

KAVP400000172017



Presented on : 03-02-2017

Registered on: 02-02-2017

Decided on : 30-03-2022

Duration : ---

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
MUDDEBIHAL**

**Present: Smt. Laxmi N.Garag
B.Com.LL.B(Spl),
Sr., Civil Judge & JMFC., Muddebihal.**

ORIGINAL SUIT No. 17/2017

Dated this the 30th Day of March-2022

Plaintiffs: 1. Fatima W/o:Abdulkhadir Ranjanagi
and others.

//Versus//

Defendants:1. Khatanabi W/o:Modinasab Ranjanagi
of Muddebihal.

PARTIES TO I.A.No.IV

Applicant/Plaintiff No.5:

1. Habib S/o:Abdlukhadir Ranjanagi
of Vijayapura.

[By Sri.H.H.Badiger, Advocate]

-V/s-

Opponent/Defendant

1. Khatanabi W/o:Modinasab Ranjanagi
of Muddebihal.

[By Sri.C.R.Joshi & B.A.Chiniwar, Advocates]

**ORDER ON I. A. No. IV U/O XXXIX Rules 1 and 2
of CPC**

The plaintiffs have filed this application against the defendant restraining her from alienating or transferring the suit property bearing R.S.No.105/1A/2 measuring 4 acres 1 guntas situated at Shirol Village of Muddebihal taluka, till disposal of the suit.

2. In support of the present application annexed to the affidavit the plaintiff No.5 stated that the plaintiff No.1 is wife and plaintiffs No.2 to 6 are children of Abdulakhadir S/o Modinsab Ranjanagi. During the life time of Abdulakhadir S/o Modinsab Ranjanagi and other two persons jointly purchased the suit property bearing R.S.No.105/1A/2 measuring 4 acres 01 guntas of land Situated at Shirol Village of Muddebihal and he has got 1/3rd share in the suit property. Abdulakhadir S/o Modinsab Ranjanagi purchased suit property out of his own earining and as such it is his self-acquired property. Abdulakhadir S/o Modinsab Ranjanagi died on 26-08-2012, leaving behind plaintiffs as his legal heir. After the death of Abdulakhadir, the plaintiffs being wife and children are the owners and in peaceful possession of the suit property and they have got 1/3rd share in it. The defendant without the knowledge of the plaintiffs have got created and concocted document as Will dated 01-08-2012 in her favour, which is said to have been executed by Abdulakhadir S/o Modinsab Ranjanagi. The husband and father of plaintiffs has never executed any Will in favour of defendant in respect of

suit property. On the basis of fabricated and created Will the defendant has entered her name in the suit property. The said Will is illegal and not binding upon the plaintiffs. Now the defendant is taking undue advantage of her name in the RTC is trying to alienating the suit property to third persons. If defendant is alienated the suit property , then plaintiffs will be put to untold hardship and loss. On the other hand, if the application is allowed no hardship would be caused to the defendant. The plaintiffs have got prima facie case and the balance of convenience is in their favour. On these grounds, prays to allow this application.

3. On the other hand the defendant has filed objections to the IA No.IV contending that the application filed by the plaintiffs is false, frivolous not maintainable either in law or facts and prays to dismiss this application. The defendant has denied the entire case of the plaintiffs and allegations made in the application and affidavit. It is the specific defence of the defendant that during the life time of deceased Ambdulkhadir S/o:Modinasab Ranjanagi, has executed unregistered Will on 01/8/2012 in favour of the defendant in respect of suit property, who is his mother and thereby the defendant has become the owner and is in possession of the suit property. The plaintiffs have filed this application in order to harass the old age defendant. On these grounds prays to dismiss the application with heavy costs.

4. Heard the arguments of counsel for plaintiffs as well as defendant. Perused the application, objections and material available on records.

