

**IN THE COURT OF THE II ADDL. CITY CIVIL JUDGE
AT BANGALORE CITY
(CCH-17)**

DATED THIS THE 4th DAY OF JULY, 2019.

PRESENT

SRI. R.Y. SHASHIDHARA, B.Com., LL.B.
II Addl. City Civil & Sessions Judge,
BANGALORE

O.S. No. 4909/2018

PLAINTIFF:

Smt. Nirmala D/o late. K. Ashwathama,
W/o Sri. Krishnegowda, 57 years, R/at
No.1649, 'C' Block, Sahakara Nagara,
Bengaluru.

(By Sri. JS, Advocate)
/Vs/

DEFENDANTS:

- 1) Smt. B.V. Pramila D/o not known,
claiming to be the second wife of
late. Ashwathama, 70 years, c/o
B.V. Pameela, No.1160, 7th cross,
3rd main, Bengaluru.
- 2) Smt. Dr., Kalpana, D/o B.V.
Pameela, 40 years, R/at No.1160,
7th cross, 3rd main, 2nd phase,
Girinagar, Bengaluru.
- 3) Sri. Bhanu Prakash S/o B.V.
Pameela, 50 years, Resident of c/o
B.V. Pameela, No.1160, 7th cross,
3rd main, 2nd phase, Girinagar,
Bengaluru.
- 4) Sri. Narasimha Prasad S/o B.V.
Pameela, 45 years, R/at C/o B.V.
Pameela, No.1160, 7th cross, 3rd
main, 2nd phase, Girinagar,
Bengaluru.
- 5) Smt. P.H. Sunitha W/o Sri. M.P.
Ganesh, 38 years, Resident of
Ramegowdana Galli, 14th ward,
Pavagada road, Madhugiri Town,
Tumkur District.

6) Sri. M.V. Narasimhamurthy S/o Sri. Veeranna, 42 years, Resident of Ragavendra Extension, Behind Gowthama Budda collage, Madhugiri Town, Tumkur District.

(By Sri. SSG, Advocate for D.1 to D.4)

(By Sri. PD, Advocate for D.5 & D.6)

PARTIES IN I.A. Nos.I & 2

APPLICANT/PLAINTIFF Smt. Nirmala D/o late. K. Ashwathama,

Versus

RESPONDENTS/DEFENDANTS Smt. B.V. Pramila and others

ORDERS ON I.A. NO. 1

This application filed by the plaintiff U/o 39 rule 1 and 2 R/w Sec 151 of C.P.C. granting temporary injunction restraining defendants from alienating or creating third party interest in the suit schedule properties by way of sale, mortgage, lease, exchange, gift, rent or in any other mode or manner to any third parties pending disposal of the suit.

.2. The plaintiff has filed affidavit accompanying to this application and stated that treated the contents of plaint to be part and parcel of this affidavit. It is

stated that one late K.Ashwathama and Smt. Kantha are husband and wife. The plaintiff is daughter of said Ashwathama and Smt. Kantha. It is stated that the defendant No.1 is claiming to be wife and defendant No.2 to 4 are claiming to be children of late Ashwathama. During the subsistence of marriage between Smt. Kantha and late Ashwathama, the defendant No.1 cannot be legally wedded wife and the defendant No.2 to 4 cannot be the status of children of said Ashwathama. Mother of the plaintiff viz., Smt. Kantha is only legally wedded wife and the plaintiff is their daughter. It is stated that late Ashwathama was also residing with defendant No.1. Mother of the plaintiff Smt. Kantha, defendant No.1 and late Ashwathama were stayed together for sometime. The defendant No.1 quarreled with Smt. Kantha and expelled her from their house. Hence, the Smt. Kantha was staying in her parents' house. It is stated that

deceased K. Ashwathama had participated and performed rituals in the marriage of the plaintiff.

