

KABK700000722024



O.S./18/2024

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE, JAMKHANDI.

Present:

**Shri. Rajashekhar.S. Harsoor
B.A. LL.B.,
Addl. Senior Civil Judge, Jamkhandi.**

**O.S No.18/2024
Dated this the 09th day of July, 2024.**

1. Chandravva W/o. Mallappa Mali
Age : 34 years, Occ : Agricultural,
R/o: Kannolli, now at Tiganibidari, Tq : Babaleshwar
2. Amit S/o. Mallappa Mali,
Age : 11 years, Occ : Study being minor
Represented by his next friend natural mother,
Plaintiff No.1 Chandravva W/o. Mallappa Mali
R/o: Kannolli Tq : Jamkhandi, now at Tiganibidari,
Tq : Babaleshwar
3. Ashwini D/o. Mallappa Mali,
Age : 10 years, Occ : Study being minor
Represented by his next friend natural mother,
Plaintiff No.1 Chandravva W/o. Mallappa Mali
R/o: Kannolli Tq : Jamkhandi, now at Tiganibidari,
Tq : Babaleshwar

... Plaintiffs

(Represented by Sri. C.T.U., Advocate)

- Vs -

1. Dundawwa W/o. Shrishail Mali,
Age : 70 years, Occ : Nil,
R/o: Kannolli, Tq: Jamkhandi.
2. Mallappa S/o. Shrishail Mali,
Age : 42 years, Occ : Agriculture,
R/o: Kannolli, Tq: Jamkhandi.
3. Mahadevi W/o. Shrishail Mali,
Age : 46 years, Occ : House making,
R/o: Kannolli, Tq: Jamkhandi.
4. Mahananda W/o. Tukaram Langote,
Age : 40 years, Occ : House making,
R/o: iragal, Tq : Jath, Dist : Sangali, State : Maharashtra.
5. Sharada W/o. Bhagawant Kori,
Age : 38 years, Occ : House making,
R/o: Yakkundi, Tq : Jath, Dist : Sangali, State : Maharashtra.
6. Prashant S/o. Mallappa Mali,
Age : 12 years, Occ : Study being
minor represented by his guardian
Natural father, defendant No.-2
R/o : Kannolli, Tq : Jamkhandi.
7. Sandeep S/o. Bhagawant Kore,
Age : 20 years, Occ : Agricultural,
R/o: Yakkundi, Tq : Jath, Dist : Sangali,
State : Maharashtra.
8. Sujata W/o. Ramagond Biradar,
Age : 45 years, Occ : House making,
R/o: (Farm house) Kannolli, Tq : Jamkhandi.

... Defendants.

(Represented by Sri. A.P.K., Advocate)

: PARTIES IN I.A No. II :

1. Chandravva W/o. Mallappa Mali & others

... Applicants/Plaintiffs

- Vs -

1. Dundawwa W/o. Shrishail Mali & others

... Opponents/Defts. No.1 to 5, 7 & 8

i.	Provision under which the application is filed	:	U/o.XXXIX Rule 1 & 2 R/w. Sec. 151 of CPC
ii.	Relief sought for	:	Seeking Temporary Injunction to restrain the defendants No.1 to 5, 7 & 8 from alienating the suit schedule properties till the disposal of the suit.
iii.	The date on which the application is filed	:	13.02.2024 (Along with the plaint)
iv.	Number of the application	:	I.A.No.II
v.	The date on which the objection is filed by different opponents	:	03.07.2024
vi.	The date on which the order was passed on the said application	:	09.07.2024.

: ORDER ON I.A No.II:

1. The plaintiffs have filed IA.No.II U/o.XXXIX Rule 1 & 2 R/w. Sec.151 of Civil Procedure Code with a prayer to restrain the defendants No.1 to 5, 7 & 8 from alienating the suit schedule properties in any manner till the disposal of suit.
2. In support of above application, plaintiff No.1 has sworn to an affidavit, wherein she mainly stated that, the plaint averments be treated as part & parcel of her affidavit. She further stated that, the suit schedule properties are ancestral & joint family properties of plaintiffs & defendants No.1 to 6. Accordingly the plaintiffs & defendants No.1 to 6 are in joint possession & enjoyment of the suit schedule properties. Earlier the survey numbers of suit schedule properties were RS.No.97/2 & RS.No.98/2. Now the defendants No.1 to 5 have got mutated the suit schedule properties in their names on the basis of false & sham documents and also trying to alienate the same in fevour of strangers with intent to deprive the rights of plaintiffs. Hence herself and on behalf of other plaintiffs, she filed this application. She further stated that, if above application is allowed, no harm or prejudice would be caused to the defendants,

on the contrary, if it is rejected, the plaintiffs would be put to greater hardship and irreparable loss rather than the defendants.

