

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 6th Day of July, 2020

O.S.No.1058/2019

1. Smt. Shashikala .S and Others : **Plaintiffs**

(Pltf. - By Sri. P.V.R.,
Advocate)

V/s.

1. Sri. Sampangi Gowda and Others : **Defendants**

(D6 - By Sri. R.M.G.,
Advocate)

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**ORDERS ON I.A.No.1**

The plaintiff has filed **I.A.No.1** under Order 39 Rule 1 and 2 r/w. Section 151 of CPC to restrain the defendants No. 3, 4, 5, 7, 9, 11, 12 from alienating, encumbering or from creating any charge in respect of the suit schedule property, pending disposal of the suit.

2. In the plaint and the affidavit accompanying application the plaintiffs have taken same contention. Original prepositus namely, Sri. Dasappa had seven children namely, Rajanna, Sampangigowda (defendant No.1), Nagaraja, Sumithamma, Kamala, Manjula, Rupesh @ Srinivasa. That there was family partition effected in the family on 05.05.2001. Accordingly, property bearing Sy.No.66/1 measuring 3 acres 9 guntas situated at Sathanuru Village, Jala Hobli, Bengalur North Taluk mentioned in the "C' schedule was fallen to the share of defendant No.1. The plaintiffs and the defendant No.1 are governed by the Mithakshara Hindu joint family and they continued to be in joint constructive possession of the suit schedule properties till date. However, the khata of the property is standing in the name of the defendant No.1 as he being the elder male member of the family. The plaintiffs have put their labour to develop the property and struggled for upliftment of the family. After the marriages, the plaintiffs are residing in their respective maternal houses and they kept all confidence upon the defendant No.1 that he will not mismanage or act detrimental to the interest of the entire family. During the festival of Dassara, the plaintiffs have come to their parental house and during this time, some differences arose between the plaintiffs and the defendant No.1 and therefore, on 18.10.2019 the plaintiffs have asked the defendant for their legitimate rights, share in the ancestral joint family properties. The defendant did not responded to the requests of the plaintiffs. Thus the plaintiffs have applied for certified copies of the documents pertaining to the suit schedule properties. After obtaining the

same, the plaintiffs got shocked and surprised that the defendant No.1 had alienated the suit schedule property without obtaining the permission/consent of the plaintiffs. The defendant No.1 had defrauded the plaintiffs and with a malafide intention to defraud the rights of the plaintiffs over the suit schedule property, had hand in glove with the other defendants, executed the above mentioned sale deeds. The said sale transactions are taken place behind the back of the plaintiffs and therefore, these transactions are not binding upon them. The further the defendant No.2 had executed separate Gift deeds in favour of (a) Defendant No.3 to an extent of 32 guntas, like wise, (b) Defendant No.4 to an extent of 7 guntas. And further the defendant No.2 had alienated the property to an extent of 14½ guntas in favour of defendant No.5. Inturn the defendant No.5 had executed sale deed dated 31.05.2019 to an extent of 14½ guntas in favour of defendant No.6. It is submitted that when the sale deed of the defendant No.2 is not in accordance with law, the further transactions are not sustainable in the eye of law. The defendant No.7 had executed sale deed dated 31.05.2019 in respect of the property to an extent of 11 guntas in favour of defendant No.6, Further, the defendant No.8 had transferred the property to an extent of 32 guntas in favour of defendant No.9 on 28.11.2008 by way of gift deed. The plaintiffs are not the parties to the said transactions and therefore, it is not binding upon the plaintiffs. The defendant No.10 executed gift deed in favour of defendant No.11 property to an extent of 21½ guntas. Further the defendant No.11 had alienated the said property in favour of the defendant No.6 on

13.06.2019. The plaintiffs are not the parties to the said transactions and therefore, it is not binding upon the plaintiffs. The defendant No.1 had no exclusive, independent rights over the suit schedule properties to alienate in favour of the third parties. The suit schedule properties are the joint, ancestral properties and the plaintiffs are having equal legitimate right, share to an extent of 1/4<sup>th</sup> share each in the suit schedule properties. Therefore, the transactions taken place behind the back of the plaintiffs are not binding upon the plaintiffs. There is no partition taken place between the plaintiffs and defendants till date. The plaintiffs came to know on enquiry that the defendants No.3, 4, 5, 7, 9, 11, 12 who do not have rights, title or interest over the suit schedule properties, are trying to alienate the same taking undue advantage of the fact that the khata of the suit lands are standing in their names. The defendants are continued in making secret negotiations with some third persons to alienate the suit schedule properties. Hence, this suit for partition and separate possession.

