

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

**PRESENT: Sri. Aravind Saibanna Hagargi,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC., Doddaballapur.
Dated this 24th day of February, 2023**

O.S.No.881/2022

Plaintiff:

1. Smt.D.Gowramma,
W/o. Sri.T.Karagappa,
D/o. Late Doddaiah, A/a. 59 years,
R/at. Varadanahalli Village,
Veerapura Post, Kasaba Hobli,
Doddaballapura Taluk.

(Represented by Advocate
Sri.Narendrababu.)

Versus

Defendants:

1. Smt.Anjinamma,
W/o. Sri.Kempanna,
D/o. Late Doddaiah, A/a. 66 years,
R/at. Mayasandra Village,
Kundana Hobli, Devanahalli Taluk.
2. Sri.Appaiah,
S/o. Late Doddaiah, A/a. 64 years,
3. Smt.Mariyamma,
W/o. Sri.Nanjappa, D/o. Late Doddaiah,
A/a. 62 years,
R/at. Kempathimmanahalli Village,
Kundana Hobli, Devanahalli Taluk.
4. Sri.Nagaraju,
S/o. Late Doddaiah, A/a. 58 years,

5. Sri.Krishnappa,
S/o. Late Doddaiah, A/a. 55 years,

Defendants No.2, 4 and 5 all are R/at.
Varadanahalli Village, Veerapura Post,
Kasaba Hobli, Doddaballapura Taluk.

(Represented by Advocate
Sri.B.Sudhakar for D2 to D5,
For steps to defendant No.1.)

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ORDERS ON I.A.No.I AND II

This orders arises out of I.A.No.I filed by the plaintiff under order 39 Rule 1 and 2 R/w Section 151 of CPC with a prayer to restrain the defendants No.2, 4 and 5 from alienation and creating any encumbrance till disposal of suit properties and I.A.No.II filed by the defendant No.2,4 and 5 under order VII Rule 11 (a) R/w Section 151 of CPC for rejection of plaint for want of cause of action.

2. **FACTS IN BRIEF:**

Description of suit schedule properties:-

Sl. No.	Sy.No.	Acres-guntas	Situated at
1	62	05.34 guntas out of which on extent 1.08 guntas	Varadanahalli Village, Kasaba Hobli, Doddaballapur Taluk, Bengaluru Rural (D)
2	62	05.34 guntas out of which an extent of 1.08 guntas	“
3	62	5.34 guntas out of which on extent of 1.08 guntas	“

This is a suit of Hindu sister against her sisters and brothers ie., plaintiffs and defendants are brothers and sisters. One Doddaiah was the propositus of the family he had a wife by name Smt.Bachamma. Plaintiff and defendant No.1 to 5 are the daughters and sons of Doddaiah and Smt.Bachamma. The case of plaintiff is that the suit schedule properties are the ancestral properties of plaintiff and plaintiffs and defendant No.1 to 5 are said to be constituting Hindu joint family and coparcenary. Defendant No.2 is said to be kartha of the family and he is addicted to bad vices. Defendant No.2 was said to be managing the affairs of the family of plaintiff and defendants. Doddaiah is said to have inherited the properties from one Subbaiah S/o. Chikkadoddaiah. It is specific case of plaintiff that plaintiff is having definite share in the suit schedule properties. But defendant No.2, 4 and 5 are said to be trying to change their name in the record of rights in collusion with revenue authorities. The plaintiff is approached the defendants in October 2022 to effect the partition, but the defendants have refuse to effect partition. Hence, present suit by the plaintiff.

3. The defendant No.2 to 5 have appeared through advocate. Defendant No.1 is yet to appear. Defendant No.2 to 5 have filed their written statement. In the written statement the defendant No.2 to 5 have admitted the relationship of plaintiff with defendants. The defendant No.2 , 4 and 5 have also admitted the nature of suit properties. The defendant No.2, 4 and 5 have contended that the Doddaiah has performed the marriage of plaintiff and defendant No.3 by spending huge money and also by giving valuable ornaments, cloths, Article and as well as cash

