

IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
AT DEVANAHALLI

PRESENT

Sri. B. DILEEP KUMAR, B.Com., LL.B.,
Senior Civil Judge & J.M.F.C.
Devanahalli

Dated this the 16th Day of September, 2020

O.S.No.95/2015

1. Smt. Kavyashree and Others : **Plaintiffs**

(By Sri. N.N./H.K.G.
Advocate)

V/s.

1. Sri. Nagaraj and Others : **Defendants**

(D1 - -----)
(D2, 4, 5 - By Sri.
T.S.R., Advocate)
(D3, 6 - Exparte)
(P.D. - By Sri. R.M.,
Advocate)

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**ORDERS ON I.A.No.II**

The plaintiffs have filed **I.A.No.2** under Order 39 Rule 1 and 2 r/w. Section 151 of C.P.C. to restrain the defendants from alienating the suit schedule properties, pending disposal of the suit.

2. In the plaint and the affidavit accompanying application the plaintiffs have taken same contention. The plaintiffs have filed the suit for partition and separate possession by metes and bounds of their 1/3<sup>rd</sup> share in the suit schedule properties. It is contended that the plaintiffs are the daughters of the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant is the step mother of the 1<sup>st</sup> defendant and defendants 3 to 6 are the daughters of the 2<sup>nd</sup> defendant and step-sisters of the 1<sup>st</sup> defendant. The suit schedule properties are the ancestral joint family properties of the plaintiffs. The suit schedule properties were originally owned by the father of the 1<sup>st</sup> defendant i.e., the grandfather of the plaintiffs by name Shamanna. The plaintiffs and defendants constitute undivided Hindu joint family and they are all in joint possession and enjoyment of the suit properties. During the lifetime of said Shamanna there was division of the properties and Shamanna died intestate leaving behind the plaintiffs and defendants to succeed to his estate. After death of Shamanna, there is no partition of the suit properties till this date. The 1<sup>st</sup> defendant has neglected the wellbeing of the plaintiffs and his family. Therefore the plaintiffs were brought up by their grandparents, the marriage of the 1<sup>st</sup> plaintiff was performed by her mother and grandmother. The 2<sup>nd</sup> plaintiff is studying and 3<sup>rd</sup> plaintiff is minor. Since their grandparents are very aged, for the purpose of marriage proposals coming for the 2<sup>nd</sup> plaintiff, the plaintiffs have shifted to the house of 1<sup>st</sup> defendant. But the 1<sup>st</sup> defendant unable to withstand the return of the plaintiffs has

started harassing them and tried to throw them out of the house. The plaintiffs are having legitimate share, right, title and interest in the ancestral joint family properties demanded to effect partition. But the 1<sup>st</sup> defendant kept on postponing the same. In the month of November 2014, the plaintiffs approached the defendant No.2 to 6 with request to effect partition of the suit properties and they told plaintiffs to prepare partition deed. The plaintiffs obtained revenue documents, to their shock and surprise the same stood in the name of defendants 3 to 6 separately instead of joint. Further, the plaintiffs' possession over the suit properties was interfered and disturbed by the defendants 3 to 6 in the 1<sup>st</sup> week and 2<sup>nd</sup> week of January 2015. Hence the plaintiffs have filed the suit.

3. After service of summons the defendants have appeared through their counsel and filed their written statement. The defendant No.3 & 6 are placed exparte. The defendant No.2,4 & 5 have contended that Shamanna's father Nanjundappa had two sons i.e., Shamanna and Narayanaswamy. Shamanna married Akkayamma and Sonamma i.e., defendants No.2 and the 1<sup>st</sup> defendant is son of Akkayamma. It is contended that the said Narayanaswamy, Akkayamma and Nagaraju filed a suit in O.S No.588/1991 against Sonamma i.e., the defendant No.2 herein for partition and separate possession of the properties in sy No.189/1 measuring 28 guntas and sy No.189/2 measuring 3 acres 16 guntas situated at Hunasmaranahalli village, house

property measuring 40 X 45 feet at Kodaguriki village, Devanahalli taluk including the suit schedule properties. The said suit came to be compromised on 03-12-1993. In the light of compromise recorded in O.S No. 588/1991 the question of effecting one more partition at the instance of the plaintiff does not arise for consideration. The 1<sup>st</sup> defendant is instrumental in filing the frivolous suit through his daughters. It is contended that the suit schedule properties were the properties allotted to the share of the defendant No.2 in the O.S No. 588/1991. Therefore, the plaintiffs have no right to claim any share in the same. After the partition in the year 1993 all the parties are residing separately, enjoying the properties fallen to their share independently. The suit properties which came to share of the 2<sup>nd</sup> defendant has been divided among her daughters i.e., the defendant No.3 to 6 herein. Therefore, the defendants contended that the suit is not maintainable and liable to be dismissed as being hit by Order II rule 2 of CPC. All other plaint averments are denied by the defendants. Thus, the defendants pray for dismissal of the suit and IA No.2.

