

IN THE COURT OF CIVIL JUDGE & J.M.F.C.
AT BANAHATTI

:PRESENT:

Miss. Shushma T.C.

B.Com., LL.B.,

Civil Judge & J.M.F.C., Banahatti.

O.S No.88/2019

Dated this, the 16th day of November, 2022.

1. Anita W/o Raghavendra Koparde,
 2. Kumari Pooja D/o Raghavendra Koparde
- Both are R/o: Rampur, Tq: Rabakavi-Banahatti.

... Plaintiffs

(Represented by Sri. P.N.K., Advocate)

- Vs -

1. Raghavendra S/o Shamrao Koparde,
 2. Vinay S/o Raghavendra Koparde,
 3. Shriya D/o Raghavendra Koparde,
 4. Kavita W/o Gopal Koparde,
 5. Rishita D/o Gopal Koparde,
 6. Samarth S/o Gopal Koparde,
 7. Sarojani W/o Shamrao Koparde,
- All are R/o: Rampur, Tq: Rabakavi-Banahatti.

... Defendants

(Represented by Sri. A.J.V., Advocate)

: PARTIES TO I.A No. VIII :

1. Sarojani W/o Shamrao Koparde and others

... Applicants/defendants

- Vs -

1. Anita W/o Raghavendra Koparde & another

... Opponents/plaintiffs

: ORDER ON I.A No.VIII :

The defendant No.7 along with other defendants as applicants have filed this application U/o 39 Rule 4 R/w sec.151 of CPC seeking to vary/set aside by vacating the Status-Quo order passed on I.A.No.6 in respect of the suit property of defendant No.7 bearing CTS No.4863-A2/177/1 in the interest of justice and equity. This application is filed when the case is posted for plaintiff evidence.

2. In support of this application, defendant No.7 has sworn to an affidavit stating that, she is the exclusive owner of the property bearing No.4863-A2/177/1 (hereinafter, referred as Sl. No.2 property mentioned in the suit schedule) situated at Rampur. She has purchased the said property out of her own money and has acquired the said property. Plaintiff No.1 was her daughter-in-law and now she is a divorcee as per the order of the court. The plaintiff has no any right, title or interest in the said property. It is submitted that, the plaintiff has filed false suit and I.A.No.4 and obtained Status-Quo

order against her in respect of her above-mentioned property along with other two properties i.e., Sl. No.1 & 2 as mentioned in the plaint schedule by misguiding the court and not revealing the fact that she is a divorcee. It is submitted that, plaintiff No.1 being a divorcee cannot claim her share in the property of her husband during the life time of her husband and as the plaintiff No.1 was harassing the applicant, she along with other defendants filed a memo dated 29.06.2022 stating that, they are ready to give legal share to her granddaughter i.e., plaintiff No.2 as she is entitled to get her $1/4^{\text{th}}$ share in $1/3^{\text{rd}}$ share of their family properties i.e., in Sl. No.1 & 3 properties as the same are ancestral properties.

3. It is submitted that, the applicant is an old lady and she wants to enjoy her exclusive property i.e., Sl.No.2 property mentioned in the plaint schedule. The plaintiff No.1 had filed maintenance petition bearing Crl.Misc.No.49/2019 and the same is pending for consideration and as she had bet and harassed her husband, he left the house and gone to other place. Hence, she has to maintain herself and is intending to alienate her exclusive house property i.e., Sl.No.2 property to meet her personal expenses and medical expenses and also to

meet the educational expenses of her grandson named Vinay. Due to the change in circumstances and to maintain her family and grandsons and daughter-defendant No.2 & 3, she is compelled to file this application. It is submitted that, she is ready to give the legal share to plaintiff No.2 in the Sl.No.1 & 3 properties but, the plaintiff No.1 taking advantage of the minority of plaintiff No.2, continued to harass the applicant. Further, due to the Status-Quo order, the applicant is unable to enjoy her exclusive property i.e., Sl.No.2 property and if the Status-Quo order is varied and permitted her to sell her house, no harm or loss would be caused to plaintiffs as they would get their share in ancestral properties. It is submitted that, she has prima facie case and balance of convenience lies in her favour and if the application is rejected, she would be put to irreparable loss, injury and hardship which cannot be compensated in terms of money. On these grounds prayed to allow the application.

4. On the other hand, plaintiffs filed objection to this application contending that, plaintiff No.1 is not a divorcee as the defendants have preferred Misc. First Appeal before the Hon'ble High Court of Karnataka on M.C. No.12/2016 and

there is a stay on the said order. As defendant No.1, 7 and others wanted money for their personal and luxuries life, Sl.No.2 ancestral property was alienated to one named Karbari and thereafter, the said property was re-purchased out of the joint family funds in the name of elder of the family i.e., defendant No.7. Hence, the said property is a joint family property. As defendant No.1 and 7 violated the orders of this court and dispossessed the plaintiffs from the above said property, they had filed an application U/o 39 Rule 2A which is numbered as I.A.No.6, this court ordered for registration of the said I.A. as separate miscellaneous case and the same is numbered as Civil Misc.No.12/2019 which is pending for adjudication. The defendant No.7 is causing harassment to the plaintiffs by taking advantage of her being an elderly person and is trying to get sympathy from the court. The said application is filed only to engulf the legal share of plaintiff No.1 & 2 in the suit properties and she is in a hurry to alienate Sl.No.2 property which is purchased out of joint family funds. As defendant No.1 is earning well, defendant No.7 and her grandchildren are under his care and custody and hence, defendant No.7 does not require money for her

maintenance as stated in her affidavit. As stated by defendant No.7 herself, the said property was purchased for Rs.4,83,000/- and she is old lady, she cannot purchase the said property by giving such a huge amount. Hence, it is clear that, the said property is purchased out of the joint family funds. Hence, the plaintiffs are having their legal share in the said suit properties.

