

**IN THE COURT OF III ADDL.SENIOR CIVIL JUDGE,
BENGALURU RURAL DISTRICT, BENGALURU.**

Present : Sri.**P.R.Yogesh**, B.Com.LL.B,
III Addl.Sr.Civil Judge,
Bengaluru(R)Dist.,Bengaluru.

Dated this the 15th day of March, 2023

OS.No.998/2011

Plaintiff : Chikkachowdamma

Vs

Defendants : Chikka Akkamma and Others

PARTIES TO IA.No.1

Applicant/
Plaintiff : Chikkachowdamma

Vs

Opponent/
Defendants : Chikka Akkamma and Others

* * *

ORDERS ON IA.No.1

This application is filed by the plaintiff U/O.39 Rule 1 and 2 of
CPC seeking an order of temporary injunction to restrain the

defendants from alienating the application schedule properties till disposal of the suit.

2. Defendant No.2 and 3 filed the Memo and requested to treat the written statement as objection. Defendant No.4 to 6 filed the Memo and requested to treat the written statement as objection.

3. During the pendency of the suit, defendant No.2 was died and reported that, defendant No.3 to 6 are LR's of defendant No.2.

4. Heard the arguments submitted by the respected counsel for rival parties. Gone through the papers. Under noted points are taken to adjudicate the application.

1. Whether plaintiff has made out a prima facie case?
2. Whether plaintiff will be put to irreparable loss, if the order is not granted?
3. Whether plaintiff will be caused inconvenience, if the order is not granted?
4. What Order?

5. Above points are answered as under:

Point No.1 to 3:- In the Negative

Point No.4:- As per the final orders, for the following:

REASONS

6. **Point No.1:-** At the outset, this suit is filed by the plaintiff claiming the relief that, declare that, she is entitled for 1/ 4th share in the suit properties, deed of partition dt.3/8/2006 and deed of gift dt.1/8/2009 are not binding on her share. Plaintiff filed the instant application with affidavit. The case of the plaintiff is, Munivenkatappa and Chikkolamma had two sons and two daughters namely Muniveerappa, Chowdappa, Doddachowdappa and Chikkachowdappa. Muniveerppa married Chikka Akkamma. Muniveerappa and Chikka Akkamma are having one son by name Hanumappa and one daughter by name Parvathamma. Defendant No.2 married Chandramma. Hanumappa and Chandramma are having three daughters namely Vishalakshamma, Gayathridevi and Shashikala. Chowdappa married Kaveramma. They are having two

sons and three daughters namely Lakshmana, Eregowda, Gowramma, Sunandamma and Anitha. She and Defendants constituted Hindu Undivided Joint Family. They owned lands in Sy.No.7, Sy.No.1/1, 1/2, 40/2, 5/2, 5/3, 89/2, 39/7 and 27/1. They owned house properties bearing K.No.80 and 83. During the lifetime of Munivenkatappa, no partition was taken among his children. After demise of Munivenkatappa, his children continued in joint possession and enjoyment of the application schedule properties. The mutation of application schedule properties were entered in the names of male members of the family. She suspected the behaviour of the defendants and she demanded for partition. Defendants gave the evasive answers. After that, she obtained the revenue records and came to know that, on 3/8/2006, they entered registered partition. She is not a party to the said partition. Defendant No.5 executed deed of gift dt.1/8/2009 in favour of defendant No.6 in respect of land in Sy.No.27/1. Defendant No.5 did not have an independent right to execute the deed of gift. Defendant No.6 has not been acquiring good title in the property

described in the gift deed. The defendants do not have an independent right over the application schedule properties. They are making an attempt to alienate the application schedule properties. She is having a prima facie case.

