



**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 22nd February, 2025.

O.S.No.869/2024

BETWEEN:

Sri. Anche- Anjinappa : **Plaintiff**

(Plts. - By Sri. C.S., Advocate)

AND:

Sri. Muniraju & Others : **Defendants**

(Def.13 to 17 - By Sri. C.K.N., Advocate)
(Def.18 to 20 & 25 - By Sri. K.S.S., Advocate)
(Def.21 to 23 - By Sri. K.M.K., Advocate)
(Def.27 & 28 - By Sri. K.V.M., Advocate)
(Def.1 to 11, 29 - By Sri.J.P.N., Advocate)
(Def.24, 26 - By Sri. M.R., Advocate)
(Def.12 - By Sri. S.N.B., Advocate)
(Def.30 - By Sri. K.M., Advocate)

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i	Provision under which the application is filed	Under Order XXXIX Rule 1 & 2 and 4 R/w.Sec.151 of C.P.C.
ii	Relief sought for	Partition and Permanent Injunction
iii	The date on which the application is filed	29-08-2024 and 05-12-2024
iv	Number of the application	I.A.No.I & II
v	Date of filing objection	14-11-2024 and 15-01-2025
vi	Date of Pronouncement of Order	22-02-2025

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

COMMON ORDER ON I.A. No.I & II

I.A. No.I is filed by the plaintiffs U/o. XXXIX Rule 1 and 2 R/w.Sec.151 of C.P.C, seeking ad-interim order of Temporary Injunction to restrain the defendants, their agents or anybody claiming through them from alienating the suit schedule properties till disposal of suit.



2. I.A. No.II is filed by the defendants No.18 to 20 and 25 U/o. XXXIX Rule 4 R/w.Sec.151 of C.P.C, seeking to vacate the Ex-parte Temporary Injunction granted by this Court in favour of the plaintiff.

3. In the affidavits accompanying I.A. No.I, the plaintiff has stated that he has filed the suit for the relief of Partition and Separate Possession. The defendants No.1 to 27 are the absolute owners in peaceful possession and enjoyment of the suit schedule properties. The plaintiff and the defendants are together constitute a joint Hindu family and they are in peaceful possession and enjoyment over the same. The maternal uncle of the plaintiff by name Venkatappa has 4 children by name Doddappaiah, Muni Akkayamma, Chikkayyaiah and Muniyappa. The suit properties are the ancestral and Joint Family properties. There is no partition among the Joint Family members. Venkatappa died by leaving behind his legal heirs. There was no partition among them. The katha and mutation were transferred in the name of the Joint Family members. On 07.08.2018, Muni Akkayamma died. Subsequently, the applicant came to know that the defendants have already filed a suit and applied for RTC and confirmed that the revenue documents are still standing in the name of Joint Family. During the lifetime of his mother, the defendants No.1 to 7 colluded with each other and filed O.S.No.395/2014



and got compromised the same on 27.07.2024. The plaintiff came to know that the defendant No.7 and her family members entered into Agreement of Sale with defendant No.28 in respect of suit item No.1 property on 13.08.2024. The plaintiff demanded for the share of his mother and the defendants have refused to comply the same. There is prima facie case in favour of the plaintiff and the balance of convenience tilts in his favour. Hence, prayed to allow the application.

4. In response to suit summons, the defendants appeared through their counsel. The defendants No.1 to 11 filed objection to I.A. No.I. The defendants No.12 to 17, 21 to 23, 27 and 30 have filed written statements and adopted the same as objection to I.A. No.I. In addition, the defendants No.18 to 20 and 25 filed I.A. No.II to vacate the interim order granted by this Court in favour of the plaintiff. In the written statement, objection to I.A. No.I and affidavit accompanying I.A. No.II, the defendants have stated that the suit itself is not maintainable. The plaintiff is noway concerned to the Joint Family. He is claiming that his mother is the daughter of Venkatappa and she has already expired. No documents have been produced before this Court to establish the relationship between the parties. The family members have entered into compromise petition in O.S.No.395/2014 and the same has been accepted



by this Court. The suit is filed by the plaintiff at the instigation of 3rd party to create documents in respect of suit schedule properties. The plaintiff has suppressed material facts to obtain the Ex-parte Temporary Injunction. There was an oral division among the male members of the family and the revenue documents disclose the same. The son of the plaintiff by name Ramanjinappa is one of the witnesses to the sale agreement. The plaintiff is not entitled for the injunction as prayed for. The stranger cannot maintain a separate suit by challenging the compromise decree as per the decision of Apex Court. There is no cause of action to file the suit. Hence, prayed to reject I.A. No.I and to allow I.A. No.II.

