

IN THE COURT OF PRL CIVIL JUDGE & JMFC,
SHIDLAGHATTA

Dated this the 5th day of July- 2022

Present: Smt. Pooja.J, BA., LLB., LLM.,
Prl Civil Judge & JMFC,
Shidlaghatta.

O.S.NO.105/2022

Plaintiff :

I. Smt. Dyavamma W/o Narashimappa,
D/o Chikkanarasappa
Aged 50 years,
R/o Goramillahalli Village,
Basettahalli Hobli,
Shidlaghatta Taluk.

2. Smt. Narasamma
W/o Gangireddy
D/o Chikkanarasappa
Aged about 48 years
R/of Goramillahalli Village,
Basettahalli Hobli,
Shidlaghatta taluk.

3. Smt. Lakshmidevamma
W/o Shivappa
D/o Chikkanarasappa
Aged about 46 years
Malagurki Village,
Mittermari Hobli,
bagepalli taluk.

(By Sri. C.L. Adv.,)

V/S

Defendants:

1. Sri. Chikkanarasappa.,
Late Narasimhappa
Aged about 70 years

R/at Goramillahalli Village,
Basettahalli Hobli,
Shidlaghatta Taluk.

2. Sri. Kumaraswamy
S/o Somashekaraiah
aged about 41 years
R/at # 11, 2nd H- Main Road,
Basaveswara nagara,
Moodala palya
Bangalore-72
3. Sri. Kondappa S/o Kullappa,
aged about 62 years, R/at
Gormallahalli Village,
Basettihalli Hobli,
Shidlaghatta Taluk.

(D1 Ex-parte D2 and D3 are by
Sri.CKN Advocate)

Parties to I.A.No.I

Applicant/Plaintiff : Smt. Dyavamma

V/s

Opponents/Defendants : Chikka Narasappa and others.

ORDERS ON I.A.NO.I

Plaintiff has filed I.A.No.1 under Order 39 Rules 1 and 2 read with Section 151 C.P.C. to restrain the defendant No.2 and 3 from alienating the plaintiff's scheduled property on the guise of creating sham documents by way of sale, agreement, gift, will, mortgage, creating charge or in any other mode of

transfer to whomsoever in any manner till pending disposal of the suit.

2. In the affidavit accompanying the application, the plaintiff submitted that,

a) The plaintiffs and defendant No.1 are constitutes the member of undivided joint Hindu family in which defendant No.1 being elder person of the joint family is maintaining the affairs of the joint family and manager of the undivided joint Hindu family. The property detailed in the foot of schedule of the plaint and in short afterwards referred to as “plaint schedule property acquired by defendant No.1 though Grant made by the Government in LND.RUC 44/77-78 dated: 04.04.1977 and the learned Thasildar shidlaghatta issued saguvalichit infavour of defendant No.1 on 08.09.1989 by imposing non alienation clause and the land revenue and other expenses born out of joint family funds and the revenue entries also legally transferred infavour of defendant No.1 by the revenue

authorities and thereby plaintiffs and defendant No.1 enjoying the plaint schedule property jointly being members of undivided joint Hindu family and there is no partition or division of joint family till now in any mode.

b) It is further submitted that, the defendant No.1 addicted voice like drinking, gambling etc., and thereby misusing the income deriving from plaint schedule property for his lavish expenses Recently on verification of revenue records plaintiff noticed that the defendant No.2 and 3 with collusion and utilizing the goodness and innocence of us have created alleged revenue records behind back of us and with the collusion of revenue officials. The alleged records if any created by defendant No.2 and 3 those documents are void documents and not at all binding on share and right of us they are not partied to those alleged transactions if any more over the defendants 2 and 3 have created the alleged records without prior permission from the

