

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,

AT DODDABALLAPUR.

Dated this the 29th day of March 2021

PRESENT: Sri.M.B.KULKARNI,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC.,
Doddaballapur.

O.S.No.432/2018

Plaintiff: Sri.Rajanna,
S/o. Late Sri.Hanumantharayappa @
Hanumanthanna,
A/a. 59 years,
R/at. Maralenahalli Village,
Kasaba Hobli,
Doddaballapur Taluk.

(Represented by Advocate
Sri.V.R./A.J.M)

V/s.

Defendants: 1. Sri.Ashok Kumar,
S/o. Late Sri.Munishamaiah,
A/a. 55 years,

2. Smt.Sujatha.G.,
W/o. Sri.Ashok Kumar,
A/a. 43 years,

Defendants No.1 and 2 are R/at.
Maralenahalli Village,
Kasaba Hobli,
Doddaballapur Taluk.

(Represented by Advocate Sri.J.K.)

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ORDER ON I.A.No.I

This is the application filed by the plaintiff under order 39 Rule 1 and 2 R/w Section 151 of C.P.C. , for grant of ad interim temporary injunction restraining the defendant No.2 are anybody acting on his behalf from alienating or encumbering the suit schedule 'B' property pending disposal of the suit as prayed for.

2. In the accompanying affidavit of the I.A.No.I, it is averred by the plaintiff that, he has filed this suit for declaration of his title and injunction and such other reliefs as prayed for. It is further averred that, the defendants without having any right title or interest over the suit property got created illegal revenue documents and entered into illegal transactions with other parties. It is further averred that, the plaintiff and his deceased adopted father, have not executed any document in favour of anybody much less, sale deed of suit property. Therefore, such created documents are not binding on the plaintiff. It is further averred that the defendants on the basis of the concocted and created documents the defendant No.2 is attempting to alienate the suit schedule 'B' property. Hence, prayed to allow I.A.No.I.

3. The defendants No.2 has filed objections to I.A.No.I contending that, they are absolute owners in possession and enjoyment of suit property as purchasers of suit property. The suit property fallen to the share of defendant No.1 in their family partition dated 05-04-1985 and accordingly 'A' schedule property allotted to share of plaintiff Sri.Rajanna and 'B' schedule property was allotted to the share of defendant No.1 Sri.Ashok Kumar who are both sons of Sri.Munishamaiah. It is further contended that, as per the partition deed the mutation was effected in the name of respective share

holders as per MR No.9/1993-94 and accordingly the concerned share holders are in cultivation of their properties. The defendant No.1 Sri.Munishamaiah had purchased suit property under registered sale deed dated 31-08-1984 and accordingly got mutation in his name. Accordingly the plaintiff and defendant No.1 and their father are in joint possession of suit property. Knowing such facts plaintiff has filed this false suit to harass the defendants. The defendant No.1 has gifted suit schedule Item No. 'B' property in favour of his wife defendant No.2 under Gift deed dated 28-09-2017. Therefore, defendant No.2 is having every right to deal with suit property and the plaintiff cannot question the same. It is further contended that, suit is barred by limitation and court fee paid by the plaintiff is not proper and correct. Hence, on these grounds prayed to dismiss I.A.No.I.

4. Heard both sides on I.A.No.I. Perused material placed on record.

5. In the light of the above the following points arise for my consideration.

Point No.1: Whether the plaintiff has made out prima-facie case for grant of temporary injunction against the defendant No.2?

Point No.2: Whether the balance of convenience tilts in favour of plaintiff in respect of I.A.No.I?

Point No.3: To whom the greater hardship or irreparable Injury would be caused if I.A.No.I is allowed or rejected?

Point No.4: What order?

6. My findings to the above points are as under:

- Point No.1:** In the affirmative.
- Point No.2:** In the affirmative.
- Point No.3:** Much loss and hardship and irreparable injury would be caused to the plaintiff if I.A.No.I is not allowed?
- Point No.4:** As per final order.

REASONS

7. **Point No.1 to 3:** I have taken all these points together for my common discussion on the ground that they are inter-linked with each other and to avoid the repetition of reasoning.