.3. It is stated that knowing very well that the plaintiff having right in the suit schedule properties, the defendants have got created certain documents. Taking undue advantage of old age of Ashwathama. The defendant No.1 to 4 have deliberately not informed the death of Ashwathama to the plaintiffs and they have prevailed upon late Ashwathama to execute the documents in their favour. It is stated that suit schedule properties purchased by deceased Ashwathama. After his death, as a legal heir, the plaintiff succeeded the suit schedule properties. The plaintiff requested and demanded the defendants for allotment of her share in the suit schedule properties. The plaintiff is having $1/3^{\text{rd}}$ share in the suit schedule properties by metes and bounds. It is stated that after knowing the records the plaintiff came to know that deceased Ashwathama sold item No.2 of landed

properties to the defendants No.5 and 6. Deceased Ashwathama had no exclusive right to deal with the share of the plaintiff in the suit schedule properties. Hence, the plaintiff constrained to file the suit for partition. It is stated that the plaintiff having right and interest in the suit schedule properties she has made out a prima-facie case. If third party right is created in respect of the suit schedule properties, she will lose her right and cannot be able to enjoying the fruits in her legitimate share. Therefore, the plaintiff prayed for allowing this application.

.4. The defendants No.1 to 4 have filed objections to I.A. No.1 and stated that the plaintiff has not approached this court with clean hands. As per the plaintiff the suit schedule property are self acquired properties of deceased Ashwathama. But during his lifetime he had alienated all the properties standing in his name and now none of the properties are available for partition. The plaintiff has not having prima-facie

case and entitle for relief of temporary injunction. It is stated that item No. 3 is self acquired property of defendant No.2, who purchased the same as per registered sale deed dated 3/1/1991. Hence, the suit of the plaintiff for partition is not maintainable.

.5. It is denied that plaintiff is daughter of deceased Ashwathama and Smt. Kantha. The defendant No.1 is only legally wedded wife and defendants No.2 to 4 are their legitimate children. The plaintiff is stranger to the family of defendants No.1 to 4. With an intention of making wrongful gain, she filed this frivolous suit. It is stated that item No.1 of the suit property was self acquired property deceased Ashwathama. The plaintiff claiming that during his life time, deceased Ashwathama gifted the said property in favour of defendant No.1 on 28/2/2002. But it is not the case of the plaintiff that said Gift deed is created document and executed contrary to law. The plaintiff has not sought for declaration that the

said Gift deed is null and void. It is stated that the deceased Ashwathama gifted the item No.1 in favour of defendant No.1, hence, the plaintiff is not having any right in the said property.

.6. It is stated that deceased Ashwathama and his sons were sold item No.2 of landed properties in favour of defendants No. 5 and 6. The said property is the self acquired property of deceased Ashwathama, who had acquired the same by way of registered will dt: 12/4/1992. by one Balappa. As on the date of the suit, item No.2 property is not standing in the name of deceased Ashwathama and the plaintiff has no right and interest in the said property. It is stated that item No.3 is the self acquired property of defendant No.2, who acquired the same from one Nagapadmavathi through registered sale deed dated 3/1/1991. Subsequently she constructed house in the said property. In the plaint the plaintiff has not stated that how item No.3 belongs to her father. Hence, the

plaintiff is not having any right, title and interest in Item No.3 of the suit property. It is stated that the plaintiff has not established that she having prima-facie case and she is the daughter of deceased Ashwathama. It is stated that, if an order of temporary injunction order granted, the defendants would be put to irreparable loss and hardship. From the above said grounds, the defendant Nos. 1 to 4 prayed for dismissal of this application with exemplary costs.

.7. The defendant No.6 has filed the written statement and defendant No.5 filed memo and adopted the same. That defendants 5 and 6 counsel filed memo that treat the contents of written statement to objections to IA No.1.

