

Dtd.9-8-16

O.S.53/2016

PLAINTIFFS:-

1. Siddamma H. and 3 Others.

//Versus//

DEFENDANTS:-

1. Pathalingamma and 7 Others.

ORDERS

The plaintiffs filed I.A.No.I U/Or.39 Rule 1 and 2 R/w Sec.151 of CPC and prayed for ad-interim injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property. The schedule which has been mentioned as agricultural land bearing Sy.No.526 totally measuring 4 acres 18 guntas of land, out of which 1 acre on the southern side and bounded by, East- Land of Sanna Obaiah, West- Land of Bangaraiah, North- Land belongs to Eranna and South- Land of Chandrappa.

2. The application is supported by affidavit and the Siddamma sworn to an affidavit and submitted that the plaintiff and plaintiff's children have got common interest in the case. The plaintiffs are the owners of the suit schedule property and

is in possession and enjoyment of the same, by virtue of registered Will dated: 04-12-2003 executed by Bommaiah by bequeathing the suit schedule property in favour of the deceased husband of the plaintiff.

3. The suit schedule property was acquired by Bommaiah, Veeresh being the grandson of the Bommaiah and he was looking the welfare of Bommaiah and Bommaiah was intending to bequeath the suit schedule property for the husband of the plaintiff and the Bommaiah voluntarily in presence of the witness executed the registered Will on 04-12-2003 bequeathing the suit schedule property in favour of the plaintiff's husband and the Bommaiah died on 29-09-2011 and the plaintiff's husband was performed of Bommaiah's funeral obsequies.

4. Plaintiff further contended that, after the death of Bommaiah plaintiff's husband was not moved to enter his name in the revenue records in respect of suit land and due his illiteracy and ignorance and revenue records are continued in the

name of deceased Bommaiah. The plaintiff's husband Veeresh died on 03-03-2013 leaving behind his legal heir and plaintiff submitted that the plaintiffs are in possession and enjoyment of the suit schedule land, but they did not move for entering their names in the revenue records to the suit land.

5. The plaintiff further contended that, recently they came to know with regard to the Will and the plaintiff filed a petition before the Tahasildar to mutate the revenue records. The defendants objected to mutate the name and it has been registered as RRT Cr.121/2015. Then the plaintiff came to know that the defendant No.1 to 3 filed O.S.211/2015 against the defendant No.4 to 8 and obtained the compromise decree in collusion with each other without the knowledge of the plaintiff and the defendants are aware of the fact that the deceased Bommaiah bequeathed the suit schedule property in favour of the plaintiff's husband and the compromise decree without impleading the plaintiff in the suit

not binding. The defendants have no manner of right, title, interest and interfering with the possession of the plaintiff and prayed for ad-interim temporary injunction against the defendants.

6. And I.A.No.III filed by the plaintiff U/O 39 Rule 1 and 2 R/w Sec.151 of CPC to restrain the defendants from alienating or making gift or executing Will or Lease till the disposal of the suit.

7. The plaintiff Siddamma sworn to an affidavit. The affidavit contents which are same which is annexed to I.A.No.I

8. The defendants filed objections to both the applications I.A.No.I and III and submitted that the Bommaiah has not executed any Will in favour of the plaintiff's husband. The plaintiffs have no right over the suit schedule property and the plaintiffs are not in possession of the suit schedule property and prayed for dismissal of the both applications.

9. The plaintiffs filed both the applications I.A.No.I and III U/Or.39 Rule 1 and 2 R/w Sec.151 of CPC and both applications are taken together for discussion to avoid repetition of facts.

10. Heard on both side.

11. The points arise for my consideration to I.A.No.I is filed by plaintiffs,

POINTS

- i) Whether plaintiffs prove prima facie case?
- ii) Whether balance of convenience is lies in favour of the plaintiffs?
- iii) Whether irreparable injury caused if the injunction is not granted?
- iv) What order?

12. My answer to the above points are as under,

Point No.i : In the Negative,

Point No.ii : In the Negative,

Point No.iii : In the Negative,

Point No.iv : As per final order for the following:-

13. The points arise for my consideration to I.A.No.III is filed by plaintiffs,

POINTS

- i) Whether plaintiffs prove prima facie case?
- ii) Whether balance of convenience is lies in favour of the plaintiffs?
- iii) Whether irreparable injury caused if the injunction is not granted?
- iv) What order?

14. My answer to the above points are as under,

Point No.i : In the Affirmative,

Point No.ii : In the Affirmative,

Point No.iii : In the Affirmative,

Point No.iv : As per final order for the following:-

REASONS

15. **Point No.1 to 3 on I.A.No.I and I.A.No.III** :- Point No.1 to 3 on I.A.No.I and I.A.No.III taken together for discussion to avoid repetition of facts.

16. The plaintiff contended that deceased Bommaiah has executed Will in favour of the plaintiff's husband. The RTC for the Sy.No.526 stands in the name of Bommaiah S/o Palaiah for the year

2010-2011 which transpires the Bommaiah has having the right over the suit schedule property.

17. The original Will it has been registered is submitted before the Court which transpires that the Bommaiah has executed the Will in favour of his grandson Veeresh S/o Ramachandrappa.

18. The suspicious circumstances of the Will is to be proved only after recording of the evidence and if the suit schedule property is alienated which amounts to multiplicity of proceedings.

19. The contention of the plaintiff is that, the defendants colluded with each other and compromised the suit and the suit schedule property the RTC stands in the name of Ningamma W/o Late Ramachandrappa.

20. The further contention of the plaintiff is that, the Will has been executed in favour of the Veeresh. The Will must be proved it come into light, only after

recording of the evidence. If the injunction is not granted in favour of the plaintiff to restrain the defendants from alienating or gifting or leasing the property which amounts to restraint of multiplicity of the proceedings. The possession of the property is to be proved only after recording of the evidence and execution of the Will is also proved only after recording of the evidence. Hence, I answered Point No.1 to 3 on I.A.No.I in the Negative and Point No.1 to 3 on I.A.No.III in the Affirmative.

21. Point No.4 on I.A.No.I and III:- I proceed to pass the following :-

ORDER

I.A.No.I filed by the plaintiffs U/Or.39 Rule 1 & 2 R/w 151 of CPC is rejected and I.A.No.III filed by the plaintiffs U/Or.39 Rule 1 & 2 R/w 151 of CPC is allowed.

The defendants are restrained from alienating or gifting or leasing the property in favour of the 3rd person till disposal of the suit.

(Girisha B.K.)
Prl. Civil Judge & JMFC,
Challakere.