

IN THE COURT OF THE XXXIV ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, BENGALURU

Dated this the 10th day of November, 2021

Present :-

Sri. G.Raghavendra, B.Sc., LL.B.,
XXXIV Addl. City Civil & Sessions Judge,
Bengaluru.

O.S. No.5928/2021

BETWEEN:

1. Smt.Bhagyalakshmi.A
w/o. Late Ramesh.N
aged about 44 years,

2. Master.Karun.R
s/o Late Ramesh.N
aged about 17 years,

3. Master Gagan.R
s/o. Late Ramesh.N
aged about 14 years,

plaintiff Nos.2 and 3
are minors and are represented
by their natural
guardian mother
Smt.Bhagyalakshmi.A
w/o. Late Ramesh.N
aged about 44 years.

All are residing at
No.7, Sri Chamundeshwari Nilaya,
3rd Main, 3rd Block,

Goraguntepalya,
Yeshwanthpura,
Bengaluru-560022.

.. PLAINTIFFS

(By Sri. B.C.Venkatesh, Advocate)

AND

1. The Branch Manager,
Punjab National Bank,
90 feet Road branch,
Yeshwanthpura,
Bengaluru-560022.
2. Smt.Venkatamma,
w/o. Late Narayanappa,
aged about 76 years,
3. Smt.Gowramma,
d/o. Late Narayanappa,
aged about 48 years.
4. Sri.Venaktesh,
s/o. Late Narayanappa,
aged about 45 years.

Defendant No.2 to 4 are
residing at No.7,m1st "C"
Main Road, Goraguntepalya,
Yeshwanthpura,
Bengaluru-560022.

.. DEFENDANTS

(Defendants No.2 to 4 : By Sri.M.R.Swaroopu, Advocate)

PARTIES TO I.A No.2/2021

Between:

Smt.Bhagyalakshmi & 2 Otrs.

.. APPLICANTS/
PLAINTIFFS

And:

The Branch Manager,
Punjab National Bank.

.. OPPONENT/
DEFENDANT No.1

PARTIES TO I.A No.3/2021

Between:

Smt.Bhagyalakshmi & 2 Otrs.

.. APPLICANTS/
PLAINTIFFS

And:

Smt. Venkatamma,

.. OPPONENT/
DEFENDANT No.2

ORDERS ON I.A. No.2/2021 and I.A.3/2021

1. This I.A.No.2/21, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (CPC) , 1908, is filed by the applicants/plaintiffs to grant an ex-parte ad-interim order of temporary injunction restraining the

opponent/defendant No.1 not to release suit schedule property/amount already transferred into the account of defendant No.2, pending disposal of the suit.

2. This I.A.No.3/21, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (CPC) , 1908, is filed by the applicants/plaintiffs to grant an ex-parte ad-interim order of temporary injunction restraining the opponent/defendant No.2 from withdrawing the suit schedule property/amount or transferring the same in favour of any persons much less in favour of 3rd and 4th defendants herein pending disposal of the suit.

3. Only counsel for defendant Nos.2 to 4 has filed written statement and objection to I.A. No.3/2021.

4. Heard both parties' counsels on I.A. No.3/21.

5. On the basis of contents of I.A. No.2/21 and I.A.No.3/21 and objection to I.A.No.3/21 and on the basis of submission of both parties counsels the following points arise for my consideration:

1. **Point No.1:** Whether the plaintiffs have made out a prima facie case in their favour?

2. **Point No.2:** Whether the balance of convenience lies in favour of plaintiffs?

3. **Point No.3:** Whether irreparable loss or injury will be caused to the plaintiffs if temporary injunction order as prayed in I.A. No.2/21 and I.A.No.3/21 is not granted?

4. **Point No.4:** What order?

6. My answer to the above points for consideration are as under:

Point No.1: In the Negative.

Point No.2: In the Negative.

Point No.3: In the Negative.

