

IN THE COURT OF THE V ADDL. CITY CIVIL JUDGE
AT BENGALURU CITY (CCH-13)

DATED THIS THE 20th DAY OF APRIL, 2022.

PRESENT

Sri. C.D. KAROSHI, B.A., LL.M.
V ADDL.CITY CIVIL & SESSIONS JUDGE
BENGALURU

O.S.No.3636/2020

Plaintiff/Applicant: Sri. Chinnaswamy Reddy @
Chinnaswamy,
S/o Late Doddanna Reddy,
Aged about 80 years

(Represented by Sri. VVSG,
advocate)

/Vs/

Defendants/Opponents: 1. Sri. C. Anand and 17 others

(D.1-by Sri. CA
D.2 to 4- Ex-parte
D.5 to 10, 13 to 18- by Sri. SSK
advocate, D.11- by Sri. AS advocate
D.12- Absent)

ORDERS ON I.A No.1

The applicant/Plaintiff has filed I.A. No.1 under Order XXXIX Rule 1 and 2 R/W/sec 151 of CPC to pass an ad-interim order of injunction to restrain the defendant No.1 and 5 to 18 from alienating schedule 'B' and 'C' properties pending disposal of the suit.

2. It is arrayed in the accompanying affidavit as well as in the plaint that, the plaintiff was the full and absolute owner of schedule 'A' property which was treated as Hindu Undivided joint family property and given for joint development, accordingly the developer has developed the suit schedule 'A' property as Villas/residential apartment in the year 2012 and also delivered back the developed 9 villas in favour of plaintiff and defendant No.1 and 3. Further it is arrayed that, even though all the documents standing in his name and he being eldest male member in the joint family, the 1st defendant being son without the consent and signature, behind back has sold all the 9 villas in favour of the defendants 5 to 18, as such the said sale is not binding on the plaintiff's share. Further it is arrayed that the suit schedule 'B' and 'C' properties are the joint family properties, therefore if there is further alienation then the plaintiff will be put to irreparable loss and there will be multiplicity of proceedings. This being the fact the 1st defendant and other defendants are making hectic efforts to sell away the schedule 'B' and 'C' properties in order to defeat his share, right and interest over the said properties. On these grounds prayed for allowing the application.

3. It is contended in the objections filed by the defendant No.1 and 8 that, the injunction application in question must be tested in the light of the well settled principles governing grant of discretionary relief of temporary injunction. It is settled that a person who comes to the court with unclean hands like plaintiff herein is not entitled to the discretionary relief of temporary injunction. Further there is no prima faice case, balance of

convenience or irreparable injury caused to the plaintiff. Further contend that where there is doubt about the case of the plaintiff and it is not clear, then extra ordinary relief of temporary injunction cannot be granted. As such wrong conduct of the plaintiff in the particular matter with respect to which he seeks injunctive relief precludes him from obtaining such relief. Further contend that suit filed by the plaintiff at the instance of defendant No.2 to 4 for the relief of partition and separate possession as against the 1st defendant and others is not maintainable either in law or on facts. The plaintiff is the father of defendant No.1 is guilty of suppressing material facts and misrepresenting the facts. Without prejudice, averments made in paragraphs of the affidavit are denied except to the extent admitted by the defendant No.1.

Further defendant No.8 would contend that the defendant No.2 to 4 have taken their respective share in the row houses, so if the plaintiff accept the same then suit is liable to be dismissed as plaintiff is giving his adherence to the sharing agreement. Further contend that plaintiff admits that they decided to develop schedule 'A' property with a builder and the plaintiff, his son and daughters have jointly executed JDA with the developer to develop the schedule 'A' property. Further though the plaintiff claim that sharing agreement was entered behind his back, then plaintiff is a party to the sharing agreement which was executed on 06/09/2012, after lapse of more than 8 years claims that 1st defendant took his signatures on various papers and stamp papers which is unbelievable. If so the plaintiff should have lodged criminal proceedings against 1st defendant, instead he has filed the suit arraying all the purchasers as defendants though 9 items in

schedule 'B' property were allotted to the share of 1st defendant. The plaintiff has not sought for the relief of setting aside sharing agreement, as such no further relief in nature of partition cannot be granted.