.8. It is denied that the mother of plaintiff is legally wedded wife of deceased Ashwathama and the plaintiff is their daughter. It is stated that contents of paras No. 4 to 9 of the plaint are not within the

knowledge of these defendants. It is denied that Item No.2 of the suit property purchased by deceased Ashwathama. It is stated that actually the said properties belonging to one Bala, who is the uncle of deceased Ashwathama. He had acquired the said properties by virtue of the registered sale deed dt: 12/4/1982 executed by his uncle Bala. After the death of said Bala, Ashwathama had become owner of the said properties. Thereafter, for his need and purchasing properties somewhere, he and his wife and children sold the Item No.2 in favour of these defendants vide registered sale deed dt: 29/1/2007. Since these defendants are in possession and enjoyment of the said properties, Plaintiff and defendants No.1 to 4 have no manner of right, title, interest and possession over the said properties.

.9. It is stated that Item No. 2 of the suit property was the personal and self acquired property of deceased Ashwathama. After the sale of said property

in favour of defendants No.4 and 5, there was a dispute between Ashwathama and others in O.S. No. 117/2000. The compromise decree, these defendants No.5 and 6 get such extent of land and continued to be in joint possession and enjoyment of the same. Interse, they divided their land and got changed the revenue entries. It is stated that one Hanumakka claims to be the sister of Bala and filed O.S.No. 111/2017 for declaration of title and possession. The said suit filed before the Prl. Sr. Civil Judge at Madhugiri and the same is pending. The defendant No.2 has also filed O.S.No. 125/2002 on the file of the Prl. Civil Judge at Madhugiri for partition and separate possession in respect of item No.2 of the suit schedule property and the said suit was dismissed. It is stated that Item No.2 is not an ancestral and joint family property of the deceased Ashwathama. It is his self acquired property and he had sold the same in favour of these defendants. Hence, the plaintiff, defendants

No.1 to 4 have no vested or birth right of share in the said property. Therefore, the defendants No.5 and 6 prayed for rejection of the I.A. No.1 with costs.

.10. Heard the arguments and perused the records.

.11. The following points that would arise for consideration of this Court are:

1. Whether the plaintiff has made out a prima-facie case for granting an order of temporary injunction ?
2. Whether the plaintiff proves that the balance of convenience in her favour ?
3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction not granted in her favour?
4. What order?

.12. My findings to the above points are as under:

- Point No.1- Partly in the affirmative,
- Point No.2- Partly in the affirmative,
- Point No.3- Partly in the affirmative,

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

REASONS

.13. **POINT No.1:** This suit filed by the plaintiff for partition and separate possession of her 1/3rd share in the suit schedule properties by metes and bounds and enquiry into mesne profits. She prayed for declaring that gift deed dated 28.02.2012 is not binding on her. It is the case of the plaintiff that her mother Smt. Kantha is the legally wedded wife of one Ashwathama. Their marriage solemnized in the year 1954. Due to their wedlock she born to them. The plaintiff further stated that the defendant No.1 claiming as wife and defendants No.2 to 4 claiming as children of Ashwathama. Per contra, the defendants specifically denied that plaintiff is daughter of Ashwathama and Smt. Kanta. According to them defendant No.1 is legally wedded wife and defendants No.2 to 4 are children of Ashwathama. It is admitted fact that Ashwathama died on 06.11.2009.

.14. To prove her relationship with deceased Ashwathama, the plaintiff has produced genealogy tree issued by Village Accountant Ramachandrapura Circle, Yelahanka Hobli. It is mentioned that the name of the plaintiff's parent as H.Ashwathama and late Kanthamma. She produced marriage invitation card belongs to her. It is mentioned that the plaintiff is daughter of H. Ashwathama. She has produced 3 marriage photos belongs to her and stated that her father Ashwathama was performed said marriage. She produced death certificates of Kanthamma and Ashwathama. She produced transfer certificate issued by Hindu Balika Patashale, Dharmaraja Koil street, Bengaluru. It is mentioned that name of the plaintiff's father as K. Ashwathama. She has produced 2 receipts issued by the residents association and hospital. It is mentioned the name of K. Ashwathama and Kanthamma. She produced 2 marks cards issued by Hindu Balika Patashala and Charimen 7th Standard

common examination board City Dist. Bangaluru. In both the documents name of the plaintiff father mentioned as K. Ashwathama. From perusal of the above said documents produced by the plaintiff, at this stage, I am of the opinion that prima facie she has proved that she is daughter of deceased K. Ashwathama and Smt. Kanthamma.