Government and as such the alleged documents if any created by defendant No.2 and 3 are void documents and the defendants No.2 and 3 cannot derive any kind of right, title, interest etc., with respect to plaint schedule property as on this day the plaint schedule property has been in joint possession and enjoyment of all the members of the joint family. The defendant No.2 and 3 on the guise of spruious records created by them have been trying to alienate the plaint schedule property to strangers and defendant No.1 also sailing with them as the defendants No.2 and 3 are powerful politically and economically with an oblique intention to effect share and right of us and to gain unlawful benefits. The defendants have no absolute or independent right to meddle with the joint family property without consent of knowledge of us as we are being coparceners and co-owners of the joint family are entitled for 1/4th share each in the plaint schedule property.

c) He further submits that knowing the said evasive activities of defendants they have approached the defendant No.1 questioned their said acts, but the defendant No.1 with the collusion of defendant No.2 and 3 has given evasive answer to us, hence plaintiff requested the defendant No.1 to partition the plaint schedule property by metes and bonds and demanded out said share, but the defendant No.1 with the collusion of other defendants bluntly refused the request and demands of us. In this regard several panchayaths held by us went in vain. Therefore, he prayed to allow the application.

3. On service of summons, defendant No.1 placed exparte and defendant No.2 and 3 are appeared through their counsels and filed same written statement.

a) Defendant No.2 and 3 are filed written statement adopting the same as objections to the application. It is submitted that the suit schedule properties bearing old Sy. No. 10 block D new Sy. No. 143/1 and 143/2 are

the self acquired property of defendant No.1 and he acquired the same through grant in the year 1977. and the defendant No.1 and his family members were sold the schedule property out of 30 acres 2-0 acres infavour of one Sri. Narashimahamurthy in the year 5-11 -1996, vide document No. 912/1996-97 for valuable consideration, for their legal and family necessities, since then the defendant No.1 and his family members were lost their rights, interest, title over the suit schedule property and in turn the narasimhamurthy sold the same in favour of one K.B Manjunatha S/o K. Byatrayappa in the year 18.05.2005 through registered sale deed dated; 18-05-2005 vide document No. SDG-1-00552/2005-06 same has been registered before the sub-registered at Shidlaghatta since then K.B Manjunatha was in possession and enjoyment over the suit property.

b) It is further submitted that, the K.B Manjunatha and his family members have executed the registered GPA

in favour of S.m Manjunatha S/o S.M Muniyappa, vide document No. SDG-4-00045/2008-09, C.D No. SDGD 24 dated: 16.06.2008, dated: 16.06.2008 same has been registered before the sub-registered at Shidlaghatta. And on basis of the GPA S.M Manjunatha have got the registered sale deed in his favour vide document No. SDG-1-01647-2016-17, CD No. SDGD 124 dated: 23.06.2016 since the date of purchase he was in possession and enjoyemnt of the suit property. Since the sate of purchase of property S.M Manjunath was in possession over the suit property. Sy. No. 143 measruing 3-0 has been phoded in the year 2014, and it has been phoded as Sy. No. 143/1 measuring 34 guntas and Sy. No/ 143/2 measuring 1-28 guntas. The S.m Manjunatha sold the suit property infavour of one Sri. Pillavenkatappa S/o late Byrappa through registered sale deed dated: 16.10.2017 vide document No. SDG-1-03577/2017-18 C.D No. SDG 136 same has been registered before the sub-register at shidlaghatta since

the date of purchase he was in possession and enjoyment of the suit property . The Pillavenkatarayappa S/o late Byrappa sold the suit property infavour one Kumaraswamy S/o Somashekaraiah(defendant No.2) through registered sale deed dated: 16.10.2017 vide document No. SDG 4900/2017-18, same has been registered before the sub-register at Shidlaghatta since the date of purchase the defendant No.1 was in possession and enjoyment of the said property.