7. In the objection/ written statement defendant No.2, 3 and defendant No.4 to 6 have taken similar contention. They contended that, the suit and application filed by the plaintiff are not maintainable. They denied the existence of joint Hindu Undivided Family. They denied the joint possession and enjoyment of the application schedule properties. They also denied the demand of plaintiff about partition. They denied the other allegations of plaintiff. They contended that, Muniveerappa was the original propositus of family of defendants. Application schedule properties are self acquired properties of Muniveerappa. Further contended that, Hanumappa and Erappa purchased item No.1 of the application schedule properties under registered sale deed dt.13/10/1986 from Muniyamma. Muniveerappa executed registered sale deed in favour of Veeranna on 17/5/1949 in respect

of item No.2 and 6 of the application schedule properties. After death of Veeranna, his son Munivenkatappa owned the same under pouthi. On 4/10/2004, sons of Munivenkatappa entered into the partition. Item No.2 and 6 were fallen to the share of Ananda. He executed sale deed in favour of Varalakshamma under registered sale deed dt.3/8/2006. Hanumappa obtained the khata in respect of item No.3 as per the order passed in RRT No.5/2001-02. Muniyamma executed deed of gift dt.6/4/1938 in favour of Muniveerappa in respect of item No.4, 5, 7, 9, 10. After death of Muniveerappa, Hanumappa and Beeregowda divided the properties under partition dt.19/7/2001. The plaintiff is not having any legal right to claim share in the application schedule properties. The suit of the plaintiff is barred by limitation and suffering from non joinder of necessary parties. Plaintiff is not having a prima facie case.

8. Plaintiff produced G-tree, record of rights, deed of partition, mutation, building and land tax assessment registers.

Defendants produced photocopy of the sale deed, MR, RTC, Panchayath paluparikath, gift deed, sale deed dt.6/4/1949, sale deed dt.17/4/1949, record of rights, MR, sale deed dt.2/4/2002, partition deed dt.4/10/2004, mutation extract, sale deed dt.3/8/2006, gift deed dt.6/4/1938, partition deed dt.19/7/2001, partition deed dt.3/8/2006, mutation register extracts, record of rights, sale deed dt.20/6/2010, sale deed dt.17/4/1947, gift deed dt.1/8/2009.

9. Relationship alleged by the plaintiff is not disputed by the defendant No.2 to 6. The specific contention of the plaintiff is, she and defendants constituted the undivided hindu joint family. The application schedule properties were acquired by Munivenkatappa under partition. During the lifetime of Munivenkatappa, no partition was taken among his children. After death of Munivenkatappa, she and defendants are in joint possession and enjoyment of the application schedule properties. On perusal of the documents submitted by the plaintiff, record of rights of Sy.No.89/2 are reflected the name of Munivenkatappa. Other documents are not

reflected the name of Munivenkatappa. On the other hand, the contention of the defendant No.2 to 6 is, application schedule properties are self acquired properties of Muniveerappa. After demise of Muniveerappa, his children acquired the same on the basis of pouthi. The documents submitted by the defendant No.2 to 6 are apparently supported the contention of defendant No.2 to 6. The further contention of the plaintiff is, she suspected the behaviour of the defendants and verified the revenue records and came to know that, partition deed was taken in the year 2006. Defendant No.5 gifted the property in favour of defendant No.6 in the year 2009. The defendants are making an effort to alienate the application schedule properties.

10. The order of temporary injunction is a discretionary relief. To grant an order of temporary injunction, who sought the relief must show that, she is having a prima facie case. If the order is not granted, she will be put to loss and inconvenience. Apart from these ingredients, conduct of the applicant is also necessary. The

applicant must show the prima facie case by submitting the proper and necessary documents.

11. In AIR online 2018 KAR 2281: Krishnachar Vs. Sundaramurthy, the Hon'ble High Court of Karnataka held that:

“The suit is one for partition along with suit, the plaintiff also filed application U/O.39 Rule 1 and 2 of CPC to restrain the defendants from alienating the suit schedule properties on the ground that, they are in joint possession of the suit schedule properties. The suit schedule properties are joint family properties. Having granted by the Land Tribunal. Even though, the lands are granted in the name of 1st defendant, who is the brother of plaintiff and other defendants, the grant is in favour of entire family. The Trial Court on consideration of the material placed by both the plaintiffs and defendants and come to the conclusion that, prima facie case material produced by the defendant No.1 are sufficient, to disbelieve the version of plaintiff. Since, the plaintiffs have not produced any document to substantiate their version. The court was of the opinion that, without their believe, any material on record, the version of the plaintiff cannot be believe for grant of relief of injunction”.

