

**IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE
BANGALORE RURAL DISTRICT, BANGALORE**

DATED THIS THE 8th DAY OF APRIL 2022

PRESENT: Sri.K.M.Ananda, B.A., LL.B.,
I/C II Addl., Senior Civil Judge,

OS.NO.243/2022

PLAINTIFF : Smt. Roopa .P

-Vs-

DEFENDANTS : Sri. Prakash .M and others.

COMMON ORDERS ON IA.NO.I AND II

The plaintiff file an IA.No.I under order 39 rules 1 and 2 of CPC seeking ad interim injunction restraining the defendants no.1 to 15 or their agents to create any third party rights especially in favour of defendant no.15 in respect of suit C schedule property till disposal of the suit.

The another IA.No.II is filed by the plaintiff under order 39 rules 1 and 2 of CPC seeking temporary injunction restraining the defendants no.1 and 2 from alienating or creating any third party rights over the suit A and B schedule properties till disposal of the suit.

2. There are 15 defendants.

3. The suit summons and IA notices yet to be served against all the defendants except defendants no.1 and 2, who have got advanced the case in view of this court granted exparte interim order on 09-02-2022 wherein “the defendants or their agents or anybody who claiming through them are temporarily restrained from alienating or encumbering suit A to C schedule properties till further orders. Accordingly, the defendants no.1 and 2 have appeared through counsel filed the written

statement and also an IA under order 39 rule 4 seeking vacating the temporary injunction order. But court holds that, that IA is not required mere oral submission would be sufficient, because as per order 39 rule 4 of CPC, the burden is on the court to dispose an application filed under order 39 rules 1 and 2 of CPC in case court grants exparte interim order by dispensing issue of prior notice as mandated under order 39 rule 3 of CPC.

4. In the objections, the defendants no.1 and 2 vehemently opposed the interim applications.

5. Heard on both sides.

6. From the above materials, the following points are arisen for my consideration.

POINTS

- i. Whether plaintiff proves that she has made out *prima facie* case to get interim order/temporary injunction by restraining the defendants No.1 to 14 from alienating or creating any third party rights in favour of defendant no.15 in respect of suit C schedule property and further whether plaintiff has made out *prima facie* case to restrain the defendants no.1 and 2 from alienating or creating any third party rights over suit A and B schedule properties?**
- ii. In whose favour, the balance of convenience lies?**
- iii. Who would be put to hardship, if an temporary injunction is granted?**

7. My answers to the above points is as follows :

Point No.i : Plaintiff has not made out *prima-facie* case.

Point No.ii : The balance of convenience lies in favour of defendants

Point No.iii : It is the defendants, who will be put to hardship, if temporary injunction is granted, for the following :

REASONS

8. **Point No.i: Prayers of suit are;**

a. To declare that the Plaintiff is entitled for 1/3rd share, in the Suit Schedule A and Schedule B properties and effect partition by metes and bounds and put the Plaintiffs in possession of her respective share in Suit Schedule A and Schedule B properties.

b. To declare that the Plaintiff is entitled for 1/30th share, in the Suit Schedule C properties and effect partition by metes and bounds and put the Plaintiffs in possession of her respective share in Suit Schedule C properties.

c. To cancel the registered Release Deed dated 14.10.2019 by declaring that the same is null and void and not binding on the Plaintiffs.

d. To grant mesne profits over the Suit Schedule Properties.

e. To grant an order of Permanent Injunction against the Defendants, their henchmen, agents or anybody claiming under them, restraining them perpetually from alienating and/or creating third party rights over the Suit Schedule properties.

9. **Plaint averments:** As per plaint averments, the Plaintiff and Defendant Nos.1 to 14 are Hindus and are bound by Mitakshara Law, governing Hindus. The Defendant No. 1 is the father of the Plaintiff and Defendant No. 2 (her brother). The Plaintiff, Defendant 1 and Defendant No. 2 constitute a Hindu Undivided Family. The Defendant Nos. 3 & 4 are the elder brothers and Defendant Nos. 9 & 10 are the

sisters of Defendant No.1. The Defendant No.5 is the wife of late Vijeyandra (the younger brother of the Defendant No.1, who has died long back leaving the Defendant No. 5 as his wife) and Defendant Nos. 6 to 8 are his children. The Defendant No. 11 to 14 are cousin brothers of Defendant No. 1. By virtue of said relationship, the said Defendants are uncles and aunts of Plaintiff. The Defendant No. 15 is a developer and the said developer has entered into an Agreement of Sale with respect to Item Nos. 1 & 2 of the Schedule C Property.