3. After service suit summons, the defendants have appeared through their counsel and filed written statement along with a memo stating that, the contents of written statement may be treated as objection to IA.No.II.
4. Heard both side. Perused the contents of IA.No.II, memo, pleadings, documents & all other materials placed on record. Going by the same, the following points arise for consideration:

POINTS

1. Whether the plaintiffs have made out prima facie case for grant of temporary injunction as sought for ?
 2. Whether the balance of convenience tilts in favour of plaintiffs ?
 3. Whether the plaintiffs will be put to hardship, if temporary injunction is declined ?
 4. What order?
5. Having heard arguments & upon going through the materials on record, this court answers to above points 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 :

6. Points No.1 to 3: These points are taken up together for common discussion to avoid repetition of facts. The plaint reveals that, the plaintiffs have filed this suit for the relief of partition & separate possession claiming 1/25th share in the suit schedule properties. It is asserted in the plaint that, the propositus Shrishail died leaving behind his wife namely defendant No.1 – Dundavva, and four children namely Mallappa – defendant No.2, Mahadevi – defendant No.3, Mahananda – defendant No.4 and Sharada – defendant No.5 as his legal heirs. The plaintiff No.1 is the wife and plaintiffs No.2, 3 & defendant No.6 are the children of defendant No.2.

6.1. It is further asserted in the plaint that, the suit schedule properties are ancestral & joint family properties of the plaintiffs & defendants No.1 to 6. Accordingly the plaintiffs & defendants are in joint possession & enjoyment of the suit schedule properties. Such being the state of affairs, the defendants No.1 to 5 had tortured and ill-

treated the plaintiffs, as such the plaintiffs were forced to leave Kannolli village and take temporary shelter at first plaintiff's sister's home situated at Tigani-Bidari village of Babaleshwar taluka. The defendant No.2 has not made any provision for the livelihood or maintenance of the plaintiffs. By taking helplessness condition of the plaintiffs, defendant No.2 had filed a case in MC.No.56/2016 against plaintiff No.1 before this court for the relief of restitution of conjugal rights or dissolution of marriage. The said case came to be dismissed. Therefore the plaintiffs with no alternative have filed a petition in Crl.Misc. No.19/2017 for maintenance. The said petition came to be allowed on 24.09.2018 wherein awarded maintenance of Rs.4,000/- to the plaintiff No.1, Rs.1,000/- each to the plaintiffs No.2 & 3. Despite passing said order, the defendant No.2 is not regularly paying the maintenance to the plaintiffs. Since the plaintiffs are facing difficulty for their livelihood, they have approached defendants No.1 & 2 to allot their legitimate share in the suit schedule properties, but said defendants have declined their request. Thereafter the plaintiffs have obtained the revenue records of the suit schedule properties and came to know that, defendants No.1 to 5 have got entered their names only, on the basis of false partition.

Further they have noticed that, defendant No.5 has gifted one of the suit schedule properties in fevour of son of defendant No.7. Further defendant No.2 has managed to enter the name of defendant No.3 in the record of rights of the suit schedule property on the basis of false relinquishment of right. As such said mutation entries are not binding upon the plaintiffs rights over the suit schedule properties. It is further asserted in the plaint that, as defendants No.1 & 2 have refused to allot shares to the plaintiffs in the suit schedule properties, they are constrained to file this suit.