4. Heard the arguments and perused the records.
5. The following points arise for my consideration:-
  1. Whether the plaintiffs have made out prima-facie case for grant of an order of equitable relief of

temporary injunction against the defendants?

2. Whether the plaintiffs will be put to irreparable injury and hardship, in case an order of temporary injunction is not granted against the defendants?
3. Whether the balance of convenience lies tilts in favour of the plaintiffs?
4. What Order?

6. My findings on the above points are as under:-

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|--------------|------------------------------------------|
| Point No.1 : | In the Negative                          |
| Point No.2 : | In the Negative                          |
| Point No.3 : | In the Negative                          |
| Point No.4 : | As per final order<br>for the following; |

### **REASONS**

7. **Points No.1 to 3:-** Since these Points are inter related with each other, hence in order to avoid repetition, they are taken up together for consideration. The brief facts of plaintiff and defendants stated above, hence not repeated once again.

8. The plaintiffs have filed the suit for partition and separate possession. The plaintiffs contended that they are the daughters of the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant is the step

mother of the 1<sup>st</sup> defendant and defendants 3 to 6 are the daughters of the 2<sup>nd</sup> defendant and step-sisters of the 1<sup>st</sup> defendant. The suit schedule properties are the ancestral joint family properties of the plaintiffs. The suit schedule properties were originally owned by the father of the 1<sup>st</sup> defendant i.e., the grandfather of the plaintiffs by name Shamanna. The plaintiffs and defendants constitute undivided Hindu joint family and they are all in joint possession and enjoyment of the suit properties. During the lifetime of said Shamanna there was no division of the properties and Shamanna died intestated leaving behind the plaintiffs and defendants to succeed to his estate.

9. The 1<sup>st</sup> defendant has neglected the wellbeing of the plaintiffs and his family. Therefore, the plaintiffs were brought up by their grandparents, the marriage of the 1<sup>st</sup> plaintiff was performed by her mother and grandmother. Since their grandparents are very aged, the plaintiffs have shifted to the house of 1<sup>st</sup> defendant. But the 1<sup>st</sup> defendant unable to withstand the return of the plaintiffs has started harassing them and tried to throw them out of the house. The plaintiffs are having legitimate share, right, title and interest in the ancestral joint family properties demanded to effect partition. In the month of November 2014, the plaintiffs approached the defendant No.2 to 6 with request to effect partition of the suit properties and they told plaintiffs to prepare partition deed. The plaintiffs obtained revenue documents, to their shock and

surprise the same stood in the name of defendants 3 to 6 separately instead of joint. Hence the plaintiffs have filed the suit.

10. In support of their case, the plaintiff has produced the following documents:- copy of genealogical tree, copy of the encumbrance certificates and RTC extracts, copy of the IHR No.150/1995-96, copy of the death certificate of Akkamma.

11. The advocate for the plaintiffs submits that the plaintiffs have established prima-facie case and balance of convenience lies in their favour while praying to allow the application, that if the application is not allowed it will lead to multiplicity of proceedings and that they will suffer irreparable loss. Hence they pray to allow the application.

12. On the other hand, the defendants argued that plaintiffs great grandfather Nanjundappa had two sons i.e., Shamanna and Narayanaswamy. Shamanna married Akkayamma and Sonamma i.e., defendants No.2. The 1<sup>st</sup> defendant is son of Akkayamma. It is argued that the said Narayanaswamy, Akkayamma and Nagaraju filed a suit in O.S No.588/1991 against Sonamma i.e., the defendant No.2 herein for partition and separate possession of the properties in sy No.189/1 measuring 28 guntas and sy No.189/2 measuring 3 acres 16 guntas situated at Hunasmaranahalli village, house property measuring 40 X 45 feet at Kodaguriki village,

Devanahalli taluk including the suit schedule properties. The said suit came to be compromised on 03-12-1993. In the light of compromise recorded in O.S No. 588/1991 the question of effecting one more partition at the instance of the plaintiff does not arise for consideration. It is contended that the suit schedule properties were the properties allotted to the share of the defendant No.2 in the O.S No. 588/1991. Therefore, the plaintiffs have no right to claim any share in the same. After the partition in the year 1993 all the parties are residing separately, enjoying the properties fallen to their share independently. The suit properties which came to share of the 2<sup>nd</sup> defendant has been divided among her daughters i.e., the defendant No.3 to 6 herein. Thus, the defendants pray for dismissal of the suit and IA No.2.

