

**IN THE COURT OF VIII ADDITIONAL
CITY CIVIL JUDGE (CCH-15) AT
BENGALURU.**

Dated this the 1st day MARCH 2012.

PRESENT:

SRI.ASWATHA NARAYANA,

B.Sc., LLB.,

VIII Additional City Civil & Sessions Judge,
Bengaluru.

O.S.No.6800 of 2011

BETWEEN

SRI.P.MUKUNDAN,

S/o. Late Sri.G.Parthasarathy,

Aged about 62 years,

Residency Apartments, No.19, Bawa Road,
Alwarpet, Chennai.

....PLAINTIFF.

AND:

1. SMT.RADHIKA VASUDEVAN,

W/o. Sri.Vasudevan, Aged about 60 years,

R/o. No.3, Srinivasa Avenue,

P & T Colony Road, Madurai.

2. SRI.P.MURULIDHAR,

S/o. Late Sri.G.Parthasarathy,

Aged about 55 years,

"Gopal", No.237/46A, 5th Main,
Chamarajpet, Bengaluru-560 004.

3. SMT.SANGEETHA RAVIKANTH,

W/o. Sri.S.Ravikanth, Aged about 51 years,

R/o. No.12, 1st Cross, Shankarapuram,
Bengaluru.

4. SRI.S.RAVIKANTH,

S/o. Sri.Shankar Rao, Aged about 53 years,
R/o. No.12, 1st Cross, Shankarapuram,
Bengaluru.

....DEFENDANTS.

ORDER ON IA-1

This suit is filed by the plaintiff for Permanent Injunction to restrain the defendants or anybody claiming through them from interfering with his possession over the suit schedule property and also for costs of the suit.

.2. IA-1 is filed under Order XXXIX Rules 1 and 2 read with Sec.151 of the CPC for grant of Ad-Interim Order of Injunction to restrain the defendants or anybody claiming through them from interfering with the plaintiff's possession over the suit schedule property pending disposal of the suit.

.3. All the defendants have filed their Written Statements in this suit. But, they did not choose to file separate objections to IA.1. On the other hand, they have filed Memo to

treat their Written Statements as objections to IA.1.

.4. Sum and substance of the contentions of the plaintiff are as follows:

Under an Oral Partition, which was reduced into writing styled as 'Memorandum of Partition' dated 11.06.1986, the suit schedule property fell to the share of the plaintiff. Since then, the plaintiff is the absolute owner in possession of the suit schedule property. The plaintiff has a proprietary business of Horticulture in the name and style as 'KSG Farm and Nursery' and breeds saplings and plants in the suit schedule property. He frequently visits Bengaluru and lives in the house situated in the suit schedule property. The defendant-1 has filed a Partition suit in OS.25874/2010 against the plaintiff, his father-Late G.Parthasarathy and the defendants-2 and 3 claiming $1/6^{\text{th}}$ share in the suit schedule property and other properties. That suit is pending on the file of CCH.29. Taking advantage of the said suit, the defendants are interfering with the plaintiff's possession

and enjoyment over the suit schedule property, though there is no Interim Order in favour of the defendants in that suit. They are trying to dispossess the plaintiff from the suit schedule property. When the plaintiff made an attempt to put up a fence around the suit schedule property, the defendants-2 and 4 obstructed the fencing work. Though the plaintiff approached the Police, they did not take any action against the defendants. But, they advised the plaintiff to go to the Civil Court. The defendants are openly proclaiming that they would dispossess the plaintiff from the suit schedule property.

