

IN THE COURT OF THE ADDL. CIVIL JUDGE & J.M.F.C., AT  
SIDLAGHATTA.

Dated this 12<sup>th</sup> day of December - 2019

: PRESENT :

Smt. Rohini.D., B.A., L L.B.,  
Addl. Civil Judge & J.M.F.C.,  
Sidlaghatta.

O.S. No. 320/ 2014

PLAINTIFF:

Sri. Gopalappa  
S/o Late. Narayanappa,  
Aged about 56 years,  
R/at. Sagatooru Village,  
Nangamakote Hobli,  
Sidlaghatta Taluk.

(R/by Sri.D.A.A., Advocate)

-Vs-

DEFENDANT/S:

1. Sri. Ramakrishnappa  
S/o Late. Narayanappa,  
Aged about 64 years,
2. Sri. Munivenkatappa  
S/o Late. Narayanappa,  
Aged about 60 years,
3. Smt. Lakshamma  
W/o. V. Lakshmaiah,  
Aged about 69 years,
4. Sri. Manjunath  
S/o. V. Lakshmaiah,  
Aged about 37 years,

5. Smt. Muthamma  
W/o. Late.Narayanappa,  
Aged about 92 years,

Above all are R/at,  
Sugutooru Village,  
Jangamakote Hobli,  
Sidlaghatta Taluk,

6. Smt. Ashwathamma  
W/o. Nanjundappa,  
Aged about 34 years,  
R/at. Venkatapura Village,  
Jangamakote Hobli,  
Sidlaghatta Taluk,

7. Smt. Varalakshmi  
W/o. Adinarayana,  
Aged about 32 years,  
R/at. Gundlapalli Village,  
Mitemari Hobli,  
Bagapalli Taluk,

(D1 & 2 R/by Sri. T.V.C Advocate,D6 R/by  
Sri. E.N. Advocate, D7 R/by Smt. C.L.  
Advocate,. D3 to D5 exparte)

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Orders on Application filed under Order 39 Rule 1 and 2 r/w Sec.151  
of CPC.,

The plaintiff has filed this application Under order 39 Rule 1  
and 2 R/w Sec,. 151 of CPC,. to restrain the an order of temporary  
injunction restraining the defendant from making construction in  
item No.11 of the suit properties till the disposal of the suit.

2. It is stated in the accompanying affidavit that, the plaintiff and the defendants are the members of un divided hindu joint family, the suit schedule properties are joint family properties acquired by the members of the joint family out of earning of the joint family members. There is no partition between the members of joint family. After alienation of ancestral properties out of the suit amount and the earnings accrued out of the ancestral properties the sons of Narayanappa have purchased the properties in the name of plaintiff and defendant No.1 and 2. The plaintiff and defendants have not divided the properties acquired by all the members of joint family. Since two years due to some differences and as the defendants are mismanaging the income and the properties of the joint family properties he is not willing to continu in the joint family he approached the defendants to divide the joint family properties but, the defendants have postpone the same, he has also conveyed several panchayaths but, the defendants refused to allot his share. The defendant No.1 and 2 taking advantages of kathas in their name trying to alienate some of the properties to third person. The defendant No.1 is tryig to make construction in item No.11 of the suit properties and trying to change the nature of the suit property. The defendant No.1 has not entitled to make any construction in item No.11 of the suit property. If an order of injuncion is not granted he

will be subjected to irreparable loss injustice which can be compensated by any means. Hence, prays for allowing the application.

