

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
AT DODDABALLAPUR.

Dated this the 07th day of July, 2021

PRESENT: SRI.ARAVIND SAIBANNA HAGARGI,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC.,
Doddaballapur.

O.S.No.136/2012

Plaintiffs:

1. Sri.Nagaraju.K.,
S/o. Late Krishnappa,
A/a. 57 years,
R/at. No.66, 3rd Main Road,
M.L.A. Layout, R.T.Nagar,
Bangalore – 560032.
2. Sri.Hanumantharayappa.K.,
S/o. Late Krishnappa,
A/a. 49 years,
R/at. Nagadenahalli Village,
Konaghatta Post, Kasaba Hobli,
Doddaballapur Taluk.

(Represented by Advocate Sri.Y.S.Ramesh)

V/s.

Defendants:

1. Smt.Akkayamma,
W/o. Late Sonnamariyappa,
A/a. 67 years,
R/at. Nagadenahalli Village,
Konaghatta Post, Kasaba Hobli,
Doddaballapur Taluk.
2. Smt.Jayamma,
D/o. Late Sonnamariyappa,
W/o. Sri.Narayanasway,
A/a. 55 years,
R/at. Gangasandra Vilalge,
Tubagere Hobli,
Doddaballapur Taluk.

3. Smt.Anandamma,
W/o. Late Somanna,
A/a. 35 years,
4. Sunil,
S/o. Late Sommanna,
A/a. 21 years,
5. Anil,
S/o. Late sommanna,
A/a. 18 years,

No.3 to 5 are R/at. Soluru Village,
Vishwanathpura Post, Kundana Hobli,
Devanahalli Taluk.

6. Smt.Bhagyamma,
D/o. Late Sonnamariyappa,
W/o. Nagaraju,
A/a. 39 years,
R/at. Bidluru Village and Post,
Kasaba Hobli,
Devanahalli Taluk.
7. Sri.Pillegowda,
S/o. Late Sonnamariyappa,
A/a. 32 years,
8. Smt.Chowdamma,
D/o. Late Byrappa,
W/o. Late Narayanappa,
A/a. 82 years,
9. Sri.Munishamappa,
S/o. Late Byrappa,
A/a. 80 years,
10. Sri.N.B.Narayanappa,
S/o. Late Byrappa,
A/a. 76 years,
11. Smt.Sonnamma,
W/o. Late Chowdappa,
A/a. 60 years,
12. Sri.Srinivasa,
S/o. Late Chowdappa,
A/a. 32 years,

13. Sri.Ramachandraiah.K.,
S/o. Late Krishnappa,
A/a. 45 years,
14. Smt.Devamma,
W/o. N.B.Thimmanna,
A/a. 50 years,
15. Sri.M.A.Narayanaswamy,
S/o. Late Anjinappa,
A/a. 62 years,

No.7 to 15 are R/at.
Nagadenahalli Village,
Konaghatta Post, Kasaba Hobli,
Doddaballapur Taluk.

(Represented by Advocates
Sri.M.K.B. for D1 to D7, 10 to 12 and
Sri.R.M. for 15, Sri.A.K.M. for D9, Sri.D.S. for
D14 and D8 and D13 are placed exparte)

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ORDER ON I.A.No.IX

These orders arisen out of again No.IX filed by the plaintiff against the defendant No.15 with the prayer to restrain the defendant No.15 and his agents, attorneys or coolies or anybody acting on his behalf from changing the topography or making any construction over the part and parcel of suit schedule Item No.1 property till disposal of the present suit.

FACTS IN BRIEF:

2. This is a suit for partition in between plaintiffs and defendants in respect of suit schedule Item No.1 to 13 properties filed on 16-06-2012. The defendants No.1 to 14 have put in their appearance. The defendant No.1 to 7 have filed their written statement and defendant

No.10,11 and 12 adopted the written statement filed by defendants No.1 to 7. In their written statement the defendants No.1 to 14 have admitting the relationship as shown by the plaintiffs in the plaint. They have also admitted that one Sri.Byrappa was propositus. The defendants No.1 to 14 have admitting all other relevant facts. Defendant No.15 is said to be purchaser of Item No.1 of suit schedule property under the sale deed dated 19-10-2012 it is pertinent to note here that suit is filed on 16-05-2012. Therefore, defendant No.15 has purchased suit Item No.1 property in pendency of suit and impleaded to this suit as per orders of I.A.No.VII dated 02-03-2018. The present I.A. is in respect of suit schedule Item No.1 property and I.A. is in between plaintiffs and defendant No.15. Therefore the facts are condensed as relevant for the consideration of present I.A.No. under consideration. For better understanding the subject matter of present I.A. under reference i.e., Item No.1 of suit schedule property is as under.

