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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
CHIKODI

: PRESENT :

SHRI. PATIL HARISH RANGANAGOWDA
BA. LL.B.(Hon's)
Prl. Senior Civil Judge, Chikodi.

15th DAY OF OCTOBER – 2024

OS NO.165/2024

BETWEEN :

1. **Smt. Kamala W/o. Nemanna Kesti**
and others
... Plaintiffs

(Miss. M. V. Patil, Adv.,)

AND :

1. **Sri. Surendra Bharamu Kesti
and another
... Defendants
(Sri. P. B. Utture, Adv.,)**

:: ORDERS ON IA NO.II ::

The plaintiffs have filed IA No.II u/O.39 Rule 1 and 2 of CPC seeking to restrain the defendant Nos.1 and 2 from interfering with their joint possession over suit property.

2. Facts of the case are unfurled here under:

The plaintiffs have filed this suit seeking for the relief of partition and separate possession of their share over suit property by contending that they themselves and defendants are members of Hindu undivided joint family and suit properties are joint family properties of themselves and defendants. According to them, their fathers by name **Bharamu**

Appanna and Nemanna have had jointly purchased the suit property under registered sale deed dated:03.09.1956. They died without dividing the property leaving behind themselves and defendants. The plaintiff Nos.1 to 6 are the wife and children of Nemanna, the plaintiff No.7 is the son of Appanna and defendant Nos.1 and 2 are sons of Bharamu. Therefore they jointly succeeded the property from said three joint purchasers and jointly growing sugarcane, jowar and soyabean crop in the said property. There is no division among themselves and defendants. The defendants are trying oust them from the suit property. Therefore they were perforce to file this suit.

3. The defendants appeared through their counsel and filed their written statement. They admit the factum of joint purchasing of property by Bharamu, Appanna and Nemanna. They in turn contend that the partition has already taken place during life time of said Bharamu, Appanna and Nemanna about sixty eight years back. The defendant Nos.1 and 2 have dug well

and removed the hill rock in their property. They have developed the land. The plaintiffs are having eagle eye on the said development of property have filed this false suit alleging non-division of property. They further pleaded that the plaintiff No.7 has also dug separate well and drawn pipeline to his property. He is also growing commercial crops like sugarcane. The land allotted to plaintiff Nos.1 to 6 is not having any source of irrigation.. The plaintiff Nos.1 to 6 are growing non-irrigated crops. Therefore there is no truth in the case of plaintiffs. They have also contended that recently the dispute with one Smt. Rajamati Tatyasab Nasalapure who is the owner of other portion of suit survey number has ended in compromise by executing sammati patra. In the said sammati patra they have lost some portion of land. Therefore there is no truth in the case of plaintiffs. Hence, they seek to dismiss the suit.

4. The plaintiffs have filed IA No.II u/O.39 Rule 1 and 2 of CPC seeking to restrain the defendants from interfering with their

possession over suit property. The defendants have filed objections to the said application by taking similar stand as taken in the plaint. In addition to that they have contended that the same request made by plaintiffs in IA No.I is rejected by this court. Therefore they seek to dismiss the application. Heard both sides.

5. Having heard and having perused the material on record, the following points would arise for my consideration.

1. Whether the plaintiffs made out prima-facie case for grant of injunction in respect of IA No.II ?

2. Whether the plaintiffs prove that the balance of convenience lies in their favour in respect of IA No.II ?

3. Whether the plaintiffs prove that if injunction is refused, they would be put to irreparable loss which cannot be compensated in terms of money ?

4. What order ?

6. Having heard and having perused the material on record, my findings to above points is as under:

Point Nos.1 to 3 : In the partly affirmative in respect of portion of property held by them

Point No.4 : As per the final order, for the following:

:: REASONS ::

7. **Point Nos.1 to 3:-** In order to avoid repetition of facts, these points are taken together for common consideration. The plaintiffs claimed that the defendants are trying to interfere with their joint possession over suit property. Therefore they seek to restrain the defendants. The defendants have contended that there is no truth in the case of plaintiffs. According to them, the partition has already taken place. The similar request made by plaintiffs in IA No.I was turn down by this court. Hence, they seek to dismiss the application.

8. In the earlier occasion the plaintiffs have filed IA No.I seeking to restrain the defendants from ousting them from the joint possession and enjoyment of suit property. This court by order dated:23.09.2024 has rejected the request of plaintiffs on the ground that the material on record prima-facie reveal the division of property. Therefore this court opined that if injunction is issued restraining the defendants from ousting the plaintiffs from joint possession and joint vahivat would lead to further dispute between the parties. This court has recorded a finding of fact that the possession of plaintiffs over suit property could be inferred to an independent extent and not the joint possession with defendants. Therefore this court has held that the joint possession and joint vahivat of property cannot be inferred. Therefore this court has rejected the application by holding that the plaintiffs are not entitled to seek injunction to claim joint possession of entire suit property.

9. Now, the plaintiffs complained that the defendants are trying to interfere with their possession over suit property. They did not specifically mention the portion of property held by them. They still claimed joint possession of property. The defendants disputed the factum of interference over the portion of property held by plaintiffs. Therefore the question to be decided is as to whether the defendants are trying to interfere with the portion of property held by plaintiffs. This court by vide order dated:23.09.2024 has held that the rejection of application cannot be construed as a ground to deny the possession of plaintiffs over their respective portion of property. The very nature of objections filed by defendants to some extent indicate that they are trying to interfere in the portion of property held by plaintiffs. Therefore the plaintiffs are made out ground for issuance of injunction to the limited extent. If the injunction is not issued it would lead to further litigation between parties. Therefore conditional injunction could be issued to safeguard the interest of both parties.

10. The plaintiffs have mentioned entire suit property as subject matter of IA No.II. This court has already held that there is prima-facie substance in the assertion of defendants in regard to division of property. Therefore the plaintiffs could not have shown entire suit property as subject matter of IA No.II. Therefore the request of plaintiffs could be considered only in regard to the portion of property held by him as shown in the sketch produced by the defendants. Therefore the request of issuance of injunction could be issued to the limited extent of property. The injunction could be issued to the extent of portion of property held by plaintiffs as per the sketch shown by the defendants. This order of injunction cannot be construed as an injunction in respect of entire property. It should not be treated as an injunction in respect of the portion of property held by defendants. **Therefore, I hold above point Nos.1 to 3 in the partly affirmative.**

11. Point No.4:- In the light of aforesaid findings on the above said points, I proceed to pass following:

ORDER

The IA No.II filed by plaintiffs u/O.39 Rule 1 and 2 R/w Sec.151 of CPC is hereby allowed in part.

The defendants are directed to not to disturb the possession of plaintiffs over the portion of property held by them in the suit property as per the sketch provided by them. This order of injunction cannot be treated as injunction in respect of entire suit property. This order of injunction also cannot be treated as acceptance of plea of joint possession so as to disturb the possession of defendants over their portion of property also. The order of injunction in any way applicable to the portion of property held by defendants as shown in the hand sketch map. Further under the guise of interim order the plaintiffs are not entitled to disturb the possession of defendants over the portion held by them as shown in the sketch. Further under the guise of this interim order, the plaintiffs are also not entitled to make claim over the water source held by defendants in their portion of property.

(Dictated to the stenographer directly over the computer, typed by her, corrected, signed and then pronounced by me in the open court on this the 15th day of October, 2024).

**(Patil Harish Ranganagowda)
Prl. Senior Civil Judge,
Chikodi.**