13. In support of their case, the defendants have produced the following documents:- copy of the plaint in O.S No. 588/1991, copy of the compromise petition in O.S No. 588/1991, copy of the ordersheet in O.S No. 588/1991.

14. The defendants counsel submits that the plaintiff has not made out prima-facie case and the balance of convenience does not lie in his favour on the other hand balance of convenience tilts in favour of the defendants, they pray for rejection of the application.

15. I have carefully examined the plaint and documents produced by both the parties. There is no dispute with respect to relationship among the parties. The plaintiffs have produced the encumbrance certificate with respect to item No.1 of the suit schedule property it reflects in the name of K.N.Shamanna having raised loan by mortgaged from the year 1970 to 2004. Similarly another encumbrance certificate from the year 2004 to 2014 reflects the names of defendant No.4 & 5. With respect of item No.3 of the suit property the EC reflect for the total extent of 4 acres whereas the suit property is to the extent of 1 acre 09 guntas. All the computerised RTC's reflects in the name of defendant 4 and 5 with respect to item No.1 and 2 and name of defendant No.3 & 6 with respect to item No.3. Further the MR No. 150/1995-96 reflects that from name of Sonnamma i.e., the defendant No.2 the names of defendant No.4 and 5 has been mutated as per inheritance.

16. The handwritten RTC with respect to item No.3 reflects in the name of K.N.Shamanna and in column No.10 it is shown as ancestral from the year 1973-74 to 2000-2001 the suit property stood in the name of K.N.Shamanna i.e., the plaintiffs' grandfather. It is contended that the plaintiffs' father is spendthrift and did not take care of the family. Further it is alleged that the 1<sup>st</sup> defendant was addicted to bad vices and did not take interest in maintaining the family. Taking advantage of

the bad habits of the 1<sup>st</sup> defendant, the other defendants have tried to deprive the legitimate rights of the plaintiffs.

17. The defendants have produced the plaint, compromise petition in O.S No. 588/1991. The said suit was filed by one K.Narayanaswamy along with 1<sup>st</sup> defendant herein and Akkiyamma i.e., the 1<sup>st</sup> defendant's mother against the 2<sup>nd</sup> defendant herein. The suit has ended in compromise among the parties therein and the suit properties herein are the item No.1 to 3 properties therein along with other properties. In the compromise petition, the suit properties are allotted to the share of the 2<sup>nd</sup> defendant i.e., Sonnamma.

18. The said suit was ended in compromise between them on 03.12.1993. As per the compromise the present suit properties fallen to the share of 2<sup>nd</sup> defendant. Wherefore, 2<sup>nd</sup> defendant is the absolute owner of the suit properties. On the date of compromise, the plaintiffs No.2 and 3 not at all born.

19. Apart from this aspect, as per Section 6 of Hindu Succession Act woman could not claim their share on a property if the disposition or alienation including any partition or testamentary disposition of property which had taken place before 20.12.2004. As per the compromise decree, the suit properties already fallen to the share of defendant No.2. Wherefore, plaintiffs are having share or not will be considered only after

conclusion of trial. At this stage, this court has not found any prima-facie material in favour of plaintiffs.

20. The plaintiffs sought for partition with respect of three properties. As per the above compromise there are five properties. The plaintiffs not included other two properties in this case. It amounts to suppression of material. In the said compromise Sy.No.189/1 measuring 28 guntas and Sy.No.191/2 measuring 3.16 guntas fallen to the share of the plaintiffs of the said suit. The 1<sup>st</sup> defendant is also one of the plaintiff in the said suit. The plaintiffs are the daughters of 1<sup>st</sup> defendant. If at all, they wants to claim any share in the properties, then they have to claim share in the properties which was allotted to 1<sup>st</sup> defendant. Wherefore, this court has not found any prima-facie case and balance of convenience in favour of plaintiffs. If an order of injunction is granted, then defendants will be put to great hardship than the plaintiffs. The plaintiffs suppressed the real aspects before this court.

21. Plaintiffs through this application prays for to pass an order of temporary injunction restraining the defendants from alienating the property. Plaintiffs have not shown any prima-facie material that the suit properties are the ancestral and joint family property. They have not furnished any material to show that the defendants are trying to alienate the property. If injunction is granted against the defendants then they will be put to great hardship. The plaintiffs have not included all the

properties. It shows that they have not come to the court with clean hands. Hence, I answer the Points No.1 to 3 in Negative.

22. **Point No.4**:- In view of above all discussion this court is proceed to pass the following:

**ORDER**

The I.A.No.2 dated:31-01-2015  
filed by plaintiffs under Order 39 Rule 1  
and 2 r/w. Section 151 of CPC is hereby  
rejected.

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 16<sup>th</sup> day of September, 2020).

**(B. DILEEP KUMAR)**  
**Senior Civil Judge & JMFC.,**  
**Devanahalli.**