5. The counsel for plaintiff filed objection to I.A. No.II by reiterating the the plaint averments. It is stated that the application is not maintainable under law. Hence, prayed to reject I.A. No.II.

6. Heard both sides.

7. The following points would arise for my consideration:

1. Whether the plaintiff proves that he has got prima-facie case and the balance of convenience tilts in his



favour to pass an order of ad-interim injunction on I.A. No.1 ?

2. Whether the plaintiff proves that he will suffer irreparable loss and hardship if temporary injunction order has not been passed on I.A. No.1
3. Whether there is suppression of material facts by the plaintiff while obtaining Ex-parte Temporary Injunction on I.A. No.1 ?
4. What order ?

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

Point Nos.1 & 2 : **In the Negative**
Point No.3 : **In the Affirmative**
Point No.4 : **As per final Order
for the following :**

REASONS

9. **Point No.1:** In order to establish the prima face case, the plaintiff has to establish his prima facie right over the suit schedule properties. This is a case filed by the plaintiff against the defendants seeking Partition and Separate Possession of suit schedule properties and to declare the compromise decree



passed by this Court in O.S.No.395/2014 as not binding upon the plaintiff and also the subsequent Sale Agreements not binding upon him. The plaintiff has also sought permanent Injunction to restrain the defendants from alienating the suit schedule properties in so far as the share of the plaintiff is concerned. It is the specific case of the plaintiff that the defendants excluded him and entered into compromise in O.S.No.395/2014 and by virtue of the present suit, the plaintiff intends to challenge the said compromise decree and also prayed to effect partition of suit schedule properties. The application is opposed by the defendants mainly on the contention that a separate suit is not maintainable by challenging the compromise decree. It is also stated that the plaintiff has not produced any document to establish the relationship between the parties.

10. In view of rival contentions, on going through the entire materials on record, it is forthcoming the entire suit of the plaintiff is based on the compromise decree passed in O.S.No.395/2014 on the file of this Court. Admittedly, the plaintiff is not a party to O.S.No.395/2014. The contention of the plaintiff is that the defendants have willfully excluded him from the said suit and got compromised the same behind his back. In this regard, the learned counsel for the defendants No.18 to 20 and 25 has produced a decision rendered in **AIR**



2020 SC 2111, Triloki Nath Singh V/s Anirudh Singh (D) through LRs and others, wherein it is clearly held that “compromise decree - challenge by stranger- permissibility- decree passed on a compromise cannot be challenged by stranger to proceeding in a separate suit, in view of specific bar under Rule 3(A) of Order 23”. In view of the above decision of Apex Court it is crystal clear that a stranger to the compromise decree cannot maintain a separate suit and the remedy available for him is to file necessary application to reopen the compromise in the same suit. In view of the same, the present suit filed by they plaintiff by challenging by compromise decree in O.S.No.395/2014 is prima facie not maintainable. As observed supra, the entire suit is based on the compromise decree in O.S.No.395/2014 and accordingly, without challenging the same before the appropriate Court as per procedure laid down by the Apex Court, there is no cause of action to file the suit. It is settled law that when the main relief itself cannot be granted, the question of granting the Temporary Injunction does not arise. I am of the considered opinion that there is no prima facie case in favour of plaintiff and balance of convenience does not tilt in his favour. Hence, I answer **Point No.1 in the Negative.**

11. **Point No.2** : It is well settled law that when there is no prima facie case in favour of plaintiff, the question of



considering the aspect of irreparable harm and injury to be caused to the parties does not arise. Accordingly, I answer **Point No.2 in the Negative.**

12. **Point No.3:** The learned counsel for the defendants No.18 to 20 and 25 filed I.A. No.II to vacate the Ex-parte Temporary Injunction. It is specifically pleaded that there is suppression of material facts by the plaintiff while obtaining Ex-parte Temporary Injunction from this Court. It is also claimed that the plaintiff has not produced any document to prove the relationship between the parties. The suit properties are the self-acquired properties of defendant No.11 under Section 14 of of Hindu Succession Act. It is pertinent to note here that while answering Point No.1 it is held that there is no prima facie case in favour of plaintiff and under such circumstances, the Ex-parte Temporary Injunction granted by this Court in favour of the plaintiff is liable to be vacated. Hence, I answer **Point No.3 in the Affirmative.**

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

ORDER

I.A. No.I is rejected.

I.A. No.II is allowed.



Consequently, the Ex-parte Temporary Injunction order dated 03.09.2024, passed by this Court in favour of the plaintiff stands vacated.

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 22nd Day of February, 2025).

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

***B.S.M**

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