.5. Sum and substance of the contentions of the defendants are as follows:

The defendant-2 is the brother, the defendant-1, the defendant-3 and one Smt.Padmini Narayan are the sisters of the plaintiff. The defendant-4 is the husband of the defendant-3. Smt.Indira Parthasarathy is the mother of the plaintiff, the defendants-1 to 3 and Smt.Padmini Narayan. Smt.Indira Parthasarathy is residing in the house situated in the suit schedule property and the

defendants-3 and 4 are looking after Smt.Indira Parthasarathy by residing with her in that house. The Memorandum of Agreement dated 11.06.1986 is not a Partition Deed. The suit schedule property does not belong to the plaintiff exclusively. The suit schedule property is a joint family property of the plaintiff, the defendants-1 to 3 and Smt.Padmini Narayan. All these persons have share in the suit schedule property. The plaintiff resides at Chennai and when he visits Bengaluru, he resides in his friends' house. Though the Partition suit in OS.25874/2010 is pending, without waiting for decision in that case, the plaintiff has filed a false suit with sole and evil intention to cause hardship to his own mother. He tried to put up fence illegally in order to block the entrance to the ancestral house, where Smt.Indira Parthasarathy is residing. Due to timely intervention of the Police, the said act was stopped. Sri.G.Parthasarathy has left a Will. As all the members of the family have a share in the suit schedule property, the plaintiff is not entitled to the relief as prayed.

.6. Heard arguments of both the sides. The learned counsel for the plaintiff has relied upon the following citations:

1.AIR 2005 SC 104 [Maharwal Khewaji Trust (Regd.,) Faridkot –Vs- Baldev Dass].

2.ILR 1993 KAR 161 [Veerabhadrapa –Vs- Mayappa].

3.ILR 1974 KAR 1533 [Suganda Bai –Vs-Sulu Bai and Others].

.7. Sum and substance of the principles laid down in the decisions of the above citations are as follows:

1. During pendency of litigation, courts have to protect *status quo* existing on the date of suit and to protect that *status quo*, grant of Temporary Injunction is justified.

2. 'Any party' to the suit could file application seeking Temporary Injunction within the purview of Rule 1(a) of Rule 39 and only the plaintiff could seek redress under sub-clauses (b) and (c) of Rule 1 and Rule 2 of Order 39 of the CPC.

Keeping in view the above principles of law and **without prejudice to the merits of the case**, this IA is dealt with.

.8. The Points that arise for determination in this IA are as follows:

1. Whether the plaintiff has made out a prima facie case for trial?
2. Whether balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss, if Temporary Injunction is refused?
4. What Order?

.9. Findings of this Court on the above Points are as follows:

Point-1: **Affirmative.**

Point-2: **Affirmative.**

Point-3: **Affirmative.**

Point-4: **See final portion of this Order.**

REASONS

UNDISPUTED FACTS

.10. The suit schedule property bearing No.237/46 consisting of land and house

measuring 11,330 square feet in all is situated at 5th Main, Chamarajpet, Bengaluru. Smt.Indira Parthasarathy is the wife, the plaintiff and the defendant-2 are the sons and the defendants-1 and 3 and also Smt.Padmini Narayan are the daughters of Late Sri.G.Parthasarathy. The defendant-4 being the husband of the defendant-3 is the son-in-law of Late Sri.G.Parthasarathy. Said Sri.G.Parthasarathy died on 16.07.2011. Smt.Indira Parthasarathy is residing in the house situated in the suit schedule property. The defendant-1 has filed a suit against the plaintiff, the defendant-2, the defendant-3 and Smt.Padmini Narayan in OS.25874/2010 claiming share in the suit schedule property and other properties. The said suit is pending before CCH.29. All these facts are not under dispute.

POINT-1

.11. According to the plaintiff, by virtue of an Oral Partition, which was reduced into writing subsequently, styled as 'Memorandum of Partition' dated 11.06.1986, he became the absolute owner in possession

of the suit schedule property. According to the plaintiff, he is running Horticulture business in the suit schedule property in the name and style as 'KSG Farm and Nursery' and he is breeding saplings and plants in the suit schedule property. According to the plaintiff, when he visits Bengaluru, he resides in the building situated in the suit schedule property. According to the plaintiff, the defendants are illegally attempting to dispossess him from the suit schedule property and thus, there is illegal interference by them.

