

Dated this the 26th day of August- 2020

: PRESENT:

O.S.No.141/2015

Dead by His LR's

2. Sri. Krishnappa
S/o late Doddasubbanna,
Aged about 66 years,
R/at. Hardi Village,
Jangamakote Hobli,
Sidlaghatta Taluk,
Now R/at. Chikkakiragambi
Village, Nandi Hobli,

Chickballapura Taluk.

[R/by Sri. K.M, advocate]

-VS-

Defendant/s

- 1.** Sri. H.S. Munishamappa
S/o late Doddasubbanna,
Aged about 70 years,
R/at. Hardi Village,
Jangamakote Hobli,
Sidlaghatta Taluk,
Now R/at. Sathyavare Village,
Sulibele Hobli,
Hoskote Taluk.
- 2.** Smt. Subbamma
W/o Gangappa,
D/o late Doddasubbanna,
Aged about 45 years.
- 3.** Smt. Premamma
W/o Muniyappa,
D/o late Doddasubbanna,
Aged about 36 years.

D1 to 2 and 3 are
R/at. Hardi Village,
Sidlaghatta taluk,
Chickballapura District.

- 4.** Smt. Rathnamma
W/o Gangaramappa,
D/o late Doddasubbanna,
Aged about 40 years,
R/at. Dinnahalli Village,
Nandagudi Hobli,
Hoskote Taluk.
- 5.** Smt. K.Malini
W/o M.R.Shivakumar,
R/at. No.25, 3rd Floor,

Karunashree Point,
Marathhalli Ring Road,
Bangalore-560037.

[R/by Sri. V.M.B. advocate]

ORDERS ON I.A.NO.I

1. The plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession with respect to suit schedule properties.

2. At the time of institution of the suit the IA.No.1 has been filed by the plaintiffs Under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C seeking an order of temporary injunction restraining the defendant No.5 from alienating the plaint schedule properties on the basis of created documents by way of sale , agreement, gift etc., in any other mode of transfer to whomsoever, in any manner till pending disposal of the suit.

3. The brief facts of the plaintiff's case are as follows:-

The plaintiffs have filed their affidavit in support of the IA.No.1 wherein he has stated that the plaintiffs and defendants are the heirs of deceased

Doddasubbanna and they are members of undivided joint Hindu family and the defendant No.1 maintaining the affairs of the joint family being manager. The properties detailed in the schedule of the plaint acquired in the name of defendant no. 1 and deceased Doddasubbanna through grant made by the Government and thereby since from the date of grant the family is enjoying the plaint schedule properties jointly. It is further contended that, there is no partition in the joint family properties amongst the members of the family and the land revenue was paid out of the joint family funds.

4. It is further contended that, the Government granted the plaint schedule properties in the name of defendant no.1 and deceased Doddasubbanna by imposing non alienation clause, recently defendants No.1 to 4 have created illegal documents in the absence of plaintiffs on the basis of the documents the defendants No.1 and 3 have created alleged revenue documents in the name of stranger, the defendant No.5, without any authority. The alleged documents

created in the name of defendant No.5 are void documents as the defendant No.2 and 3 have no right to transfer the joint family properties without consent or knowledge of the plaintiffs as the coparceners of the joint family.

5. It is further contended that, the alleged documents created by defendant No.5 are nullity and void documents as he has created illegal documents by violating the non alienation clause imposed the Government and also in the absence of the other coparceners of the joint family no legal possession of suit properties can be transferred to defendant No.5. Further the plaintiffs knowing the said fraud played by defendant No.1 to 4, have approached them and expressed their inability to continue being members in the said joint family and thereby requested defendants to effect an amicable partition but, request was went in vain, on the other hand, the defendant No.5 has alienated the suit schedule properties. Hence, the present application has been filed.

6. On the other hand, the defendant No.5 has filed written statement, wherein it is contended that, the suit schedule properties have been granted in favour of Venkatalakshmi under Land Grant Order bearing No.LADSR267/79-77, accordingly he was in possession of the land. After the death of Venkatalakshmi his grand son Mr. Venkateshappa acquired the property through MR.No.228/99-2000 and said Venkateshappa sold the 1 acre 20 guntas to Sri. Anneppa S/o Danappa on 02/11/1999 under sale deed dated: 03/02/2006. Further the B M Raju has purchased the remaining land 1 acre 20 guntas in Sy.No. 3/5 from Venkatesh S/o Venkateshappa under registered sale deed and in turn B M Raju sold the said land to defendant No.5 herein under the registered sale deed dated: 02/09/2006 and from the date of purchase the defendant No.5 is in possession of the suit schedule properties. Further the said land was re numbered as Sy.No.3/5/P33 and further the land bearing Sy.No. 3/15 new Sy.No.146 was originally granted to Doddasubbanna under order

No. LND SR267/76/77 and he was in possession of the said land.

