

KABG300010562023



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 27th Day of April 2024

ORIGINAL SUIT No.264/ 2023

Plaintiff: Shri. Manjunath Veerabhadrappe Ganachari,
Age: 26 years, Occ: Agriculture,
R/o: Dombarakoppa, Tq: Kittur.

(By Shri. S.V.S., Advocate)

// Vs. //

Defendants: 1) Sri. Veerabhadrappe S/o Chinagudeppa
Ganachari,
Age: 65 years, Occ: Agriculture
R/o Sangolli, Tq: Bailhongal.

2) Smt. Channavva W/o Veerabhadrappe
Ganachari,
Age: 59 years, Occ: Household,
R/o: Dombarkoppa, Tq: Kittur.

3) Smt.Shingavva W/o Veerabhadrappe

Ganachari,
Age: 55 years, Occ: Household,
R/o: Sangolli, Tq: Bailhongal.

4) Sri. Mallikarjun S/o Veerabhadrappe
Ganachari,
Age: 28 years, Occ: Agriculture
R/o Sangolli, Tq: Bailhongal.

(By Shri. F.F.P., Advocate for D1, D3 and D4)
(By Shri. S.Y. P., Advocate for D2)

INTERLOCUTORY APPLICATION No.I

Applicant: Shri. Manjunath Veerabhadrappe Ganachari,
Plaintiff Age: 26 years, Occ: Agriculture,
R/o: Dombarakoppa, Tq: Kittur.

(By Shri. S.V.S., Advocate)

// Vs. //

Respondent 1) Sri. Veerabhadrappe S/o Chinagudeppa
s : Ganachari,
Defendants Age: 65 years, Occ: Agriculture
R/o Sangolli, Tq: Bailhongal.

2) Smt. Channavva W/o Veerabhadrappe
Ganachari,
Age: 59 years, Occ: Household,
R/o: Dombarkoppa, Tq: Kittur.

3) Smt.Shingavva W/o Veerabhadrappe
Ganachari,
Age: 55 years, Occ: Household,

R/o: Sangolli, Tq: Bailhongal.

4) Sri. Mallikarjun S/o Veerabhadrappa
Ganachari,
Age: 28 years, Occ: Agriculture
R/o Sangolli, Tq: Bailhongal.

(By Shri. F.F.P., Advocate for D1, D3 and D4)
(By Shri. S.Y. P., Advocate for D2)

ORDER ON I.A.No.I

I.A. No.I is filed by the plaintiff under Order 39 Rules 1 and 2 R/w.sec. 151 of CPC seeking relief of injunction against the defendant Nos.1 and 4 from alienating the suit schedule properties till disposal of the case.

2. In the accompanying affidavit plaintiff has sworn to the fact that, the suit is filed for the relief of partition and separate possession. Plaintiff has sought for half share in the suit schedule properties. Defendant Nos.1 and 4 have illegally got their names entered in respect of the suit properties and are trying to alienate the suit properties. When demanded a share defendant No.1 has refused to allot him a share. Defendant No.4 has illegally alienated the suit properties and in this regard MRH 6/2012-13 is certified on 17.12.2012. Misusing this fact the defendant No.4 is in a hurry to sell the suit schedule properties. Therefore the

present IA no 1 is filed for restraining the defendant Nos.1 and 4 from alienating the suit properties.

3. The defendants have appeared and contested the case. Defendant Nos.1, 3 and 4 have filed the written statement and adopted the written statement filed by the defendants as objections to IA No.1.

4. According to the defendant Nos.1, 3 and 4 suit is falsely filed. Plaintiff is not at all the son of defendant No.1. The relationship itself is denied. There is no locus standi available to the plaintiff to file the present suit. Suit is filed only to gulp up the suit properties. The genealogy mentioned is also false. Defendant No.2 is not a wife of defendant No.1 and plaintiff is not the son of defendant No.1. The name of plaintiff and defendant No.2 is illegally shown in the genealogy. Infact, Sri Veerabhadrapppa has no wife by name Smt Channavva and there was no marriage. Smt. Shingavva is not the second wife. Infact, Smt. Shingavva is the legally wedded wife of Veerabhadrapppa. Manjunath is not his son. Therefore the genealogy is completely false. Therefore the plaintiff is not entitled for half share in the suit properties. There is no question of allotting share by effecting partition. Hence the very relationship of plaintiff as son of defendant No.1 is denied in

the written statement. Infact, defendant No.4 is the absolute owner of the suit properties and he has every right to sell the suit property. Defendant No.4 has become absolute owner of the suit properties since 17.11.2012 and he is having every right to alienate the suit properties. Since the relationship itself is disputed there is no question of granting injunction. Hence the defendant Nos.1, 3 and 4 prays for dismissal of the suit by awarding compensatory costs.

5. Heard the arguments, canvassed on both sides and perused the documents on record. Perused written arguments filed on IA no 1.

