

IN THE COURT OF SENIOR CIVIL JUDGE,
AT KUSHTAGI

PRESENT:-SHRI.B.S.HONNASWAMY,
B.A., L.L.M.

DATED THIS THE 17th DAY OF MARCH - 2022

O.S. No 62/2019

PLAINTIFF/APPLICANT:

Mailarappa S/o Neelappa Billakar,
Age:44 years, Occ: Tuition teacher & agri,
R/o Hanumasagar Tq:Kushtagi, Dist:Koppal.

(By Sri.Asif Ali. Advocate)

V/s

OPPONENT/DEFENDANTS:-

1. Hullava W/o Neeelppa Billakar,
Age 78 years, Occ: Nil,R/o Beelagi
village,Tq;Kushtagi,Dist:Koppal.
2. Yallappa S/o Bheemappa Gonal,
Age: Major, Occ;Agri R/o Beelagi,
Tq;Kushtagi, Dist:Koppal.

(D-1 By Sri.B.K.R. Advocate

(D-2 By Sri.M.M.M advocate)

---: ORDER ON IA-I and II :---

The plaintiff has filed IA No.I U/o 39 Rule 1 and 2 of C.P.C. seeking to grant injunction against the defendant No.2 restraining the defendant no.2 from alienating the suit schedule properties.

2. The plaintiff in his affidavit stated that, The suit properties being joint family property of plaintiff and defendant No.1 he is having legitimate $\frac{1}{2}$ share as stated in the point suit properties. That, the defendant No.2 by taking undue advantage of his high handedness and the entries made in his name in respect of the records of the suit properties, is in a hurry to alienate the suit properties in favor of third parties and create charges over the suit properties. If he succeed in his such illegal acts, he will be put to greater injustice and his legitimate share will be frustrated. Hence it is just and necessary to grant an injunction order from alienating th suit properties till final disposal of the case. He has got prima facie case balance of convenience lies in his favour, if injunction is not granted the plaintiff would be put to irreparable loss and injury. The plaintiff has filed IA 2 for extension of Temporary injunction.

3. The Defendants No. 2 counsels filed affidavit by ways of objection stating that the detail facts are mentioned in his written statement. This IA No.1 and 2 is not maintainable on merits but he same is hopelessly barred by law of limitation. The suit is filed with malafide intention of extracting money from the poorest person on earth. The defendant No.1 died on 25-8-2019 at an over age 80 years. Since more than an year she was bed ridden with more than one ailments. He spent heavy amount for her treatment and nourishment by raising private loans. To meet his family necessities he has sold he suit land fully or any portion of its. In such serious situation the plaintiff cannot get restrained order against him. Under these circumstances if T.I. is passed he will be put to irreparable loss an injury which cannot be compensated in terms of money. By refusing the T.I. no harm will be cussed to then plaintiff as the suit will be lispence and he sale will be subject to the result of the suit. Hence he prays to reject the IA.No1 and 2.

4. Heard the arguments both sides the point that arise for my consideration is:

1. Whether the plaintiff has made out a prima facie case?
2. Where does the balance of convenience lies?
3. who would be put to irreparable loss and injury If TI is granted?
4. Whether there are sufficient grounds for extending the temporary order?
5. What order?

5. **My finding on the above points are as under:-**

POINT No. 1 to 4 : In the negative.

POINT No. 5 : As per final order for the following.

---: REASONS :---

6. **Point No.1 to 4** :- These points are taken together to avoid repetition of facts. The plaintiff has filed the suit for declaration ,partition and Separate possession, and perpetual injunction against the defendants No.1 and 2.

It is pleaded that the suit properties are the joint family property of family and defendant No.1. same was standing in the name of Adoptive father of plaintiff and husband of defendant No.1 Neelappa Billakar he died during the year leaving behind then plaintiff as his

adoptive son and the defendant No.1 as his wife. Till today no partition taken place. The defendant No.1 very recently has started to show some sort of hat redness towards the plaintiff and she been not cooperating in the joint possession o the suit property with the plaintiff by hearing the words of the defendant No.2. the plaintiff came to know that the defendant No.2 has filed a suit in OS. No.54/1994. The said comprise decree is illegal is not binding on the plaintiff. Further the suit properties are not the properties of parents of the defendant No.1 but, the suit properties are belonged to the Neelappa billakar.

