

KABR210007502013



**IN THE COURT OF THE II ADDL. SENIOR CIVIL  
JUDGE AND J.M.F.C. AT ANEKAL**

Dated this the 2<sup>nd</sup> day of April, 2024

**: PRESENT :**

**Sri. KRISHNA RAJ K.,** B.A., LL.B.,  
II Addl. Senior Civil Judge & J.M.F.C.,  
Anekal.

**O.S. No. 606 / 2013**

**PLAINTIFFS:** Sri. Venkataswamy  
Dead by his LRs,

1(a). Smt. Jayamma  
W/o late Venkataswamy,  
Aged about 73 years,  
R/at No.1273, 7<sup>th</sup> Main Road,  
Vivek Nagara, Bengaluru South,  
Bengaluru - 560 047.

And Others.

**(Represented by Sri. B.R.C., Advocate)**

**V/s**

**DEFENDANTS:**

1. Sri Muniyappa  
S/o late Ganga Bovi,  
aged about 63 years,  
R/at Bovipalya,  
Kutaganahalli village,  
Sarjapura Hobli, Anekal Taluk,  
Bengaluru City District.

And Others.

**(Rep. by Sri. V.G.K., Adv. for Defendants)**

**COMMON PARTIES ON IA.NO.VIII TO X**

|                              |                                                                |
|------------------------------|----------------------------------------------------------------|
| <b>Applicant / Plaintiff</b> | Sri. Venkataswamy<br>Dead by his LRs,<br>Smt. Jayamma & Others |
|------------------------------|----------------------------------------------------------------|

**V/s**

|                                   |                        |
|-----------------------------------|------------------------|
| <b>Opponents /<br/>Defendants</b> | Sri Muniyappa & Others |
|-----------------------------------|------------------------|

**-: COMMON ORDERS ON I.A. No.VIII TO X:-**

The I.A.No.VIII is filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC seeking an

order of Temporary Injunction to restraining the defendants from alienating the suit schedule properties and creating third party interest over the suit schedule property pending disposal of the suit.

2. The I.A.No.IX is filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC seeking an order of Temporary Injunction to restraining the defendants from changing the nature of suit schedule properties pending disposal of the suit.

3. The I.A.No.X is filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC seeking an order of Temporary Injunction to restraining the defendants from putting up any construction in and over the suit schedule properties pending disposal of the suit.

4. In the accompanying affidavit it is submitted that the plaintiff and defendant No.1 to 5 constituted Hindu Undivided joint family and the suit schedule properties are their ancestral joint family properties. Originally, the property bearing Sy.No.140/1

measuring 07 guntas out of 01 acre 27 guntas and Sy.No.136/3 measuring 30 guntas including 02 guntas kharab land situated at Kutaganahalli village, Sarjapura Hobli, Anekal Taluk, Bengaluru District originally belonged to the grandfather of plaintiff late Chikkavenkataswamy. The plaintiff is entitle to legitimate share in the suit schedule properties. Behind the back of plaintiff, the husband of defendant No.2 and defendants No.2 to 5 illegally got created the sale deed dated 02.06.2006. The father of plaintiff and grandfather illegally executed the sale deed dated 10.04.1964 in favour of Sri. Yellappa and Hanumaiah with respect to suit 'B' schedule property. All the sale deeds executed behind the back of plaintiff are not binding on the plaintiff. The defendants are trying to alienate the suit schedule properties and also trying to change the nature of suit schedule properties. Hence, the defendants may be restrained by an order of Temporary Injunction from alienating the suit schedule properties and from changing the nature of suit schedule properties in any manner.

5. On service of suit summons, the defendants have appeared. The defendants No.2 to 5 have filed their written statement. The learned counsel for the defendants filed memo adopting the written statement as objection to the above applications.

6. Heard the arguments of learned counsel for the plaintiff and defendants.

7. The points that would arise for consideration of this Court are as follows;

**:- P O I N T S :-**

- (1) Whether the plaintiff has made out prima-facie case to grant temporary injunction as sought in IA.No.VIII to X ?
- (2) In whose favour balance of convenience lies ?
- (3) Who will be suffer irreparable injury if temporary injunction is granted or refused ?
- (4) What order ?

