

KAVP500047582023



**IN THE COURT OF HON'BLE ADDL. SENIOR CIVIL
JUDGE AND JMFC, SINDAGI
AT: SINDAGI.**

Present – Shri. Abdul Rahiman .A. Mulla
B.A.L,LL.B.(Hon's)

**Addl. Sr. Civil Judge & JMFC,
Sindagi.**

Dated 5th day of November, 2024

O.S. NO.143/2023

Plaintiff/s :

Kallappa S/o. Chandrappa Metagar,
Age: 70 Yrs., Occ: Agriculture,
R/o. Choudi Galli, Near: Samaj Mandir,
Devara Hipparagi, Tq: Devara Hipparagi,
Dist: Vijayapura.

(R/by Shri. S.A.Kulkarni, Adv.,)

// Versus //

Defendant/s :

1. Dashrat S/o. Basappa Metagar,
Age: 41 Yrs., Occ: Agriculture,
R/o. Choudi Galli, Near: Samaj Mandir,
Devara Hipparagi, Tq: Devara Hipparagi,
Dist: Vijayapura.
2. Bouramma W/o. Basappa Metagar,
Age: 60 Yrs., Occ: Agriculture,

2.

O.S.No.143/2023

R/o. Choudi Galli, Near: Samaj
Mandir,
Devara Hipparagi, Tq: Devara
Hipparagi,
Dist: Vijayapura.

3. Chandram S/o. Kallappa Metagar,
Age: 40 Yrs., Occ: Agriculture,
R/o. Choudi Galli, Near: Samaj
Mandir,
Devara Hipparagi, Tq: Devara
Hipparagi,
Dist: Vijayapura.

**(D-1 & 2 R/by Shri. S.K.Pujari, Adv.,)
(D-3 – Ex-parte)**

PARTIES IN I.A.No.1

**Applicant
Plaintiff:**

1. Kallappa S/o. Chandrappa Metagar.

V/s.

Opponents/Defendants:

1. Dashrat S/o. Basappa Metagar
& others.

1.	Provision under which the application is filed	U/o.39 Rule 1 and 2 of CPC
2.	Relief sought for	To restrain the defendants from sale, mortgage, lease, transfer, alienate etc., over suit land
3.	The date on which application is filed	06-11-2023

4.	Number of the application	I.A.No.1
5.	The date on which objections/written statement are filed by different opponents	10-01-2024
6.	The date on which orders were passed on said application	05-11-2024

:-ORDERS ON I.A.No.1 FILED BY PLAINTIFF U/O.39

RULE 1 AND 2 OF CPC :-

1. The present suit is filed by plaintiff against defendants for the relief of declaration and permanent injunction and along with the suit, the present application is filed by plaintiff praying this court to restrain defendants from sale, mortgage, lease, transfer and alienate the suit schedule property bearing R.S.No.234/2B measuring 10 acres totally measuring 15 acres 12 guntas of Devarahipparagi, Vijayapur in any other manner, till disposal of suit.

2. In the affidavit annexed to the application, plaintiff averred that, defendant No.1 is his cousin brother, defendant No.2 is mother of defendant No.1 and defendant No.3 is his son. That he is absolute owner in possession of suit schedule

property having purchased western area measuring 10 acres out of land bearing R.S.No.234/2B totally measuring 15 acres 12 guntas under registered sale deed and accordingly M.E.No.6829 is certified. That defendant No.1 on 20-08-2023 came to suit schedule property asserting his false title by denying title of plaintiff over 06 acres, obstructed and threatened to dispossess plaintiff from suit schedule property.

3. It is further averred that, when plaintiff verified the revenue records, he came to know that defendant No.2 colluding with revenue authorities has created M.E.No.10952 stating that partition took place between him and defendant No.1, wherein 06 acres is allotted to defendant No.1, who was minor and defendant No.2 acted as minor guardian. That defendant No.3 has also created M.R.No.504/2010-11 behind his back alleging that there is partition between him and plaintiff. Now defendants are in a hurry to

alienate the suit schedule property and amongst these grounds, prayed to allow the application.