7. On the contrary, defendant No.1 to 8 have admitted the relationship in between the plaintiffs & defendants as shown in the plaint family genealogy. But they have denied rest of the plaint averments. They have specifically contended that, the suit schedule properties are not ancestral or joint family properties as asserted in the plaint. In fact, the suit schedule properties are tenanted lands and same were self acquired properties of propositus Shrishail. They further contended that, defendants No.1 to 6 have got entered their names in the revenue records of the suit schedule properties on the basis of partition deed dated 22.09.2021. As per said partition, defendant

No.2 has got Rs.10,00,000/- as his share and the suit schedule property bearing RS.No.92/2 measuring 03 acre 7 gunta was fallen to the share of defendants No.1, 4 & 5. Further the land RS.97/2 measuring 03 acre 31 gunta is fallen to the share of defendant No.3 – Mahadevi. The defendant No.1 has got 1/3rd share in land RS.No.98/2 measuring 03 acre 27 gunta and she has to retain said portion of land till her life time and after her death, her 1/3rd share shall go to defendant No.2. Aforesaid partition was reduced in writing and registered on 22.09.2021 before the Sub-Registrar Jamkhandi. Therefore said document is binding upon the plaintiffs. It is further contended by defendants that, the plaintiffs have not challenged said partition deed.

- 7.1.** It is further contended by the defendants that, defendant No.2 requested defendant No.3 to put up a shed in suit land RS.No.97/2, in turn defendant No.3 has given 10 guntas of land to defendant No.2 for putting up said shed. It is further contended by defendants that, defendant No.4 executed registered gift deed dated 15.05.2023 in fevour of defendant No.5 in respect of suit land RS.No98/12 measuring 02 acre 05 gunta.

7.2. It is further contended by defendants that, defendant No.8 purchased the suit land RS.No.98/12 measuring 02 acre 05 gunta from defendant No.7 for a consideration amount of Rs.7,65,000/- under registered sale deed dated 12.10.2023. She has been enjoying said suit land as owner in possession from the date of purchase. Neither plaintiffs nor other defendants objected for aforesaid alienation.

7.3. It is further contended in the written statement that, plaintiff No.1 is an adamant lady and created a false document namely 'Consent Deed' by forging the signature of defendant No.1, in order to grab the suit land RS.No.98/2 measuring 03 acre 07 gunta. Therefore defendant No.1 has lodged the private complaint before the JMFC Court Jamkhandi in PC.No.46/2018 and the concerned police have filed charge sheet against plaintiff No.1 and accordingly said private complaint as registered as CC.No.46/2019. Furthermore the defendant No.1 has also filed objection before the Tahasildar with a prayer, not to mutate aforesaid land in the name of plaintiff No.1. The plaintiff No.1 has challenged the criminal proceedings initiated in CC.No.46/2019 before the Hon'ble High Court of Karnataka in Crl. Petition No.101043/2021 dated 21.03.2023, wherein said

proceedings were quashed only on technical ground. The plaintiff No.1 is criminal minded lady and she doesn't have any hesitation to do anything against her husband -defendant No.2 and her son – defendant No.6 who is under care & custody of defendant No.2. With these contentions, defendants have prayed for dismissal of above application.

8. Going by rival pleadings of the parties and the documents available on record, it appears that, according to the plaintiffs the suit schedule properties are ancestral & joint family properties of themselves & defendants. On the contrary, the defendants have specifically contended in paragraph No.4 of the written statement that, all the suit schedule properties were granted to deceased propositus Shrishail and they were his self acquired properties. It is to note that, though the defendants have denied almost all the plaint averments but they have not denied their relationship with the plaintiffs as described in family genealogy depicted in plaint paragraph No.4. As stated above, the plaintiffs have specifically asserted in the plaint that, all the suit schedule properties are their ancestral & joint family properties and they are entitled for 1/25th share in the suit schedule

properties. Perused all the documents placed on record in the light of above said pleadings. As per RTCs for the year 2023-24, the suit schedule property item No.1 bearing RS.No.97/2 measuring 10 gunta situated at Kannolli village of Jamkhandi taluka is standing in the name of defendant No.2. The suit schedule property item No.2 bearing RS.No.97/10 measuring 03 acre 21 gunta situated at Kannolli village of Jamkhandi taluka is standing in the name of defendant No.3. The suit schedule property item No.3 bearing RS.No.98/2 measuring 05 gunta situated at Kannolli village of Jamkhandi taluka is standing in the name of defendant No.5. The suit schedule property item No.4 bearing RS.No.98/11 measuring 02 acre 26 gunta situated at Kannolli village of Jamkhandi taluka is standing in the name of defendant No.1. The suit schedule property item No.5 bearing RS.No.98/12 measuring 02 acre 05 gunta situated at Kannolli village of Jamkhandi taluka is standing in the name of defendant No.8. The suit schedule property item No.6 bearing RS.No.98/13 measuring 39 gunta situated at Kannolli village of Jamkhandi taluka is standing in the name of defendant No.7.