3. After service of summons the defendant No.6 has appeared through his counsel and filed written statement along with memo to consider written statement as objections to I.A No.1. The averments in para 1 of the plaint that Dasappa had five sons and they have partitioned the family properties on 05.05.2001, is admitted as correct. It is also true that 'C' schedule properties were fallen to the share of defendant No.1 in the said partition. Suit schedule property along with other properties, was allotted to the share of 1<sup>st</sup>

defendant's father Dasappa, in the family partition between himself and his brothers effected through a registered Partition Deed dated 23.01.1978. After the death of Dasappa, the 1<sup>st</sup> defendant, his mother and brothers sisters entered into an unregistered palupatti dated: 05.05.2001 and as per 'C' schedule annexed to the same suit schedule properties and other properties were allotted to the share of defendant No.1. In pursuance of the same the katha of the properties allotted to the share of defendant No.1 were made over to his name vide M.R.No.1/2004-05. The 1<sup>st</sup> defendant wanted to sell the suit schedule properties to meet legal necessities and family obligations and he approached defendants No.2, 7, 8, 10 and 12. After negotiations defendants No.2, 7, 8, 10 and 12 agreed to purchase the suit schedule properties and they got issued a public notice through their advocate in 'Vijaya Karnataka' kannada daily newspaper calling for objections to the intended sale by 1<sup>st</sup> defendant from anyone having any right in the suit schedule property, but nobody including the plaintiffs filed objections within the stipulated time. Thereafter, defendants No.2, 7, 8, 10 and 12 purchased the suit schedule properties through 7 separate registered sale deeds dated 10.11.2005, for valuable consideration. Since the palupatti entered into between defendant No.1 and his brother was unregistered, as per request of the purchasers 1<sup>st</sup> defendant joined his brothers and sisters also joined as parties to the sale deeds in favour of defendants No.2, 7, 8, 10 and 12. Subsequently, defendant No.2 has gifted the portion of suit schedule property purchased him in favour of defendants No.3 and 4 and sold a portion of the same to 5<sup>th</sup>

defendant. The portion purchased by defendant No.8 was gifted by her to defendant No.9. the portion purchased by defendant No.10 was later gifted by him in favour of defendant No.11. Defendants No.3 and 4 have sold the property got through gift from their father in favour of one Vishwanath.R through two separate registered sale deeds dated 09.10.2019. Defendant No.5 has also sold the portion purchased from defendant No.2 in favour of defendant No.6 through a registered Sale Deed dated 31.05.2019. Defendant No.7 has sold the portion purchased in favour of defendant No.6 through a registered Sale Deed dated 31.05.2019. Defendant No.11 has sold the portion suit schedule properties got through gift from his father in favour of defendant No.6 through registered Sale Deed dated 14.06.2016. Now the 6<sup>th</sup> defendant is the owner and he is possession of 1 acre 7½ guntas out of the suit schedule property bearing Sy.Nos.66/1, 66/4 and 66/8 and Vishwanath .R is the owner in possession and enjoyment of totally 39 guntas out of the suit schedule property bearing Sy.Nos.66/5 and 66/9. Since the sisters of defendant No.1 were not parties to the unregistered palupatti dated: 05.05.2001, after sale of suit schedule properties in favour of defendants No.2, 7, 8, 10 and 12, defendant No.1 his brothers and sisters have again entered into a registered Partition Deed dated 15.11.2015, in which suit schedule properties were not included since they were already sold by all of them. In the Partition Deed dated: 15.11.2015 defendant No.1 was allotted 3 items of properties. The plaintiffs have neither challenged the Partition Deed dated 15.11.2015 in this suit nor they have included the properties

allotted to the share of their father as per 'C' schedule to the said partition deed, which clearly goes to show that defendant No.1 himself has got filed this collusive suit in respect of suit schedule properties through plaintiffs to harass the present owners namely defendants No.6, 9, 10 and one Vishwanath .R., who is not made a party to this suit, with an intention to harass them and make wrongful gain. That the plaintiffs' suit for partial partition only in respect of alienated properties without challenging the registered Partition Deed dated 15.11.2015 and without including other family properties is not maintainable in law. That the plaintiffs have not joined all the executants of the sale deeds in favour of defendants No.2, 7, 8, 10 and 12 namely their uncles and aunts and also one of present owners of the suit schedule properties as parties to this suit. Hence, the suit is also bad for non-joinder of necessary parties. The plaintiffs have not approached this Hon'ble court with clear hands and the suit is not maintainable either in law or on facts. Thus the defendant No.6 seeks for dismissal of suit and application.