which is required by plaintiff and defendant No.3. It is specific case of the defendant No.2, 4 and 5 that there was a panchayath Palupatti dated 10-01-1995 among the parties after the death of Daddaiah and during the lifetime of his wife Smt.Bachamma. It is specific case of plaintiffs that the plaintiff and her mother Smt.Bachamma were allotted Sy.No.73 measuring 0-13 guntas an house property bearing No.36/50 measuring 65x42 feet as per schedule 'A' of the Palupatti dated 10-01-1995. It is also the case of The defendant No.2, 4 and 5 that schedule 'B' property is allotted to defendant No.2, 'C' property to defendant No. 4, 'D' allotted to defendant No.5. Since 10-01-1995 the plaintiff and defendants are said to be residing separately and enjoying and cultivating the schedule 'A' to 'D' properties allotted to their share. It is specific case of The defendant No.2, 4 and 5 that Sy.No.73 was said to be acquired by the KIADB and compensation was awarded and parties have received their respective share of compensation. The plaintiff is said to be the party and signatory to the panchayath Palupatti dated 10-01-1995. Hence, The defendant No.2, 4 and 5 have contended that the plaintiff is estopped from filing the suit by the doctrine of estoppel. The defendant No.2, 4 and 5 have contended that there is no cause of action for the plaintiff in view of partition dated 10-01-1995. Hence, prayed to dismiss the suit of plaintiff.

4. Plaintiff filed I.A.No.I under order 39 Rule 1 and 2 R/w Section 151 of CPC with a prayer to restrain the defendant No.2, 4 and 5 from alienating the suit schedule properties. Plaintiff has filed affidavit along with I.A.No.I restated the entire plaint averments and prayed to allow I.A.No.I.

5. Defendant No.2, 4 and 5 have filed memo stating that the contents of their written statement be treated as their objections to I.A.No.I.

6. The defendant No.2, 4 and 5 have filed I.A.No.II under order 7 Rule 11 (a) R/w Section 151 of CPC for rejection of plaint for want of cause of action. Defendant No.4 has filed affidavit along with I.A.No.II. The defendant No.4 in the affidavit has reiterated the written statement assertions and contentions and prayed to reject the plaint and I.A.No.I.

7. The plaintiff has filed the statement of objections to I.A.No.II. The entire plaint averments and averments are restated in the objections to I.A.No.II and prayed to reject I.A.No.II.

8. Heard both sides on I.A.No.I and II.

9. The points that arise for my consideration are:

1. Whether plaintiff has made out prima-facie case for grant of interim injunction order as claimed in I.A.No.I?

2. In whose favour the factor of balance of convenience lies?
 3. Who will be put to irreparable loss, if an interim injunction orders as claimed in I.A.No.I is refused?
 4. Whether the plaint of the plaintiff is liable to be rejected under order VII Rule 11 (a) R/w Section 151 of CPC as prayed by defendant No.2, 4 and 5?
 5. What order?
10. My findings on the above said points are as under:
- Point No.1:** In affirmative
- Point No.2:** In favour of plaintiff
- Point No.3:** Plaintiff will be put to irreparable loss if injunction is refused.
- Point No.4:** In negative
- Point No.5:** As per final order as per the following;

REASONS

Point No.1 & 4:

11. These two points are interlinked to each other. If the defendant No.2, 4 and 5 demonstrates on the basis of plaint averments and suit documents that suit of plaintiff is liable to be rejected, then the plaintiff has no prima-facie case in their favour

of plaintiffs for consideration of I.A.No.I. On the contrary if the defendant No.1 fails to demonstrate that there is no cause of action for the plaintiff to file the suit and suit of plaintiff is barred by law of limitation then the plaintiffs have a prima-facie case for consideration of I.A.No.I. Therefore, these two points are taken for discussions together. Before going further I am duty bound to have glimpse of order 7 Rule 11 which reads as under;

- a. where it does not disclose a cause of action;**
- b. where the relief claimed is undervalued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;**
- c. where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper with a time to be fixed by the Court, fails to do so;**
- d. where the suit appears from the statement in the plaint to be barred by any law;**
- e. where it is not filed in duplicate.**

f. where the plaintiff fails to comply the provisions of Rule 9.