c) It is further submitted that, the defendant No.1 and his family members were sold the schedule property bearing old Sy. No. 10 D block new No. 143/1 measuring 34 guntas infavour of one Sri. Nagaraj in the year 27.12.2006, vide document No. SDG-1-02685/2006-07 for valuable consideration for their legal and family necessities, since then the defendant No.1 and his family members were lost their rights, interest, title over the suit schedule property and in turn

the Nagaraj sold the same infavour of one Kondappa (defendant No.3) in the year 19-06-2017 through registered sale deed, vide document No. SDG-1-01646/2017-18 same has been registered before the sub-registered at shidlaghatta. Since the date of purchase the defendant No.3 is in possession in the Sy. No. 143/1 measuring 34 guntas. The plaintiff No.1 had filed the PTCL case against the defendant No.2 and 3 and other purchasers before the Assistant commissioner at Chickballapura in PTCL (Shi)case No. 37/2020-21, the assistant commissioner was pleased to dismiss the case on 01.11.2021. After the disposal of the PTCL case the plaintiffs have filed this frivolous suit against the defendant No.2 and 3 and moreover the plaintiffs are never in possession and enjoyment over the suit propertied and therefore they have not paid the sufficient court fee under section 35(1) of Karnataka Court fee and valuation Act. Hence, thye have prayed for dismissal of the application with costs.

4. On the basis of the above contentions, the following points arise for my consideration.

1. Whether the applicant/plaintiff has made out prima-facie case in I.A.No.I?
 2. Whether balance of convenience lies in favour of the applicant/plaintiff as contended in I.A.No.I?
 3. Whether the applicant/plaintiff will be put to irreparable loss and injury if T.I. is not granted?
 4. What order?
5. Heard the arguments and perused records.
6. My findings to the above points are as under;

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

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

REASONS

7. **Point No.1:-** The plaintiff has filed this suit for the relief of partition of 1/4th share in the suit schedule properties.

8. In the instant application, the plaintiff averred that the defendant No.1 who is the father of plaintiffs has acquired the suit schedule property to the grant made by the Government in LND.RUC 44/77-78 dated: 04.04.1977 and learned the Thasildar, Shidlaghatta issued the Saguvali Chit infavour of defendant No.1 on 08.09.1989 by imposing non alienation clause and the land revenue and other expenses born out of joint family funds and the revenue entries also legally transferred infavour of defendant No.1 by the revenue authorities and thereby plaintiffs and defendant No.1 enjoying the plaint schedule property jointly being members of undivided joint Hindu family and there is no partition or division of joint family in support of the above said contention. In order to substantiate her contention, the plaintiff has relied upon the documents such as produced the xerox copy of LNDRA SCKST No. 2/2022-23.

9. On the contrary, the defendant No. 2 and 3 have adopted the written statement contents as objection to IA No.1 and contended that, the defendant No.1 and his family members were sold the schedule property bearing old Sy. No. 10 D block new No. 143/1 measuring 34 guntas infavour of one Sri. Nagaraj in the year 27.12.2006, vide document No. SDG-1-

02685/2006-07 for valuable consideration for their legal and family necessities, since then the defendant No.1 and his family members were lost their rights, interest, title over the suit schedule property and in turn the Nagaraj sold the same infavour of one Kondappa (defendant No.3) in the year 19-06-2017 through registered sale deed, vide document No. SDG-1-01646/2017-18 same has been registered before the sub-registered at shidlaghatta. Since the date of purchase the defendant No.3 is in possession in the Sy. No. 143/1 measuring 34 guntas. The plaintiff No.1 had filed the PTCL case against the defendant No.2 and 3 and other purchasers before the Assistant commissioner at Chickballapura in PTCL (Shi)case No. 37/2020-21, the assistant commissioner was pleased to dismiss the case on 01.11.2021 certified copy of mutations and Akar band, RTC extract pertaining to the the year 1992-2001 to 2017 Assessment commissioner orders. The defendant No.2 and 3 in support of their contention has filed certified copy of the mutation of 113/1977-78, certified copy of mutation of 109/1996-97, certified copy of old RTC extract in the year 1992-2011, certified copy of the Akar Band and Tippani, xerox copy of the sale deed dated: 05.11.1996, xerox copy of the sale deed dated: 18.05.2005, xerox copy of the sale deed dated: 23.06.2006, xerox copy of the sale

deed dated: 16.10.2017, xerox copy of the sale deed dated: 24.02.2020, xerox copy of the sale deed dated: 23.12.2006, xerox copy of the sale deed dated: 19.06.2017, certified copy of Assistant commissioner order dated: 01.12.2021 in PTCL No. 37/2020-21.

