have made out a prima facie case in their favour?

(2) Whether the balance of convenience lies in favour of plaintiffs?

(3) Whether irreparable loss or hardship will be caused to the plaintiffs, if injunction is not granted?

(4) What order?

6. My findings 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:-The facts of IA No.I is already narrated above and the same to be considered henceforth during the discussion in order to avoid repetition of facts.

8. The plaintiffs and defendants in order to substantiate their case, have placed several documents on record. On perusal of M.E.No.7420, it is forthcoming that, the Rudrayya purchased the property bearing Sy.No. 154 and further on perusal of M.E.No.423, it is forthcoming that, after the death of the said Rudrayya the names of plaintiff No.1 to 3 and defendant No.1 and 2 came to be entered as warasas as with respect to suit property. On perusal of RTC extract of suit property for the year 1982 to 1998 of the suit property, the suit property was in the possession of the Rudrayya. Further, on perusal of M.R.No. H95/2016-17, it is forthcoming that, the suit properties came to be standing in the name of defendant No.1 to 5. On perusal of M.R.No. H141/2012-13, it is forthcoming that, the suit property stood in the name of defendant No.1, defendant No.2

and plaintiff No.1 to 3. At this stage, on perusal of the aforesaid documents and RTC extracts for the year 2020-2021, no doubt defendant No.1 to 5 are in the possession of the suit properties, but what is pleaded by the plaintiffs is to be looked into. The plaintiffs pleaded that, defendant No.1 and 2 by colluding with revenue officials on having played fraud got the names of defendant No.1 to 5 entered in the revenue records with respect to suit properties. At this stage, it is obvious that, the question arises as to when the Rudrayya died intestate, why the suit properties stood in the name of defendant No.1 to 5 to the exclusion of plaintiff No.1 to 3. In addition, defendant No.3 has contended that, there was oral family arrangement. To assess the said oral family arrangement, full-fledged trial is required. However, at this stage, this Court is of the opinion that, to assess as to how the suit properties came to be standing in the name of defendant No.1 to 5, evidence is required. Thus, to determine the same, it is necessary to let the plaintiffs go for trial. Thus, this Court answered Point No.1 in the Affirmative.

9. Point No.2:- It is well settled principle of law that, prima facie case and balance of convenience go together. At this stage, if the instant application is refused, it would result in great inconvenience to the plaintiffs at large. Until this Court adjudicates the question that have arosed at this stage, this Court is of the opinion that, the suit properties are required to be preserved. Thus, this Court answered Point No.2 in the Affirmative.

10. Point No.3:- For the reasons assigned during the discussion of Point No.1 and 2, it is apparent that, if the instant application is refused it results in irreparable loss to the plaintiffs i.e., plaintiffs may get deprived of their share. Thus, at this stage, to avoid the irreparable loss, these questions are to be determined in the course of full-fledged trial. Thus, this Court answered Point No.3 in Affirmative.

11. Point No.4:-For the reasons assigned above, this court proceeds to pass the following;

ORDER

I.A.No.I filed by the applicants/ plaintiffs U/O 39 Rule 1 and 2 of Civil Procedure Code is hereby allowed.

Consequently, the defendant No.1 to 5 and their followers are hereby restrained from alienating the suit properties bearing Sy.No.154/2 measuring 5-Acres 00-Guntas and land bearing Sy.No. 154/7 measuring 6-Acres 38-Guntas situated at Ukkali village, till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer directly on the computer typed by her, corrected and pronounced by me in the open court on this the **20th day of April-2024**).

Place:B.Bagewadi
DATE:20-04-2024

(SMT.SAUMYA HOOLI)
Addl.Civil Judge & JMFC.,
Basavana-Bagewadi.