Further the plaintiff claims that defendant No.8 is not a bonafide purchaser, but the defendant has paid market value for their respective properties through bank loans and other means. The allegations that 1st defendant has sold 9 villas behind the back of the plaintiff are denied as false. The plaintiff was very much aware of the execution of sale deeds, as such suit is bad for misjoinder of necessary parties. On the other hand due to the order of temporary injunction the defendant No.8 is suffering from tremendous mental agony. On these grounds prayed for dismissal of I.A. No.1 with exemplary costs.

4. Heard the learned counsel for the parties through V.C. as well as physically and perused the Written arguments along with the material on record.

The learned counsel for plaintiff has relied on the decisions reported in ILR 1976 KAR P 426, AIR 1999 SC P 2171, (2005) 11 SCC P497, AIR 2002 SC P 2598, AIR 2006 SC P 623, (2006) 8 SCC P 367 Head note A&C, AIR 2006 SC P 3275, AIR 1995 Kerala P 52, (2007) 2 KCCR P 1482 Head Note Counsel 2008(1) KCCR Short Note 50 and AIR 1993 SC 276.

Similarly the learned counsel for defendant No.1 also relied on the judgments/decisions reported in Civil Appeal No.6779-6780/2021, W.P. No.18038/2021 (GM-CPC), (1994) 1 SCC (Partition Suit), 2017(3) AKR 209, ILR 1992 KAR 2905, AIR 1965 Mysore 310, (2012) 6 SCC 430 and 2018(1) KAR 128.

5. The points that arise for my consideration are:
1. Whether the plaintiff has made out a prima-facie case?
 2. Whether balance of convenience lies in favour of the plaintiff?
 3. Whether plaintiff will be put to irreparable loss and injury if the ex-parte ad interim injunction granted on I.A. No.1 is not made absolute ?
6. My answer to the above point No.1 to 3 are in the negative for the following:-

REASONS

7. POINT No.1 to 3: I take these points altogether for my discussion, as the facts overlap and for the sake of convenience.

8. Admittedly the plaintiff being the father of defendant No.1 to 4 has filed the above numbered suit for the relief of partition and separate possession of his one half share in suit schedule 'B' and 'C' properties by declaring sale transactions took place between defendant No.1 and 5 to 18 in the year 2020 as not binding stating that himself and defendant No.1 constitute Hindu Undivided Joint Family and defendant No.2 to 4 have already taken their share in the form of row houses, which has been seriously disputed by the 1st defendant and purchasers on the ground that the plaintiff has filed the false suit along with interim application and also obtained ex-parte ad interim injunction by suppressing the material facts and misrepresenting the facts before the court.

9. It is the case of the plaintiff as argued by the learned counsel for plaintiff that the said sale transactions are not binding on him stating that he is the owner of the property bearing residentially converted Sy.No.74/3 measuring 1 acre 20 guntas of Kasuvanahalli village, Varthur Hobli, Bengaluru East Taluk which was treated as joint family property of himself and defendant No.1 to 4. Per contra it is the case of the defendant No.1 as argued by the learned counsel for 1st defendant that the suit has been filed by the plaintiff at the instigation of defendant No.2 to 4 daughters by suppressing the material facts and obtained ex-parte ad interim injunction by misrepresenting the facts.

10. It has been held in the decisions referred supra by the learned counsel for plaintiff that, if plaintiff has made out prima facie case, balance of convenience, other side set up false documents and irreparable injuries if any that might be suffered by the plaintiff in case of refusal to grant injunction or by vacating the injunction already granted, then to protect the party from species of injury/comparative hardship likely to occur from with holding injunction greater than would be likely to arise from granting it, then temporary injunction can be granted.

11. On the other hand it has been held in the judgments/decisions referred supra by the learned counsel for defendant No.1 that, the plaintiff who does not show utmost good faith in making an application for ad interim ex-parte injunction and also suppressed

the relevant material facts in addition to general principles like prima facie case, balance of convenience and irreparable loss and when plaintiff's case is in doubt or not clear, then he would not be entitled for such relief.

12. So in the light of the facts and circumstances of the case and principles enunciated in the decisions referred supra if we go through the entire material on record we can find that the plaintiff and defendant No.1 to 4 being the father and children have authorized a developer by name M/s ESSEM 18 Constructions, Bengaluru under a GPA to develop the schedule property as agreed under registered JDA dated 05/09/2012 by receiving the amount under the ratio of 40:60 between the owners and developers as per sharing agreement dated 06/09/2012, wherein the plaintiff and defendant No.1 to 4 are the parties and also signed the documents and the payment received by the parties also supported by the copies of statements and receipts, which indicates that there is no prima facie case in favour of the plaintiff.