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

REASONS

7. **Point No.1:** The case of the plaintiffs is that the plaintiff No.1 is the wife of one Ramesh.N who died on 12.05.2021 due to Covid-19 issue, plaintiff Nos.2 & 3 are the

children of deceased Ramesh.N, the defendant No.2 is the mother of Ramesh.N, defendant Nos. 3 and 4 are sister-in-law and brother-in-law of plaintiff No.1 and children of defendant No.2, Ramesh.N, during his lifetime maintained S/B.Account with 1st defendant bearing A/c.No.126101010003474, as on the date of death, the husband of the 1st plaintiff maintained balance amount of Rs.81,72,713.53 (Rupees eighty one lakhs seventy two thousand seven hundred thirteen rupees fifty three paisa only) from his savings, as he was working as Manager, Arvind garment Limited at Bangalore, the husband of the 1st plaintiff-Ramesh gave his mother 2nd defendant as nominee before his marriage, However, after his marriage with the 1st plaintiff, the deceased Ramesh failed to change the nominee from that of his mother to 1st plaintiff, the 1st plaintiff received a message from 1st defendant bank into the mobile of her deceased husband-Ramesh cell No.974290022 stating to have transferred a sum of Rs.81,27,713.53/- into the account bearing No.1261010100035037, immediately, she had approached the 1st defendant bank regarding

transfer of amount details, she could able to get the information stating that the 1st defendant has transferred Rs.81,72,713.53/- into the newly created account of 2nd defendant as 1st plaintiff's husband has given 2nd defendant as nominee to his savings account during his lifetime, the plaintiff submitted a representation to the 1st defendant bank informing to freeze the 2nd defendant account till redress her grievance before the competent court of law, for which the 1st defendant failed to take necessary steps in freezing the account of 2nd defendant till adjudication of the dispute between the 1st plaintiff and the 2nd defendant, that the 2nd defendant in order to defraud the legitimate right of the plaintiffs over the amount/deposit made by Ramesh during his lifetime, the 2nd defendant bent upon to transfer the said amount into the account of 3rd and 4th defendants and the 1st defendant bank failed to honour the request made by the plaintiff either to distribute the amount in accordance with law, or to give necessary endorsement to the parties to

redress their grievance in accordance with law before the jurisdictional court.

The plaintiffs have produced the photocopy of the Judgment dated 10.04.2014, passed by Hon'ble High Court of Karnataka, Bangalore, in RFA.No.155/2013. In the said Judgment, their Lordships of Hon'ble High Court of Karnataka, Bangalore, at para-9 have opined as under:-

“The appellant being a nominee, the Bank ought to have paid the amount lying the Account to the nominee and the nominee has to keep the amount as a trustee and ultimately, the amount shall have to be distributed as per the succession.”

As per the above opinion, defendant No.2 being a nominee, has to keep the amount which is transferred to her S.B. Account from the S.B.Account of her son-deceased Ramesh.N as a trustee and ultimately, the said amount shall have to be distributed as per the succession.

Plaintiffs have admitted that defendant No.2 is the mother of deceased Ramesh.N. The plaintiffs at para-10 of

their plaint has pleaded that the 1st defendant bank failed to honour the request made by the plaintiff either to distribute the amount in accordance with law, or to give necessary endorsement to the parties to redress their grievance in accordance with law before the jurisdictional court. By pleading as above, the plaintiffs are ready for distribution of amounts which is lying in the S.B.Account of defendant No.2, as per law.

Sections 8, 9 and 10 and schedule of Hindu Succession Act, 1956 reads as under-

“8. General rules of Succession in the case of males.- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter.-

(a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

(b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

Section-9. Order of succession among heirs in the Schedule.- Among the heirs specified in the Schedule, those in Class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry; those in the second entry shall be preferred to those in the third entry; and so on in succession."

Section-10. Distribution of property among heirs in Class I of the Schedule.- The property of an intestate shall be divided among the heirs in Class-I of the Schedule in accordance with the following rules:

Rule 1- The intestate's widow, or if there are more widow than one, all the widows together, shall take one share.

Rule 2- The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule-3- The heirs in the branch of each predeceased son or each predeceased daughter of the intestate shall take between them one share.

Rule 4- The distribution of the share referred to in Rule-3.-

(i) among the heirs in the branch of the predeceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the predeceased-daughter shall be so made that the surviving sons and daughters get equal portions.”

Class-I:

Son; Daughter; Widow; Mother;

As per the above sections and schedule of Hindu Succession Act, which I reproduced above, defendant No.2, plaintiff No.1, plaintiff No.2 and plaintiff No.3 are entitled for each $\frac{1}{4}^{\text{th}}$ share of the amount which is lying in the Savings Bank account of defendant No.2.

