

KABG040043602023



**IN THE COURT OF THE III ADDL. CIVIL JUDGE & JMFC,
BELAGAVI**

Dated this 2nd day of April, 2024

PRESENT

Smt. Geeta. B.A.LLB (Hons) LL.M.,
III Addl. Civil Judge and JMFC, Belagavi.

ORIGINAL SUIT NO: 1256/2023

BETWEEN:

Shri. Prakash S/o. Mukund Vernekar,
Age: 65 years, Occ: Business,
R/o: H.No.4803/B, III Lane,
Shivaji Nagar, Belagavi.

.....Plaintiff

(By Shri. A. A. Sunalkar, Advocate for Plaintiff)

AND:

Smt. Upasana Wd/o. Ullas Vernekar,
Age: 54 years, Occ: Household work,
R/o: H.No.4803/173B, III Lane,
Shivaji Nagar, Belagavi and others.

..Defendant

(By Shri. S. V. Ganachari, Advocate for defendant no.4 and 5)
(Defendants NO.1 to 3 exparte)

I.A.No.I

Applicant/Plaintiff : Shri. Prakash S/o. Mukund Vernekar

-Vs.-

Opponent/Defendant : Smt. Upasana Wd/o. Ullas Vernekar,

ORDERS ON I.A.No.I and II

The I.A.No.I is filed by the plaintiff U/o. XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C restraining the defendants, their agents, servants, henchmen or anybody acting on their behalf from alienating or creating any sort of charge over the suit properties till disposal of suit.

The defendant no.4 and 5 also filed I.A.No.II U/o. XXXIX Rule 1 and 2 R/w. Section 151 of C.P.C restraining the plaintiff from changing the nature of the C.T.S.No.4803/173A, C.T.S.No.4803/173B of 3rd Main, Shivaji Nagar i.e., suit properties till disposal of suit.

2. In the affidavit of I.A.No.I, the plaintiff stated that he has filed this suit for partition and separate possession. The father of plaintiff Late Mukund Vernekar was original propositus of plaintiff and defendants. He died in the year 1997 and his wife Smt. Laxmibai died on 16.03.2018 leaving behind their sons by name Prakash, plaintiff, Ullas, Ganapat, defendant no.4 and Santosh defendant no.5. Ullas also died on 14.07.2022 leaving behind his wife Upasana the defendant no.1, one son by name Gourav the defendant no.2 and one daughter by name Shradha the defendant no.3. The suit properties B to F were purchased by father of plaintiff by name Mukund in the name of Laxmibai. During her lifetime, she has executed a gift deed in favour of plaintiff and defendants of the property bearing C.T.S.No. 4803/173A which was farming half of the land. The plaintiff and defendants have jointly constructed a building upon the gifted

land. The suit schedule A property was purchased by investing Firm funds in the name of defendant no.4 and 5 and thus each of the partner is having $\frac{1}{4}^{\text{th}}$ share in the said property also. It is further stated that the property at Devarwadi is purchased by investing the Firm funds hence, plaintiff is entitled for $\frac{1}{4}^{\text{th}}$ share in the said property also, as plaintiff and defendants constitute an undivided Hindu Joint Family and hence, suit properties are jointly held and each of the branch i.e., plaintiff, defendant no.4 and 5 and defendant no.1 to 3 jointly entitled for $\frac{1}{4}^{\text{th}}$ share each in the suit properties. There is no partition by metes and bounds in respect of the suit properties between plaintiff and defendants. It is stated that, plaintiff requested several times to the defendants to effect partition, but they have been avoiding to effect the same by metes and bounds and give his legitimate share in the suit properties. With these contentions the plaintiff prayed to allow the application.

3. On the other hand, defendant no.4 and 5 have filed written statement cum objection to the I.A.No.I and denied the application averments and contended that, plaintiff had been in habit of filing one after another suit. Earlier to this file, he has filed O.S.No.784/2023 and Arbitration Application no.2/2023. This has been a third suit filed by plaintiff without any reasons and plaintiff is bent upon to harass the defendants. There are no merits in the suit and the properties are not properly described by plaintiff and properties belonging to defendant no.4 and 5 have been included in the suit and boundaries also not correct.

4. It is further stated that plaintiff has not at all come out with proper valuation of the properties. Hence, this court has no pecuniary jurisdiction. It is stated that the suit schedule A property is purchased by defendant no.4 and 5 from Shrikant R. Kittur under registered sale deed dated 30.11.2013 for valuable consideration of Rs.40,00,000/- and they by utilizing their exclusive funds have purchased the same and the same is within the knowledge of plaintiff and other defendants. The plaintiff knowing fully well has come out with false case to include the schedule A property. The schedule B property is concerned the said property has been thrown to the Partnership Firm and therefore, the claim of plaintiff in the said property under joint ownership / joint family property is unsustainable. Further, in so far as schedule G property is concerned to is not standing / owned by plaintiff and defendants. Hence, the suit in respect of suit schedule A, B and G property shall stand dismissed. It is further contended that partition is required to be effected in respect of the suit schedule properties at C to F. The defendants are entitled to equal share to that of plaintiff and other defendants. The plaintiff is unnecessarily approached the court without cause of action. With these contentions defendant prayed to reject the application with costs.