7. It is further contended that, after the death of Doddasubbanna his children have partitioned the family properties under panchayath partition on 09/07/1999 and in the partition Sri. Subbanna, allotted the said land under B Schedule and katha was mutated in his name under MR.No. 12/2004-05 and he put in the possession of the land in new Sy.No.146. The said Subbanna along with his children sold the said land to B.M.Raju on 08/02/2006 through registered sale deed and thereafter the katha was mutated in his name in turn the B.M.Raju sold Sy.No.146 to the purchaser on 02/09/2006 under the registered sale deed and thereafter the katha was mutated in his name. The purchase has paid the tax to the properties up to date. The said purchaser Sri. K.Sethu Sri. Madhavaraju, Smt. Roopa and Samruth have sold the said lands in favour of defendant No.5 to meet their family and legal necessities under sale deed dated: 22/01/2007 and the said documents duly

registered in the office of Sub Registrar, Sidlaghatta. It clearly shows that the defendant No.5 is in possession and enjoyment of the above said land and the entries in the revenue records as such the plaintiffs have no right, title possession over the suit schedule properties. Hence, he prayed for rejection of I.A.No.1.

8. Heard both sides at length in great detail and perused the material on record.

9. On the basis of application and objection and other material on record the points that arise for my consideration are:

P O I N T S

1. Whether the plaintiffs prove that they have got prima facie case and the balance of convenience lies in their favour to pass temporary injunction?
2. Whether the plaintiffs prove that they will suffer irreparable loss and hardship, if the temporary injunction is not granted?
3. What order?

10. My answers to the above points are as follows:

- Point No.1 : In the affirmative
Point No.2 : In the affirmative

Point No.3 : As per final order for the following:

R E A S O N S

11. **Point No.1 and 2**: Since the point No. 1 and 2 are interconnected with each other, hence they have been taken together for common discussion to avoid the repetition of facts.

12. The present suit has been filed by the Plaintiffs for the relief of partition and separate possession against the Defendants with respect to suit schedule properties. Further it appears from the records that the suit schedule properties have been granted in favour of late Doddasubbanna and Sri. Munishami the defendant No.1. The defendant No.1 is the manager of the family of the plaintiffs and defendants and the suit schedule properties are ancestral joint family properties of the plaintiffs and defendants and it is further the case of the plaintiffs that, plaintiffs are also having right, title and interest over the suit schedule properties but, in spite of that the defendant No.1 to 4 have alienated the suit schedule properties in favour of defendant No.5 by violating non alienation clause

imposed by the Government at the time of granting the suit schedule properties. It is specifically contended that, being the members of joint Hindu family the plaintiffs are having rights over the suit schedule properties as such, the application has been filed for the relief of temporary injunction.

13. In support of the application the plaintiffs have produced the following document 1) Genealogical tree which shows that the propositus is Doddasubbanna and his elder son is defendant No.1 and further have produced 2)RTC extract of the suit schedule properties wherein the name of late Doddasubbanna and thereafter the name of the defendant No.1 is appearing in old RTC extract, 3) new RTC extract of suit schedule properties it clearly shows that the name of the defendant No.5 is appearing and it clearly discloses that as per registered sale deed dated: 30/03/2007 and 10/02/2007 the defendant No.5 has purchased the suit schedule properties. On the other hand the defendant No.1 to 4 have appeared before the court but, they have not filed the written

statement. The defendant No.5 has appeared before the court and filed his written statement wherein it is specifically contented that, the defendant No.5 has purchased the suit schedule property from their vendors through registered sale deed and thereafter the her name is entered in the revenue records as such she is absolute owner and person in possession of the suit schedule properties. In support of the written statement the defendant No.5 has not produced any documents.

14. The materials available on record clearly goes to show that, the suit schedule properties were granted in favour of late Doddasubbanna and defendant No.1 and the defendant No.1 is the manager of the family of the plaintiffs and defendants and through documents clearly shows that the plaintiffs are also members of joint family as such they are having right, title, interest over the suit schedule properties but, in spite of it the defendants have alienated the suit schedule properties in favour defendant No.5. In order to avoid the multiplicity of proceedings and also to

protect the civil right of the plaintiffs it is just a necessary to consider the application. Further the plaintiffs have made out prima facie right, title and interest over the suit schedule properties and even plaintiffs have made out balance of convenience and if the temporary injunction is not granted. If the defendant No.5 alienate the suit schedule properties in that event the plaintiffs will put to irreparable loss as such considering the plaint, written statement, and other materials available on record the court is of the opinion that the plaintiffs have made out prima facie case, balance of convenience, irreparable loss as such the plaintiffs are entitled for the relief of temporary injunction. Hence, this court answered the Point No.1 and 2 in the affirmative.

15. **Point No.3**: As per the discussion on point No.1 and 2, and also considering the facts and circumstance of the case the court proceeds to pass the following:

ORDER

The I.A.No.I filed by the plaintiffs
Under Order 39 Rule 1 and 2 of CPC,
is hereby allowed.

The defendant No.5 is hereby
restrained from alienating the suit
schedule properties in any manner to
anybody till disposal of the suit by
way of temporary injunction.

No order as to cost.

[Dictated to Stenographer, typed by her and
corrected by me and then pronounced in the open court
on this the 26th day of August- 2020].

(Sanjukumar Pachhapure)
Prl. Civil Judge and J.M.F.C.,
Shidlaghatta.