

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC, INDI.**

-PRESENT-

**DEVARAJU H.R.
B.A., LL.B.
Additional Civil Judge & JMFC, Indi.**

Dated this the 18th Day of November, 2022

Original Suit No.68/2022

PLAINTIFF:-

1. Smt.Mallamma Singe @ Immanad.

(By Sri.Y.S.P., Advocate)

V/S

DEFENDANT:-

1. Smt.Yallabai W/o Shivappa Immanad & others

(By Sri. M.M.K., Advocate)

I.A. NO. I

APPLICANT/Plaintiff :

**1. Smt.Mallamma W/o Gangaram Singe @
Immanad,
Age: 55 years, Occ: H.H.work,
R/o Salotagi, Tq: Indi, Dist: Vijayapura.**

**Now at Sadar Bazar 440 Zopadapatti,
Near Sainik School, Satara, now at Indi.**

V/S

OPPONENTS/ Defendants:

- 1. Smt.Yallabai W/o Shivappa Immanad,
Age: 50 years, Occ: H.H.work,
R/o Salotagi, Tq: Indi, Dist:Vijayapura.
Now at Prem Anupam Nagar Society Kalyan,
Tq: & Dist: Thane & others.**

ORDERS ON I.A.NO.I

The plaintiff has filed present interim application under order 39 Rule 1 and 2 of C.P.C for seeking temporary injunction against the defendant No.1 and 3 restraining them from alienating or encumbering the suit schedule properties by way of gift, mortgage, exchange or in any other mode till the pending disposal of the present suit.

2. The plaintiff in her affidavit annexed to this application has stated that, she has filed the present suit for partition and separate possession against the defendants. The suit schedule properties are the joint

family properties of her and defendants. She is having 1/4th legitimate share over the suit schedule properties.

3. Further the plaintiff submits that, one Shivappa S/o Ranappa Immanad was a manager of family and out of joint family nucleus the land bearing Sy.No.815/2 measuring 5 acres 38 guntas purchased by him from one Vithoba S/o Sangappa Chikkarugi for consideration amount of Rs.18,000/-. As per the sale deed khata has been mutated into his name as per M.E.No.6134. Later on said Shivappa Immanad effected partition among his brothers. Accordingly, land bearing Sy.No.815/2 measuring 5 acres 38 guntas fallen to the share of deceased Shivappa Immanad. She is the daughter of Shivappa Immanad. He was died on 01.05.2021 and her mother namely Yallabai W/o Shivappa Immanad was also died on 06.11.2018. After the death of her mother her father got marriage to defendant No.1 as his 2nd wife. The defendant No.2 and 3 are the sons of defendant No.1 and deceased Shivappa Immanada through defendant No.1, who is the 2nd wife of her father. Without any manner of

right defendant No.1 and 3 have illegally transferred the khata into their names as per M.R.N.145/2011-12. The above said transactions are illegal and not binding on her as the property is the ancestral property of plaintiff and defendants. Further she has contended that, the land bearing Bl.No.728 measuring 29 acres 38 guntas of Salotagi village was originally purchased by name Ranappa Yallappa Immanad from one Rayagondappa Gurappa Hayati for consideration amount of Rs.25,000/-. As per the sale deed khata of the said property got mutated as per M.E.No.5769. Later on said Ranappa Immanada was died on 23.03.1987 and his sons namely Shivappa, Mahadev and Girimallappa succeeded the said property as per the M.E.No.8540. In partition the land bearing Sy.No.728/2 measuring 9 acres of Salotagi village was allotted to the father of her. Then her father has illegally without allotting the plaintiff's share has transferred the same in favour of defendant No.2 vide M.R.No.H73/2012-13. Thereafter, her father has purchased the land bearing Sy.No.728/7 from his brother Mahadevappa Immanad through registered sale

deed. The khata of the said property got mutated into the name of her father as per M.R.No.H89/2017018. Thereafter, her father has purchased two sites at Indi in Bl. No.26 and 27 in land bearing Sy.No.619/X of Indi town measuring 1750 Sq.feet. The said properties are the ancestral properties of plaintiff and defendants.

4. The plaintiff further submits that, after the death of her father, defendant No.3 has colluded with defendant No. 1 and 2 and have filed suit in O.S.No.255/2021, wherein they compromised the suit. In compromise the land bearing Sy.No.815 was allotted to defendant No.3 and land bearing Sy.No.728/2, Sy.No.728/7, plot No.26 and 27 are allotted to the defendant No.1. The said compromise is illegal, because both defendants have colluded with each other to dupe the legitimate share of the plaintiff. Recently she came to know the above said facts. Hence, she has demanded the defendants to effect partition and to allot her legitimate shares over the suit schedule properties. In spite of it, the defendants have refused to effect partition. Hence, she has

filed the present suit for partition along with his application.