10. It is further averred that, the propositus of the said family is one late Chanchi Reddy @ Sanji Reddy. He and his wife, late Smt. Guramma had two children, viz., late Chinnappa @Chinnappa Reddy and late Muniyappa @ Muniyappa Reddy. The said late Chinappa Reddy has 4 Children through his wife late Chinnamma and late Muniyappa Reddy has 6 children through his wife late Ammayamma. The said family of late Chanchi Reddy constituted a Hindu Undivided Family. After the death of the said Chanchi Reddy, the children of Muniyappa Reddy, including the Defendant No. 1, who is father of Plaintiff partitioned the item Nos. 1 & 2 of the Schedule A Property i.e., property bearing Survey No.6/9A measuring 32 guntas situated at Devarabisanahalli Village, Varthur Holi, Bangalore East Taluk, Bangalore as joint & ancestral family properties of late Muniyappa Reddy amongst themselves on square foot basis by executing a registered Partition Deed dated 24.04.2004. However, in view of errors in allotting the survey number properties on square foot basis, the same was rectified by a registered Rectification Deed dated 03.08.2005 by allotting the shares in respective guntas instead of square foot basis.

11. It is further averred that the schedule A property consists of two items and schedule B property consists of 8 items and schedule C consists of items no.1 to 3. The plaintiff in the affidavit annexed to the

IA, she states herself and defendants no.1 to 14 are Hindus and are governed by Mithakshara Law. The defendant no.1 is the father of plaintiff and defendants no.2, the defendant no.2 is brother of plaintiff. The defendants no.3 and 4 are the elder brothers and defendants no.9 to 10 are the sisters of defendant no.1. The defendants no.5 is the wife of late. Vijiendra the younger brother of the defendant no.1 who died and his wife is shown as legal heir and defendants no.6 to 8 are the children of defendant no.5. The defendant no.11 to 14 are cousin brothers of defendant no.1 by virtue of said relationship the said defendants are become uncle and aunts of plaintiff. The defendant no.15 is a developer who entered in to an agreement to sell in respect of suit items no.1 & 2.

12. One Chanchireddy @ Sanjireddy and his wife Smt. Guramma had two children namely late. Chinnappa @ Chinnappareddy and late. Muniyappa @ Muniyappareddy. The Chinnappareddy had four children through his wife late. Chinnamma and late. Muniyappareddy had six children through his wife late. Ammayamma. The said family of late. Chanchireddy @ Sanjireddy constituted a Hindu Undivided family. After the death of the said Chanchireddy the children of Muniyappareddy including the defendant no.1 who is father of plaintiff partitioned the item nos.1 and 2 of the schedule A property by executing registered partition deed dated 24-04-2004, due to some errors again on 03-08-2005 registered rectification deed was entered. As per said deeds each of the male members have got each 0.7guntas of property as their shares and female members had got 0.2 guntas of property as their shares in property bearing sy.no.6/9A the properties in schedule A of the said deeds have fallen to the share of defendant no.1 father. Accordingly, plaintiff, defendants no.1 and 2 inherited the said suit A schedule property and they are in possession.

13. Apart from the properties mentioned in the said partition deed dated 24-04-2004, the family members of the said late. Muniyappareddy, the father of the plaintiff that is M. Prakash had owned/purchased few more properties in his name and sons defendant no.2 name out of the income of the joint family/ancestral properties, which is shown as suit B schedule properties which is items no.1 to 8.

14. **The cause of action to the suit is concerned,** the plaintiff states that, the defendants in the first week of October 2019, the mother of the plaintiff, defendants no.1 and 2 malafidly with an intention to knock of the plaintiff's right they demolished existing 20 to 30 houses constructed in sy.no.6/9 and they intended to construct new apartment by obtaining loan of Rs.5crore from Bank. Accordingly, plaintiff also participated in executing mortgage deed along with the mother of the plaintiff and defendants no.1 and 2. On 14-10-2019 the plaintiff put the signature even without reading the contents of the said papers. Photo was also taken by the register office officials. Again during 2021, the mother of the plaintiff and defendants no.1 and 2 informed the plaintiff that they are selling the portion of the schedule properties that is sy.nos.39/1 and 39/2 infavour of defendant no.15 even no copy of agreement was given to her, but she was forced to put the signature as requested by the plaintiff's mother and defendants no.1 and 2. And last week of the December 2021 it was informed by defendant no.1 that he was going to execute the sale deed in respect of land bearing sy.no.39/1 and 39/2 without plaintiffs presence since defendant no.1 informed that the plaintiff executed a registered release deed immediately she got the said deed and came to know the malafide intention of defendant no.1 and 2 as they misrepresented and played fraud upon her by fraudulently getting the registered release deed dated 14-10-2019. Hence, the suit and IA.