.12. In support of his contentions, the plaintiff has filed his affidavit and affidavit of Smt.Kempamma, who is the servant of the plaintiff. The defendants did not choose to counter the averments of those affidavits by filing counter affidavits. As such, averments of affidavits of the plaintiff and Smt.Kempamma have to be accepted as proved. In this regard, this Court relies upon the decisions in the cases of **AIR 1962 Allahabad 407 (DB) [Juggilal Kamla Pat -Vs- Ram Janki Gupta & Another]** and

AIR 1962 Allahabad 439 [Raja Himamshu Dhansingh –Vs- Additional Registrar of Co-operative Society & Another]. In the affidavit of the plaintiff, he has deposed about all the contentions regarding his exclusive ownership and possession over the suit schedule property as on the date of the suit and also about the interference by the defendants with his possession and enjoyment over the suit schedule property. In her affidavit, Smt.Kempamma has fully supported the contentions of the plaintiff. As such, affidavits of the plaintiff and Smt.Kempamma fortify the contentions of the plaintiff about his ownership and possession over the suit schedule property as on the date of the suit as well as illegal interference by the defendants with his possession and enjoyment over the suit schedule property.

.13. In addition to those affidavits, the plaintiff has relied upon a document titled as 'Memorandum of Partition' dated 11.06.1986. This document is executed in between the plaintiff, the defendant-2 and their father-

Late Sri.G.Parthasarathy. The defendants-1 and 3 are the consenting witnesses to this document. The defendants have not disputed the execution of such a document, though they have contended that the said document is not a Partition Deed as contended by the plaintiff. It is not in dispute that Late Sri.G.Parthasarathy has executed a Will on 18.10.2002 in respect of his assets. Even in that document, Late Sri.G.Parthasarathy has ratified the execution of Memorandum of Agreement dated 11.06.1986. As such, it is clear that a document styled as 'Memorandum of Agreement' dated 11.06.1986 has come into existence in between the plaintiff, the defendants-1 to 3 and their father-Late Sri.G.Parthasarathy, with the consenting witness of the defendants-1 and 3.

.14. Recitals of the said 'Memorandum of Agreement' show that joint family properties belonging to the plaintiff, the defendant-2 and their father were partitioned orally by them and that the same was reduced into writing subsequently on 11.06.1986 as per

'Memorandum of Agreement'. These recitals *prima facie* show that the said 'Memorandum of Agreement' is a 'Memorandum of Partition', which was effected in between the plaintiff, the defendant-2 and their father with the consent of the defendants-1 and 3. As such, *prima facie*, this document supports the contention of the plaintiff about partition in his family. As per this document, the suit schedule property fell to the share of the plaintiff and that he became the absolute owner of the suit schedule property. This document also shows that right of residence in the house situated in the suit schedule property was given to Late Sri.G.Parathasarathy and his wife also and that a common passage of 15 feet situated on the Eastern side of the suit schedule property was left for common use by the plaintiff and the defendant-2. As such, recitals of this document *prima facie* support the contention of the plaintiff about his absolute ownership and possession over the suit schedule property.

.15. The plaintiff has also produced Copy of Petition dated 24.07.1986, Special Notice issued by the Assistant Revenue Officer of Bengaluru City Corporation, Assessment Register Extract, Khatha Certificate, Khatha Extract and Tax Paid Receipt. All these documents show that the plaintiff, the defendant-2 and his father have acted upon the Partition Deed dated 11.06.1986 and that in pursuance of that Partition, Khatha of the suit schedule property has been changed to the name of the plaintiff and that the plaintiff is paying Tax in respect of the suit schedule property since 1986 itself. As such, these documents fortify the contention of the plaintiff about his exclusive ownership and possession over the suit schedule property.

.16. The plaintiff has also produced Registration Certificate issued by the Director of Horticulture, Patent issued by the United States, Copy of Business Line Newspaper, Bills, Certificate issued by the Professor and Head & Designated Inspection Authority of Agricultural College, Permits for Importing of Plants and Seeds issued by the Government

of India, Letter issued by the Ministry of Agriculture, Government of India, Import Release Order issued by the Government of India and also Photos. All these documents show that the plaintiff is breeding saplings and plants in the suit schedule property in the name and style 'KSG Farm and Nursery' and that he is doing Horticulture business in the suit schedule property as contended by him. Those Photos also show enjoyment of the property by the defendant-2 separately, which has been allotted to his share in the Partition of 1986. As such, these documents also fortify, at this stage, that the plaintiff is the exclusive owner in possession of the suit schedule property.