5. The plaintiff further submits that *prima-facie* case and balance of convenience lies in favour of her. If court has not granted temporary injunction order against the defendants, it would cause hardship to her. Therefore, prays for allow the application.

6. Per contra, the defendants have filed memo by adopting the contents of the written statement as objection to I.A.No.1 filed by the plaintiff by denying the entire plaint averments as false and baseless. The defendants have contended that, genealogy produced by the plaintiff is false. The defendants have totally denied the relationship of the plaintiff with deceased husband of defendant No.1 by name Shivappa Immanad. They have contended that, plaintiff is no way concerned to the family of the defendants, she is not a daughter of deceased Shivappa Immanad. Hence, suit filed by the plaintiff is not maintainable.

7. The defendants further contended that, suit schedule property item No.1 is separate property of

deceased Shivappa. This property is purchased by the father of deceased Shivappa. After his death his sons have succeeded the property, and they have ultimately effected partition among themselves. Item No.1 has allotted to the father of the defendant No.2 and 3 as his separate share. After the partition deceased Shivappa Immanad had gifted the said property to his natural son, who is the defendant No.2 herein under registered gift deed. Ever since date of gift deed the defendant No.2 was in lawful possession, cultivation and enjoyment of the suit property. The item No.2 is self acquired property of deceased Shivappa. He has purchased the said property from his brother. After the death of his father the defendants have succeeded the said property as Class-I heirs of deceased Shivappa. Now partition effected in O.S.No.255/2021 the land was allotted to the defendant No.1 as her share. The item No.3 was purchased property of deceased Shivappa Immanad under registered sale deed out his own earned money. There was no any man hand to purchase the suit property either money or labour. Hence, it was absolute property of

deceased Shivappa. Item No.4 and 5 were open sites properties purchased by the husband of defendant No.1 and he has built house in the said plots. The said properties fallen to the share of defendant No.1 in O.S.No.255/2021. The plaintiff has no rights over the above said properties as she is not a daughter of deceased Shivappa Immanad. She has filed the present suit only for the purpose of giving harassment to these defendants. Hence, prays for reject the application.

8. Heard both sides and perused the available materials on record.

9. The following points arise for the consideration of this Court;

1. Whether the plaintiff/applicant has made out *prima-facie* case?

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

- 3. Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction as prayed for ?**
- 4. What order ?**

10. My answer to the above points are as follows;

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

11. Point No 1 : It is the case of the plaintiff that, she is the daughter of deceased Shivappa through his 1st wife Yallabai. Her mother was died on 06.11.2018 and her father Shivappa was also died on 01.05.2021. The defendant No.1 is the 2nd wife of her father. The defendant No.2 and 3 are the children of her father through his 2nd wife i.e., defendant No.1. The plaintiff is having her legitimate 1/4th share over the suit schedule properties.

The suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. Her father was a manager of family, out of joint family nucleus he has purchased the property in Sy.No.815/2 measuring 5 acres 38 guntas for valuable consideration amount of Rs.18,000/-. Thereafter, her father effected partition among his brothers. Accordingly, property bearing Sy.No. 815/2 measuring 5 acres 38 guntas fallen to the share of her father as per M.E.No.8140. Thereafter, her grand father has purchased Sy.No.728 measuring 29 acres 38 guntas. After demise of her grand father property measuring 09 acres fallen to the share of her father and her father has purchased 2 plots in Indi. These properties are the ancestral properties of plaintiff and defendants, to dupe her claim the defendants have colluded with each other and have filed suit in O.S.No.255/2021, and they have entered into the compromise. The plaintiff came to know this fact recently. Hence, she has demanded the defendants her share over the suit schedule properties. But

they have refused to effect partition. Hence, she has filed the present suit along with this application.

12. On the other hand the defendants have disputed the relationship with the plaintiff with their father Shivappa. However, they have admitted that, they have filed the suit in O.S.No.255/2021 and got their shares as per compromise.

13. The plaintiff in support of her case has furnished RTC extracts of the suit schedule properties, wherein it appears that, khata of the suit schedule properties stands in the name of defendant No.1 and 3. Further she has furnished M.E.No.8140 wherein it appears that, property bearing Sy.No.815/2 measuring 5 acres 38 guntas fallen to the share of Shivappa. On perusal of entire documents furnished by the plaintiff they prima-facie reveals that, Shivappa had acquired the property by way of sale deed and through his father.