4. Heard the arguments and perused the records.

5. The points that arise for my consideration is as follows;-

#### **P O I N T S**

1. Whether the plaintiffs have prima-facie case?
2. Whether balance of convenience lies in favour of plaintiffs?

3. Whether the plaintiffs would suffer irreparable loss and injury if I.A. is not allowed which cannot be compensated in terms of money?
  4. What order or decree?
6. My findings to the above points are as follows;
- |              |                                          |
|--------------|------------------------------------------|
| 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.

8. The plaintiffs have filed the suit to declare that the suit schedule property is ancestral property of the plaintiffs entitled to 1/4<sup>th</sup> share each in the suit schedule property, for separate possession by metes and bounds and to hold the several sale deeds dated:10-11-2005, gift deed dated: 12-09-2011 as not binding on their share and for consequential reliefs.

9. The Counsel for the plaintiffs has argued that original prepositus is one Sri. Dasappa, he had seven children namely, Rajanna, Sampangigowda (defendant No.1),

Nagaraja, Sumithramma, Kamala, Manjula, Rupesh @ Srinivasa. That there was family partition effected in the family on 05.05.2001. Accordingly, property bearing Sy.No.66/1 measuring 3 acres 9 guntas situated at Sathanuru Village, Jala Hobli, Bengalur North Taluk mentioned in the 'C' schedule was fallen to the share of defendant No.1. The plaintiffs and the defendant No.1 are governed by the Mithakshara school of Hindu law. They constitute joint family and they continued to be in joint constructive possession of the suit schedule properties till date. However, the khata of the property is standing in the name of the defendant No.1 as he being the elder male member of the family.

10. It is further argued that due to differences among members of joint family the plaintiffs demanded for partition of the joint family properties but the defendant no.1 refused to heed to their demands. The plaintiffs obtained the papers relating to the suit property and were shocked to know that the defendant No.1 had alienated the suit schedule property without obtaining the permission/consent of the plaintiffs. The defendant No.1 had defrauded the plaintiffs and with a malafide intention to defraud the rights of the plaintiffs over the suit schedule property, the defendant no.1 is hand in glove with the other defendants, executed various sale deeds with respect to suit property.

11. It is argued that the transactions taken place behind the back of the plaintiffs are not binding upon the plaintiffs. There is no partition taken place between the

plaintiffs and defendants till date. The plaintiffs came to know on enquiry that the defendants No.3, 4, 5, 7, 9, 11, 12 who do not have rights, title or interest over the suit schedule properties, are trying to alienate the same taking undue advantage of the fact that the khata of the suit lands are standing in their names. The defendants are continued in making secret negotiations with some third persons to alienate the suit schedule properties. Hence, the plaintiffs prays to allow the I.A.

12. In support of their case, the plaintiffs have produced the Family Tree, 7 numbers R.T.C. Extracts, 5 numbers Registered Sale Deeds dated 10.11.2005, Registered Gift Deed dated 12.09.2011, Registered Gift Deed dated 17.01.2018, Sale Deed dated 04.03.2011, Gift Deed dated 28.11.2008, Gift Deed dated 06.07.2010, two numbers Sale Deed dated 31.05.2019 Sale Deed dated 13.06.2019.

13. On the other hand the counsel for the defendant no.6 has argued that the relationship among parties as contended in the plaint and partition deed dated: 05-05-2001 is admitted as true. It is stated that the suit schedule property along with other properties, was allotted to the share of 1<sup>st</sup> defendant's father Dasappa, in the family partition between himself and his brothers effected through a registered Partition Deed dated 23.01.1978. After the death of Dasappa, the 1<sup>st</sup> defendant, his mother and brothers sisters entered into an unregistered palupatti dated: 05.05.2001 and as per 'C' schedule annexed to the same suit schedule

properties and other properties were allotted to the share of defendant No.1. In pursuance of the same the katha of the properties allotted to the share of defendant No.1 were made over to his name vide M.R.No.1/2004-05. The 1<sup>st</sup> defendant wanted to sell the suit schedule properties to meet legal necessities and family obligations.