5. It is submitted that, plaintiffs had filed I.A.No.3 & 4 against defendants seeking to restrain defendant No.7 from dispossessing the plaintiffs from Sl.No.2 property and from alienating or mortgaging the said property. As there was delay in filing objection by defendant No.7, this court on oral request of the plaintiffs ordered to maintain Status-Quo. Thereafter, when defendant No.1 & 7 dispossessed the plaintiffs from the said property, she filed I.A.No.6 reporting about the violation of temporary injunction order passed by this court and the same is registered separately. I.A.No.5 was filed by defendant No.7 seeking to restrain the plaintiffs from causing disturbance to her possession over the said property and the same is rejected by this court. By the order dated 02.11.2019, this court has allowed I.A.No.3 & 4 filed by

plaintiffs wherein, defendant No.7 is restrained from alienating Sl.No.2 property and from creating charge over the said property and also restrained her from dispossessing the plaintiffs from the said property without following due process of law. The applicant, without preferring an appeal over the said order, has filed this false application in order to get a wrong order from this court. Hence, on these grounds prayed to reject the application with cost of Rs.5,000/-.

6. Heard both sides and perused the materials placed on record.

7. On the basis of rival contentions of the parties, the points that would arise for my consideration are as follows:

1. Whether the applicant has made out a prima facie case?
2. In whose favour balance of convenience lies?
3. Who will be put to irreparable loss or injury, if an order of temporary injunction is not vacated?
4. What order?

8. My answers to the above said points are as under:

Point No.1 : In the **Negative**.

Point No.2 : Does not arise for consideration.

Point No.3 : Does not arise for consideration.

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

: R E A S O N S :

9. **Point No.1:** The brief facts of the contents of the application are discussed in detail in the above paragraphs and hence, without repeating the same, the merits of the application shall be looked into. This suit is filed by plaintiffs for partition and separate possession against defendants in respect of Sl.No.1 to 3 properties as shown in the plaint schedule. Defendant No.7 has filed this application in respect of Sl.No.2 property seeking to vary/set aside by vacating the Status-Quo order passed on I.A.No.6. At this stage, it is necessary to look into whether there is any Status-Quo order passed by this court on the said I.A No.6 as contended by the applicant.

10. On perusal of the entire materials on record and on perusal of the order sheet, it is clear that, I.A.No.6 filed by plaintiffs U/o 39 Rule 2A is ordered to be registered as separate Civil Misc. case by the order dated 02.11.2019. As stated by defendant No.7, there is no any Status-Quo order on I.A.No.6. However, on perusal of the order sheet dated 20.06.2019, after hearing

plaintiffs on I.A.No.3 to 5 this court ordered both parties to maintain Status-Quo in respect of the suit schedule properties till further orders. Thereafter, this court after hearing both parties on I.A.No.3 to 5, by the order dated 02.11.2019 passed a detail order on merits. Hence, the question of vacating or varying the Status-Quo order on I.A No.6 as submitted by defendant No.7 does not arise for consideration. As I have already stated, I.A.No.6 is ordered to be registered as separate Civil Misc., and the same is pending for adjudication. If defendant No.7 is aggrieved by the order on I.A.No.3 to 5, she is at liberty to seek the relief before the appropriate forum and the present application seeking to vary or vacate the Status-Quo order does not hold water for a simple reason that, there is no Status-Quo order on I.A No.6 and the Status-Quo order passed by this court on I.A No.3 to 5 was only till further orders and after hearing both parties, this court has passed orders on I.A No.3 to 5 on merits. Hence, the said Status-Quo order is not in existence and even if assumed to be existing, it is not on I.A No.6. Further, the question whether Sl.No.2 property is the self-acquired property of defendant No.7 or if the same is ancestral

property or joint family property will be adjudicated after trial. Hence, in view of the above discussion, I am of the opinion that, the applicant has not made out prima facie case for the relief claimed in the application. Hence, I proceed to answer point No.1 in the **Negative**.

11. **Point No.2** : The defendant No.7 has not made out prima facie case for vacating the Status-Quo on I.A No.6 which is alleged to have been granted against her by this court and without going into the merits of the case and based on my discussion on above point, it is just and proper to hold that, balance of convenience does not lie in her favour and it is necessary for her to satisfy the court, all the three ingredients for the grant/vacating of discretionary relief of injunction and if any one of the ingredient is not made out by the party seeking the relief, this court cannot exercise its discretionary relief and hence, consideration of this point would not arise at all. Hence, this point is answered accordingly.

12. **Point No.3** : By considering the facts and circumstances of the case and based on my discussion on above points, I hold that, defendant No.7 has not made out prima facie case for

vacating the Status-Quo order in her favour and has not convinced this Court that, she is entitled for the discretionary relief of vacating injunction in her favour and moreover, has not shown that, a Judicial intervention is necessary to protect her right over the suit property, failing which, she will be put into great hardship, which cannot be compensated in any terms. Further, as she has not made out prima facie case, consideration of this point does not arise. Hence, this point is answered accordingly.

13. **Point No.4** : In view of my discussions on point No.1 to 3, I proceed to pass the following:

: O R D E R :

I.A No. VIII filed by defendant No.7
U/o 39 rule 4 R/w sec.151 of CPC is
hereby dismissed.

No order as to costs.

(Dictated to the stenographer, transcribed by her, transcript corrected by me and then signed and pronounced by me in the open court on this, the 16th day of November, 2022)

(Shushma T.C.)
Civil Judge & J.M.F.C., Banahatti.