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**IN THE COURT OF CIVIL JUDGE AND JMFC., AT YADGIRI**

**PRESENT**

**Sri. Arun Chougule,**

**B.A.LL.B.[Hons.]**

**CIVIL JUDGE AND J.M.F.C, YADGIRI**

**DATED THIS THE 03<sup>RD</sup> DAY OF AUGUST-2024**

**ORIGINAL SUIT NO.155/2023**

- PLAINTIFF/S:-**
1. Sri. Maruti S/o Sabanna Minigi,  
Age: 60 Years, Occ: Agriculture.  
R/o. Minaspur village,  
Tq: Gurumitkal, Dist: Yadgiri.
  2. Sri. Manikamma W/o Hanamanthu Minigi,  
Age: 63 Years, Occ: Agriculture.  
R/o. Minaspur village,  
Tq: Gurumitkal, Dist: Yadgiri.

**(By Sri. G.R Advocate)**

**-V/S-**

- DEFENDANT/S:-**
- Smt. Narasamma W/o Hanamanthu Minigi,  
Age: 40 years, Occ: Agriculture,  
R/o. Minaspur village,  
Tq: Gurumitkal, Dist: Yadgiri.

**(By Sri. G.M.M Advocate)**

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**ORDER ON I.A.No.1**

**Applicants/ plaintiff/s:** Sri. Maruti S/o Sabanna Minigi and Anr,

-V/S-

**Opponents/ defendant/s:** Smt. Narasamma W/o Hanamanthu Minigi,

i.	<i>Provision under which the application is filed</i>	<i>Under Order 39 Rule 1 and 2 R/w Sec.151 of CPC</i>
ii.	<i>Relief sought for</i>	<i>Temporary Injunction</i>
iii.	<i>The date on which the application is filed</i>	<i>10-07-2023</i>
iv.	<i>Number of the application</i>	<i>IA NO.1</i>
v.	<i>The date on which the objections are filed by different opponents</i>	<i>31-05-2024</i>
vi.	<i>The date on which the orders were passed on the said application.</i>	<i>03-08-2024</i>

**ORDER ON I.A.NO.1 FILED BY THE PLAINTIFF**  
**UNDER ORDER XXXIX RULE 1 AND 2 R/W SEC.151**  
**OF CPC**

The plaintiffs have filed the present application seeking the temporary injunction restraining the defendant from alienating the suit property till disposal of the suit.

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2. The plaintiff No.1 has sworn to an affidavit in support of the application stating that, the plaintiffs and defendant are members of Hindu undivided family and the suit property being an ancestral property they are in joint possession and enjoyment of the same. It is alleged that, after the death of her husband, the defendant got her name entered to the records of suit land by colluding with revenue authorities and she is trying to alienate the suit land. Hence, the plaintiffs pray to allow the application.

3. The defendant has filed written statement along with a memo seeking to adopt the same as objections to present application. In the written statement, the defendant though admits that herself and plaintiffs are members of Hindu undivided family, she claims that suit property was duly mutated in her name as per ME No.175/2003-04 and she being the absolute owner is in possession and enjoyment of the same. It is contended that the defendant has already sold the suit land in favour of one Smt.Janolla Narasamma W/o Janolla Kashappa under registered sale deed bearing No.3755/2023-24. Accordingly, the purchaser having got her name mutated to the

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records of suit land is in possession and enjoyment of the same. On these grounds, the defendant prays to dismiss the suit with costs.

4. I have heard arguments of both side.

5. After hearing the arguments and perusal of pleading and records, the following points arise for my consideration;

1. **Whether the plaintiffs have made out a prima-facie case?**
2. **Whether balance of convenience lies in favour of plaintiffs?**
3. **Whether irreparable loss will be caused to the plaintiffs if the temporary injunction as prayed is not granted?**
4. **What order?**