SCHEDULE

ITEM No.1;

All that piece and parcel of the land bearing Sy.No.2/1 measuring 4-26 guntas including 0-1 gunta pot kharab and Sy.No.2/2 measuring 0-22 guntas including 0-1 gunta pot kharab situated at Nagadenahalli Village, Kasaba Hobli, Doddaballapur Taluk, Bengaluru Rural District bounded on;

EAST: Gramatana,
WEST: Land of Karanalada Muniswamaiah,
NORTH: Land of Shivanna
SOUTH: Oni.

3. The plaintiff No.1 has filed affidavit along with I.A.No.IX at Paragraph No.1 to 7 the contents of plaint are reiterated. From Paragraph No.8 to 14 the relevant statement to the present application is made by plaintiff No.1 on affidavit. Paragraph No.8 and 9 of affidavit are relevant wherein the plaintiff has stated the pendency of litigation in between plaintiffs and defendant No.15 before the Revenue Court and also made allegation that the defendant No.15 on 01-07-2021 taking undue advantage making illegal attempts to change the topography of the Item No.1 of suit property by digging and damaging the same and also attempting to make construction over suit Item No.1 property to make wrongful gain and to cause wrongful loss to the plaintiffs. The plaintiffs have approached the Police but Police is said to have not entertain the plaintiffs grievances. Hence, the present application under reference by the plaintiff against defendant No.15.

4. The defendant No.15 has filed this objections to I.A.No.IX at Paragraph No.7 defendant No.15 has admitted the pending litigation in between plaintiffs and defendants before the revenue courts and grant of stay orders by the revenue courts. From Paragraph No.10 onwards the defendant No.15 has setup his case. Paragraph 16 of the objections is relevant wherein the defendant No.15 has pleaded that he has developed the land by investing huge money. The defendant No.15 has also admitted in Paragraph No.16 of his statement of his objections to I.A.No.IX that he is making arrangement for the construction of the shed over the suit land ie., Item No.1 of suit schedule property purchased by defendant No.15 under sale deed dated 19-12-2010 accordingly the defendant No.15 prayed to reject the I.A.No.IX.

5. I have perused the pleadings, affidavit and the documents produced by the plaintiffs and defendant No.15 in this case.
6. Heard arguments of Sri.Y.S.Ramesh, Advocate for plaintiff and Sri.Ravi.M. Advocate for defendant No.15 on I.A.No.IX.
7. The points that arises for my consideration are
 1. Whether plaintiffs have made out prima-facie case for grant of interim injunction order as claimed in I.A.No.IX?
 2. In whose favour the factor of balance of convenience lies?
 3. Who will be put the irreparable loss, if interim injunction orders as claimed in I.A.No.IX is refused?
 4. What order?
8. My findings on the above said points are as under:

Point No.1: In the affirmative

Point No.2: In favour of plaintiffs

Point No.3: Plaintiffs will be put to irreparable loss if interim injunction as claimed in I.A.No.IX is refused.

Point No.4: As per final order as per the following;

REASONS

9. **Point No.1:** This is an application filed by the plaintiffs against the defendant No.15 to restrain defendant from defendant his agents etc for chanting topography and making construction over the part

and parcel of the suit schedule property at Item No.1 till disposal of suit. The defendant No.15 has contended the petition. It is the admitted case of defendant No.1 to 14 i.e., relationship of plaintiffs and defendant No.1 to 14 is an admitted fact. The suit properties belonging to the propositus Sri.Byrappa is also admitted fact the defendant No.1 to 7 have contended that Sri.Bachanna has executed Will on 28-08-2008 in favour of defendant No.7 in respect of suit lands and suit lands were said to be allotted to the share of Sri.Bachanna. Defendant No.15 is the purchaser of 1-0 acre of land in suit schedule Item No.1 property vide sale deed dated 19-10-2012. Undisputedly suit is filed on 16-05-2012 therefore sale deed in favour of defendant No.15 is executed in pendency of suit ofcourse at the time of filing suit defendant No.15 was not a party to the suit. All these admitted facts can be seen from Paragraph No.2 and 3 of written statement of defendant No.1 to 7 and Paragraph No.4 and 22 of written statement of defendant No.15. In these admitted facts whether plaintiff has made out prima-facie case for grant of interim injunction order is to be ascertained.