13. It is to be noticed that, the 40% of residential building houses bearing No.A3, A4, A7,A8, A9, A10, A11, B1 and B6 constructed on schedule 'A' property shown in schedule 'B' of the sharing agreement and I.A. schedule. Similarly residential vacant site bearing No.18 of BBMP carved out of converted land bearing Sy.No.21/2 as per conversion order dated 16/07/1991 shown as schedule 'C' of the plaint as well as I.A schedule.

14. In this connection if we go through the schedule annexed with copy of sharing agreement we can find that schedule 'B' properties have been allotted to the share of 1st defendant/son C. Anand. Similarly remaining properties at Unit No.A5, A6 and B2 have been allotted in favour of defendant No.2 to 4 daughters. Similarly the remaining ratio of 60% share and interest of residential buildings constructed on schedule 'A' property shown as schedule 'C' in sharing agreement were being allotted to the share of 2nd party i.e. M/s ESSEM 18 Constructions developer.

15. It is also prima facie evident from perusal of the certified copies of the sale deeds that several sale transactions have taken place between the 1st defendant and defendant No.5 to 18 from the year 2015 to 2018 in respect of the properties in dispute. This being the fact as rightly urged by the learned counsel for defendant No.1 the plaintiff has filed the present suit as against alienated properties only i.e. pre-suit alienations and he has neither brought all the properties covered by sharing agreement under common hotchpotch nor made the developer as party to the present suit or pleaded that the defendant No.1 and developer have played fraud while executing the alleged GPA and sharing agreement referred supra. So the discretionary relief of temporary injunction as sought for by the plaintiff also barred by delay and laches. Therefore, the aforesaid material indicates that balance of convenience also does not lie in favour of the plaintiff.

16. It is not in dispute as submitted by the learned counsel for 1st defendant that, the earlier counsel Sri. KTD who drafted JDA dated 05/09/2012 on behalf of the plaintiff and defendant No.1 to 4

along with developer in question, himself filed the above numbered suit along with interim application and also represented the suit, but thereafter he gave NOC vakalth to another counsel. So as could be seen from the perusal of material on record that the averments made in the plaint as well as contents of accompanying affidavit filed with I.A. No.1 under order XXXIX Rule 1 and 2 CPC suffers not only from suppression of material facts, but also suffers on the ground that, it contains misleading averments. Further the plaintiff has also failed to show utmost good faith in making an application for ad interim ex-parte injunction along with three ingredients like prima facie case, balance of convenience and irreparable injury so as to grant temporary injunction against the defendant No.1 and 5 to 18 as sought for under I.A. No.1. On the other hand the defendant No.1 and 8 have shown that if the order of temporary injunction is made absolute then they would be put into more hardship.

17. It is also worth to note that, the plaintiff has not come to the Court with clean hands and also suppressed the material facts before this Court while seeking an order of ex-parte ad interim injunction. For these reasons any amount of arguments/written arguments filed by the learned counsel for plaintiff do not have wight and cannot be accepted. On the other hand arguments canvassed by the learned counsel for defendants holds good. Therefore, having regard to the facts and circumstances of the case, I am of the opinion that I.A. No.1 filed by the plaintiff is liable to be dismissed without cost, with liberty to establish his case on merits by including remaining joint family properties and developer during trial. Hence, I answer the point No.1 to 3 are in the negative and proceed to pass the following:

:ORDER:

I.A. No.1 filed under Order XXXIX Rule 1 and 2 r/w Section 151 of C.P.C by the counsel for the plaintiff is hereby dismissed.

Consequently order of ad interim ex-parte injunction dated 26/08/2020 granted by this court on I.A. No.1 stands vacated.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on 20th day of April, 2022)

**(C.D.KAROSHI)
V ADDL.CITY CIVIL JUDGE,
BENGALURU.**

Operative portion of the orders on IA.No.1 pronounced in the open court vide separate:-

:ORDER:

I.A. No.1 filed under Order XXXIX Rule 1 and 2 r/w Section 151 of C.P.C by the counsel for the plaintiff is hereby dismissed.

Consequently order of ad interim ex-parte injunction dated 26/08/2020 granted by this court on I.A. No.1 stands vacated.

No order as to cost.

[C.D. KAROSHI]
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