12. In 2017 (4) AKR 129: V.Anilreddy Vs. K.Venkataramanreddy, the Hon'ble High Court of Karnataka held that:

“It is well settled principle of law that while considering an application for grant of Injunction, the Court will not only take into consideration the basic elements in relation thereto viz., (a) existence of prima facie case; (b) balance of convenience; and (c) irreparable injury, but it must also take into consideration the conduct of the parties. Grant of Temporary Injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal the properties exclusively,ordinarily would not be entitled to an order of Temporary Injunction. The Court will not interfere only because the property is a very valuable one. The fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the Courts is imperative. Contentions raised by the parties must be determine do bjectively. Admittedly in the present case, as can be seen from the pleadings of the plaint, the plaintiff alleges that the original propositus Krishnappa Reddy died in the year 1968 and the present plaintiff was born in the year 1971. Plaintiff further alleges in the pleadings of the plaint that some of the defendants have illegally and high handedly entered into a registered agreement in the year2005 in respect of some of the items of the suit schedule properties and some of the defendants were using item No.9 of the suit schedule properties for

running petrol bunk and the eldest son of the original propositus has entered into various fraudulent transactions in respect of item No.8 of the suit schedule properties with the Karnataka Electricity Board Employees' Co-operative Society and Golden Gate Projects. The materials on record clearly indicate creation of innumerable documents spread over a period of two decades and the entries having gone unchallenged, clearly indicate that the defendants were treating those properties as their exclusive properties and they have created 3rdparty interest in them and dealt with those properties in a way they like etc., Admittedly, the suit filed in the year 2016 after lapse of more than 45 years from the date of birth of the plaintiff and 24years after the plaintiff attained the majority. Prima facie the documents depict that the defendants are in possession of the suit properties since from long time and the plaintiff never exercised any act of possession for more than 24 years from the date he attained majority. Therefore the plaintiff is not entitled to the order of Temporary Injunction at this stage and various contentions urged by both the parties have to be adjudicated between the parties to the lis.40. In order to consider the prima facie case made out by the plaintiff for grant of Tempor”

Herein above judgments, the Hon'ble High Court of Karnataka held that, the plaintiff must submit the substantial material to show the prima facie case. In the instant case, the plaintiff filed the application by alleging that, application schedule properties are

undivided joint family properties of her and defendants. The documents submitted by the plaintiffs are not substantiate the contention taken by the plaintiff. On the other hand, the contention of the defendants No.2 to 6 is, the application schedule properties are self acquired properties of them. The documents submitted by the defendants are prima facie sufficient to throw out the contention of the plaintiff. Plaintiff is claiming a share as a daughter of Munivenkatappa. The plaintiff filed the suit and application against wife and children of her brothers. The plaintiff must prima facie shows that, the application schedule properties are belonging to her father and after demise of her father, her brothers acquired the same. After death of her brothers, defendants acquired the properties as a successor. The materials submitted by the plaintiff is not sufficient to hold that, she is having a prima facie case. For these reasons, in the opinion of court, plaintiff has failed to made out a prima facie case. As such, answered Point No.1 in Negative.

13. Point No.2 and 3:- These points are interconnected with each other, in order to avoid repetition, taken these points at one hand.

The contention of the plaintiff is, she is having 1/4th share in the application schedule properties. Defendants entered the partition in the year 2006, without her knowledge. She is not a party to the deed of partition. Defendants are trying to alienate the application schedule properties. If the defendant do the same, she will be put loss and inconvenience. On the other hand, the contention of the defendant No.2 to 6 is, application schedule properties are not joint family properties. Plaintiff is not having any right in the application schedule properties. Application schedule properties are self self acquired properties of them. The court already come to the opinion that, plaintiff has failed to made out a prima facie case. The documents submitted by the defendants are apparently shown that, the transaction was taken place from 1949 and onwards. The plaintiff has been kept quite for a long time without questioning the transactions, which was taken in respect of the application schedule properties. Such being the case, if the order is not granted, it will not cause any loss to the plaintiff. For all these reasons, if the

order is not granted, plaintiff will not put any loss and inconvenience. As such, answered Point No.2 and 3 are in Negative.

14. **Point No.4:-** In view of the above discussion, proceed to pass the following:

ORDER

IA.No.1 filed by the plaintiff U/O.39 Rule 1 and 2 of CPC is hereby rejected.

(Dictated to the steno, typed by her then corrected by me and pronounced in the open court on this 15th Day of March, 2023)

(P.R.YOGESH)
III Addl.Sr.Civil Judge,
Bengaluru (R) District,Bengaluru.