10. Grant of interim injunction during pendency of legal proceedings is a matter resting with the exercise of discretion of the Court. While exercising the discretion the Court has to apply following tests;

- a. Whether plaintiff has prima-facie case.
- b. Whether balance of convenience is in favour of plaintiff; and
- c. Whether plaintiff would suffer irreparable injury if the prayer for interim injunction disallowed or refused.

11. The decision whether or not to grant interim injunction has to be taken at a time when the existence of legal right is asserted by the plaintiffs and its alleged violation are both contested and uncertain and remains uncertain till they are established at the trial on evidence. Relief by way of interim injunction is granted to mitigate the risk of injustice to the plaintiffs during the period before grant uncertainty could be resolved. The object of interim injunction is to protect the plaintiffs against injury by violation of his rights which could not be adequately compensated in damages recoverable in the action if uncertainty were resolved in his favour at the trial. The need for such protection has, however to be weighed against the corresponding need of the defendant to be protected against the injuries resulting from preventing his exercising legal right for which he could not be adequately compensated.

12. Now keeping in mind above said principles the present I.A.No.IX has to be considered in touch stone of the above said principles. In the present case relationship is an admitted fact. The defendant No.1 to 7 have taken the plea of execution of Will by Sri.Bachanna in their favour in respect of suit schedule properties. They have also taken the plea of prior partition. Defendant No.15 is the purchaser of 1-0 acre of land in suit Item No.1 property. This is an admitted fact. Whether there was prior partition and whether suit properties have fallen to the share of Sri.Bachanna and also whether Sri.Bachanna has executed Will in favour of defendants No.1 to 7 and 10 to 12 on 28-08-2008 is are all the facts which needs to be proved in full dressed trail. Admittedly defendant No.15 is the purchaser of 1-0 acre of land of suit Item No.1 property. The remedy for the defendant No.15 is to file suit for general partition for allotment of the

property purchased by him. This principles of law is laid down by Hon'ble Supreme Court of India in the case of Kailash Pati Devi V/s. Smt.Bhubneshwari Devi and others reported in (1985) 1 SCC Page No.405 where in it is held that -

“Hindu law- partition – Where the property purchased from a member of joint family was the only joint family property for partition, question whether the purchaser could file a general suit for partition against the members of the joint family would be academic, there being no equities to be adjusted as between the parties”.

Admittedly the defendant No.15 has not filed suit for general partition.

13. Admittedly suit item No.1 property is also disputed property. 1-0 acre is purchased by defendant No.15 out of suit schedule Item No.1 property. There is a revenue litigation in between plaintiffs and defendant No.15 before the learned Assistant Commissioner, Doddaballapur in R.A.No.168/2015. It is admitted fact that the Assistant Commissioner, Doddaballapur has stayed the mutation entry sanction in favour of defendant No.15. this is very clear from Paragraph No.8 of affidavit filed along with I.A.No.IX by plaintiff No.1 and admissions made by defendant No.15 in Paragraph No.7 of statement of objections filed to I.A.No.IX. The defendant No.15 Paragraph No.16 has made categoric admission that he is making arrangements for construction of said over the disputed 1-0 acre out of Item No.1 of suit schedule property.

“It is relevant to extract the Paragraph No.16 of objection, this defendant has developed the land purchased by him by spending huge money. He has invested huge money to grow crops in the said land. Now the plaintiffs in order to grab the lands which are developed by this defendant has filed the above false suit. This defendant is making arrangements for the construction of a shed over the said land. At that stage, the plaintiffs have come up with this false application”.

14. Therefore, it is admitted fact the defendant No.15 is making construction over disputed property without there being allotment of the property purchased by him to his share either by preliminary decree or by final decree. The only remedy for the defendant No.15 is to get allotted the property purchased by him under sale deed in Item No.1 property by decree of Court and without there being decree the defendant No.15 cannot intermeddle or make any activities on disputed properties like construction and changing of topography. The boundaries in sale deed and Gift deed and Will deed are disputed. Therefore, the defendant No.15 has to ascertain and get fixed the boundaries of the land purchased by him only after the decree of the Court.