12. The plaint averments and suit documents required to be taken in to consideration for considering the application under order 7 Rule 11 for rejection of plaint. This principle of law is laid down by **Hon'ble Supreme Court of India in the following case (2020) 3 Indian Civil Cases 448** where in it is held that -

“Civil Procedure Code, 1908, Order 7 rules 11(a) and 14 - Documents filed along with plaint, are required to be taken into consideration for deciding application U/o. 7 R.11 (a) of C.P.C. - When document referred in the pliant, forms basis of plaint, it should be treated as a part of plaint.”

and also in the case of **Soumitra Kumar Sen v. Syamal Kumar Sen**, reported in (2018) 5 SCC 644 where in it is held that -

“Civil Procedure Code, 1908

- **Or, 7 R. 11, S. 11 and Or.2 R.2 - Rejection of plaint on grounds of res judicata, which required consideration of pleadings in written statement - Permissibility - Held, while considering application for rejection of plaint, averments in plaint must be considered and not what is stated in written statement.”**

also principles laid down by the **Hon'ble Supreme Court of India** in the case of **H.S. DEEKSHIT & ANR. versus M/S. METROPOLI OVERSEAS LIMITED & ORS.** reported in **2022 LiveLaw (SC) 703** which reads as under;

“ Code of Civil Procedure, 1908; Order VII Rule 11 - Averments in the plaint alone are to be examined while considering an application for rejection of plaint - No other extraneous factor can be taken into consideration.

13. This is an application filed by the plaintiff against the defendants under order 39 Rule 1 and 2 R/w Section 151 of CPC for interim relief of injunction. The relief of interim injunction is governed by order 39 Rule 1 and 2 of CPC and Section 37 of Specific Relief Act. The plaintiff has filed the present application under order 39 Rule 1 and 2. Therefore, plaintiff has to make out a prima-facie case for grant of interim injunction order. Prima-facie case includes maintainability of the suit, whether there is a triable issue which is made out by the plaintiff at the stage of this case. Whether this Court has got jurisdiction to try this suit is also falls under the prima-facie case. Making out of prima-facie case is really an harbinger for consideration of application under order 39 Rule 1 and 2 of CPC. This principle of law is laid down by **Hon'ble High Court of Karnataka in the 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.296** 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.”

14. This Is a suit for partition and separate possession filed by the sister against the brothers and another sister. The defendant No.2, 4 and 5 i.e., the brothers of plaintiff have filed the written statement and admitted the relationship of plaintiff and nature of suit properties i.e., the suit property is ancestral property. Now the defendant No.2, 4 and 5 may contend that they have not admitted the nature of suit properties, but they have admitted the relationship. But fact remains that the defendant No.2,4 and 5 have taken the plea of prior partition vide panchayath palupatti dated 10-01-1995. Meaning thereby the defendant No.2, 4 and 5 by pleading the plea of prior partition in Paragraph No.18 in detail indirectly or directly admitted the nature of suit properties. The two foundational facts for the partition suit i.e., relationship and nature of suit properties is admitted by the defendant No.2,4 and 5. Now the relevancy of pleadings for rejection of plaint and parameters for considering the applications under order 7 Rule 11 of CPC becomes material. It is well settled principles of law that it is only and only the plaint averments and suit documents are germane and material for considering the applications under order 7 Rule 11 of CPC. It is well settled law that the written statement contentions and documents produced by the defendants are totally irrelevant and out of place at the time of considering the applications under order 7 Rule 11 of CPC. The plaintiff in plaint averments has never ever pleaded that there is a partition as per panchayath palupatti dated 10-01-1995. The plaintiff has not pleaded that as per the partition schedule 'A to

