

IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
AT : HIRIYUR

PRESENT: SMT.TATTANDA DAMAYANTI SOMAYYA,
B.A.,LL.B.,
Senior Civil Judge & JMFC.,
Hiriyur

Dated on this 4th day of July 2020

O.S. No.25/2017

PLAINTIFFS

- :** **1. Lakshmidevi**
W/o Kenchappa
Aged about 22 years,
- 2. Ambuja**
D/o Late Kenchappa,
Aged about 19 years,
- 3. Siddesh**
S/o Late. Kenchappa,
Aged about 12 years,
The plaintiffs 1 and 2 are
agriculturists and the plaintiff
No.3 is a minor represented by
his minor guardian plaintiff No.1
and all are R/o. Alur Village
Hiriyur taluk.

[Rep.By Sri.S.A.Rizwan,Advocate]

-V/s-

DEFENDANTS

- :** **1. Thimmareddy**
S/o Late Puttabovi,
Aged about 60 years,
Agriculturist,

R/o. Alur village,
Hiriyur taluk.

2. Renukamma

W/o Late. Kenchappa,
Aged about 42 years,
C/o Parameshi chicken center,
Bus stand Amarapura, village,
Madaksira taluk,
Ananthapura district,
Andrapradesh.

[Def.No.1 Rep.By Sri.S. Jayanna,
Advocate and Def. No.2 placed
exparte]

ORDERS ON I A No.1 FILED BY THE PLAINTIFF U/O
XXXIX R. 1 AND 2 R/W SEC.151 OF CPC

The plaintiffs have filed this application U/O XXXIX rule 1 and 2 R/W Sec.151 of CPC and pray the Court to grant an ad interim temporary injunction restraining the defendant No.1 his men, agents, servants, supporters and followers etc., from dispossessing them from the house situated in "C" schedule property except under the due process of law, pending disposal of the suit.

2. The plaintiffs contend that, the suit schedule properties are their ancestral and joint family properties. They are residing in the house situated in "C" schedule property from long back. Except the said house, they have no other shelter for their residential purpose. They are in settled possession of the said house. The defendant No.1 has no absolute right, title, possession or interest whatsoever over the suit schedule property. They have demanded their respective shares. In order to take revenge against them, he has threatened them to dispossess from the said house. They have got a prima facie case and balance of convenience lies in their favour. They would be put to great loss in the event of rejection of their application. Accordingly, they prayed the Court to allow their application.

3. The defendant No. 1 opposed this application and filed his written objections contending that, the contents of the affidavit annexed to I.A.No. 1 is not maintainable. He contends that, themselves and plaintiffs are not the members of joint family. The suit schedule properties are

not their ancestral and joint family properties. There is no joint holding between themselves and plaintiffs. The father of the plaintiffs and husband of the 2nd defendant namely Kenchappa, himself, his mother Thimmakka W/o Puttabhovi got partitioned their ancestral and joint family properties through a registered partition deed dated:06.03.1996. In the said partition, the land measuring 2 acres 5 guntas in Sy.No.223/P was allotted to the share of first defendant. The land measuring 2 acres 5 guntas in Sy.No.223/P5 was allotted to the share of the father of the plaintiff. The land measuring 1 acre 17 guntas in Sy.No.483/P and land measuring 1 acre 10 guntas in Sy.No.21 were allotted to the share of Thimmakka W/o Late Puttabhovi. The land measuring 1 acre 10 guntas in Sy.No.21 was not included in the partition, which was allotted to the share of Thimmakka as, the khatha of the said property was not transferred to the joint names of the sons of Puttabhovi and Thimmakka. From the date of partition, himself, father of the plaintiffs and husband of defendant No.2 are residing separately in item No.4 of

schedule property, which was partitioned through registered deed. He is also residing separately towards northern side of item No.4 property. Southern side of item No.4 property was allotted to Kenchappa, his brother in the partition. The plaintiffs are entitled to share over the properties, which was allotted to the share of their father Kenchappa. He is not a manager or kartha of the family. His mother and grandmother of the plaintiff was managing the properties and family as manager till the partition deed dated:06.03.1996. He has purchased the "C" schedule property out of his own earnings from his elder uncle Erabhovi. From the date of its purchase, he is in exclusive possession and enjoyment of "C" schedule property. The mother-in-law of the 1st plaintiff and his family members were trespassing into the "C" schedule property without their consent. Hence, he had filed O.S.No.25/2009 against the mother-in-law of first plaintiff namely Jayamma seeking the relief of declaration and injunction. The said suit was decreed against the Jayamma. Aggrieved by that judgment, the mother-in-law of plaintiff No.1 namely Jayamma

preferred an appeal in RA.No.22/2013. The said appeal came to be dismissed. Against the dismissal order, the mother-in-law of plaintiff No.1/ Jayamma preferred RSA No.275/2017 on the file of Hon'ble High Court of Karnataka. The said RSA is also dismissed. He has filed execution petition against the mother-in-law of plaintiff No.1 in execution No.4/2016 and seeking possession in respect of "C" schedule property. The plaintiff No.1 is the daughter-in-law of Jayamma. In order to avoid eviction in execution petition, by suppressing all the real facts, she has filed the present suit which is not maintainable. The plaintiffs have not made out a prima facie case nor balance of convenience lies in their favour. Hence, he prayed the Court to dismiss the application.

4. I have heard both the counsels on this application.

5. On the basis of the contentions taken by the plaintiffs in their application, the following points arise for my consideration:

1. Whether the plaintiffs have made out a prima facie case against the defendant No.1?
2. Whether the balance of convenience lies in favour of plaintiff?
3. Whether the plaintiffs have made out that, they would be put to great loss in the event of rejection of this application?
4. What order?