9. On the contrary, the defendants have produced the registered partition deed dated 21.07.2021 which discloses that, the defendants No.1 to 5 have got divided the suit schedule properties among themselves. As per recitals of the said partition deed no landed properties were allotted to defendant No.2. He had received an amount of Rs.10,00,000/- in lieu of his share. Further it discloses that, the suit schedule property bearing RS.No.98/2 measuring 03 acre 35 gunta was fallen to the share of defendant No.1 herein, who has to enjoy said property till her last breath and thereafter that property shall go to defendant No.2. The land bearing RS.No.98/2 measuring 03 acre 35 gunta was jointly fallen to the share of defendants No.1, 4 & 5. Further the defendants have produced the registered gift deed dated 12.05.2023, which discloses that, defendant No.4 has gifted the suit schedule property bearing RS.No.98/12 measuring 02 acre 05 gunta in fevour of defendant No.5. Further the defendants have produced another registered gift deed dated 01.08.2023, which discloses that, defendant No.5 has gifted the suit schedule property bearing RS.No.98/12 measuring 02 acre 05 gunta in fevour of defendant No.7. Further they have produced online digital copy of registered sale deed dated

06.10.2023 which discloses that, defendant No.7 had sold the suit schedule property bearing RS.No.98/12 measuring 02 acre 05 gunta in fevour of the defendant No.8. It is to note that, apart from aforesaid document, the defendants have not produced any prima facie material to show that, all the suit schedule properties were granted deceased propositus Shrishail.

10. As discussed above, the plaintiffs have specifically asserted that, as the suit schedule properties are their ancestral & joint family properties, they are having their legitimate and definite share in the suit schedule properties. Further they have asserted that, the aforesaid documents were executed behind their back, as such they are not binding upon them. On conjoint reading of the pleadings and the contents of documents stated supra, it appears that, there are triable issues involved in the suit which need evidence. Therefore this court is of opinion that, the plaintiffs have made out prima facie case for trial.
11. As discussed above, almost all the suit schedule properties are standing in the names of defendants No.1 to 7 except the suit schedule property item No.5 bearing RS.No.98/12. The said suit

schedule property is standing in the name of the alleged purchaser defendant No.8. The plaintiffs No.2 & 3 have claimed their birth right over the suit schedule properties. As stated above, the defendants have absolutely not disputed their relationship with the plaintiffs as asserted in the plaint. Furthermore they have not produced any prima facie materials to show that, all the suit schedule properties are their exclusive properties. Having regard to above factual aspects and the contents of documents stated supra, this court is of opinion that, the balance of convenience lies in favour of the plaintiffs rather than the defendants. Under such circumstances, it is very much necessary to keep intact all suit schedule properties till determination of rights of the parties. In the event, the defendants alienate the suit schedule properties during the pendency of suit, it would be a root cause for multiplicity of litigation and the plaintiffs would be put to hardship rather than the defendants. In view of above discussion, this court opines that, it is just & necessary to grant temporary injunction as sought in IA.No.I. Accordingly, points No.1 to 3 are answered in the affirmative.

12. **Point No.4:** In view of above findings, the following order is passed:

: O R D E R :

IA.No.II filed U/o.XXXIX Rule 1 & 2 R/w Sec.151 of CPC by the plaintiffs is hereby allowed.

Defendants No.1 to 5, 7 & 8 are hereby restrained from alienating the suit schedule properties till the disposal of the suit.

No order as costs.

(Dictated to the stenographer directly on computer, typed by her, corrected and signed by me, and then pronounced in the open Court on 09th day of July, 2024)

**Sd/-
(Shri. Rajashekhar S. Harsoor)
Addl. Senior Civil Judge,
Jamkhandi.**