14. It is further argued that the plaintiffs have neither challenged the Partition Deed dated 15.11.2015 in this suit nor they have included the properties allotted to the share of their father as per 'C' schedule to the said partition deed, which clearly goes to show that defendant No.1 himself has got filed this collusive suit in respect of suit schedule properties through plaintiffs to harass the present owners namely defendants No.6, 9, 10 and one Vishwanath .R., who is not made a party to this suit, with an intention to harass them and make wrongful gain. That the plaintiffs' suit for partial partition only in respect of alienated properties without challenging the registered Partition Deed dated 15.11.2015 and without including other family properties is not maintainable in law. That the plaintiffs have not joined all the executants of the sale deeds in favour of defendants No.2, 7, 8, 10 and 12 namely their uncles and aunts and also one of present owners of the suit schedule properties as parties to this suit. Hence, the suit is also bad for non-joinder of necessary parties. The plaintiffs have not approached this Hon'ble court with clear hands and the suit is not maintainable either in law or on facts. Thus the defendant No.6 seeks for dismissal of suit and application.

15. The defendants have produced the following documents in support of their case, Copy of R.T.C. Extracts in Sy.Nos.66/1, 66/4, Copy of Sale Deed dated 09.08.2019 executed in favour of Vishwanath .R, Copy of Sale Deed dated 09.08.2019 executed in favour of Vishwanath .R.

16. I have carefully examined the plaint and documents produced by both the parties. The plaintiffs have filed the suit for partition, separate possession by metes and bounds and to hold sale deeds as not binding on their share. The plaintiffs are claiming the property contending that one Dasappa was the original propositus who is the grandfather of the plaintiffs. It is further contended that the suit property fell to the share of defendant no.1 under the partition deed.

17. The defendant no.6 admitted the relationship between the parties and devolution of the properties but specifically contended that the plaintiff's father, mother and brothers was partitioned the properties under palupatti/panchayath parikath dated: 05-05-2001. Further it is contended that the suit schedule property was sold and there was regd partition among defendant no.1 and his brothers on 15-11-2015 without including the suit schedule property. It is also contended that the plaintiffs suit for partial partition only for alienated properties without challenging the registered partition deed dated: 15-11-2015 and without including other joint family properties is not maintainable.

18. The suit schedule property was sold in the year 2005 by the defendant no.1 i.e., the plaintiff's father. I have

perused the 5 sale deeds dated: 10-11-2005 produced by the plaintiffs wherein the same are executed by defendant no.1 along with his brothers and sisters i.e., the children Late Dasappa but the plaintiffs have not made the brothers and sister of defendant no.1 as parties to the above suit. Similarly, the plaintiffs have not challenged the panchayath parikath dated: 05-05-2001 mentioned in the said sale deeds in the above suit.

19. I have perused the two sale deeds dated: 09-08-2019 produced by the defendant no.6, executed by defendant no.3 & 4 in favour of R.Vishwanatha with respect to the suit schedule property but the plaintiffs have neither made the said Vishwanatha R as party to the proceedings nor challenged the said sale deed.

20. The suit schedule property has been alienated in the year 2005 and the plaintiffs have approached the Court after lapse of 14 years, moreover, the plaintiffs have not included necessary parties in the suit. Therefore, the plaintiffs have not made out prima-facie case and balance of convenience does not lie in their favour.

21. In view of decision of the Hon'ble High Court of Karnataka reported **2017 (4) AKR 129** it held that – it is well settled principle of law that while considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz., (a) existence of prima-facie case; (b) balance of convenience; and (c) irreparable injury, but it must also take into

consideration the conduct of the parties. Grant of Temporary injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal the properties exclusively, ordinarily would not be entitled to an order of temporary injunction. The Court will not interfere only because the property is a valuable one. The fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of min on part of the Courts is imperative. Contentions raised by the parties must be determined objectively.

22. The rival contentions have to be decided in a full-fledged trial, from the above discussions the plaintiffs have not made out prima facie case and balance of convenience. The grant of Temporary injunction is an equitable relief and the same cannot be granted in favour of the plaintiff. Hence, I answer the Points No.1 to 3 in the Negative.

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

### **ORDER**

The I.A.No.1 filed by plaintiffs under Order 39 Rule 1 and 2 r/w. Section 151 of C.P.C. is hereby dismissed.

The exparte Temporary  
Injunction granted in this case is  
stands vacated.

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 6<sup>th</sup> day of July, 2020).

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