

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

PRESENT

SRI. PRAVEEN NAYAK, LL.M.,
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 29th September, 2023.

O.S.No.311/2022

Smt. Pillamma : **Plaintiffs**

(Plt. - By Sri. A.K.B.,
Advocate)

- V/s. -

Sri. K. Narayanaswamy & Another, : **Defendants**

(Def.1 - By Sri.M.G.P.,
Advocate)
(Def.2 - By Sri. B.M.G.,
Advocate)

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ORDERS ON I.A.No.I FILED BY THE PLAINTIFFS U/o.XXXIX
RULE 1 & 2 of C.P.C.

The instant application has been filed by the plaintiff seeking ad-interim order of Temporary Injunction to restrain

the defendants, their agents or any body acting through them from alienating the suit schedule properties in favour of 3rd parties till disposal of suit.

2. In the affidavit accompanying the application the plaintiff has stated that, she and the defendants are brothers and sisters. The suit schedule properties are ancestral and joint family properties of her and defendants. They are in joint possession and enjoyment of the suit schedule properties. The plaintiff is entitled for 1/3rd in the same. The khatha pertaining to the suit properties standing in the names of the defendants. The defendants are trying to alienate the suit schedule properties in favour of 3rd parties. The plaintiff has got prima facie case the balance of convenience tilts in her favour. If the defendants alienate the suit schedule properties, the plaintiff will be put irreparable loss and injury. Hence prayed to allow the application.

3. In response to suit summons the defendants No.1 and 2 appeared through different counsel the defendant No.1 filed written statement and adopted the same as object to I.A. No.1. The defendant No.2 also filed written statement and adopted the same.

4. In the written statement the defendant No.1 has denied the case of the plaintiff. It is stated that the plaintiff has filed the present suit for the relief of Partition and Separate

Possession, which is not maintainable under law. The plaintiff has not come up with clean hands. The plaintiff and defendants are well aware about the partition taken place on 04-02-1999. One Kempanna was the propositus and he had a son by name K. Narayanaswamy and two daughters by name Pillamma and Munirathnamma. They are the defendant No.1 and plaintiff and defendant No.2 respectively. During his life time Kempanna settled all his properties by executing partition deed on 04-02-1999 in favour of defendant No.1. In the said partition both the suit schedule properties have been allotted to the share of defendant No.1. As per the partition mutation entries have been changed and the revenue records are standing in the name of defendant No.1. The physical possession of the suit properties have been delivered to defendant No.1. The partition was duly acted upon. The defendant No.1 executed Mortgage deed in favour of one M. Narayanswamy in respect of item No.2 of suit schedule properties. The said Mortgage deed was executed by receiving an amount of Rs.20,000/- on 27-10-2003 for the family necessity. The defendant No.1 and his son sold the item No.2 property in favour of M. Narayanaswamy through registered Sale Deed. On 01-09-2007 the defendants No.1 and 2 have again purchased the suit item No.2 property from their own fund through registered Sale Deed. Under the said Sale Deed the physical possession of item No.2 property has been delivered to defendants No.1 and 2. The defendant No.2 filed O.S.No.384/2016 against the plaintiff for the relief of partition and the said suit came to be decreed by allotting half share

each in favour of defendant No.1 and defendant No.2. The suit item No.2 is the self acquired property of the defendants. The plaintiff has no right over the same. The suit item No.1 property has been acquired by the defendant No.1 under partition held between him and his father. The partition taken place on 10-06-1990 and khatha has been effected accordingly. The defendant No.1 has been enjoying the property as absolute owner. The suit of the plaintiff is not maintainable as partition took place and revenue entries have been changed prior to 20-12-2004. The plaintiff and defendant No.2 were never in possession and enjoyment of the said property. The plaintiff should have valued the suit under section 35(1) of Karnataka Court Fee and suit valuation act. The suit is hopelessly barred by time. Hence, prayed to reject the application.

