

IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C,
AT: BAILHONGAL
:Present:

Shri. Basavaraja Thulasappa Nayaka ,
B.A. L. LL.M.

Prl. Civil Judge & JMFC, Bailhongal.

DATED; THIS THE 15th DAY OF OCTOBER 2024

O.S.NO. 41/2022

1. Sri. Somalingappa S/o Fakkeerappa Kadakol @ Byali
Age: 71 years, Occ: Agriculture
R/o: Belavadi, Tq: Bailhongal
Dist: Belagavi
Since, dead and his Lr's
- 1.(a) Smt. Parvati W/o Somalingappa Kadkol @ Byali
Age: 62 years, Occ: Household work
R/o: Belavadi Village (Budarkatti Road) Tq: Bailhongal
Dist: Belagavi
- 1.(b) Smt. Sunanda W/o Shankareppa Udakeri
Age: 39 years, Occ: Household work
R/o: Belavadi Village (Hosamath Oni) Tq: Bailhongal
Dist: Belagavi
- 1.(c) Sri. Fakkirappa S/o Somalingappa Kadkol @ Byali
Age: 37 years, Occ: Agriculture
R/o: Belavadi Village (Budarkatti Road) Tq: Bailhongal
Dist: Belagavi

...Plaintiffs.

(By Shri.M.S.A, Advocate)

V/s.

1. Smt. Fakkeerawwa W/o Madiwalappa Kadakol @ Byali
Age: 68 years, Occ: Household work
R/o: Belavadi, Now she is residing at Neginahal Village
Near last Bus stop, Tq: Bailhongal
Dist: Belagavi
2. Sri. Rudrappa A/F Madiwalappa Kadakol @ Byali
Age: 37 years, Occ: Agriculture
R/o: Belavadi, Now she is residing at Neginahal Village
Near last Bus stop, Tq: Bailhongal
Dist: Belagavi

....Defendants.

(By Sri. RAP Advocate)

ORDERS ON IA NO. I and V

The plaintiffs have filed I.A.No.I u/o 39 rule 1 nd 2 of CPC seeking to restrain the defendant from alienating the suit property till the disposal of the suit. The defendants have filed I.A.No.V u/o 39 rule 4 of CPC seeking to set-aside the order of temporary injunction granted on 4-2-2022.

2. Brief facts of the parties are as under:

It is the case of the plaintiff that, the suit property is the ancestral property of plaintiff and defendants. After the death of their propositus, the plaintiffs and defendants inherited the suit property. Thereafter the suit bearing O.S No. 35/2013 entered into compromise wherein the

defendants acquired the ownership over the suit property by virtue of the said compromise. As per the compromise, the name of the defendants were entered in respect of the suit property. The defendants agreed to sell the suit property on the actual market value at the time of the purchase to the defendants. If the defendant intend to sell the suit property. Further contended that as per the Section 22 of Hindu Succession Act. He has right of preemption to purchase the suit property. Further contended that the defendants are now trying to alienate the suit property to one Iranna Hosamani, resident of Anigol Village.

3. Plaintiff contended that he has got prima-facie case, the balance of convenience lies in his favour. If the order on temporary injunction is not granted he would be irreparable hardship or injuries. Hence prays to allow the application.

4. The defendants have filed written statement, admitted the ownership of the defendant No.1 over the suit property. Defendants admits that as per the compromise, the defendant No.1 has become absolute owners of the suit property. The defendants denied the right of the plaintiff to purchase the suit property. Further contended that the plaintiffs are not the class-I legal heirs of defendant No.1. The plaintiffs have no right of preemption. Further contended that the

defendants are illiterate person and the entire contention of O.S No. 35/2013 has not read over the explain to the parties to the suit. Hence averements made in para No.5 of the compromise in O.S No. 35/2013 is not binding on the defendants. Hence prays dismiss of the application.

5. The defendant in the I.A.No.V contended that the suit property was allotted to the defendant no1 in O.S.No.35/2013. She has become absolute owner of the suit property. After the death of her husband , herself and the defendant no.2 are only class I heirs to her husband. The present plaintiff is not the class -I heir to her late husband Madiwalappa. Hence, the suit of the plaintiff u/s 22 of Hindu succession act is not comes within the per view of the said act. The suit is not maintainable. Hence, prays to allow the application.

6. The plaintiff filed objection reiteratig the averments made in the I.ANO.I file by him and contended that in O.S.No.35/2013, the defendants in the compromise petition agreed to sell the suit schedule property to the plaintiff if they intend to sell the suit properties. Hence, prays for dismissal of the I.A.No.V.