3. On the other hand, the defendant No.1 has filed objection to the above application contending that, the item No.11 of the suit property acquired by the defendant No.1 from his brother in law through registered sale deed and it is self acquired property of the defendant No.1. The item No.11 of the property is not joint family property. Since 10 years the plaintiff and defendant No.2 are separately residing in the item No.7 of the suit property and the defendant No.1 residing in the rented house at Jangamakote. The defendant No.1 is not having any permanent residential house. He is constructing domestic house within his 1 1/4<sup>th</sup> guntas in the item No.11 of the suit property. Due to inconvenience of the rented house and also personal inconvenience the defendant No.1 is not able to residing in the rental houses in 1<sup>st</sup> and 2<sup>nd</sup> floor. Thereby, within great difficulty he is constructing the residential house. The defendant No.1 is ready to abide by all the condition imposed upon him by this court. If he constructed the residential house in the said suit item no harm or injustice will be caused to the plaintiff, he is ready and willing to the final result of this proceeding with respect to

all suit properties. The plaintiff by knowing all these facts intentionally had filed this application to give trouble to 1<sup>st</sup> defendant. If this application allowed he will be put to great hardship and injury which can not be compensated by any means. Hence, prays for dismissing the application.

4. Heard counsel for plaintiff and perused the records.
5. On the basis of the application and objections points that arise for consideration of the court are:

1. Whether the plaintiff has made out prima facie case in his favour?
2. Whether the plaintiff show that balance of convenience lies in his favour?
3. Whether the plaintiff further shows that irreparable loss and injury will be caused to him, if an order of temporary injunction is not granted?
4. What Order?

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

Point No 1 : In the Negative  
Point No 2 : Does not survive for consideration  
Point No.3 : Does not survive for consideration  
Point No 4 : As per final order for the following:

// REASONS //

7. Point No 1 : The plaintiff has filed this suit against the defendants for the relief of partition and separate possession with

respect to suit properties. Further contended that, the plaintiff and defendants are members of un divided hindu joint family. The suit schedule properties are the joint family properties of plaintiff and defendants. There is no partition between the joint family members out of earning of the joint family properties they have purchased the properties in the name of plaintiff and defendant No.1 and 2. The defendant No.1 and 2 taking advantages of kathas in their name trying to alienate the suit properties to third person and defendant No.1 is trying to make construction in item No.11 of the suit property.

8. In support of their contention they have furnished RTC extracts, House list, Certified copy of sale deed dated: 11.02.2009, Certified copy of plaint in OS No. 63/2012, Photos and C.D.

9. On perusal of RTC extracts, House list pertaining to suit properties it appears that the item No.1 to 6 are standing in the name of defendant No.2 and item No.7 to 12 are standing in the name of defendant No.1. The certified copy of the sale deed dated: 11.02.2009 shows that the defendant No.1 had purchased item No.11 of the suit property from Subramani for consideration of Rs, 50,000/-, certified copy of the plaint in OS No. 63/2012 shows that the defendant No.2 has filed suit against the plaintiff and other defendants for relief of

partition and separate possession. In the aforesaid suit, the defendant No.1 stated that, the properties acquired in the name of Ramakrishnappa and Munivenkatappa have purchased by the joint family funds, The item No.11 of the suit property is not included in the aforesaid suit.

10. Prima facie case means the plaintiff must by making positive averments, assert that he has a strong case and a legal right to the property in suit which has to be preserved and protected. It is not necessary for the plaintiff to prove by evidence. But, at least he must show that he has a strong prima facie case and there is every chance of his success in the case. But, in this case There is no prima facie materials placed by the plaintiff. The contentions taken by the both the parties are to be decided after well pledged trial. The plaintiff failed to establish prima facie case in his favour. Accordingly this court answers the point No.1 in the negative.

11. Point No.2 and 3: The plaintiff has failed to establish prima facie case in his favour there is no question of considering the aspects of balance of convenience as well as irreparable loss or injury to be caused to the plaintiff. Hence, the point No.2 and 3 does not survive for consideration.

12. Point No.4: For the discussions made above court is of the opinion that the plaintiff is not entitled to the relief claimed in the I.A No. 4 and the same required to be rejected. Hence, this court proceed to pass the following :

O R D E R

The I.A. No.1 filed by the plaintiff  
Under Order 39 Rule 1 and 2 R/w sec,. 151  
of CPC,. is hereby dismissed.

(Dictated to the stenographer directly on computer. The print out is revised, corrected and then pronounced by me in the open Court on this the 12<sup>h</sup> day of December 2019).

(Smt. Rohini.D)  
Addl. Civil Judge and J.M.F.C.,  
Sidlaghatta