.17. On the other hand, it is the contention of the defendants that Smt.Indira Parthasarathy is residing in the house situated in the suit schedule property. The plaintiff has not disputed the said contention of the defendants. In fact, as observed above, right of residence in the house situated in the suit schedule property has

been given to the parents of the plaintiff also under the document dated 11.06.1986.

.18. According to the plaintiff, the defendants-3 and 4 are residing at house No.12, 1st Cross, Shankarapuram, Bengaluru. But, the defendants have denied the said contention of the plaintiff. On the other hand, according to the defendants, the defendants-3 and 4 are also residing in the said house situated in the suit schedule property along with Smt.Indira Parthasarathy. However, to show that the defendants-3 and 4 are also residing in the house situated in the suit schedule property along with Smt.Indira Parthasarathy, the defendants have not produced any documents. On the other hand, Certificate dated 01.09.2009 and Identity Card issued by the Ministry of Textiles, Government of India, which are produced by the defendants clearly show that the defendants-3 and 4 are not residing in the house situated in the suit schedule property and that they are residing in House No.12, 1st Cross Road, Shankarapuram, Bengaluru-4. It is not in

dispute that the defendant-1 has filed a suit in OS.No.25874/2010 for Partition. In that case, the defendant-3 of this suit is the defendant-5 and she has filed Written Statement. Copy of Plaint and the Written Statement filed by the defendant-3 in this case clearly show admission on the part of the defendant-1 as well as the defendant-3 about residence of the defendants-3 and 4 in House No.12, 1st Cross, Shankarapuram, Bengaluru. As such, all these documents negative the contention of the defendants that the defendants-3 and 4 are residing with Smt.Indira Parthasarathy in the house situated in the suit schedule property. On the other hand, those documents support the contention of the plaintiff. This circumstance shows that the defendants are not ready to disclose the true state of affairs and that they are suppressing the real facts.

.19. Though it is contended by the defendants that the document dated 11.06.1986 is not a Partition Deed, Partition has not taken place in respect of the joint family properties, the defendants-1, 3 and

Smt.Padmini Narayan have share in the suit schedule property also and that a Partition suit is pending, it is not their contention that the plaintiff has no exclusive possession over the suit schedule property. It is not their contention that they have possession and enjoyment over the suit schedule property. At this stage, the defendants have not placed any documentary evidence to rebut the evidence placed by the plaintiff in support of his contention.

.20. During the course or arguments, when the Court asked both the parties about the stand of Smt.Indira Parthasarathy, the defendants filed affidavit of Smt.Indira Parthasarathy. The said affidavit consists of 6 Pages. In that affidavit, Smt.Indira Parthasarathy has stated that Memorandum of Agreement of the year 1986 is not a Partition Deed and that it is a temporary arrangement. However, it is not stated in the affidavit that the plaintiff has no exclusive possession over the suit schedule property. As such, the said affidavit of Smt.Indira Parthasarathy is of no assistance

to the defendants to rebut the evidence placed by the plaintiff at this stage.

.21. Main grievance of the defendants as well as Smt.Indira Parthasarathy is that in order to cause inconvenience and hardship to the defendants for easy movement, the plaintiff started to put up a fence. However, it is not the contention of the defendants that the plaintiff tried to put up a fence to the property other than the property allotted to his share or the property belonging to any of the defendants, which is not in his exclusive possession. As observed above, the evidence available at this stage, *prima facie* shows allotment of the suit schedule property to the share of the plaintiff in the year 1986 itself and his exclusive possession over the suit schedule property since then. As such, he is entitled to enjoy the property, which is in his exclusive possession and to protect his property in his own manner. Hence, putting of fence by the plaintiff to the suit schedule property, which is in his possession, for the protection of his property cannot be said as illegal act. For all these reasons, it is clear

that the plaintiff has come to the Court with an answerable question and that as such, he has made out a *prima facie* case for trial. Hence, this Point is answered in the **affirmative.**