7. Points arise for my consideration:

1. Whether the plaintiff has made out grounds to allow the I.A.NO.I?
 2. Whether the defendants made out grounds to allow the I.A.No.V?
 3. What order ?
8. My answer to the above points are as follows”-

Point No.1: In the Affirmative

Pont No. 2: In the Negative

Point No.3: As per order for the following

REASONS

9. **Point No.1 and 2**: As these points are interrelated they are taken together for discussion. It is the case of the plaintiff that, the suit property is the ancestral property of plaintiffs and defendants in O.S No. 35/2013. The plaintiffs and defendants entered into compromise, defendant No.1 has become absolute ownership of the suit property. Further defendant No.1 agreed to sell the suit property to the plaintiffs on actual market value, if the defendants intend to sell the suit property. Further contended that the defendants are trying to alienate the suit property. They have right of preemption over the suit property. On the other hand, the defendants admits the

ownership. Further contended that the plaintiffs are not the class-I legal heirs, they have no right of preemption. The entire contents of compromise petition in O.S No. 35/2013 are not read over to the defendants. Therefore the condition in the compromise petition is not binding on them.

10. The plaintiffs counsel relied on the condition of the compromise petition and argued that the defendants agreed to sell the suit property. On the other hand, defendants counsel argued that the plaintiff is not class-I legal heirs of defendant No.1. Therefore, plaintiff has no right of preemption. Further argued that the defendant No.1 has sent a notice to plaintiffs calling them to purchase the suit property on actual market value of Rs.32,00,000/- per acre.

11. It is pertinent to note that the relationship between the plaintiff and defendants is not in dispute. Further it is not in dispute that the defendant No.1 acquired the ownership over the suit property by virtue of compromise entered in O.S NO. 35/2013 with the plaintiff herein. According to the plaintiff he has right of preemption as per Sec.22 of Hindu Succession Act and also relied on the conditions stipulated in compromise petition filed in O.S No.

35/2013. The defendants contended that, Sec. 22 of Hindu Succession Act is not applicable to the plaintiff herein. The plaintiff is not class-I legal heir of defendant No.1. Further contended that, the defendants are illiterate the entire contents of compromise decree was not read over and explained to the parties to the suit. Hence para No.5 of compromise in O.S NO. 35/2013 is not binding on the defendants. It is pertinent to note that on perusal of the compromise decree it appears that the defendants agreed to sell the suit property to the plaintiff herein, if they intend to sell the suit property in future. The plaintiff contended that, now the defendants are trying to alienate the suit properties. Admittedly as stated supra there is condition in the compromise decree agreeing to sell suit property to the plaintiff at market value, if the defendants herein intend to sell the suit property. So for as the contention of the defendants. The content of compromise are not read over to the defendants and the said condition is not binding is matter of trial.

12. Admittedly the defendants herein have not challenge the compromise decree. So for as the contention of the defendants that they have offered to sell the suit property at market value of Rs.32,00,000/- to the plaintiffs. In this regard relied on the notice

dated 05.09.2024. On the other hand, the plaintiffs denied that the market value of the suit property per acre of Rs. 32,00,000/-. In this regard relied on the valuation slip issued by the Sub Registrar. Whether the market value of the suit property per acre is Rs. 32,00,000/- is matter of trial. I am of the opinion that, at this stage the plaintiff has made out prima facie case and balance of convenience lies in favour of plaintiff. If an temporary injunction is not granted to the plaintiff would be put to irreparable loss and injury. The plaintiff has made out grounds to allow the I.A.No.I and the defendants have not made out grounds to allow the I.A.No.V. Hence, I answer the point no.1 in the Affirmative and Point No.2 in the Negative.

13. **POINT NO. 3:** In view of the above discussion, I proceed to pass the following:-

ORDER

IA No.1 filed by the plaintiff u/o 39 rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrain from alienating in the suit property till disposal of suit.

I.A.No.V filed by the defendants U/o 39 rule 4 of CPC seeking to set-aside the temporary order granted on 4-2-2022 is hereby dismissed.

No order as to cost.

**Prl. Civil Judge and JMFC.,
Bailhongal.**

(Order pronounced in the open court vide separate order)

ORDER

IA No.1 filed by the plaintiff u/o 39 rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrain from alienating in the suit property till disposal of suit.

I.A.No.V filed by the defendants U/o 39 rule 4 of CPC seeking to set-aside the temporary order granted on 4-2-2022 is hereby dismissed.

No order as to cost.

**Prl. Civil Judge and JMFC.,
Bailhongal.**

Order pronounced in the open court vide separate order

ORDER

The Preliminary Issues no.2 and 3 are answered in the Negative .

In view of the circumstances, there is no order as to costs.

**Prl. Civil Judge & JMFC.,
Bailhongal**