

**IN THE COURT OF THE ADDL. SENIOR CIVIL  
JUDGE AT JAMKHANDI.**

**Present**

**Sri.A.SAMIULLA**

**B.Sc., LL.B.,**

**Addl. Sr. Civil Judge, Jamkhandi.**

**Dated: 12<sup>th</sup> Day of July 2021**

**OS.No.88 of 2020**

Smt.Bourawwa w/o Channayya Math @ Ganachari,  
& Another.

**..... Plaintiffs**

**V/s**

Smt.Mahadevi w/o Sidramayya Hiremath,  
& Others.

**..... Defendants**

**IA.No.VI**

Smt.Mahadevi w/o Sidramayya Hiremath,  
& Others.

**.....Applicants/Defts**

**V/s**

Smt.Bourawwa w/o Channayya Math @ Ganachari,  
& Another.

**.....Opponents/Plts**

**Order on IA-VI; u/O 39 Rule 1 & 2 r/w Sec.151 of CPC:**

Defendant-2 moved this application seeking temporary injunction to restrain the defendant-4 from obstructing the possession of defendant-2 over the

land bearing RS.No.233/1 (10As 08Gs) of Kotyal village and possession of defendant-3 over the land bearing RS.No.447/2/1 (9As 20Gs) of Gothe village, which were fell to their shares under a memorandum of family arrangement dated 11.08.20 respectively in any manner pending disposal of suit.

**2.** Defendant-4 resisted the application by filing objection statement.

**3.** Heard arguments from both side.

**4.** Following points arise for consideration:

1. *Whether defendants-2 & 3 prove that they have got a prima facie case?*
2. *In whose favour the balance of convenience lies?*
3. *To whom the irreparable loss will be caused?*
4. *What order?*

**5.** Findings to the above points are as under;

***Point-1: Negative.***

***Point-2: Does not survive for consideration.***

***Point-3: Does not survive for consideration.***

***Point-4: As per below for the following;***

**REASONS**

**6. Points-1 to 3:** These points are taken together for common discussion to avoid repetition of facts.

**7.** At the outset; suit is filed for partition and separate possession of plaintiffs  $1/5^{\text{th}}$  share each in the suit properties by asserting that; the propositus Channayya died on 29.07.20 leaving behind wife Bourawwa (P1) and daughters Mahadevi (D1), Sushila (P2), Shobha (D2) and Neelabai (D3). They constituted joint family, they are in joint possession and there is no severance of joint family status. Suit properties are ancestral joint family properties of propositus, as such they got  $1/5^{\text{th}}$  share each. Defendant-4 is son of plaintiff-2. Suit properties are in the name of propositus except the land bearing RS.No.447/2/1 (9As 29Gs) of Gothe village, which is in the name of plaintiff-1, as it is purchased by the propositus in her name. Propositus was running provisional shop in

VPC.No.192 of Gothe village, the defendant-4 behind the back of plaintiffs and other defendants got the license of provisional shop in his name, as such he is arrayed as a party to the suit. Said shop belongs to the plaintiffs and defendants-1 to 3. They demanded partition but to no use, hence suit is filed.

**8.** Defendant-2 resisted the suit by filing written statement seeking counter claim. Defendant-3 adopts the written statement of defendant-2. They admits the genealogy shown in the plaint and also the nature of suit properties. But contended that the family is having other properties, which are not included in the suit. They contended that; though in the presence of plaintiff-2 her son defendant-4 is not a necessary party to the proceedings but he being the anchor of fraud played in the joint family his presence is also necessary in the suit. After filing of suit they came to

know about the license of provision shop obtained by the defendant-4 behind the back of plaintiffs & other defendants, as such his (D4) presence is necessary for effective adjudication. Denying other averments they contended that; the husband of plaintiff-2 being addicted to bad vices had suffered huge loss in business, due to this the defendants-2 & 3 advised their father to allow the family of plaintiff-2 to reside in the parental home, as such they are in parental home from the past 22 years. After the death of propositus; the plaintiff-2 and her son (D4) colluding together and without disclosing the particulars of family properties, income of provision shop, agricultural income and fixed deposit of Rs.One Crore, they hurriedly got prepared partition deed (Apsath Watni) to defraud the legitimate share of defendants-1 to 3. Apart from this they also obtained signatures of defendants-2 & 3 on blank stamp paper of Rs.200/-. Notice was issued

calling upon them to disclose the purpose for which signatures were obtained on blank stamp paper. Till this day they have not replied the notice. Propositus used to keep cash amount of Rs.50 lakhs in the house. Plaintiff-2 and defendant-4 have taken said amount. Among these grounds they prayed to dismiss the suit.

**9.** Defendant-2 filed the application at hand for the relief stated supra by stating that the defendant-4 is attempting to obstruct the possession of defendant-2 & 3 over the land bearing RS.No.233/1 of Kotyal and land bearing RS.No.447/2/1 of Gothe which were fell to their shares respectively in a family arrangement.