5. The defendant No.2 filed separate objection by denying the plaint averments. It is stated that item No.2 property was purchased by defendants No.1 and 2 jointly through registered Sale Deed dated 01-09-2007. The revenue entries have been made jointly in the name of the defendants. The defendant No.2 filed O.S.No.384/2016 seeking partition of suit item No.2 property and the same was decreed by allotting half share each in favour of defendants No.1 and 2. the plaintiff was never in possession of item No.2 property. The suit item No.1 property is ancestral and joint family property of the plaintiff and defendants. The defendants has been in physical possession and enjoyment of the same. The defendant No.2 is

also entitled for 1/3rd share in the suit schedule item No.1 property. Hence, prayed to allow the application in respect of item No.1 property only.

6. Heard both sides.

7. **The following points would arise for my consideration:**

1. Whether the applicants prove that they have got prima-facie case and the balance of convenience tilts in their favour to pass an order of ad-interim injunction on I.A. No.1 ?
2. Whether the applicants prove that they will suffer irreparable loss and hardship if temporary injunction order has not been passed on I.A. No.1 ?
3. What order or decree ?

8. **My answer to the above points are as follows:**

Points No.1 & 2 : **In the Negative**

Point No.3 : **As per final Order
for the following:**

REASONS

9. **Point No.1:** In order to prove the prima facie case the plaintiff must established the prim facie right over the suit schedule property and also establish that balance of convenience tilts in his favor.

10. The plaintiff has pleaded in the plaint that one Pillamaranna was the propositus of the joint family. He died leaving behind his son Kempanna. The said Kempanna died leaving behind the plaintiff and defendants No.1 and 2. The plaintiff and defendant together constitute a joint Hindu family. The suit schedule properties are the joint family properties. The khatha of the suit schedule properties were standing in the name of Kempanna. Thereafter the khatha and RTCs were mutated in the names of the plaintiff and the defendants. The plaintiff approached the defendants for partition of suit schedule properties. The defendants refused the same.

11. On the other hand the defendant No.2 has admitted the plaint averments in part and contended that the suit item No.1 property is available for partition. The suit item No.2 property is the self acquired property of defendants No.1 and 2 and the same is not available for partition. The defendant No.2 in her counter claim has sought for 1/3rd share in the suit item No.1 property. On the other hand the defendant No.1 has contended that there was a partition on 04-02-1999 in the family

and in the said partition the suit schedule properties have been allotted to share of defendant No.1. He executed Mortgage deed by receiving an amount of Rs.20,000/- from M. Narayanaswamy for family necessity and later sold the suit item No.2 property in favour of him vide registered Sale Deed dated 27-10-2003. Later, on 01-09-2007 the defendants No.1 and 2 repurchased the suit item No.2 property from the said M.Narayanaswamy. The defendant No.2 filed O.S.No.384/2016 and obtained decree for half share in the said property. Suit item No.1 property is the property acquired by the defendant No.1 through partition in the year 1990. The partition has been acted upon.

12. In view of rival contention on going through the document produced by the plaintiff it is clear that the suit schedule properties were initially standing in the name of Pillamaranna and after his death name of Kempanna came to be entered in the revenue records. The name of defendant No.1 came to be entered in respect of the RTC pertaining to suit item No.1 property. The names of defendant No.1 and 2 have been entered in respect of item No.2 property. It is pertinent to note that the plaintiff has not produced any iota of evidence to show that the name of the wife and children of late Kempanna came to be entered in the revenue records at any point of time. It is also to be noted that the plaintiff has not disclosed material facts in the plaint and maintained in the silence in respect of registered documents such as Sale Deed dated 27-10-2003 and 01-09-

2007. This gives an inference that plaintiff has not approached the court with clean hands to obtain the equitable relief of Temporary Injunction.