POINTS-2 AND 3

.22. As the material available on record, at this stage, shows the plaintiff's exclusive possession over the suit schedule property by virtue of Partition of 1986, the balance of convenience lies in favour of the plaintiff to protect his possession. As there is serious threat of interference by the defendants with the plaintiff's possession and enjoyment over the suit schedule property, if Temporary Injunction is refused, definitely, the plaintiff will be put to irreparable loss. For all these reasons, these Points are answered in the **affirmative.**

POINT-4

.23. According to the defendants, as the Partition suit filed by the defendant-1 is still pending, the plaintiff is not entitled for Temporary Injunction in this suit. Though

the defendant-1 has filed a suit for Partition claiming share in the suit schedule property, no Interim Order or any other Order is passed in favour of the defendant-1 or against the plaintiff in respect of the suit schedule property. As the material available on record shows the plaintiff's exclusive possession and enjoyment over the suit schedule property, he is entitled to enjoy that property exclusively till he is evicted under due process of law, if at all the defendants get share in the suit schedule property in that Partition suit. It is not shown by the defendants as to how the plaintiff is not entitled for Temporary Injunction, merely because a Partition suit is pending. Hence, it is not fit to accept the contention of the defendants.

.24. It is also argued on behalf of the defendants that in order to dispossess Smt.Indira Parthasarathy from the house situated in the suit schedule property, the plaintiff has filed this suit and hence, he is not entitled to Temporary Injunction. As observed above, Smt.Indira Parthasarathy

has also right of residence in the house situated in the suit schedule property. The plaintiff has not disputed the said fact. The plaintiff has not sought any relief against Smt.Indira Parthasarathy in this suit. It is the contention of the plaintiff that he has no intention to dispossess his mother from the house situated in the suit schedule property as she has right of residence in that house. As such, apprehension of the defendants that the plaintiff wants to dispossess Smt.Indira Parthasarathy from the suit schedule property is not fit to be appreciated. However, in order to remove the said apprehension of the defendants, it is just and proper to make observation that this Order shall not come in the way of enjoyment of her right of residence in the house situated in the suit schedule property by Smt.Indira Parthasarathy. For all these reasons, it is a fit case to exercise discretion to grant the relief of Temporary Injunction. In the result, the following order is passed:

ORDER

**IA.1 is allowed. By way of
Temporary Injunction, the**

defendants are hereby restrained from interfering with the plaintiff's possession and enjoyment over the suit schedule property in any manner pending disposal of the suit.

However, it is made clear that this order shall not come in the way of Smt.Indira Parathasarathy to enjoy her right of residence in the house situated in the suit schedule property as provided under the 'Memorandum of Agreement' dated 11.06.1986.

The plaintiff is entitled for costs of this IA from the defendants. Advocate's fee is fixed at Rs.500/-.

(Dictated to the Judgment Writer, computerized by her and corrected, revised and then pronounced by me in open Court on this the **1st day of March 2012.**)

(ASHWATHA NARAYANA)
VIII Additional City Civil Judge,
Bengaluru.

Order on IA-1 pronounced in the open Court and the following order is passed:

IA.1 is allowed. By way of Temporary Injunction, the defendants are hereby restrained from interfering with the plaintiff's possession and enjoyment over the suit schedule property in any manner pending disposal of the suit.

However, it is made clear that this order shall not come in the way of Smt.Indira Parathasarathy to enjoy her right of residence in the house situated in the suit schedule property as provided under the 'Memorandum of Agreement' dated 11.06.1986.

The plaintiff is entitled for costs of this IA from the defendants. Advocate's fee is fixed at Rs.500/-.

For appearances of parties for the purpose of hearing on

**reference under Section 89 of
the CPC, call on 06.06.2012.**

(Computerized to my dictation in the open
Court.)

(ASHWATHA NARAYANA)
VIII Additional City Civil Judge,
Bengaluru.