7. The defendant no.2 in his written statement stated that the plaint is incomplete pleadings. It is liable for rejection under order 7 rule 11 of CPC. The plaintiff his claiming the relief as adoptive son. As a mater of fat far back in a regular suit his adoption by said Mailrappa was disproved. He denied that Neelappa is the adoptive

father of the plaintiff is denied. And he denied that adoption deed dated 05-01-1983. his alleged fact of adoption deed is negatives as 1998 in a suit OS 54/98 which compromise took place between the parties. It was declared that the plaintiff was not the adopted son of late Neelappa, the husband of Hullawa, the defendant No.2 in this suit. The said decrees has become final, binding and operate as resuscitate and estoppel against ht plaintiff there fore the suit is not maintainable.

8. The case for the defendants are that their were found divided brothers namely Bneelappa, Sanna Nelappa, Hanamappa and Narasappa. They had got in their name separate lands and houses. The defendant No.1 was he wife of said Hire Neelappa had no issues so he inherited her husbands land Sy. No.72/1a and house 617 taking advantageous of he such position one after another her husbands brothers started to give her trouble having their eyes over his property falsely

claiming falsely on the ground of adoption, will and relinquishment deeds and also on the ground that her husband during his life time had divorced her. More than one suit namely OS 1298/1990, No.54/94 and 118/2007 before this court both suits OS128/909 and 118/2007 were dismissed and OS. NO.54/1994 ended in a compromise decree. The deceased defendant no.1 in her old aged was in the care and look out of her real brother Hullappa, the defendant No.2 in this case. she had special love and affection towards her brother. Suppressing all hurdles in her way she got her name entered in the record of rights of the suit land and her name in respect of suit house in the gram panchayat records. After so getting her name for the suit property she bequeathed the same to her brother. Defendant no.2 by executing a duly attested registered will deed 21/91-92 dated 11-3-1992. when she was sound an disposing mind. The plaintiff claiming registered adoption is not a valid document. Hence the defendant No.2 prays to

dismiss the suit. The plaintiff has produced the following documents. Original adoption deed. Record of rights. Standing in the name of Yellappa. Hanumanthappa Jawarhala. Mutation order. Certified copy of the order sheet in OS54/94. The defendants has produced the documents1. Certified of the RTC certified copy of MR 25 dated 31/3/1995. C.C of application dated 19/5/1990. 4. Certified copy of application dated 7/8/1990 and 2/9/90. house extract H No 717 for the year 2019. The original will deed dated 21/91-92. RTC for the year 1989-90.CC of Ra 102/2009 Judgment which shows that Neelappa billakar is not a adoptive son. C.C of death certificate dated 25/8/2019 Hullamma died C.C of decree in R.A No.102/2009. The documents of the defendant clearly goes to show that the plaintiff do not have any right over the suit property. When the court is dismissed that Neelappa is not a adoptive father . He has challenged the same in Rs.102/19 the appeal is dismissed. Again the plaintiff do not have any right to file

second suit. There is no prima facie case for grant of injunction., the balance of convenience lies infavour of the defendant No.2 if injunction is granted the defendant No.2 would be put to irreparable loss and injury. The defendant no.2 counsel has relied the ruling ILR 1992 Kar 3772 Order 39 rules 11 and 2 -Porrima facile includes nature of suit and maintainability-no temporary injunction,If suit is not maintainable. 202091) KCCR 494. Order 39 rule 1 and 2 of CPC temporary injunction- Existence for prima facie case- Irreparable injury and balance fo convenience- not established -trial court granting an order of temporary injunction infavour of plaintiff -not justifiable-order liable to be set aside. The above principles applies to present case on hand. The defendant would be put to irreparable loss and injury. Which cannot be compensated in terms of money. Question of will it has to be decided during trial. There are no sufficient grounds to extending the temporary

injunction order passed by this court. Hence I answer point No.1 to 4 in the Negative.

9. Point No.5:- For the reasons discussed in point No.1, I proceed to pass the following order.

---: ORDER :---

The I.A. No.I and II filed by the plaintiff U/o. 39 Rule-1 and 2 of CPC is hereby dismissed. Parties are directed to bare their own costs.

Call on 08.04.2022 for issues.

(Typed and corrected, initialed by me and then pronounced, in the open court on this day of 17/03/2022)

(B.S.Honnaswamy)
Senior Civil Judge, Kushtagi.