5. On careful examination of contentions of both the side and the materials on record, the following points arise for consideration of this court:

POINTS

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

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

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

4) *What Order?*

6. The above points are answered as follows:-

Points No.1 to 3 : In the Affirmative,

Point No.4 : As per final order
for the following:

REASONS

7. **Point No.1:-**The plaintiffs have filed this suit for declaration and consequential relief of permanent injunction against the defendant in respect of the suit schedule property. At the stage of plaintiffs evidence, plaintiffs have filed this application. It is the specific case of plaintiffs that the plaintiff No.1 is wife and plaintiffs No.2 to 6 are children

of Abdulakhadir S/o Modinsab Ranjanagi. During the life time of Abdulakhadir S/o Modinsab Ranjanagi, he and other two persons jointly purchased the suit property bearing R.S.No.105/1A/2 measuring 4 acres 01 guntas of land Situated at Shirol Village of Muddebihal and he got 1/3rd share in the suit property. Abdulakhadir S/o Modinsab Ranjanagi purchased suit property out of his own earining and as such it is his self-acquired property. Abdulakhadir S/o Modinsab Ranjanagi died on 26-08-2012, leaving behind plaintiffs as his legal heir. After the death of Abdulakhadir, the plaintiffs being wife and children are the owners and in peaceful possession of the suit property and they have got 1/3rd share in it. The defendant without the knowledge of the plaintiffs have got created and concocted document as Will dated 01.08.2012 in her favour, which is said to have been executed by Abdulakhadir S/o Modinsab Ranjanagi. The husband and father of plaintiffs has never executed any Will in favour of defendant in respect of suit property. On the basis of fabricated and created Will the defendant has entered her name in the suit property. The said Will is illegal and not binding upon the plaintiffs. Now the defendant is taking undue advantage of her name in the RTC is trying to alienating the suit property to third persons.

8. In support of their case, the plaintiffs have produced the certified copies of M.E.No.1734 dated 24.03.1991 and RTC extracts for the year 1990 to 1994, MRs and RTC extracts. On perusal of it clearly discloses that as per

compromise decree passed by the Munsiff Court, Muddebihal in O.S.No.213/1990 dated 14.03.1991, property bearing Sy.No.105/1B measuring measuring 4 acres of land Situated at Shirol Village of Muddebihal taluka was jointly fallen to the share of Ambdulkhadir S/o:Modinasab Ranjanagi, Rayangodua S/o:Basanagouda Patil and Mamhammadhusain S/o:Murtujasa Awati and the said property jointly standing in their names. The deceased Abdulkhadin S/o:Modinasab Ranjanagi has got 1/3 share in the said property.

9. It is specific defense of the defendant that during the life time of deceased Ambdulkhadir S/o:Modinasab Ranjanagi, has executed unregistered Will on 01/8/2012 in favour of the defendant in respect of suit property, who is his mother and thereby the defendant has become the owner and is in possession of the suit property. In support of her contention the defendant has produced copy of unregistered Will and RTC extracts and MRs. On the basis of unregistered Will the suit schedule property is mutated in her name and said property is standing in name of defendant.

10. Admittedly, the plaintiffs No.1 to 6 are the wife and children and the defendant is the mother of deceased Abdulkhadir S/o:Modinasab Ranjanagi. It is the specific contention of the plaintiffs that the defendant has created alleged Will in faovur of defendant in respect of suit schedule property on 01-08-2012 and died on 26-08-2012. The plaintiffs are claiming that they are the owner of suit schedule property as a legal heirs of deceased and defendant

is claiming that she is the owner of suit schedule property on the basis of Will. Whether the plaintiffs are the suit schedule property or defendant is the owner of the suit property by virtue of Will, it should be considered at the time of full-fledged trial, in accordance with law. Now the suit schedule property is standing in the name of defendant. If the suit property is alienated by the defendant without proving the Will, which is contested by the plaintiffs, it will lead to multiplicity of proceedings and greater hardship and irreparable loss to the plaintiffs.