D' properties are distributed and divided in between plaintiff and defendant No.2, 4 and 5. It is straight case of plaintiff that suit properties are inherited by her father Doddaiah from one Subbaiah S/o. Chikkadoddaiah on the death of the father of plaintiff and defendant No.2 was managing the affairs of the family and plaintiff and defendants have inherited the properties and the cause of action for the plaintiff to file the suit is by birth. Under Hindu Law the right of partition is by birth and even a child conceived in the womb of mother will be having right of share in ancestral and coparcenary property. Admittedly, plaintiff is sister of defendant No.2, 4 and 5 and she had birth right. In the plaint averments it is nowhere pleaded that the plaintiff has either relinquished her share or there is partition either by oral partition or written document. The suit documents produced by the plaintiff at sl.No.1 to 5 does not evidence the fact of the partition dated 10-01-1995. Therefore, both from the plaint averments and suit documents it is not evident that there is no cause of action for the plaintiff to file the suit. The defendant No.2, 4 and 5 have contended there is partition by way of panchayath Palupatii dated 10-01-1995 and it is acted upon by virtue of M.R.No.3/1997-98. This material pleaded by the defendant No.2, 4 and 5 supported by the documentary evidence is not relevant for considering the application under order 7 Rule 11 of CPC. It is a matter of evidence that whether defendant No.2, 4 and 5 proves the plea of prior partition dated 10-01-1995 and such matters and fact for trial are not to be considered under order 7 Rule 11 (a) or (d) of CPC. For the simple reasons that written statement contentions and documents of defendant No.2, 4 and 5 are immaterial cannot to be looked into

considering the application under order 7 Rule 11 of CPC. The defendants No.2, 4 and 5 have failed to establish that the birth right of share of plaintiff in suit properties is either extinguished or relinquished by any modes of law from the plaint averments and suit documents. Therefore, on the basis of admitted relationship and nature of suit properties and the position of law that defendants No.2, 4 and 5 documents and written statement cannot be considered at the time of consideration I.A.No.II under 7 Rule 11 of CPC. The plaintiff has made out a prima-facie case. On the contrary the contentions raised by the defendants is a matter of trial and not a material for consideration of I.A.No.II under order 7 Rule 11 of CPC. Therefore, I am of the opinion that the plaintiff has made out prima-facie case which needs to be tried in the light of the contention of plea of prior partition contended by defendant No.2, 4 and 5. I am also opinion that the defendants have failed to demonstrate that partition dated 10-01-1995 and this is apparent and exfacie on the basis of pleadings of plaint and suit documents. Hence, I answered point No.1 in affirmative and point No.4 in negative.

Point No.2 and 3:

15. This is a suit for partition with admitted relationship and nature of suit properties. The defendant No.2, 4 and 5 have set up the plea of prior partition by way of panchayath Palupatti dated 10-01-1995. Whether there is partition on 10-01-1995 is a matter of evidence at trial. Now the plaintiff by admitted relationship and nature of suit properties has made out prima-facie case . The relief sought in I.A.No.I only to restrain the defendants No.2, 4 and 5 from alienation of suit

properties and not from causing interference of plaintiff in any of the Item of suit schedule properties. Therefore, even if there is a partition as per the panchayath Palupatti 10-01-1995 and parties are in possession and there possession will not be affected and disturbed by the orders of I.A.No.I. Order 39 Rule 1-A of CPC contemplates the interim injunction restraining the defendants No.2, 4 and 5 from alienation of suit properties. This is so because the suit properties must be intact till the rights of the parties are determined after the trial and also to pass an executable decree so as to see that the parties must enjoy the fruits of decree. The decree must not be paper decree. This is one of the principles under order 39 Rule 1 and 2 of CPC. In the event of the defendants No.2, 4 and 5 establishing and proving the plea of prior partition they are entitled for the costs and compensatory costs under Section 35 and 35(A) of CPC, if the plaintiff has filed a false suit against the defendants inspite of getting share under panchayath palupatti 10-01-1995 and if i.e., proved at the trail of the suit. But at the stage if the injunction is refused it is the plaintiff who will be put to comparably more irreparable loss and inconvenience than the defendant No.2, 4 and 5. Hence, I answered point No.2 and 3 in favour of plaintiff.

Point No.5:

16. In view of my findings on point No.1 to 4, I proceed to pass following;

ORDER

I.A.No.I filed by the plaintiff under order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

I.A.No.II filed by the defendants No.2, 4 and 5 under order 7 Rule 11 (a) R/w. Section 151 of CPC is hereby rejected

Draw decree in terms of I.A.No.II.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 24th day of February, 2023)

(ARVIND SAIBANNA HAGARGI)
Senior Civil Judge & JMFC.,
Doddaballapura.