

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

PRESENT

**SRI. PATIL HARISH RANGANAGOWDA,  
B.A., LL.B.(Hon's)**

Addl. Senior Civil Judge & J.M.F.C.  
Devanahalli.

**Dated this day of 22<sup>nd</sup> November,2022.**

**O.S.No.609/2022**

Sri.C.N. Kantharaju, : **Plaintiff**  
S/o Late D.M. Nanjundappa,  
Aged about 42 years,  
R/at: No.236,Chikkajala  
Jala Hobli,  
Bangalore North Taluk.

(Plt. - By Sri. G.S.H., Advocate)

**- V/s. -**

1. Smt. Pillamma, : **Defendants**  
W/o Late D.M. Nanjundappa,  
Aged about 68 years,  
R/at: No.236,Chikkajala  
Jala Hobli,  
Bangalore North Taluk.
2. Sri. C.N. Shiva Kumar,  
S/o Late D.M. Nanjundappa,  
Aged about 47 years,
3. Sri.C.N. Mahesh,  
S/o Late D.M. Nanjundappa,  
Aged about 35 years,

The defendants No.2 & 3 are  
R/at: No.92/1, Rangaswamy Camp,  
Chikkajala, Jala Hobli,  
Bangalore North Taluk.

(Def. -1 & 2 -By Sri. A.R.S.R.,  
Advocates)  
(Def. -3 -----

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**ORDERS ON I.A. filed U/o.39 RULE 1 & 2 & 4 OF C.P.C.**

The plaintiff has filed I.A. No.1 U/o.39 Rule 1 & 2 of C.P.C, seeking to restrain the defendants and their agents or anybody acting under them from alienating the suit properties during pendency of this suit. This court by order dated 31.05.2022 granted interim injunction restraining the defendants and their agents or anybody acting under them from alienating the suit properties to the 3<sup>rd</sup> parties. The defendants appeared through counsel and filed application U/o.39 Rule 4 of C.P.C. seeking to vacate the interim order in respect of suit item No.4 & 7 property. Heard counsel for plaintiff and defendants on I.A. No.1 & 2.

**2. Facts of case are unfurled here under :** It is pleaded by the plaintiff that, he himself and defendants constitute Hindu undivided joint family and suit properties are

joint family properties of himself and defendants. According to him one Nanjundappa was the original prapositurs. He died leaving behind defendant No.1 as his wife. He himself and defendant No.2 & 3 are the children's of said Nanjundappa and defendant No.1. Thus he himself and defendants constitute Hindu undivided joint family and suit properties are joint family properties of himself and defendants. The said Nanjundappa had sold joint family property bearing Sy.No.17/7 and 18/2 to one Manjunath under registered dated 06.03.2006. He had purchased the suit item No.2 property by utilizing the sale proceedings of said property. The suit item No.1 was earlier belonging to the joint family. It was sold by Nanjundappa in favour of Narayanswamy, who is the brother of defendant No.1. The said Narayana swamy has gifted the said property to defendant No.1 under registered gift deed. Therefore the said property is also joint family property. The request made by him to effect partition and separate possession has been turndown by defendants. Hence he approached this court.

3. The defendants appeared through their counsel and filed their written statement by opposing the claim of plaintiff in respect of suit item No.3, 4, 5, 7 & 8 property. They have inter

alia contended that, the suit item No.4 property is the self acquired property of defendant No.1 who acquired under gift deed executed by her father. The suit item No.7 property is the self acquired property of defendant No.2 who acquired the same by virtue of temporary grant. Similarly the suit item No.8 property was granted to plaintiff. The defendant No.2 has constructed house over suit item No.7 property by using his hard earned money. The suit item No.1 & 2 properties are abutting to the lake and falls in the buffer zone. As regards suit item No.3 is concerned, there is dispute pending over said property. The suit item No.5 property is also not available for division as the dispute is pending over the said property. The suit item No.6 property is also not available for division. Therefore they seek to dismiss the suit.

4. As indicated above the plaintiff has filed I.A. under order 39 Rule 1 & 2 of C.P.C. seeking to injunct the defendants from alienating the suit property to the 3<sup>rd</sup> parties. During pendency of suit, this court by order dated 31.05.2022 granted interim injunction as requested in I.A No.1. The defendants seek to vacate the said interim injunction in respect of suit item No.4 & 7 property. Heard both the sides.

**5. Having heard both sides, the following points would arise for my consideration:**

1. Whether the Plaintiffs made out prima-facie case for issuance of injunction in respect of all properties ?
2. Whether the Plaintiff proves that, the balance of convenience lies in his favour?
3. Whether the Plaintiff proves that, if injunction is refused, he would be put to irreparable loss which cannot be compensated in terms of money?
4. Whether defendants made out ground to vacate the interim order ?
5. What order?

**6. Having heard and having perused the material on record, my findings to above points is as under :**

Point Nos.1 to 4 : **Partly in the Affirmative.**

Point No.5 : **As per final Order for the following :**

## R E A S O N S

**7. Point Nos.1 to 4 :** In order to avoid the repetition of facts, these points are taken together for common consideration. It is the assertion of plaintiffs that, he himself and defendants constitute Hindu undivided joint family and suit properties are joint family properties of himself and defendants. According to him one Nanjundappa was the original prapositurs and died leaving behind himself and defendants as his decedents to succeed the property. According to him, he himself and defendants succeeded the property. The request made by him to effect partition and separate possession has been turn down by the defendants. Hence he approached this court.