11. While deciding the present suit for declaration and permanent injunction, this court will have to determine the aforesaid contentions considering the materials and evidence on record. The suit for declaration and permanent injunction filed by the plaintiffs and contention of the defendant about “Will” necessarily involves an ad-judication of the right of the parties in the suit property. Without deciding the right of the parties, none of the parties are entitled share in respect of suit property. The contentions raised by the parties are yet to be proved and disproved by the parties during trial. Hence, the grounds sought for dismissal of the IA by the defendant is not tenable at this stage, it requires full-fledged trial. If the application is not allowed, then the third party rights will be create and it amounts to multiplicity of proceedings. Admittedly, it is a suit for declaration and permanent injunction. If the defendant alienated the suit property without proving the Will, it will cause greater hardship to the

plaintiffs, who claim to be the legal representative of deceased Abdulakhadir. No harm or prejudice will be caused to either parties, if application is allowed.

12. On perusal of the property extracts, it clearly discloses that the suit schedule property is standing in the name of defendant. The plaintiffs have made out a prima facie case at this stage that if defendant has alienated the suit property in favour of third person then it amounts to multiplicity of proceedings and plaintiff will be put to hardship. At this stage, the plaintiff has made out a prima facie case for trial.

13. It is the allegation of the plaintiffs that the defendant is trying to alienate the suit property to third parties. If defendant succeeded in alienating the suit property, it causes injustice, loss to the plaintiffs and also leads to multiplicity of proceedings. If the defendant is restrained from alienating the suit property, no hardship of any kind will be caused to the defendant. The plaintiffs have also made out a case for grant of interim order of temporary injunction or otherwise, it leads to multiplicity of proceedings. Taking into consideration of the above facts and circumstances as well as materials available on record, it is of the considered opinion of the court that the plaintiffs have made out a prima facie case for trial as well as a case for passing the interim order of temporary injunction. Accordingly, I answered Point No.1 is in the **Affirmative**.

14. POINTS No.2 and 3:- Both these points are taken up together for discussion as they are inter connected with each other in order to avoid repetition of facts.

15. It is the specific case of the plaintiffs that the they are the owners of suit schedule property and the defendant has created and concocted Will in her favour, which is not binding upon them. Now the suit schedule property is standing in the name of defendant, if the defendant succeeded in alienating the suit property or transferring the same in favour of anybody, then they will be put to great hardship and loss or injury. Defendant has not denied that suit schedule property is standing in her name. It is a well settled principle of law that the status of the property is to be kept intact as it is in order to protract the right of the plaintiffs. Otherwise, it causes much hardship and injustice as well as inconvenience to the plaintiffs. Taking into consideration of the above settled principle of law and in order to maintain the property intact till the disposal of the suit, it is just and proper to restrain the defendant from alienating the same. The balance of convenience lies in favour of the plaintiffs and the they will be put to loss or injury in the event if the defendant succeeded in alienating the suit property. In view of the above facts and circumstances, the balance of convenience lies in favour of the plaintiffs as well as injury will be caused to the plaintiffs, if the order of injunction is not granted. Accordingly, I answered the Points No.2 and 3 are in the Affirmative.

16. POINT No.4:- In view of the findings on points No.1 to 3 in the affirmative, I proceed to pass the following ;

ORDER

I.A No.IV filed by the plaintiffs Under Order XXXIX Rules 1 and 2 of C.P.C is hereby allowed.

The defendant is restrained from alienating suit property bearing R.S.No.105/1A/2 measuring 4 acres 01 guntas land out of which 1/3 share of plaintiffs, Situated at Shirol Village of Muddebihal taluka either by way of sale, gift, mortgage etc., pending disposal of the suit.

Under the circumstances of the case, no order as to cost of this application.

(Dictated to the stenographer directly on computer, corrected and then pronounced by me in open court on this **30th** day of **March-2022**)

[Smt. Laxmi.N.Garag]
Sr..Civil Judge & JMFC.,
Muddebihal.