

KABG300003782020



IN THE COURT OF THE SENIOR CIVIL JUDGE
BAILHONGAL

PRESENT:

Smt. Usha Rani.R. B.A.L.,LL.M.,
Senior Civil Judge, Bailhongal.

Dated on this the 4th Day of April 2024

ORIGINAL SUIT No.68/ 2020

Plaintiff: 1) Shri. Shivanasingh Roopasingh Mokeshi,
Age: 57 years, Occ: Agriculture,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.

(By Shri. R.A.P., Advocate)

// Vs. //

Defendants : 1) Smt. Hindubai W/o Roopasingh Mokeshi,
Age: 85 years, Occ: Household work,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.

2) Shri. Laxmansingh Roopasingh Mokeshi,
Age: 60 years, Occ: Agriculture,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.

3) Shri. Vijaysingh Roopasingh Mokeshi,
Age: 55 years, Occ: Agriculture,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.

4) Shri. Rajesh Roopasingh Mokeshi,
Age: 53 years, Occ: Agriculture,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.

5) Smt. Sunitha W/o Jagadish ThoshiKhani,
Age: 48 years, Occ: Household work,
R/o: Sumana Sadana Hanamant Nagar
Unkal Hubballi, Tq: Hubballi,
Dist: Dharwad.

(By Shri. A.G.R., Advocate for D1)
(By Shri. A.F.P., Advocate for D2 to 4)
(By Shri. A.F.P., Advocate for D5)

INTERLOCUTORY APPLICATION No.III

Applicants: 1) Shri. Shivanasingh Roopasingh Mokeshi,
Plaintiff Age: 57 years, Occ: Agriculture,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.
Tq: Bailhongal.

// Vs. //

Respondent 1) Smt. Hindubai W/o Roopasingh Mokeshi,
s : Age: 85 years, Occ: Household work,
Defendants R/o: Chikkanandihalli, Tq: Kittur

Dist: Belagavi.

2) Shri. Laxmansingh Roopasingh Mokeshi,
Age: 60 years, Occ: Agriculture,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.

3) Shri. Vijaysingh Roopasingh Mokeshi,
Age: 55 years, Occ: Agriculture,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.

4) Shri. Rajesh Roopasingh Mokeshi,
Age: 53 years, Occ: Agriculture,
R/o: Chikkanandihalli, Tq: Kittur
Dist: Belagavi.

5) Smt. Sunitha W/o Jagadish ThoshiKhani,
Age: 48 years, Occ: Household work,
R/o: Sumana Sadana Hanamant Nagar
Unkal Hubballi, Tq: Hubballi,
Dist: Dharwad.

ORDER ON I.A.No.III

I.A. No.III is filed by the plaintiff under Order 39 Rules 1 and 2 of CPC seeking temporary injunction against the defendants No.1 to 4 from alienating the suit survey No74/1, 74/2, 73, 69, 67, 6/5, 6/1, 65, 7/1, 6/1A till disposal of the suit.

2. It is averred that there was a family settlement made

by defendant No.2 in respect of RS No.69 measuring 11 acre 29 guntas among his children Rahulsingh, Jayasingh, Vikramsingh S/o Laxmansingh Mokashi. When the application was filed to mutate the name of children the plaintiff filed objections and a disputed case was registered in RTSSR No.28/2023-24 before the Tahasildar of Kittur. Plaintiff appeared and filed the objection and the case pending for final orders. If the RTC extracts are changed during pendency of the suit the plaintiff will be prejudiced. Thereafter purchasers would be have to be impleaded and it would lead to multiplicity. Therefore it is necessary to grant injunction.

3. In the accompanying affidavit Plaintiff sworn to the fact that the suit properties are their ancestral joint family properties and he is having 1/ 6th share. There s no partition till date. Since the name of defendant No.1 to 4 are separately entered in the records they are in a hurry to alienate the suit properties.

4. There was a family settlement made by defendant No.2 in respect of RS No.69 measuring 11 acre 29 guntas among his children Rahulsingh, Jayasingh, Vikramsingh S/o Laxmansingh Mokashi. When the application was filed to mutate the name of children the plaintiff filed objections and a disputed case was registered in RTSSR No.28/2023-24 before the Tahasildar of Kittur. Plaintiff appeared and filed

the objection and the case pending for final orders. If the RTC extracts are changed during pendency of the suit the plaintiff will be prejudiced. Thereafter purchasers would be have to be impleaded and it would lead to multiplicity. Thus IA no III is to be allowed.

5. Defendant No.4 and 5 filed objection to IA No.III on the grounds that application is not tenable. The case is posted for evidence of plaintiff and after 14 adjournments the plaintiff has not let evidence. There is already partition in the family and possession also separately held. Even during the pendency of the suit two appeals were filed by the plaintiff before the Assistant commissioner Bailhongal and there is no reason to allow IA no III.

6. Heard the arguments of counsel for the plaintiff and defendants. Perused documents on record.

7. The following points arise for my consideration:

- 1) Whether the plaintiff has made out prima facie case in his favour?
- 2) Whether the balance of convenience lies in favour of the plaintiff?

3) Whether the plaintiff will be put to irreparable loss or injury if the T.I as sought in I.A.No.1 is refused?

4) What Order or direction ?