6. 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.I is refused?
- 4) What Order or direction ?

7. 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 ::

8. **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.

9. 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.

10. In order to prove the case plaintiff has relied upon RTC extracts of suit properties, mutation register extracts, application filed, Police acknowledgment, copy of ration card and copy of Aadhar card of the plaintiff. In fact the plaintiff has claimed himself to be the son of defendant No.1. Plaintiff Manjunath claims that he is the son of defendant No.1 Veerabhadrappa through first wife Channavva. Smt. Shingavva is the second wife and defendant No.4 is the son from second wife Shingavva. Plaintiff has sought for half share in the suit schedule properties claiming that the suit properties are joint family

properties available for partition.

11. There are two properties mentioned in the plaint. The RTC extracts produced by the plaintiff shows that RS No.83/18 i.e., Item No.1 property stands in the name of defendant No.4 Mallikarjun Veerabhadrapa Ganachari. It is shown as entry by way of partition. Item No.2 property RS No.129/5 stands in the name of Mallikarjun Veerabhadrapa Ganachari i.e., defendant No.4. The mutation register extract also shows that earlier the name of defendant No.1 was entered in both the suit properties and thereafter the name of defendant No.4 has been mutated in the revenue records.

12. The mutation register extracts are also produced. Plaintiff has also produced the copy of the objections filed by Manjunath Veerabhadrapa Ganachari to the Tahasildar on 15.09.2023 claiming that he is having half share in the suit properties and he has objections for any sort of alienation. He has also filed copy of Police acknowledgment to show the complaint was filed. Ration card of Channavva wife of Ganachari is produced where the plaintiff is shown to their son. Copy of Aadhar card of Channavva Veerabhadrapa Ganachari is also produced. Photographs are also produced.

13. Per contra, the defendant no 2 relied upon certain documents. Defendant no 2 has produced consent deed, certificate under the Gruhalakshmi Plan, relinquishment deed executed by Veerabhadrapa in favour of Channavva, wherein the property in RS No.129/2 has been given up to her possession. Pass book of Channavva is also produced, Ration card and Aadhar card of Channavva Veerabhadrapa Ganachari is also produced by the defendants.

14. Defendant No.2 is infact is supporting the case of the plaintiff. In the written statement defendant no 2 contended that even the plaintiff is having half share and plaintiff is the legitimate son of defendant No.1. He contends that he has produced the photographs of marriage of defendant Nos.1 and 2 and he admitted that in the half share suit may be decreed. In fact defendant No.2 has supported the case of the plaintiff.

15. The contesting defendants are the defendant Nos.1, 3 and 4. The defendant no 1 3 and 4 have at this stage not produced any documents. Defendant Nos.1, 3 and 4 have only produced copy of school certificate of Manjunath Veerabhadrapa Vanti and also his voters ID card.

16. On the marshalling the entire evidence prima facie it is apparent that as on the date of suit properties stands in the name of defendant No.4. It is contended that defendant No.4 is in hurry to alienate the suit schedule properties. Defendant No.2 has supported the case of the plaintiff because defendant No.2 is the mother of plaintiff. Defendant No.1 has denied the very relationship of the plaintiff as son of the defendant No.1. It is also denied that he had not married defendant No.2 and there is no son born to them. Therefore the very status of plaintiff as the son of defendant No.1 has been denied by them.

17. At this pre-trial stage the court cannot venture into mini trial to decide whether plaintiff is the legitimate son of defendant no.1 or not. No doubt the ration card of Channavva is produced in which the plaintiff is shown to be the son. At this stage it is not permissible to marshal the documents produced on both sides. The very status of the plaintiff as son the defendant No.1 is to be established. To prove the status plaintiff has to lead the evidence for which a full fledged trial is essential. The contention of plaintiff that he is the legitimate son of defendant No.1 cannot be considered without evidence. It is also merit of the case. The very nature of the suit properties and status of plaintiff is disputed. The parties are yet to prove their rival

contentions.

18. 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 status of the plaintiff. 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 joint family properties or not. 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. Therefore this court is of the opinion that an opportunity is to be given to both sides to prove their respective contentions.

19. Further plaintiff has not pleaded from whom he learnt that defendants no.1 and 4 are trying to alienate the suit properties and what efforts were made by the said defendants no.1 and 4 to sell the suit property. Mere apprehension that defendants will alienate the suit properties 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 his status as son of the defendant no.1 and also that the suit properties are joint family properties, then he will be held entitled for share and the alienation if any made by the defendant no.1 and 4 will not bind their rights.

20. 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.

21. **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 his status as son of the defendant no.1 and also that the suit properties are joint family properties then he will be held entitled for share and alienation if any made by the defendants, will not bind his 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.

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

ORDER

The I.A.No.1 filed by the plaintiff
under Order 39 Rule 1 and 2 R/w.sec. 151 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 27th day of April 2024)

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

