

KADG210004222023



**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC.
AT : CHANNAGIRI.**

Present: *Sri. Vishwanath V. Mugati* B.A. LL.B
Senior Civil Judge & JMFC.,
Channagiri.

DATED 30th DAY OF NOVEMBER, 2024.

O.S NO:91/2023.

Plaintiff . : *Nagarathna C.B*

V/s

Defendants. : *Smt. Halamma & Others*

ORDER ON IA No.1.

Along with plaint, the plaintiff maintained this application U/Or.39 Rule 1 & 2 R/w Sec.151 of CPC against the defendants praying to issue exparte T.I Order restraining the defendants from alienating the application schedule properties till disposal of the suit in any manner.

1. In the affidavit annexed to the application, the plaintiff stated that, due to misunderstandings between herself and defendant NO:3 to 5, 7, 9 to 11, the relationship is not in-cordial. Then, on 02-02-2023, the

plaintiff demanded her share in the suit schedule properties. The defendant N0:4 on 09-07-2019, issued untenable legal notice, which the plaintiff received on 21-03-2023. Then, the defendants convened the meeting for effecting partition in the application schedule properties at Sri.Kalleshwara temple of Doddabbigere village on 02-04-2023. Though, the plaintiff approached the Doddabbigere village, at surprise, no one was present therein. Further, upon demanding her share by the plaintiff, the defendant N0:3 to 5 took quarrel with the plaintiff by abusing in filthy language and also gave life threat not to visit the Doddabbigere Village. Then, the plaintiff approached the jurisdictional police, but the police have not supported the cause of the plaintiff. Then, the plaintiff sent a email to S.P Davanagere. The plaintiff filed this suit for the relief of partition & separate possession. Some of the application schedule properties are ancestral properties and some are purchased by father of the plaintiff by name Basappa. After the death of parents of the plaintiff, without the knowledge of the plaintiff, the revenue records of the application schedule properties being mutated in the name of defendants under I.H Proceedings. The defendant N0:3 & 4 have constructed a house in Item N0:5 schedule property, which is standing in the name of defendant N0:3 to 5, 7, 9 & 10. Item N0:10 property being purchased in the name of Smt.Pravathamma during life time of one Basappa. The defendant N0:3 to 5 have constructed a house in Item N0:2 to 4 application schedule properties without the knowledge

of plaintiff. The husband of plaintiff was working as a Govt. Lecturer and used to reside in different places. All the application schedule properties are ancestral and joint family properties. The plaintiff is having good grounds to succeed in the case. The plaintiff is having prima facie case. If the application is not allowed, the plaintiff will suffer irreparably and prays to allow the application.

2. The defendant N0:3 filed WS, which was adopted as objections to this application, whereby, the defendant N0:3 admits the relationship of the plaintiff and defendants as pleaded and denied the nature of the properties as claimed by the plaintiff. All the daughters of Basappa, at the time of their marriages, gave up their rights existed in the suit schedule properties. The plaintiff is not at all in possession over the application schedule properties for more than twelve years and as such, suit is barred by limitation. The suit is bad for non-joinder vendor of Item N0:5 application schedule property. Item N0:1 to 5, 9, 10 to 14 are self acquired properties of father of the plaintiffs by name Basappa. Item N0:6 & 10 plaintiff schedule properties are self acquired properties of Smt.Parvathamma, a mother of plaintiff. Item N0:7 plaintiff schedule property is purchased by father of defendant N0:9 by name Chandrashekhara. Item N0:8 plaintiff schedule property is purchased by defendant N0:3. There is no cause of action to this suit. This suit is not properly framed and as such, the suit is liable to be rejected U/Or.7 Rule

11 of CPC and prays to dismiss the application.

3. The points that arise for consideration are,

1. *Whether the plaintiff made out the prima facie case ?.*
2. *Whether the balance of convenience is lying in favor of the plaintiff ?.*
3. *If the TI Order as sought is not a granted, whether the plaintiff will suffer irreparably ?.*
4. *What order ?.*

4. Heard the both parties. Perused the records. My answers to the above points are,

POINT NO:1. : In the **Negative.**

POINT NO:1. : In the **Negative.**

POINT NO:1. : In the **Negative**

POINT NO:4. : As per the final order
for the following,

REASONS

5. **POINT NO:1 to 3.** since, all the points are inter-connected to each other and in order to avoid repetition of facts and findings, taken up together for common discussion.

6. On perusal of the plaint avernments as well as IA.N0:1, this court noticed that, the plaintiff pleaded all

along that, the suit schedule properties are ancestral and joint family properties. Some of the properties are inherited by the father of the plaintiff by name Basappa and some of the properties are purchased by the said Basappa. After the death of parents of plaintiff by name Basappa and Smt. Parvathamma, the revenue records of the suit schedule properties were mutated in the name of defendants under I.H proceeding excluding the plaintiff and without the knowledge of the plaintiff as well. All along, at plaint and in the affidavit annexed to the IA No1, it is noticed that, the plaintiff pleaded the nature of the plaint schedule properties acquired by parents and mutation of revenue records after the death of her parents in the name of defendants under IH proceedings, the plaint and affidavit annexed to the IA are absolutely silent about the act of attempting to alienate the suit schedule properties by the defendants. Admittedly, present application is filed seeking exparte TI order against the defendants restraining them from alienating the application schedule properties. Without necessary pleadings about the act of alienating the application schedule properties by the defendants, the very application is not maintainable. In the absence of necessary pleadings, this court is of the considered view that, the plaintiff has not made out prima facie case and the question of considering the balance of convenience as well as hardship, if the application is not allowed, would not arise at all. With these observations, Point N0:1 to 3 are answered in the Negative.

7. **POINT N04.** In view of foregoing reasons, I proceed to pass the following,

ORDER

The IA No.1 so filed by the plaintiff U/Or.39 Rule 1 & 2 R/w Sec.151 of CPC is hereby rejected.

Call on for compliance U/Sec.89 of CPC by 04-01-2025.

Sd/-

*Senior Civil Judge & JMFC
Channagiri.*