8. The defendants did not dispute the relationship of plaintiff. They inter alia contended that, the suit item No.4 & 7 properties are self acquired properties of defendant No.1 & 2. Therefore the said properties are not available for division. As regards suit item No.3 & 6 are concerned, dispute is pending between themselves and one Ravikumar and others. Therefore the

said properties are liable to be divided after clearing the said dispute. Therefore they seek to dismiss the suit.

**9. Based on rival contentions of parties, the following undisputed facts can be culled out hereunder :**

1. It is not in dispute that, the plaintiff and defendants are the lineal decedents of Nanjundappa.
2. It is also not in dispute that, the suit agricultural landed properties are standing in the name of defendant No.1.
3. It is also not in dispute that, the defendants have agreed to share the property with the plaintiff in respect of suit item No.1, 2 & 5.

10. In respect of suit item No. 3 & 6, they agreed to share the said property after clearing the litigation. They seriously disputed the claim of plaintiff in respect of suit item No.4 & 7 property. Therefore with this back drop of disputed and undisputed fact and I proceed to examine the material placed by the parties. The plaintiff buttress his case by placing reliance on Genealogical tree, Record of Rights, Mutation, Panchayath documents and

Copies of sale deeds. The Copy of sale deed produced by plaintiff indicate that, the said Nanjundappa had sold suit item No.1 property to one Narayanswamy who is the brother of defendant No.1 under registered sale deed dated 08.01.2007. He has mentioned in the said sale deed that, the said property is his ancestral property. The said Narayanswamy had gifted the said property to his sister, i.e., defendant No.1 Pillamma under registered gift deed dated 16.03.2013. The suit item No.2 property was purchased by said Nanjundappa under registered sale deed dated 21.03.2006. The defendants did not seriously dispute the claim of plaintiff over suit item No.1 & 2 property. They infact agreed to share the said properties with plaintiff. The defendants have contended that, there is dispute over suit item No.3 property which is filed by one Ravikumar and others. They have not produced the document to show about the status of said dispute. The Record of Rights produced by the plaintiff indicate the name defendant No.1 to an extent of 2 gunta of suit item No.3 property. The defendants have seriously disputed the claim of plaintiff in respect of suit item No.4 property. The defendants have contended that, the said property was earlier belonging to father of defendant No.1, who had gifted the said property to defendant No.1. The plaintiff has not produced the old Record of Rights

standing in the name of his father Nanjundappa to show that, it was later mutated in the name of defendant No.1. In the absence of old Record of Rights the said property cannot be inferred as joint family property of plaintiff and defendants at this stage. As regards suit item No.5 & 6 is concerned, the plaintiff has produced Panchayath documents which indicate the name of Nanjundappa. Therefore the interest of plaintiff could be considered in respect of said suit item No.5 & 6 property. As regards suit item No.7 is concerned, the plaintiff has produced Panchayath document which indicate the name of defendant No.2. The defendant No.2 has claimed that, the said property was granted to him on his individual capacity. He has constructed house in the said property. He has produced temporary grant certificate indicating his name over the said property. The material on record such as the copy of sale deed executed by Nanjundappa and defendant No.2 indicates that, the said Nanjundappa and defendant No.2 have resided together. The plaintiff did not join in execution of sale deed with his father. It would indicate that, the plaintiff is not residing with the defendants. He has also acquired suit item No.8 property by virtue of grant.

11. Therefore the said to independent grant indicates that, the said grants was made independently. Therefore at this stage

the right of plaintiff over suit item No.7 property cannot be inferred. As regards suit item No.8 is concerned, the said property is standing in the name of plaintiff. Therefore question of alienation of said property by the defendants does not arise at all. Therefore I hold that, the plaintiff has made out prima faice case for issuance of injunction in respect of suit item No.1 to 3, 5 & 6 property alone. The claim of plaintiff in respect of suit item No.4, 7 cannot be considered at this stage as he has failed to make out prima facie case. **Therefore I hold above point Nos.1 to 3 in the partly Affirmative in respect of suit items no.1 to 3, 5 & 6 property. The point No.4 is answerd in the affirmative by vacating the interim injunction in respect of suit item no. 4 & 7 property as plaintiff failed to make out Prima fa-cie case.**

**12. Point No.5 :** In the light of aforesaid finding on the above said point, I proceed to pass the following :

### **ORDER**

The I.A. filed by the plaintiff U/o.39 Rule 1 & 2 of C.P.C. is hereby allowed in part. The defendants and their agents or

anybody acting under them are hereby temporary restrained from alienating suit item No.1 to 3, 5, 6 property till disposal of suit.

Consequently the I.A. filed by defendants U/o.39 Rule 4 of C.P.C. is hereby allowed and interim order granted in favour of plaintiff in respect of suit item No.4 & 7 property is hereby vacated.

As regards suit item No.8 is concerned the said property is standing in the name of plaintiff and question of alienation of said property by the defendants does not arise at all. It is made it clear to the parties that, this order of injunction is binding only against parties to the suit and will not enable them to claim any litigative right against 3<sup>rd</sup> parties.

**Call on: 27-01-2023 For issues.**

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 22<sup>nd</sup> Day of November 2022).

**(SRI. PATIL HARISH RANGANAGOWDA)  
Addl. Senior Civil Judge & J.M.F.C.,  
Devanahalli.**