15. Plaintiff has to make out a prima-facie case i.e., a case to be tried for grant of interim injunction order. Making out of prima-facie case is really harbinger for grant of interim injunction order. This principles of law is laid down by Hon'ble High Court of Karnataka in

the celebrated case of Gowrishankara Swamigalu V/s. Siddaganga Mutt reported in ILR 1989 KAR Page No.1701 where in it is held that-

“Order 39 Rules 1 & 2 – Grant of ad-interim injunction – Principles applicable - Existence of prima-facie case is harbinger to investigate other aspects – If no prima facie case, balance of convenience, irreparable loss etc., need no consideration – Existence of prima-facie case does not permit leap-frogging by plaintiff to injunction directly without evaluation of other considerations unmindful of other consequences – Even if unbeatable prima-facie case exists injunction not to be granted, if consequences of grant, detrimental in nature”.

and also by Hon'ble Supreme Court of India in the case of Kashi Math Samsthan and others V/s. Srimad Sudhindra Thirtha Swamy and another reported in AIR 2010 SCC Page No.229 wherein it is held that

“Grant of interim relief – requirements – Balance of convenience and irreparable loss – When not required to be considered – Held, in order to obtain order of injunction, party has to show (i) prima-facie case to go for trial, (ii) balance of convenience in his favour, and (iii) irreparable loss and injury if injunction is not granted – Question of considering balance of convenience or irreparable loss and injury to the party does not arise if party fails to prove prima-facie case to go for trial”.

16. In the present case on hand in view of the admitted facts by defendant No.1 to 7 and defendant No.15 in written statement and admitted facts by defendant No.15 in Paragraph No.7 and 16 of statement of objection the plaintiffs have made out a prima-facie case which needs to be tried by this Civil Court. Hence, I am of the opinion that the plaintiffs have made out prima-facie case for grant of interim injunction order as claimed in I.A.No.IX. Hence, I answered point No.1 in the affirmative.

17. **Point No.2 and 3:** The plaintiffs have made out a prima-facie case. Now whether balance of convenience lies and leans in favour of plaintiffs and whether plaintiffs will be out to irreparable loss in the event of refusal of interim injunction order is to be considered. Defendant No.15 in Paragraph No.7 and 16 of his statement of objections filed to I.A.No.IX has admitted that he is making preparation for making construction over the disputed 1-0 acre in suit Item No.1 property. The boundaries of properties purchased by defendant No.15 is at dispute. Therefore, where the property of defendant No.15 is situated and what are its boundaries are still not proved. Under such circumstances the defendant No.15 is making preparation for construction over disputed property without there being demarcation of his property by the decree of the Court. Admittedly defendant No.15 has not filed suit for general partition for allotment and demarcation of 1-0 acre of land purchased by him under sale deed out of suit Item No.1 property. Under such circumstances if defendant No.15 is permitted to make construction over disputed property the things will become irreversible at the conclusion of trial and it may also create confusion in drawing preliminary decree and also final decree. In view of the said fact if

the construction is made by defendant No.15 the plaintiffs will be put to comparably more inconvenience than the defendant No.15. It is not the case of defendant No.15 that he is not having any house for his shelter and he is compelled to make construction over disputed properties. The rights of plaintiffs in the immovable properties are at stake in the present suit. Therefore if the construction are made over the disputed property in pendency of the trail of the suit then the plaintiffs would be suffering irreparable loss which cannot be compensated in terms of money. Therefore, I am of the opinion that the factors of balance of convenience lies and leans in favour of plaintiffs and plaintiff will be put to irreparable loss in the event of refusal of interim injunction order as claimed in I.A.No.IX. Hence, I answered point No.2 and 2 in favour of plaintiff.

18. In view of my findings on point No.1 to 3 I proceed to pass the following;

ORDER

1. I.A.No.IX filed by the plaintiff under order 39 Rule 1 and 2 of C.P.C. is hereby allowed.
2. The defendant No.15 or his agents, attorneys or coolies or anybody acting on his behalf are hereby restrained by changing the topography and making construction over the part and parcel of the suit schedule Item No.1 in any manner till further orders.

3. The plaintiff shall commence the trial without unnecessary delay by taking undue advantage of interim injunction orders dated 05-08-2015 and present orders dated 07-07-2021.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 7th day of July, 2021.)

(ARAVIND SAIBANNA HAGARGI)

Senior Civil Judge & JMFC.,
Doddaballapur.