8. My findings on the above points are as under;

Point No.1 : In the Negative

Point No.2 : In favor of the defendants

Point No.3 : The defendants will suffer irreparable injury if Temporary Injunction is granted in favour of the plaintiff

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

**-: R E A S O N S :-**

9. **Point No.(1) to (3):-** Above points are inter-connected with each other and requires similar and identical discussion, therefore above points were taken up together at one stretch in order to avoid repetition of discussion.

10. It is the specific case of plaintiff that the grandfather of plaintiff Sri. Chikkavenkataswamy and his wife Smt. Eramma died leaving behind two sons namely 1. Gangabovi and 2. Munishami @ Munishami Bovi. The elder son Gangabovi had three children namely 1. Eramma, 2. Venkataswamy (plaintiff), 3. Muniyappa (defendant No.1). The elder daughter Eramma died issue-less. The second son Munishami @ Munishami Bovi had wife by name Yellamma and they died leaving behind one son by name Venkatappa @

Venkataswamy Bovi. The said Venkatappa @ Venkataswamy Bovi died leaving behind his wife Smt. Yellamma (defendant No.2) and three children namely 1. Ramesh (defendant No.3), 2. Ammaiah (defendant No.5) and 3. Devaraju (defendant No.4). The suit schedule properties bearing Sy.No.140/1 measuring 07 guntas out of 01 acre 27 guntas and the property bearing Sy.No.136/3 measuring 03 guntas including 02 guntas kharab land situated at Kutaganahalli village, Sarjapura Hobli, Anekal Taluk, Bengaluru District originally belonged to the grandfather of plaintiff late Chikkavenkataswamy. The grandfather of plaintiff had acquired the suit schedule properties through his ancestors. After the death of Chikkavenkataswamy, the plaintiff and defendants No.1 to 5 are in joint possession and enjoyment of the suit schedule properties. There was no partition among the family members with respect to the suit schedule properties. The plaintiff has demanded for partition in the suit schedule properties, however the defendants No.1 to 5 have postponing the same. On verifying the records, the plaintiff came to know that the defendant No.2 and her husband along with the defendants No.3 to 5 have illegally executed

registered sale deed dated 02.06.2006. The father of plaintiff and late Chikkavenkataswamy have illegally executed another sale deed dated 10.04.1964 in favour of one Yellappa and Hanumaiah in respect of suit 'B' schedule property and the said Yellappa and Hanumaiah have illegally executed registered sale deed dated 24.09.1965 in favour of defendant No.8 with respect to suit 'B' schedule property. Again the defendant No.8 in turn alienated the same in favour of defendant No.9 under registered sale deed dated 19.01.1976. The defendant No.9 has executed sale deed bearing document No.2048/1975-76 before the Sub-Registrar, Anekal. The legal heirs of late Yellappa and Hanumaiah have executed GPA in favour of defendant No.15 and the defendant No.15 illegally executed the sale deed dated 23.12.2006 in favour of defendant No.16. All the above transactions are illegal and not binding on the plaintiff. On the other hand, the defendants No.2 to 5 have contended that the suit schedule properties originally belonged to Chikkavenkataswamy S/o late Ramabhovi. The wife of Chikkavenkataswamy namely Smt. Eramma had three children namely 1. Gangabovi, 2. Munishami @ Munishami Bovi, 3. Papamma. The elder son Sri.



Gangabovi has separated from the family in the year 1964. When he has demanded for partition in the suit schedule properties, suit 'B' schedule property bearing Sy.No.140/1 measuring 01 acre 20 guntas was allotted towards the share of Ganga Bovi. In turn, the said Ganga Bovi and Chikkavenkataswamy have alienated the said property under registered sale deed dated 09.01.1964 in favour of Sri. Yellappa and Hanumaiah. The elder son of Chikkavenkataswamy has separated from the joint family in the year 1964 itself. Therefore, the plaintiff being the son of said Ganga Bovi has no right to claim partition in the suit schedule properties. The second son Muniswamy @ Munishami Bovi and daughter Smt. Papamma have acquired suit 'A' schedule property and the house bearing K.No.117 under registered Will Deed dated 26.12.1966. On the basis of Will Deed the mutation was effected in the name of Munishami @ Munishami Bovi and Smt. Papamma. After the death of Munishami @ Munishami Bovi, his son Venkatappa @ Venkataswamy Bovi had acquired the suit schedule property. The mutation was effected as per IHC. No.12/1986-87. Thereafter, they have alienated 20 guntas of land in favour of defendant No.6 under