4. After issuance of summons, defendant No.3 remained ex-parte, whereas defendant No.1 and 2 appeared through their counsel, wherein defendant No.1 filed written statement and objections which is adopted by defendant No.2. Defendant No.1 filed his written statement denying entire averments of plaint and contended that, description of suit schedule property is not correct and defendant No.2 purchased western area measuring 06 acres in land bearing R.S.No.234/2B and to avoid stamp duty, partition took place, wherein western area measuring 06 acres was allotted to defendant No.1 and accordingly M.E.No.10952 was certified. Thereafter land allotted to defendant No.1 was re-numbered as R.S.No.234/2B1 and eastern area land retained by plaintiff measuring 04 acres was re-numbered as R.S.No.234/2B2.

5. It is further contended that, defendant No.1 has perfected his title over land bearing R.S.No.234/2B1 by way of adverse possession and suit of plaintiff is barred by limitation and amongst these grounds prayed to dismiss the application

6. Heard. Perused the records.

7. The points that arise for my consideration is as under:

- 1) Whether prima-facie case and balance of convenience lies in favour of plaintiff?
- 2) To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same?
- 3) What order?

8. My findings to the above points are as under:

Point No.1 : In the Negative.

Point No.2 : To defendants in
case of granting temporary
injunction.

Point No.3 : As per final order
for the following:

:REASONS:

9. **POINT NO.1 AND 2:** As both these
points are interlinked with each other, they are taken
together for discussion to avoid repetition of facts.

10. It is specific case of plaintiff that, he is
absolute owner in possession and enjoyment of
western area of land measuring 10 acres out of
R.S.No.234/2B measuring 15 acres 12 guntas for
having purchased the same under registered sale deed
and accordingly M.E.No.6829 is certified. Behind the
back of plaintiff, defendants have got created mutation
entries and now defendants are attempting to alienate
the suit schedule property.

11. In support of his contention, plaintiff produced in all 7 documents i.e. certified copy of four mutation entries and three RTC extracts of suit schedule property.

12. On the contrary, defendant No.1 contended that, partition has taken place, wherein western area 06 acres of land was allotted to him and M.E.No.10952 is certified. He has perfected his title by way of adverse possession and no documents are produced by defendant No.1 in support of his contention.

13. On prima-facie perusal of pleadings and documents produced by plaintiff, it reveals that, land bearing R.S.No.234/2B was standing in the name of plaintiff from the year 1972 to 1988. Further prima-facie on perusal of M.E.No.10952 produced by plaintiff himself, it reveals that partition has taken place between plaintiff and defendant No.1 on 25-02-1990, wherein western portion of land bearing

R.S.No.234/2B1 was allotted to defendant No.1 and eastern portion of land bearing R.S.No.234/2B2 was allotted to share of plaintiff and said partition is acted upon by way of mutation entries, which can be prima-facie seen in RTC extracts.

14. These documents produced by plaintiff himself reveals that, partition has taken place between plaintiff and defendant No.1 at an undisputed point of time. Whether plaintiff is absolute owner of suit schedule property bearing R.S.No.234/2B measuring 10 acres is to be adjudicated by leading full fledged evidence and it requires trial and same cannot be adjudicated at this stage of the case by holding mini trial.

15. In order to grant an order of temporary injunction, three essential ingredients have to be fulfilled i.e. prima-facie case, balance of convenience and irreparable loss and injury in favour of plaintiff. The documents produced by plaintiff prima-facie

reveals partition having taken place at an undisputed point of time between plaintiff and defendant No.1. To rebut the same there is nothing forthcoming from the side of plaintiff at this stage of the case. Hence, plaintiff has not made out prima-facie case, balance of convenience also does not lie in his favour. If temporary injunction as prayed by plaintiff is granted irreparable loss and injury would be caused to defendants rather than plaintiff. Hence, for the above said reasons, I answer Point No.1 in the “Negative” and Point No.2 as “irreparable loss and injury would be caused to defendants in case of granting temporary injunction”.

16. **Point No.3:** For the reasonings and findings given to Point No.1 and 2, I proceed to pass following:

:ORDER:

I.A.No.1 filed by plaintiff U/o.39 Rule 1
and 2 of CPC is hereby rejected.

Parties to bear own costs.

The interim ex-parte temporary
injunction order dated 10-11-2023 is hereby
vacated.

*(Dictated to the stenographer directly on computer, typed by him, corrected,
signed by me and then pronounced in open court on 5th day of November,
2024).*

**(Abdul Rahiman .A. Mulla)
Addl. Sr. Civil Judge & JMFC,
Sindagi.**