5. In the affidavit of I.A.No.II, the defendant no.4 stated that the partition has not taken place in the family and as per his version the property continuous to be in joint and though the defendants differ with the plaintiff in so far as some of the properties are concerned and because some of the properties

owned by defendants are also included. It is contended that if the property bearing C.T.S.No.4803/173A, 4803/173B of Main road, Shivaji Nagar are taken into consideration, the plaintiff has specifically contended that the partition has not taken place. Such being the fact, plaintiff suddenly started removing some portion of the parapet wall of both properties with an intention to change the nature of the suit property. The photographs will reveal about the parapet wall of the suit property being removed. It is stated that defendants requested the plaintiff not to change the nature of the property for the reasons of suit for partition being pending in the court, but, the plaintiff is not in a mood to listen to the request of defendants. The defendants being law abiding persons tried to convince the plaintiff by personally requesting him, so also tried to convince him through well wishers of their family. But plaintiff started behaving rudely. Therefore they have filed this application. With these contentions the defendant no.4 and 5 prayed to allow I.A.No.2.

6. The plaintiff submitted no objection to allow the application of the defendants.

7. Heard and perused the records.

8. Now the points that arise for consideration on I.A.No.I and II are as under;

1. Whether the plaintiff has made out prima facie case to grant temporary injunction?

2. *Whether the plaintiff proves that balance of convenience lies more in his favor?*
3. *Whether the plaintiff proves irreparable loss will be caused more to him, if temporary injunction is not granted?*
4. *Whether the defendant no.4 and 5 have made out prima facie case to grant temporary injunction?*
5. *Whether the defendant no.4 and 5 prove balance of convenience lies more in their favor?*
6. *Whether the defendant no.4 and 5 prove irreparable loss will be caused more to them, if temporary injunction is not granted?*
7. *What order?*

9. Answer on above points is as follows;

Point No.1 : In the Affirmative.
Point No.2 : In the Affirmative.
Point No.3 : In the Affirmative.
Point No.4 : In the Affirmative.
Point No.5 : In the Affirmative.
Point No.6 : In the Affirmative.
Point No.7 : As per final order for the following;

REASONS

10. **Point No.1 to 6:** In order to avoid the repetition of facts and for the sake of convenience these points are taken together for discussion.

11. It is the case of the plaintiff that, he and defendants are members of same family and suit schedule properties are their joint family properties. Suit properties No. B to F were purchased by their father in the name of their mother. During her life time she gifted those properties to her four sons i.e., plaintiff, husband of defendant no.1, defendant no.4 and 5. The plaintiff and defendants have jointly constructed a building upon gifted land and suit schedule A property was purchased by investing funds of the Firm in the name of defendant no.4 and 5. As a partner the plaintiff is having $\frac{1}{4}$ th share in the suit properties. In spite of request made by the plaintiff the defendants have not effected partition of the suit property and not ready to give his legitimate share in the suit properties. The plaintiff stated that as he filed this suit for partition the defendants have to be restrained from alienating and creating any sort of charge over then suit properties. The defendant no.4 and 5 have denied the contentions of the plaintiff and stated that suit schedule A property is their self-acquired property and all other properties are joint family properties. Now the plaintiff is changing the nature of C.T.S.No.4803/173A, C.T.S.No.4803/173B of III Main, Shivaji Nagar.

12. In order to prove his contention, the plaintiff produced CTS extracts with respect to C.T.S.No.2158, which stands in the name of defendant no.4 and 5 jointly in view of sale deed dated 30.11.2013. The plaintiff produced CTS extracts with respect to C.T.S.No.4803/173A, C.T.S.No.4803/173B, 4803/174, 4803/175, 4803/176 and also CTS map, all these properties are jointly

standing in the name of plaintiff and defendant no.4 and 5 and also in the name of husband of defendant no.1. Plaintiff also produced certified copy of plaint in O.S.No.784/2023, which was filed by plaintiff against defendant no.4 and 5 for the relief of permanent injunction restraining them from carrying out the business resembling of mother Firm by using name, asset and share property of M/s. Pragati Book Binders and also to stop defendant no.4 and 5 from carrying out business in the name of Pragati Books / Pragati Books and stationery at shop No.1, 978 Ismail Pannalli, Kalaigar Galli, Belagavi. He also produced objection filed in O.S.No.784/2023, balance sheet for the year ending 31.03.2021, 31.03.2022 and GST Registration certificate, wherein, the principal place of business is at 4803 173A from III Lane, Shivaji Nagar, Belagavi.