15. The plaintiff relies on following documents:

- a. Genealogy tree
- b. Copy of Adhar card of the plaintiff
- c. Copy of Partition deed dated 24-04-2004
- d. Copy of Rectification deed dated 03-08-2005
- e. Copy of RTC of suit schedule A property
- f. Copy of RTC of item no.1 suit schedule C property
- g. Copy of RTC of item no.2 suit schedule C property
- h. Copy of RTC of item no.3 suit schedule C property
- I. Copy of RTC of item no.4 suit schedule C property
- j. Copy of release deed dated 14-10-2019.

16. The defendants no.1 and 2 have taken contentions which as follows: The Plaintiff executed a Deed of Release in favour of Defendant No.1 who is none other than her father, inter alia, releasing her share in the properties i.e., Property bearing No.6/9A, measuring 4900.5 square feet, Property bearing No.6/9A, measuring 1089 square feet and Property bearing No.6/9A, measuring 1089 square feet, all situated at Devarabeesanahalli Village, Varthur Hobli, Bangalore East Taluk, Survey No.39/1, measuring 15 Guntas (i.e., 1/8th share measuring 1.875 Guntas), situated at Amani Bellandur Khane Village, Varthur Hobli, Bangalore East Taluk and Gramtana Property bearing Old Khaneshumari No.85/A, New Khaneshumari No.57/63, BBMP Katha No.64/63/57, measuring East to West: (25+40)/2 feet and North to South: 34 feet, situated at Devarabeesanahalli Village, Varthur Hobli, Bangalore East Taluk and Gramtana BBMP Katha No.65/64/58, measuring 45 feet x 17 feet, situated at Devarabeesanahalli Village, Varthur Hobli, Bangalore East Taluk and Site No.7/1, out of old Peroperty No.53/2, V.P.Katha NO.61/1 Assessment No.53/2, H. L. No.7/1, measuring East to West: (45+42)/2 feet and North to South: 30 feet and along with House situated at Govindasetty Palya, Konappana Agrahara Dakhale, Begur Hobli, Bangalore South Taluk. However, the Plaintiff was given property bearing No.6/9A, i.e., Item Nos.1 to 4 of 'B' Schedule Property, situated at Devarabeesanahalli Village, Varthur Hobli, Bangalore East Taluk, measuring East to West: 49 feet and North

to South: 33.5 feet in all measuring 1641.5 square feet. The said release Deed is dated 14.10,2019. registered as Document No.VRT-1-4110/2019-20 in Book-I, C.D.No.VRTD563 in the Office of the Sub-Registrar, Varthur, Bangalore.

17. It is further contended that the Defendants No.1 and 2 had further given the said property which was already developed and consisting of certain sheds in the same. The Plaintiff is getting a rent of Rs.40,000/- per month since then and enjoying the same. The Plaintiff being very well versed has executed the Release Deed knowing fully well that she is entitled for that considering that the Defendant No.1 give her share magnanimously although she is not entitled for anything. The land bearing Survey No.39/2, measuring 0.11 Guntas admittedly stands in the name of Gopal Reddy and Dasharath Reddy, i.e., Defendants No.3 and 11 respectively. It is submitted that the said Property belongs to Dasharath Reddy and none of the Defendants have any right, title, interest over the same. The other Item No.3 of the Schedule Property is under litigation. As far as Survey No.39/1, measuring 20 Guntas also belongs to the brothers of the Defendants wherein Defendant No.1 has no right, title or interest. The said properties have been partitioned among the brothers through a registered Partition Deed dated 24.04.2004. Subsequently, it was rectified through a Deed of Rectification of the Partition Deed dated 03.08.2005.