**10.** Defendant-4 objected the application by contending that; he is not entitled for any separate share in the suit properties, as such the plaintiffs already filed application to struck out his name. Defendants-2 & 3 in their written statement have not

stated anything about the family arrangement between the plaintiffs and defendants-1 to 3 and oral partition reduced into writing on 11.08.20 and also about the lands fallen to their shares. They are falsely claiming possession over said lands. The question of he obstructing their (defendants-2 & 3) possession does not arise as the plaintiffs and defendant-1 are in joint possession of suit properties. If temporary injunction is granted the same will be misused by the defendants-2 & 3 against plaintiffs and defendant-1, who are co-owners of suit properties. Defendants-2 & 3 have no locus standi to file this application and they can maintain application only if the right arises out of same cause of action. Among these grounds he prays to reject the application.

**11.** The settled position of law is that; to seek discretionary relief of temporary injunction

plaintiff/defendant must satisfy the Court with respect to the existence of a prima facie case, irreparable injury likely to be suffered by them and balance of convenience lies in their favour.

**12.** Suit for partition is filed by the wife and daughter of deceased Channayya against other three daughters of deceased Channayya in respect of properties held by the deceased. Defendant-2 filed written statement and same is adopted by the defendant-3, wherein they admit the relationship projected by the plaintiffs and the nature of suit properties. But they disputed that the plaintiffs have not included all joint family properties. At para-7 it is specifically stated that as stated in para-8 of plaint there is no division effected between the plaintiffs and defendants and they are in joint possession.

**13.** It is worth to note that; the defendant-2 filed the

written statement on 15.12.20, wherein nothing is stated about the memorandum of family arrangement dated 11.08.20 and allotment of lands towards their shares and their exclusive possession over said lands. Instead she admitted that the plaintiffs & defendants are in joint possession of suit properties. But very surprisingly the defendant-2 filed the application at hand claiming exclusive possession over the land bearing RS.No.233/1 and exclusive possession of defendant-3 over the land RS.No.447/2/1 stating that the partition effected as per memorandum of family arrangement dated 11.08.20. Why it is not pleaded in the written statement is a mystery. No plausible explanation is offered. Even today the written statement is not amended to put forth the plea of family arrangement. In addition to this no document is produced to show that the said family arrangement is acted upon or not. The RTC extracts produced by the

plaintiffs depict that the land RS.No.233/1 is in the name of deceased Channayya & land RS.No.447/2/1 is in the name of plaintiff-1. Except few photographs the defendants-2 and 3 have not produced any acceptable evidence which prima facie indicates their exclusive possession over the said lands. On the basis of photographs the possession of parties over the lands in question cannot be ascertained at this stage of proceedings. By this it can be said that at the moment the defendants-2 and 3 failed to demonstrate their exclusive possession over the said lands to seek temporary injunction. Thus, at present no prima facie case made out by the defendants-2 & 3.

**14.** Before parting let us consider another ground on which the defendants-2 & 3 are not entitled for the relief sought herein. Order 39 Rule 1 & 2 CPC envisages that; where in any suit it is proved by

affidavit or otherwise- **a)** that any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or **b)** that the defendant threatens or intends to remove or dispose of his property with a view to defrauding his creditors, **c)** that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

**15.** It is worth to note that as per above provision; it is only under sub-class A of Order 39 Rule 1 & 2 that

any party to the suit could be restrained by means of an order of temporary injunction, which clearly presupposes that either the plaintiff or the defendant could file the application against the other party under this particular sub-class. The other two sub-classes viz., (b) & (c) of Order 39 Rule 1 CPC and also Order 39 Rule 2 CPC enable the Court to grant injunction against the defendant restraining him from committing the several acts mentioned therein. The word any party occurring in sub rule A of Rule 1 does not find a place in these Rules. Therefore, it is clear that it is only the plaintiff that could seek redress under these rules against the defendant. Having regard to the plain language of these Rules, by no means could it be contended that defendant is entitled to obtain an order of injunction against the co-defendant under these very sub-rules.

**16.** The defendant-2 herein can maintain an application u/O 39 Rule 1(a) CPC and not under other sub-rules only against plaintiff not against co-defendant. As per Rule-1(a) the injunction can be sought if any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree.

**17.** It is pertinent to note that; the case put forth by the defendant-2 herein to seek interim injunction against defendant-4 does not fit into sub-rule(a). Since the case does not come within the domain of sub-rule(a) the application of defendant-2 is not maintainable. In lieu of discussion supra the point-1 is answered in negative.

**18. Points-2 & 3:** Above findings show that the defendant-2 fails to demonstrate prima facie case at this stage. Hence, these points does not survive for

consideration. Accordingly, these points are answered.

**19. Point-4:** By virtue of above findings, Court proceeds to pass the following;

**ORDER**

IA-6; U/o 39 R 1 & 2 r/w Section 151 CPC filed by the defendant-2 is rejected.

No order as to costs.

(Dictated to the Stenographer and directly typed by her, corrected and initialed by me and then pronounced in the open Court on 12<sup>th</sup> day of July 2021).

**Sd/-**

**(A.SAMIULLA)**

**Addl. Senior Civil Judge**

**Jamkhandi.**

**/skn/**