10. On going through the materials available on record it is noticed by this court that the plaintiff filed this suit against the defendants for the relief of 1/4th share of partition in the suit schedule properties. The plaintiff has come with this instant application against defendant No.1 who is the father of the plaintiff and defendant No.2 and 3 who are the purchaser of the suit schedule property stating that, the plaintiffs are the joint family members and the suit schedule property is the the joint family property and defendant No.2 and 3 with collusion have created revenue records behind the back of the plaintiffs and same is not binding on the share of the plaintiffs.

11. At this juncture, it is relevant to rely on ruling of Hon'ble Apex Court Morgan Stanley Mutual Fund V/s Karthik Das the Hon'ble Apex Court held that "A prima-facie case implies the probability of the plaintiff obtaining a relief on the material placed before the court. The court should be satisfied that there is a serious question to be tried at the hearing and that on

the facts before it, there is probability that the plaintiff is entitle to the relief”.

12. On perusal of the documents produced by both the parties, it reveals that full fledged trial is required to establish that the suit schedule property is joint family property of the plaintiffs and defendant No.2 and 3 have created the revenue records. At this stage, the plaintiff has not made prima-facie case to grant temporary injunction order as sought for. Hence, this court answer Point No.1 **in the Negative.**

13. **Point No.2 and 3:** Both these points are interrelated to each other and they have taken up together for common discussion to avoid repetition of facts.

14. Apart from prima facie case plaintiff also needs to show the balance of convenience and irreparable loss and injury lies in her favour. The power to grant temporary injunction is at the discretion of the court. This discretion, however should be exercised reasonable judiciously and on sound legal principles.

15. Therefore, the court needs to assess that if injunction is not granted to the plaintiff as sought for, she will be not put to hardship and loss. If the court gets convinced that the party will suffer such loss that

cannot be compensated, it may grant injunction. It should be granted only in cases where the party has no other alternative remedy left except seeking injunction.

16. In the instant application, the plaintiff has not produced sufficient documents before the court that if the defendant No.2. And the alienate the suit schedule property the same will cause hardship to the plaintiffs. Hence, this court answers Point No. 2 and 3 **in the Negative.**

17. **Point No.4:-** For the reasons stated supra, this Court proceed to pass the following,

ORDER

I.A. No.6 filed by the plaintiff
under Order 39 Rule 1 and 2
R/w section 151 of C.P.C. is
hereby rejected.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in Open Court, on this the 5th day of July, 2022).

(Pooja J.)
Prl .Civil Judge & JMFC,
Shidlaghatta.

Order pronounced in open court
(Vide separate sheet)

O R D E R

I.A. No.6 filed by the
plaintiff under Order 39 Rule 1
and 2 R/w section 151 of C.P.C.
is hereby rejected.

No order as to cost.

28.06.2022

**Prl .Civil Judge & JMFC,
Shidlaghatta.**

(Computerized to my dictation on computer by the steno, printout then revised, corrected, signed and pronounced by me in Open Court on this 2nd day of March 2020.)

(SMT. POOJA)
V ADDL.CIVIL JUDGE AND JMFC.
SHIVAMOGGA

Order pronounced in the open Court
(vide separate order)

ORDER

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

Defendant, his agents, supporters, relatives, representatives etc are hereby restrained from interfering with the peaceful possession and enjoyment of the suit schedule property in any manner till pending disposal of the suit.

II ACJ AND JMFC. SHIVAMOGAG