.15. It is further case of the plaintiff that, her father deceased K. Ashwathama had purchased item No.1 of the suit schedule property i.e., house on site No.94/25, A LIG, 9th Block, Jayanagar Extension, Bengaluru. To prove the same, she has produced copy of sale deed dated 04.08.1998 executed by KHB in favour of K. Ashwathama. It is further case of the plaintiff that the defendants have created the documents. She claiming that as per the gift deed dated 28.02.2002, the item No.1 of the suit schedule property gifted by K. Ashwathama in favour of the defendant No.1. The said property is joint family

property and she having share in the said property. I have perused the contention of defendants. In the written statement the defendants 1 to 4 admitted that item No.1 of the suit schedule property had acquired by deceased K. Ashwathama from KHB, it is his self-acquired property. This property is not the joint family property. During his life time, deceased K. Ashwathama gifted the same in-favour of his wife i.e., defendant No.1 through a registered gift deed dated 28.02.2002. Both parties have produced copy of gift deed dated 28.02.2002. At this stage, I am of the opinion that, as stated above the plaintiff is a daughter of K. Ashwathama. As a daughter of K. Ashwathama, the plaintiff having right in the item No.1 of the suit schedule property. The plaintiff further contended that the defendants 1 to 4 claiming themselves as wife and children of deceased K. Ashwathama and they have created some documents in-respect of suit schedule properties. She further contended that her mother

Smt. Kantha is only the legal wedded wife of deceased K. Ashwathama. As per the plaintiff, whether alleged gift deed to be created by the defendants is to be decided in this suit. She prayed for declaring that gift deed dated 28.02.2012 is not binding on her.

.16. It is further case of the plaintiff that the item No.2 i.e., land bearing Sy.No.115, measuring 10 acres and (a) 1 acre 30 guntas and (b) 1 acre 25 guntas of kharab land, situated at Lingenahalli village, Kasaba Hobli, Madhugiri Taluk purchased by her father deceased K. Ashwathama. Hence, she has got share in the above said property. Per contra, it is the contention of defendants that item No.2 property are self acquired property of deceased K. Ashwathama, who acquired the same through one Balappa as per registered Will. Subsequently, for his family necessity, he and his two sons sold the said property in favour of defendants 5 and 6 through a registered sale deed dated 21.05.2007. Though item Nos.1 and 2 of the properties

are self acquired properties of deceased K. Ashwathama, during his life time, he gifted item No.1 property in favour of his wife – defendant No.1 and sold item No.2 property in-favour of defendants 5 and 6. Hence, as on the date of filing of the suit, the above said properties were not standing in the name of deceased K. Ashwathama. Therefore, the plaintiff cannot claiming her right in the above said properties. Both parties have produced copy of sale deed dated 29.01.2007. It reveals that deceased K. Ashwathama and his 2 sons sold item No.2 property in favour of defendants 5 and 6. As stated above, the plaintiff claiming that the defendants have created the documents in order to defeat her right over the suit schedule properties. She further claiming that she is only legitimate daughter of deceased K. Ashwathama and suit schedule properties are joint family properties. Her father had no right to sell the suit schedule properties. Mutation entries and RTC extract

produced by the plaintiff discloses that item No.2 property purchased by deceased K. Ashwathama from one Balappa through a registered sale deed dated 12.04.1982 and accordingly, his name entered in the RTC entries. Considering the same, At this stage, I am of the opinion that the plaintiff has prima facie proved that item No.1 and 2 are joint family properties of herself and her father and she having share in the said property.