18. As per G-Tree, the Plaintiff is the daughter of Defendant No.1 and the Defendant No.2 is her brother. The allegation that the Plaintiff, Defendant Nos.1 and 2 constitute a Hindu undivided family is totally false. The Plaintiff having released from the family, cannot now claim that she is the member of the joint family. As per the said Partition Deed which was effected way back in 2004 this Property i.e.. Item No.1 of the 'C' Schedule Property survey No.39/1, also does not belong to the

Defendant No.1 and 2. The same belongs to the other Defendants wherein the Defendant No.1 has got only 1/7th share. Admittedly, the Plaintiff is the daughter of Defendant No.1 and the Defendant No.2 is his son. In the said Property, assuming that the Plaintiff succeeds, she may have 1/3rd share out that 1/7th share, so that will be not more than 200 square feet. Suppressing the above said facts, the Plaintiff has filed the above said suit.

19. Further, as per partition deed dated 24-04-2004, the properties which are suit C schedule property were ancestral properties accordingly plaintiff being a daughter, as per section 6 of Hindu Succession (amendment) Act 2005 would be applicable. As per section 6 of the Act any instruments including final decree, partition and registered sale deeds came into existence prior to 20-12-2004 which cannot be questioned by daughter though she is recognized as coparcener as Amendment Act came into existence as on 09-09-2005. So at this stage court holds, plaintiff has not made out prima-facie case in respect of suit C schedule property.

20. Regarding suit A and B schedule properties are concerned, the plaintiff herself executed registered release deed dated 14-10-2019 in respect of suit A and B schedule properties in favour of her own father and brother who are defendants 1 and 2. Now, she blames and makes allegation against father, own brother and also her own mother that she was forced to put the signatures on agreement to sell entered between defendant no.1 to 14 and defendant no.15. The plaintiff further alleges that, the defendant no.15 is a developer and now based on fraudulent document, the defendants no.1 and 2 also trying to alienate suit A and B schedule property with an intention to defraud her rights on the ground that plaintiff herself executed release deed in favour of defendants no.1 and 2 and also agreement in favour of defendant no.15.

21. Questioned documents are registered documents, they are public documents, as per cause title, plaintiff is aged about to 37 years as on the date of filing the suit. It is not her case that, she was an uneducated lady she did not have worldly knowledge, but she makes allegation against her own kith and kin. At this stage, regarding prima-facie case is concerned she has not made out grounds in respect of ancestral properties are concerned, in view of during the life time of her father i.e. defendant no.1 she has no business to seek partition, because as per registered partition deed dated 24-04-2004 and rectification deed dated 03-08-2005 the defendant no.1 father took the share and it becomes his separate property and properties shown in the said deeds became separate property of defendant no.1. As per section 8 of Hindu Succession Act the plaintiff gets right over properties only after demise of father. Therefore, on this count also, plaintiff miserably failed to prove prima facie case.

22. More over based on registered instruments, mutations were caused and RTC also standing in the name of respective sharers. Therefore, court does not want to unsettle the settled possession and enjoyment. It is pertinent to note, already law of lis pendency is applicable to suit as per section 52 of Transfer of Property Act and her rights in the suit properties if any is protected by the said section and more over if any development or any thing is done by the defendants it will enure benefit of even plaintiff in case if she succeeds in the suit, because the ultimately parties will bound by the decree and more over if any thing done during the pendency of the suit, the defendants cannot seek any equity. **Accordingly, point no.i is answered that plaintiff fails to make out prima-facie case get interim order as sought in both the IAs.**

23. **Points No.ii and iii:** These dual points are together taken for common discussion, in view of both are interlinked each other and also for brevity. In view of findings given to point No.i, at this stage, the court holds the plaintiff has not made out not only prima-facie case, the balance of convenience also and at the same time, it is the defendants no.1 and 2 who have made out prima-facie case and balance of convenience to get reject the both the interim applications.

24. Further, whether fraud was played by defendants no.1 and 2 or not to be decided on merits. At this stage, by considering the registered documents which came at an undisputed point of time and subsequently the plaintiff asserted that, she did not consent for either release deed or agreement and her signatures were obtained under misrepresentation with convenience to cheat her etc. Therefore, at this stage, court holds, applications are liable to be rejected and in the result, I proceed to pass the following;

ORDER

IA.No.I and II filed by plaintiff Under Order XXXIX Rules 1 and 2 of CPC are hereby rejected with costs and in the result exparte interim order granted earlier is stands vacated.

Await suit summons of rest of the defendants by 15.06.2022.

(Dictated to the Stenographer, transcribed and computerized by her, corrected and then pronounced by me in the open court this the 8th day of April 2022)

08.04.2022.

(K.M.Ananda)

**I/C II Addl. Senior Civil Judge,
Bengaluru Rural District, Bengaluru.**

ORDER PRONOUNCED IN THE OPEN COURT

(Vide Separate Order)

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