registered sale deed dated 01.06.2006. Venkataswamy Bovi was died on 15.07.2006. After his death, remaining 10 guntas of land was mutated in the name of Smt. Yellamma. It is further contended that the defendant No.1 was died and his LRs not brought on record, therefore the suit is bad for non-joinder of necessary parties. Hence, the suit of the plaintiff is liable to be dismissed.

11. The learned counsel for the plaintiff argued that the suit schedule properties are the ancestral joint family properties and there was no partition between the branch of late Ganga Bovi and Munishami @ Munishami Bovi. The defendants No.2 to 5 illegally created the revenue entries in their names and trying to alienate the suit schedule properties during the pendency of the suit. On the other hand, the learned counsel for the defendants argued that there was already partition in the year 1964. The elder son of Chikkavenkataswamy i.e., Ganga Bovi who is the father of plaintiff has separated from the joint family. The property allotted towards the share of father of plaintiff was alienated along with the father of plaintiff and grandfather of plaintiff under registered sale deed

dated 09.06.1964. Thereafter, the father of plaintiff was settled at Bengaluru and he never in joint possession of the suit schedule properties. Therefore, the plaintiff has no right to seek partition in the suit schedule properties by questioning the earlier sale deeds.

12. In the light of arguments advanced by both side, I have perused the entire materials on record. It is the claim of plaintiff that there was no partition between the legal heirs of Chikkavenkataswamy and Smt. Eeramma. The plaintiff and defendant No.1 are representing the branch of Ganga Bovi. The defendants No.2 to 5 are representing the branch of Sri. Munishami @ Munishami Bovi. The defendants No.6 to 16 are the purchasers of suit schedule properties. It is the contention of defendants that in the year 1964 itself the father of plaintiff has separated from the joint family and towards his share the property bearing Sy.No.140/1 measuring 01 acre 20 guntas was allotted and thereafter the said Ganga Bovi along with his father Chikkavenkataswamy have executed the registered sale deed dated 09.01.1964 in favour of Sri. Yellappa and Hanumaiah. The said 'A'

schedule property was allotted towards the share of Munishami @ Munishamibovi and Smt. Papamma under registered Will Deed dated 26.12.1966. The plaintiff has categorically admitted that his father along with grandfather has executed sale deed dated 09.06.1964 with respect to suit 'B' schedule property. It is not the case of plaintiff that his father never alienated the suit schedule properties. The plaintiff's father himself along with grandfather of plaintiff have alienated the suit 'B' schedule property in favour of Yellappa and Hanumaiah. Thereafter, there were several other sale transactions in favour of subsequent purchasers who were arrayed as defendants No.6 to 16. The recitals of the said sale deeds prima facie shows that the plaintiffs are not in joint possession and enjoyment of the suit schedule properties. The plaintiff has not produced prima facie material to show that as on the date of institution of the suit, he was in joint possession and enjoyment of the suit schedule properties. On the other hand, the material on record prima facie shows that the defendants are in possession and enjoyment of the suit schedule properties. Therefore, the plaintiffs have failed to make out prima facie of case to grant

Temporary Injunction in his favour. The balance of convenience is in favour of defendants and the defendants will suffer irreparable injury if Temporary Injunction is granted in favour of plaintiff. Accordingly, Point No.1 is answered in the Negative, Point No.2 and 3 are answered accordingly.

13. **Point No.(4):** In view of the above findings, this court proceed to pass the following :-

**-: O R D E R :-**

The I.A.No.VIII filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of C.P.C. is hereby rejected.

The I.A.No.IX filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of C.P.C. is hereby rejected.

The I.A.No.X filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of C.P.C. is hereby rejected.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced by me in the open court, on this, **the 2<sup>nd</sup> day of April, 2024**)

**(KRISHNA RAJ K.,)**  
II Addl. Senior Civil Judge & J.M.F.C.,  
Anekal.