.17. In the plaint, the plaintiff has contended that item No.3 property belongs to her father namely K. Ashwathama. It is pertinent to note that in the plaint it is no-where mentioned that how deceased K. Ashwathama had acquired the above said property. The plaintiff has not produced any documentary evidence before this court that item No.3 property is standing in the name of deceased K. Ashwathama. Per contra, it is the specific case of the defendants 1 to 4 that, item No.3 is self acquired property of defendant

No.2, who acquired the same from one Nagapadmavathi under a registered sale deed dated 03.01.1991. Originally the said site formed by Vishwabharathi House Building Co-operative Society, who in turn, sold the same in favour of defendant No.2. After purchase, the defendant No.2 constructed a house in the said property, she is residing in the said house. To substantiate the same, the defendants 1 to 4 have produced copy of sale deed dated 22.01.1991 executed by Nagapadmavathi in favour of defendant No.2 in-respect of item No.3 property. Tax paid receipt and khata extract, which are in the name of defendant No.2 in-respect of item No.3 property. They have also produced electricity bill and water charges bill, which are in the name of defendant No.2. Considering the same at this stage, I am of the opinion that the plaintiff has not prima facie proved that item No.3 property belongs to her father deceased K. Ashwathama and it is her joint family property. At this stage, I am of the

opinion that the defendants 1 to 4 have proved that the item No.3 property is self acquired property of defendant No.2. From the above discussion, I come to the conclusion that the plaintiff has prima facie proved that item Nos.1 and 2 properties belongs to her father and they are joint family properties and she having share in the said property. She also proved that the defendants are made an attempt for alienating the said properties. Therefore, I come to the conclusion that to avoid multiplicity of proceedings and to preserve item Nos.1 and 2, to be restrained the defendants 1 to 6 not to alienate the suit schedule properties in any manner till disposal of the suit is just and necessary. Further I am of the opinion that if the temporary injunction is granted, no irreparable loss and injury will be caused to the defendants. From looking into the facts and circumstances of the case, at this stage, I am of the opinion that the balance of convenience lies in favour of the plaintiff in-respect of item Nos.1 and 2

properties. If the temporary injunction is not granted in-respect of item Nos.1 and 2 she will be put to irreparable loss and injury.

.18. As discussed above, the plaintiff has prima facie not proved item No.3 property belongs to her father deceased K. Ashwathama and it is their joint family property. Therefore, I am of the opinion that she is not entitle for the relief of temporary injunction in-respect of item No.3 property. Further I am of the opinion that the balance of convenience in her favour. If the temporary injunction in-respect of item No.3 is not granted, no loss or injury will be caused to the plaintiff. Further I am of the opinion that temporary injunction is granted in-respect of item No.3, the defendants 1 to 4 will suffer irreparable loss and injury. Hence, I am of the opinion that the present application is liable to be allowed in-respect of item Nos.1 and 2 properties and dismissed in-respect of

item No.3 property. Hence, I answer points 1 to 3 partly in the affirmative.

.19. **POINT No.4:** In view of my findings on the above points 1 to 3, I proceed to pass the following:

ORDER

I.A. No.1 filed by the plaintiff under Order 39 Rules 1 and 2 of C.P.C. is partly allowed.

It is restrained the defendants 1 to 6 shall not alienate or creating third party interest in suit item Nos.1 and 2 properties by way of sale, mortgage, lease, exchange, gift, rent or in any other mode or manner to any 3rd parties pending disposal of the suit.

IA No.1 filed by the plaintiff in-respect of item No.3 property is dismissed.

No cost.

(Dictated to the Judgment writer, transcribed by her ,corrected and then pronounced by me in open court this 4th the day of July 2019.)

(R.Y. SHASHIDHARA)
II Addl. City Civil & Sessions Judge,
BANGALORE.