6. My findings on the above points are as under;

**Point No.1 : In the Negative.**

**Point No.2 : Does not survive for consideration.**

**Point No.3: Does not survive for consideration.**

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

**REASONS**

7. **POINT NO.1** : The plaintiffs have filed the present suit seeking the relief of partition and separate possession claiming 1/3<sup>rd</sup> share each in the suit land Sy.No.177/A (old) measuring 01 acre 30 guntas renumbered as Sy.No.177 measuring 01 acre 29 guntas situated at Minsapur village, Gurumitakl Taluk of Yadgiri District. As the pleadings of the parties would reveal, one Sabanna S/o Lakshmappa was propositus of the family of plaintiffs and defendant who died leaving behind three sons by names Hanamantha (deceased), Sharanappa (deceased father of plaintiff No.2), and Maruti (plaintiff No.1). The defendant is the wife of deceased Hanamantha.

8. The plaintiffs claim that the suit property is an ancestral property and themselves and the defendant are in joint possession and enjoyment of the suit land. The plaintiffs allege that, after the death of her husband Hanamantha, the defendant got her name mutated to the records of suit land without the knowledge of the plaintiffs and she is trying alienate

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the suit land. On the other hand, the defendant claims to be the absolute owner and in possession of the suit land stating that after the death of her husband the Khata was transferred in her name as per MR No.175/2003-04 dated 19.04.2001.

9. The plaintiffs have produced RTCs and mutation extracts pertaining to the suit land. The defendant has produced certified copy of registered sale deed dated 10.08.2023 and certified copy of mutation order.

10. Hand written RTCs produced by the plaintiffs show that 03 acres 21 guntas of land in suit Sy.No.177/A belonged to one Lachamappa Minigi and the records were standing in his name from 1963-64 to 1967-68. The RTCs further show that the said land was thereafter mutated in the names of one Srishaila S/o Lachamappa and the defendant's husband Hanamantha S/o Sayabanna Minigi. Thereafter, name of said Srishaila was deleted and names of his sons by name Sharanappa and Lachamappa were mutated. The suit land 01 acre 30 guntas was standing in the name of defendant's husband Hanmantha since 1993-94 till 2003-04. Thereafter, as

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per MR No.175/2003-04, the Khata was transferred to the name of defendant. The documents produced by the defendant show that the defendant has sold the suit land in favour of one Smt.Janolla Narasamma W/o Janolla Kashappa under registered sale deed dated 10.08.2023 and Khata is transferred in the name of the purchaser. It can be seen that, now the suit land after said sale transaction has been renumbered as 177/2.

11. From the material on record it can be seen that there is no document to show that the suit land belonged to either the father of plaintiff No.1 by name Sabanna or his grandfather Lachamappa. There is no document produced by the plaintiff as to on what basis name of defendant's husband was mutated to the records of suit land. There is no averment in the plaint whether the suit land was inherited by the defendant's husband from his father or grandfather. Under such circumstances, it cannot be said that the suit land is either an ancestral or joint family property of the family of plaintiffs and defendant. Though the defendant has not stated regarding the manner of acquisition of suit property by her deceased husband, the

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plaintiffs cannot take advantage of the same as the initial burden is upon them to prove their case.

12. Further, it can be seen that the present suit was filed on 11.07.2023. The defendant executed sale deed dated 10.08.2023 in favour of one Smt.Janolla Narasamma. It can be seen that, even before receipt of suit summons, the defendant has alienated the suit land. As such, question of restraining the defendant from alienating the suit land does not arise.

13. In view of above discussion, this court is of the opinion that, the plaintiffs have failed to make out a *prima facie* case in their favour. Hence, point No.1 is answered in the Negative.

14. **POINT No.2 and 3:-** This court has come to the conclusion that, the plaintiffs have failed to prove that they have got a *prima facie* case in their favour. As such, questions of irreparable loss and balance of convenience do not survive for consideration. Hence, points under consideration are answered accordingly.

15. **POINT NO.4:** In view of the above discussion, the following:-

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**ORDER**

I.A.No.1 filed by the plaintiffs under Order XXXIX Rule 1 and 2 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the stenographer, transcribed and typed by him and after corrections, pronounced in the Open Court on this the **03<sup>rd</sup> day of August-2024**)

**CIVIL JUDGE AND J.M.F.C,  
YADGIRI.**