13. The defendant No.2 has contended that the suit item No.1 property is available for partition. She has further contended that suit item No.2 is the self acquired property of defendants No.1 and 2 and the said property is not available for partition. The defendant No.1 has contended that there was a partition on 04-02-1999 among the joint family members and in the said partition the defendant No.1 has acquired both the suit schedule properties. He has produced the unregistered partition deed before this court. On careful perusal of unregistered partition deed it appears that, the same has been entered between Kempanna and defendant No.1. It is to be noted that the plaintiff and defendant No.2 are not parties to the said partition deed. Now, it is necessary to find out whether the said partition deed has been acted upon or not. The defendant No.1 has produced documents which show that the revenue entries have been effected on the basis of the alleged unregistered partition deed dated 04-02-1999 immediately. It is not the case of the plaintiff that the said partition deed is a created document. The defendant No.2 has claimed that the suit item No.2 property is the self acquired property of her and defendant No.1. At the same time she is contending that the suit item No.1 property is still available for partition. It is pertinent to note that, on the basis of the alleged partition deed dated 04-02-1999, the name

of defendant No.1 came to be entered in the revenue records and on the basis of the same he has sold the suit item No.2 property in favour of M. Narayanaswamy and 27-10-2003. Later, the defendants No.1 and 2 have repurchased the same through registered Sale Deed dated 01-09-2007. The entire transaction pertaining to the item No.2 property is based on the partition dated 04-02-1999. If the defendant No.1 had not acquired the suit properties by virtue of the alleged partition, he had no right to execute the Sale Deed dated 27-10-2003. Under such circumstances, the defendant No.2 could not have claimed that she and the defendant No.1 together purchased the suit item No.2 property by virtue of Sale Deed dated 01-09-2007. The defendant No.2 is admitting the partition deed dated 04-02-1999 in respect of item No.2 property and she has been denying the same in respect of item No.1 property. The defendant No.2 cannot blow hot and cold in the same breath.

The learned counsel for the plaintiff relied upon a decision reported in **(2020) 9 SCC 1, Vineeta Sharma Vs.Rakesh Sharma and others** wherein it is held that “Defence based upon plea as to oral partition, in exceptional cases it may be accepted”. He has also relied upon a decision reported in **2011(1) KCCR 314**, wherein it is held that partition deed is a compulsorily registerable document”. On the other hand learned counsel for the defendant No.1 has relied upon a decision reported in **(2006) 5 SCC 353, Prem Singh and others Vs. Birbal and others**, wherein

it is held that “ there is presumption of valid execution of registered document and onus is on the person who rebuts such presumption by leading evidence.” I have gone through the above decisions with due respect. In the instant case there are documents to show that the oral partition has been acted upon and revenue entries have changed at undisputed point of time. On the basis of the said oral partition registered instruments have been executed. The decision relied upon by the counsel for the defendant No.1 shows that the date of knowledge shall be considered from the date of registered instruments. There are sufficient materials to believe that there was oral partition in the family which was reduced into righting in unregistered family settlement deed and the same was acted upon. Hence, the decisions relied upon by the counsel for the plaintiff are not applicable to the present set of facts.

14. There is suppression of fact by the plaintiff in the plaint. The defendant No.1 has placed sufficient materials on record to prima facie prove that there was a partition on 04-02-1999, which was acted upon. The revenue records support the contention of the defendant No.1. The plaintiff has not uttered even a single word about the alleged partition and the subsequent Sale Deeds in respect of item No.2 property. In view of the same there is no prima facie case in favour of plaintiff and balance of convenience does not tilt in her favour. Hence, I answer **Point No.1 in the Negative.**

15. **Point No.2** : The plaintiff has failed to prove the prima facie case and the balance of convenience does not tilt in her favour. It is settled position of law that where there is no prima facie case, the question of considering the irreparable harm and injury does not arise. If the Temporary Injunction is granted, the defendant No.1 will suffer irreparable harm and injury. The plaintiff has not made out grounds to allow the application. Hence, I answer **Point No.2 in the Negative.**

16. **Point No.3** : In view of the findings on Point No.1 and 2, this court proceeds to pass the following:

O R D E R

I.A. No.1 filed by the
plaintiffs U/o.XXXIX Rule 1 &
2 of C.P.C is hereby rejected.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 29th Day of September, 2023).

(SRI. PRAVEEN NAYAK)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.