13. In order to prove their contentions, the defendant produced complaint given by them to CPI, Market Police Station, Belagavi alleging that the plaintiff is constructing and altering the C.T.S.No.4803/173A, 4803/173B and certified copy of Order sheet of this case and also photographs stating that plaintiff has put lock to the stock room and also put up staircase from his house to stock room. They also produced endorsement issued by Market Police Station, Belagavi on 17.03.2024. They also produced No objection letter issued by plaintiff dated 15.01.2021 to run business of Pragati Book Agency at property bearing no.4803/173A, Vernekar Campus, III Lane, Shivaji Nagar, Belagavi without any compensation. They also produced stock

summary from 01.04.2023 to 31.03.2024, tax invoice, Profit and Loss statement.

14. On perusal of all these documents, it is admitted fact that plaintiff and defendant no.4 and 5 are brothers and suit property B to F are the joint family properties of plaintiff and defendants. The plaintiff and defendant no.4 and 5 also admitted that they both constructed building at 4803/173A out of Firm fund. It shows that building at 4803/173A and suit schedule B to F properties are joint family properties. It is also admitted fact that initially the plaintiff and defendants are running Partnership Firm jointly and now the defendant no.4 and 5 are running independent business with the consent of plaintiff. The defendant no.4 and 5 contended that suit schedule A property was purchased by them out of their own money and it is their self-acquired property. Whether schedule A property is the self-acquired property of the defendant no.4 and 5 or not has to be looked into after recording evidence of both parties. Till then the suit properties have to be remain as it is to avoid multiplicity of proceedings. Further, both parties have admitted that other suit properties are joint family properties, the plaintiff is seeking his share in the said properties. In the circumstances, all the properties have to be remaining as it is still deciding of this case. If the defendants alienate the suit properties to third parties, it will lead to multiplicity of proceedings. Therefore, at this stage plaintiff has made out prima facie case to allow the application.

15. The defendant no.4 and 5 contended that the plaintiff is changing the nature of the suit properties and also produced photographs in support of their contentions. The plaintiff submitted no objection to allow I.A.No.II stating that till decision of this case, the properties have to be maintained as it is without changing their nature. On perusal of the photos produced by the defendant no.4 and 5 stair case has already been put up. In the circumstances, both parties have to be restrained from further changing the nature of suit properties.

16. At the time of argument on applications the learned counsel for plaintiff relied on judgment reported in **AIR 1996 BOMBAY 36, Prakash S. Akotkar and others Vs. Mansoorkha Gulabkha and others**, the Hon'ble Bombay High court held that, whether a co owner in possession is entitled to an injunction against other co owners. Once it is found that possession of co-owner is far and on behalf of other co-owners, other co owner cannot claim injunction to exclude other co-owners from exercising their right as co-owners. Injunction cannot be granted against other co-owners, restraining them from interfering with his possession and enjoyment of suit property and so as to exclude them from exercising their rights as co-owners.

17. In **Roopachand Vs. Indradevi and others, AIR 1997 MADHYA PRADESH 200**, wherein, it is held that injunction cannot be granted in favour of any co-sharer against others, unless there was a finding that the share of one of the co-sharers was either partitioned or made separate by family arrangement.

In the present case, both parties have admitted that the suit properties are joint family properties and there is no partition with respect to same. Further, the defendant no.4 and 5 are seeking temporary injunction against the plaintiff to restrain him from changing the nature of the suit property and not to restrain from enjoyment of suit properties. Therefore, above referred judgments are not applicable to the facts of the present case.

18. Therefore, at this stage the plaintiff and defendant no.4 and 5 have made out prima facie case to go for trial, the balance of convenience equally lies in favour of plaintiff and defendant no.4 and 5. If temporary injunction is not granted in favour of plaintiff and defendant no.4 and 5 alienates the suit properties the plaintiff will be put to hardship. In the same way if plaintiff changes the nature of suit properties defendants will be put to hardship. Therefore the plaintiff has to be restrained from changing the nature of the suit property, otherwise the defendants will be put to hardship. ***Hence, I answer the Point Nos. 1 to 6 in the Affirmative.***

19. **Point No.7:-** In view of the discussion on point no.1 to 6, for the reasons stated therein, I proceed to pass the following;

ORDER

***I.A.No.1 filed by the plaintiff
U/O. XXXIX Rule 1 and 2 R/w Sec.
151 of CPC is hereby allowed.***

I.A.No.II filed by the defendant no.4 and 5 U/O. XXXIX Rule 1 and 2 R/w Sec. 151 of CPC is hereby allowed.

In the result, the Defendants, their servants, agents, henchmen or anybody acting on their behalf are hereby restrained from alienating or creating any sort of charge over the suit property till further orders.

The plaintiff is hereby restrained from changing the nature of C.T.S.No. 4803/173A, C.T.S.No.4803/173B, III Lane, Shivaji Nagar till further orders.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open Court on 2nd day of April, 2024).

**(GEETA)
III Addl. Civil Judge & JMFC,
BELAGAVI.**