8. My answer to the above points 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 final order for the following;

:: REASONS ::

9. **Point No.1:-** Law relating to grant or refusal to grant temporary injunction has been enunciated by the Honble Supreme Court of India and Honble High Court of Karnataka in a plethora of cases. The court while exercising its discretion applies the following tests-(i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory in injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at

the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

10. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in these decisions, the factual aspects of the case has to be embarked upon. It is the case of the plaintiff that the suit is filed for declaration partition and separate possession. The defendants are highhandedly trying to alienate the suit property and to deprive his preemptive right.

11. According to the plaintiff the suit properties are joint family properties and he is having share in the same. It is averred that there was a family settlement made by defendant No.2 in respect of RS No.69 measuring 11 acre 29 guntas among his children Rahulsingh, Jayasingh, Vikramsingh S/o Laxmansingh Mokashi. When the application was filed to mutate the name of children the plaintiff filed objections and a disputed case was registered in RTSSR

No.28/2023-24 before the Tahasildar of Kittur. Plaintiff appeared and filed the objection and the case pending for final orders. If the RTC extracts are changed during pendency of the suit the plaintiff will be prejudiced. Thereafter purchasers would have to be impleaded and it would lead to multiplicity.

12. Per contra the Defendant No.4 and 5 contend that there is already partition in the family and parties are holding separate possession. Even during the pendency of the suit two appeals were filed by the plaintiff before the Assistant commissioner Bailhongal and there is no reason to allow IA no III.

13. Admittedly the suit is filed for relief of partition and separate possession and plaintiff has sought of 1/ 6th share defendant No.1 to 5 appeared and denied the case of the plaintiff. According to the defendants there was partition in the family by way of Apasat watni/ mutual partition deed which is already executed and plaintiff is aware of the said mutual partition. The plaintiff is also a party to the partition and it is binding on him. Therefore there is no question of allotting 1/ 6th share to the plaintiff.

14. To prove prima facie case the plaintiff has produced RTC extracts of the suit properties which stands in the names of different parties, tax assessment register extracts of GP properties, mutation register extracts, application given by Rajeshwari Roopsingh mokashi stating about the kabooli patra, copy of the Kabooli patra/ consent deed, death certificate of Eerabai and Roopsingh.

15. Prima facie the documents produced by the plaintiff shows that the name of parties are separately entered in respect of different suit properties. The name of plaintiff is separately entered in respect of RS no 64 measuring 7 acres 33 guntas. No relief is sought against the said property. Plaintiff is yet to prove that all the suit properties are still joint family properties liable for partition. There is contention of mutual partition set up by the defendants. The nature of the suit properties could be decided only after trial.

16. Under IA No.III the plaintiff is seeking injunction from not alienating the suit properties. The very nature of the suit properties is disputed. The parties are yet to prove their rival contentions. There is plea of mutual partition set up.

17. At this pre trial stage and when the case is in the infant stage when the court is considering the question of

temporary injunction, the court cannot venture into a mini trial to decide whether there is a mutual partition or not. At this stage it is not permissible for the court to marshal the entire documents on record in the light of rival pleadings and to discuss about the right of the plaintiff and whether the suit properties are still joint family properties or whether there is severance of joint status. The same can be ascertained only after full fledged trial. Thus trial is necessary. For consideration of the rival facts in issue a full fledged trial is necessary. Therefore this court is of the opinion that it is necessary to proceed with the trial of the case to enable both the parties to prove their case by leading cogent evidence in support of their pleadings.

18. Further plaintiff has not pleaded from whom he learnt that defendants are trying to alienate the suit properties and what efforts were made by the said defendants to sell the suit property. Mere apprehension that defendants will alienate the suit property not sufficient. There must be an actual efforts made towards alienation. When and through whom the plaintiff learnt about alienation is not whispered. More over the present suit is filed for partition of the share of the plaintiff. If the plaintiff succeeds in proving that the suit properties are joint family properties, then he will be held entitled for shares and the alienation if any made by the defendants will not bind their rights.

19. Even otherwise any alienation during the pendency of any suit attracts the provisions of section 52 of Transfer of property Act. Such alienation will be bound by the decree passed in the said proceedings. Under the said circumstances even if some of the suit lands are alienated the subsequent purchasers will step into the shoes of defendants and they would be bound by any decree passed in this suit. As such the plaintiff failed to make out any prima facie case for granting the relief of injunction as prayed in I.A-I. Therefore the plaintiff failed to prove that there is a prima facie case in his favour. Hence, the point No- 1 is answered in the Negative.

20. **Point Nos.2 and 3:-** The plaintiff has not made out any prima facie case at this stage to be entitled for injunction as claimed in I.A.No.I. Plaintiff failed to prove that there is a prima facie case in his favour. Since the suit is filed for partition of the share of the plaintiff even if the plaintiff succeeds in proving that the suit properties are joint family property then he will be held entitled for share and alienation if any made by the defendants, will not bind their rights. As already observed alienation during the pendency of any suit attracts the provisions of section 52 of Transfer of property Act. Thus there is no balance of convenience also. No irreparable injury would be caused if injunction is refused.

Thus points No.2 and 3 are answered in the negative.

21. **Point No.4:-** In view of my above discussions I proceed to pass the following;

ORDER

The I.A.No.III filed by the plaintiff
under Order 39 Rule 1 and 2 of CPC is
hereby dismissed with costs.

(Dictated to the stenographer, transcribed and computerized by him on computer and corrected by me, then pronounced by me in the Open Court, on this the 4th day of April 2024)

(Smt.Usharani.R.)
Senior Civil Judge, Bailhongal