Though the plaintiffs have pleaded that the 1st defendant bank failed to honour the request made by the plaintiff either

to distribute the amount in accordance with law or to give necessary endorsement to the parties to redress their grievance in accordance with law before the jurisdictional court, they have filed the suit praying to (i) pass Judgment and decree permanently restraining the defendant No.2 to 4, their agents, legal representatives, or any persons claim through, or under them from withdrawing the suit schedule property/amount from the account of 2nd defendant maintained with the 1st defendant Bank and (ii) For mandatory injunction directing the defendant No.1 bank not to disburse the suit schedule property/amount in the account of the defendant No.2 till the plaintiffs approach the jurisdictional court to redress their grievance by filing probate and succession certificate petition in accordance with law.

The temporary injunction relief sought for by the plaintiffs in both I.A.No.2/21 and I.A.No.3/21 are similar to prayer sought for in the plaint at prayer (i) and (ii). If the reliefs as prayed in I.A.No.2/21 and I.A.No.3/21 are granted,

I am of the opinion that the same would amount to passing of Judgment and decree in favour of the plaintiffs without trial.

Defendants No.2 to 4, in their written statement at para-13 have contended that if the plaintiffs want to continue the litigation, the defendants are ready to proceed in accordance of law by claiming their legitimate share over the properties/amount left by the deceased husband of 1st plaintiff by filing necessary applications/suit before the competent authority and in case if the plaintiffs files the probate and succession certificate as prayed before this Hon'ble Court, the 2nd defendant is also eligible and entitle for her legitimate share in accordance of law.

When defendant No.2 is having right of $\frac{1}{4}$ th amount, which is lying in the S.B.Account of defendant No.2, I of the opinion that plaintiffs failed to make out a prima facie case. Hence I answer point No.1 in the negative.

8. **Point Nos.2 and 3:** In view of the answer I arrived to point No.1, I answer point Nos. 2 and 3 in negative.

9. **Point No.4:** The plaintiffs in both I.A.No.2/21 and I.A.No.3/21 sought for to pass such other suitable orders also. Defendant Nos.2 to 4 while addressing arguments on I.A.No.3/21, has filed a memo for direction to 1st defendant to release at least 50% of the amount which is lying in S.B.Account or any reasonable amount deems fit by this court. But the plaintiffs themselves have sought for mandatory injunction directing the defendant No.1, bank not to disburse the suit schedule property/amount in the account of the defendant No.2 till the plaintiffs approach the jurisdictional court to redress their grievance by filing probate and succession certificate petition in accordance with law.

Defendants 2 to 4 also in their written statement at para-13 have contended that if the plaintiffs want to continue the litigation, the defendants are ready to proceed in accordance of law by claiming their legitimate share over the properties/amount left by the deceased husband of 1st plaintiff by filing necessary applications/ suit before the competent authority and in case if the plaintiffs files the

probate and succession certificate as prayed before this Hon'ble Court, the 2nd defendant is also eligible and entitle for her legitimate share in accordance of law. This court in this suit cannot decide the right of plaintiffs and defendant No.2 in the amount which is transferred to S.B.Account of defendant No.2 from S.B.Account of deceased Ramesh.N and give direction to defendant No.1 to release the amount in favour of plaintiffs or defendant No.2. The plaintiffs and defendant No.2 can approach the competent court for grant of succession certificate or for any suitable orders to receive the amount which is lying in S.B.Account of defendant No.2.

As per the opinion of Their Lordships in the decision furnished by counsel for plaintiffs which I reproduced above, plaintiffs and defendant No.2 being Class-I legal heirs, can file petition for grant of Succession Certificate.

The relief sought for in I.A.No.2/21 and I.A.No.3/21 are similar.

In view of the answers I arrived to point Nos.1 to 3, I proceed to pass the following:

ORDER

I.A.No.III/2021, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (CPC) filed by the applicants/plaintiffs is rejected with costs.

Consequently I.A.No.II/2021, under Order XXXIX Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (CPC) filed by the applicants/plaintiffs is also rejected with costs.

(Dictated Partly to the Judgment Writer and also directly on computer, after transcribed, corrected, signed and pronounced in the open court on this the 10th day of November, 2021).

(G.Raghavendra)

XXXIV Addl. City Civil & Sessions Judge
Bengaluru.

Order pronounced in open
court(vide separate order)

ORDER

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XXXIV ACC&SJ,
Bengaluru.