8. It is not disputed by the both parties to the suit that, the original propositus of their family is one Sri.Hanumantharayappa who had a son by name Sri.Huchhayya. The said Huchhayya had two sons by name Sri.Hanumanthanna and Sri.Hanumantharayappa. The said Sri.Hanumanthanna had two sons by name Sri.Munishamaiah and Sri.Muninanjappa. The above said Sri.Munishamaiah is none other than father of plaintiff and defendant No.1.

9. It is not disputed by both parties that, Sri.Munishamaiah has purchased suit property along with six Items of properties in the name of plaintiff out of joint family funds and also purchased properties in the name of defendant No.1, under registered sale deed dated 31-08-1984. It is also not disputed by the both parties to the

suit that, plaintiff and defendant No.1 and their father are in joint possession and enjoyment of such properties. Therefore, it is clear that suit properties are joint family properties of plaintiff and defendants.

10. It is case of the defendants No.1 and 2 that partition took place between plaintiff and defendant No.1 under panchayath parikath dated 05-04-1985 and suit property has fallen to the share of defendant No.1 in that partition as 'B' schedule property of partition deed. This fact is disputed by the plaintiff. If at all the partition was effected under registered partition deed then matter would have been different and in that case if the plaintiff was party to such registered partition deed then the plaintiff could have been estopped under law from opposing the partition, but that is not the case here in this suit. Since the alleged partition deed dated 05-04-1985 is unregistered partition deed, the plaintiff has disputed the same and heavy burden is casted on the shoulders of defendant No.1 to prove the same.

11. Therefore, when the cloud is created over the rights of defendant No.1 and 2 on the basis of such alleged unregistered partition deed, dated 05-04-1985, he had no absolute right to bequeath that property in favour of his wife, but it appears that as per the objections of the I.A.No.I and written statement of defendant No.2, he has contended that he has gifted suit property to his wife under registered Gift deed dated 28-09-2017 i.e., in favour of defendant No.2 and got transferred khata in her name and therefore, the defendants are entitled to make use and enjoyment of suit property as their absolute property.

12. Such argument of defendants No.1 and 2 cannot be accepted because when the defendant No.1 is claiming ownership over the suit property on the basis of the unregistered partition deed it is a question of fact to be proved by the defendant No.1 in the full pledged trial of the suit regarding his title and only if he proves that he got lawful title over suit property then only he is having every right to bequeath that property to third parties or his wife as the case may be but not otherwise.

13. Therefore, till disposal of the suit on merits it is necessary to prevent the defendants No.1 and 2 from alienating or creating charge over suit schedule Item No.2 property. Therefore, till the proof exclusive of title of defendants No.1 and 2 over suit property after completion of the full pledged trial, it is deemed that suit properties are joint family properties/ancestral properties of plaintiff and defendant No.1. and 2. Therefore, if during pendency of the suit the defendants No.1 and 2 succeed in alienating or encumbering the suit schedule 'B' property then much loss and hardship would be caused to plaintiff if ultimately the plaintiff succeeds in the final judgment of the suit. Therefore, to avoid the loss to the rights of the plaintiff it is necessary to allow I.A.No.I.

14. Therefore, the plaintiff has made out prima-facie case on the basis of the admissions of the defendants No.1 and 2 taken in their objections to I.A.No.I and also in their written statement. Therefore, when prima-facie case is in favour of plaintiff, automatically the balance of convenience tilts in favour of plaintiff and such being the facts, if I.A.No.I is not allowed much loss and hardship would be

caused to plaintiff rather than the defendants. Hence, I answered above points accordingly.

15. **Point No.4**: On the basis of my above reasons and in the result I proceed to pass following;

ORDER

The I.A.No.I filed by the applicant (plaintiff) under order 39 Rule 1 and 2 R/w Section 151 of C.P.C. is hereby allowed as prayed for and defendant No.2, her agents, servants, her LRs or anybody acting on her behalf are hereby restrained by order of ad interim temporary injunction from alienating or encumbering the suit schedule 'B' property pending disposal of the suit.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 29th day of March, 2021.)

(M.B.KULKARNI)
Senior Civil Judge & JMFC.,
Doddaballapur.