

IN THE COURT OF THE I ADDL. CIVIL JUDGE
& JMFC, AT: BELAGAVI

Present: Smt. Vinutha B.S. B.B.M., LL.B.,
I Addl. Civil Judge & JMFC.,
Belagavi

Dated: This, the 12th day of November, 2019

ORIGINAL SUIT No.187/2019

- 1 Smt. Kavita D/o Shankar Nagannavar
On marriage Smt. Kavita W/o Anil Kolkar,
Age: 40 years, Occ: Housewife,
R/o: Ambedkar Galli, Majagaon,
Belagavi.

....Plaintiff

(By Shri M.N. Kulkarni, Adv.)

V/s.

- 1 Smt. Shantabai W/o Parashuram Mahar @ Kamble,
Age: 65 years, Occ: Household work,
R/o: Datta Galli, Mannur,
Tal & Dist: Belagavi
and 10 others.

....Defendants

(By M.M. Shaikh, Adv.)

ORDER ON IA-I UNDER ORDER XXXIX RULE 1 & 2
r/w SECTION 151 OF CPC

The plaintiff has filed IA – I under Order XXXIX Rule 1 & 2 r/w section 151 of CPC seeking for an ad-interim order of temporary injunction to restrain the defendant No.3, his agents, servants, henchmen or anybody acting on his behalf from creating third party interest over the suit properties during the pendency of the suit either by sale, exchange, gift or any other mode known to law, till disposal of the suit.

2. The plaintiff in the affidavit sworn to the facts that she has filed the present suit for the relief of partition and separate possession. The plaintiff has contended that the suit properties are fallen to the share of her mother as per the decree passed in O.S.No.36/1990 and FDP No.1/1995. Further the mother of the plaintiff, defendant No.3, defendant No.6 and the mother of defendant No.7 to 10 have jointly

granted 1/3rd share in the family properties in the said suit. Since then the plaintiff and defendants are in joint possession of the suit properties. But the revenue records are in the name of the defendant No.3, by taking advantage of it, the defendant No.3 is trying to create third party interest over the suit properties.

The plaintiff in her plaint has contended that the suit properties belongs to her mother's maternal family. As there was a dispute regrading the family properties between the grandsons of the original propositus of the family Yallappa and his full brothers. In result of which O.S.No.36/1990 was filed for the relief of partition and separate possession. The said suit was contested by the predecessors in title of the plaintiff and the same came to be decreed on 19/07/1993. Accordingly 1/3 share was allotted to the plaintiff and the predecessors in title of the defendants. Further the mother of the plaintiff namely Chandrawwa died on 17/07/2016 leaving behind the

plaintiff as only legal heir. Hence the plaintiff succeeded the suit properties. After the death of the said Chandrwawwa, the plaintiff has approached the defendants to effect the partition and separate possession. But the defendants postponed the same for one or the other reasons. On these grounds the plaintiff has filed the present suit along with the present I.A.

3. Though the defendants have appeared before the Court, have failed to file objections to the present IA.

4. In view of the above, the following points arise for consideration:

POINTS

- 1. Whether the plaintiff has made out prima-facie case?*
- 2. Whether the balance of convenience lies in favour of the plaintiff?*
- 3. Whether irreparable loss and hardship would be caused to the plaintiff if temporary injunction is not granted?*
- 4. What order?*

5. Heard the arguments of the plaintiff. Even after grant of sufficient time and opportunity, the counsel for defendants has not canvassed his argument and hence the same is taken as not canvassed. Having considered the pleadings, IA, documents produced in this case and case law relied upon, the above points have been answered as follows:

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 :

6. **POINT No.1:-** Perused the pleadings, IA and documents on record. The plaintiff has filed the present suit seeking for partition and separate possession. It is the specific contention of the plaintiff that 1/3rd share in the suit properties was jointly fallen to the share of the mother of the plaintiff, defendant No.3, defendant No.6 and the mother of defendant No.7 to 10 as per the decree

in O.S.No.36/1990 and FDP No.1/1995. To prove the same the plaintiff has produced the certified copy of the entire order sheet of FDP No.1/1995 and the certified copy of the Panchanama. Upon careful perusal of the order sheet, it goes to show that the petition filed by the petitioner was allowed. But apart from that nothing has been came out to know that the suit property was allotted to the share of the mother of the plaintiff along with the others. Further nowhere in the panchanama which is produced by the plaintiff, it is recited that the suit property was allotted to the share of the mother of the plaintiff along with the others. If such being the case, the Court cannot come to the conclusion that the suit property was allotted to the share of the mother of the plaintiff along with the others. The plaintiff in order to substantiate her contention has produced the record of rights with respect to the suit property. But it is pertinent to note that the entries in the revenue records

will only prove the possession but not the title. If such being the case the Court cannot rely on the said document to come to a conclusion that the plaintiff is the joint owner of the suit property. Further if at all the suit property was allotted to the plaintiff along with the others, what impediment caused to the plaintiff to produce the certified copy of the judgement and decree in O.S.No.36/1990 and FDP No.1/1995. This creates the doubts in the minds of the Court. It is pertinent to note that the plaintiff to prove her title over the suit property, the said judgement and decree are the materials which the Court expects to produce to come to the conclusion with respect to the plaintiff's title. But the plaintiff has utterly failed to produce the same and nothing has been whispered for non - production of the same. Further those documents are public documents and very much available to the plaintiff to produce the same before the Court. Further as per the pleadings of the plaintiff, it is

clear that the plaintiff is one of the co-owners. The defendants who happens to be the co-owners have semblance of right as such the plaintiff. Under such circumstances curtailing the defendants from alienating the suit property is not a justifiable one. Further the plaintiff has not made out anything to show that the defendants are trying to alienate the entire suit property. It clearly goes to show that the plaintiff has not made out prima-facie case and therefore the point No.1 is answered in negative.

7. **POINTS No.2 & 3:-** These points have been taken up together as they can be discussed and answered by way of common discussion.

8. Since point No.1 has been answered in the negative holding that plaintiff has not made out a prima-facie case, it is not necessary to go into the question of balance of convenience and irreparable loss. This view is supported by the decision of Hon'ble Supreme Court in

the case of **Kashi Math Samsthan & Anr. v. Srimad Sudhindra Thirtha Swamy & Anr.**¹, wherein it has been held -

“In order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima-facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima-facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima-facie case to go for trial, it is not open to the Court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.”

Hence for the foregoing reasons, points No.2 and 3 are answered in the negative.

¹ AIR 2010 SUPREME COURT 296

9. **POINT NO.4:-** In the light of the discussion, reasons and answers to points No.1 to 3, it is just and proper to pass the following,

ORDER

The IA-I filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w section 151 of CPC is hereby dismissed.

(Dictated to the Stenographer, transcribed by her, transcript corrected by me and then pronounced in the open Court on this 12th day of November, 2019)

Sd/-

(Smt. Vinutha B.S.)
I Addl. Civil Judge & JMFC, Belagavi