14. Once again I repeat that, defendants have denied the relationship of the plaintiff with deceased Shivappa, and they have contended that, plaintiff is not a

daughter of Shivappa and further they have contended that Shivappa had no two wives. He has only wife i.e., defendant No.1 namely Yallabai. In order to substantiate her contention plaintiff has furnished birth certificate of her, wherein it appears that, she is the daughter of Shivappa.

15. On the other hand the defendants have disputed the birth certificate of plaintiff. Admittedly, the plaintiff has filed petition in Cril.Misc.No.199/2022 U/s 13 of Registration of Births and Deaths Act, said petition was allowed. The plaintiff has furnished affidavit filed by her uncle in Cril.Misc.No.199/2022 as P.W-2, wherein he has stated that, plaintiff is the daughter of his brother.

16. The counsel for the defendants Sri.M.M.K has argued that, in cross-examination witness has admitted as said Shivappa had only wife namely Yallabai. On perusal of the said document it appears that in re- examination he deposed that she is alive but in his further cross-examination he has stated that, his brother had only wife Yallabai and she was died. The question before me is that,

whether plaintiff is daughter of Shivappa are not is the subject matter of trial. Because, to determine the relationship of the plaintiff with Shivappa trial is required. On perusal of the document furnished by the plaintiff it prima facie shows that, she is the daughter of Shivappa. On perusal of the birth of certificate furnished by the plaintiff is issued by competent authority on the basis of court order. It is relevant to note here the decision reported in **AIR1998 (P & H) 238 (Ashok Kumar v. Jaikumar)** Wherein Hon'ble High Court of Punjab And Haryana has held that; **"Genuineness of the document cannot be gone into in the proceeding under O.39 R.1 and 2 of C.P.C."** as per the ratio laid down in the above said decision court can not conduct mini trial while passing an interim order of injunction U/o 39 Rule 1 and 2 of C.P.C, but court has to consider the documents on the prima facie basis. At this juncture, it is necessary to protect the interest of plaintiff over the suit schedule properties.

17. It is relevant to note here decision reported in **ILR 2004 KAR 4076** (between **Fakirasab V/s Syedusad and others**) wherein our Hon'ble High Court of Karnataka at Para No.9 has held that;

“It is well settled that while considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit”.

18. As per ratio laid down in the above said decision the plaintiffs would not be put irreparable loss and their rights over the schedule property should be protected. It is relevant to quote here one more decision reported in **ILR 2007 KAR 1214** (between **T.K. Gowramma V/s K.**

Raviprasanna) wherein our Hon'ble High Court of Karnataka has held that;

“The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial”.

19. As per ratio laid down in the above said decision object of the temporary injunction is to protect the plaintiffs against injury by violation of her legal right for which she could not be adequately compensated. In the instant case the plaintiff has furnished relevant documents to establish their *prima-facie* case. Therefore, it is just and necessary to protect the interest of the plaintiffs over the

suit schedule property. In view of these observations, I hold point No.1 in the **Affirmative**.

20. Point No 2 and 3 : Since these points are inter-related to each other I have taken up together for my common discussion in order to avoid repetition of facts and findings.

21. It is the contention of the plaintiff that, if defendants alienate the suit schedule properties including her share it creates multiplicity of proceedings and hardship to her. If they alienate the suit schedule properties she will be put to hardship. On perusal of the records it appears that, khata of the suit schedule properties stands in the name of the defendant No.1 and 3. If defendant No.1 and 3 alienates the suit schedule properties on the basis of the khata stands in their names hardship causes to the plaintiff. Hence, I am of the opinion that, balance of convenience and hardship causes to the plaintiff. Hence, I hold point Nos. 2 and 3 in the **Affirmative**.

22. Point No.4 :- On above made discussions on points No.1 to 3, this court proceeds to pass following:-

ORDER

**I.A.No.I filed by the plaintiff
under order 39 rule 1 and 2 of CPC is
hereby allowed with cost.**

**Consequently, defendant No.1
and 3 are hereby temporarily
restrained from alienating the suit
schedule properties by way of gift,
sale, mortgage or any other mode to
the 3rd person till pending disposal of
the present suit.**

*(Dictated to Stenographer, transcribed and typed
by her, corrected and then pronounced by me, in the
open Court on this the 18th day of November-2022.)*

(DEVARAJU H.R.)
Addl Civil Judge and J.M.F.C.,
Indi.