6. On the basis of the pleadings and documents placed before the Court, my answers of the above points are as under:

Point No.1 : In negative

Point No.2 : In negative

Point No.3 : In negative

Point No.4 : As per final orders for the

following;

REASONS

Point No.1 to 3: As these three points are inter related, I take all the 3 points together for common discussion to avoid of repetition.

7. The plaintiffs have approached this Court seeking the relief of declaration that, themselves and defendant No.2 are jointly entitled to $\frac{1}{2}$ share in the suit schedule properties and for partition and separate possession of their share in the suit schedule properties by metes and bounds and consequential relief of permanent injunction restraining the defendant No.1 from dispossessing them from the house existing in "C" schedule property, except under due process of law.

8. In order to claim an order of temporary injunction the person claiming such relief must establish that, he has got a prima facie triable case as against the opposite party and balance of inconvenience lies in his favour. Likewise, he has to establish that, he would be put to great loss in the event of rejection of his application.

9. The plaintiffs contend that, the suit schedule properties are the ancestral and joint family properties of themselves and defendants and they are having $\frac{1}{2}$ share in the suit schedule property. According to the plaintiffs, they

are the members of Hindu undivided joint family. One Puttabhovi was the propositus of the family. He died leaving behind his wife Thimmakka and children and "A" and "B" schedule properties. After the death of defendant No.1, being the eldest son, the defendant No.1 was managing the affairs of "A" and "B" schedule properties. While managing the affairs of "A" and "B" suit property. The defendant No.1 purchased the land in Sy. No.223/P14 and got registered it in his name. It consists of ACC sheet roofed house, wherein they are residing and they are in settled possession.

10. The plaintiffs contend that, the defendant No.1 threatened them to dispossess from the "C" schedule property, when they demanded their share in the suit properties. Nowhere in the pleadings the plaintiffs have pleaded about the previous suit, appeal and filing of execution petition by the defendant No.1.

11. It is the specific contention of the defendant No.1 is that, they got partitioned the family properties through registered partition deed dated:06.03.1996. He purchased

the “C” schedule property out of his own earnings from his elder uncle Erabhovi for a valid consideration and from the date of its purchase, he is in exclusive possession and enjoyment of the property. As the mother-in-law of plaintiff No.1 and her family members trespassed into the “C” schedule property, he filed suit against them in OS.No.25/2009 seeking the relief of declaration and injunction. The said suit came to be decreed in his favour. Aggrieved by that judgment, the mother-in-law of plaintiff No.1/ Jayamma preferred an appeal in R.A.No.22/2013, which was also dismissed. Against the dismissal order, they preferred RSA No.275/2017 on the file of Hon'ble High Court of Karnataka and the said appeal also came to the dismissed. Subsequently, he filed execution petition against the mother-in-law of plaintiff No.1 in Ex.case No.4/2016 seeking possession of “C” schedule property.

12. The plaintiff No.1 is the daughter-in-law of Jayamma. The defendant No.1 has produced copy of registered partition deed dated:06.03.1996. By perusing the same, it

appears that, the wife of Puttabhovi namely Thimmakka her sons Thimmareddy and Kenchappa got partitioned the joint family properties. In the said partition 2 acres 5 guntas of land in R.S.No.223/P of Alur village was allotted to the share of Kenchappa S/o Puttabhovi. The plaintiff No.1 is the wife of the said Kenchappa. Plaintiff No.2 and 3 are the children of plaintiff No.1 and Kenchappa.

13. The defendant No.1 has also produced the copy of sale deed dated:21.03.2005, which was executed by Erabhovi S/o Appabhovi in favour of the defendant No.1. Through the said sale deed, the defendant No.1 purchased 1 acre of land in R.S. No.223/P14 for valid consideration. The defendant No.1 has produced copy of the judgment passed in O.S.No.25/2009. By perusing the said document, it appears that, the defendant No.1 herein had filed that suit against Jayamma W/o Chandrappa and others, seeking the relief of declaration and possession from the defendants.

14. On enquiry, the said suit came to be decreed, wherein the defendant No.1 herein was declared as the owner of

suit schedule property, i.e., 1 acre of land in Sy.No.223/P14 and the defendants therein were directed to hand over the vacant possession of the suit schedule property to the plaintiff there in within six months from the date of judgment.

15. The defendant No.1 has also produced copy of judgment passed by the Hon'ble High Court of Karnataka in RSA.No.275/2017. On enquiry the Hon'ble High Court of Karnataka dismissed the appeal, holding that the trial Court has rightly decreed the suit. The first appellate Court, on reappreciating the evidence on record has confirmed the finding as well as the judgment and decree of the trial Court.

16. The plaintiffs have produced xerox copy of Aadhar card and election identity card of first among them. Mere production of those 2 documents will not prove that, the plaintiffs are in settled possession of the "C" schedule property. The photographs taken in front of ACC sheet

roofing house will not prove that, the plaintiffs are in possession of “C” schedule property.

17. In the election identity card, the address of the plaintiff No.1 is mentioned as No.24, Masiyappa extension, Alur. In her Aadhar card, her address is mentioned as W/o Kenchappa, Alur, Chitradurga. As per the description given in the plaint “C” schedule property is a land measuring 1 acre in Sy.No.223/P14 consisting of ACC sheet roofing house measuring East-West 30 feet and North-South 25 feet of Alur village.

18. By perusing the RTC extract of “C” schedule property, it appears that, the said property stands in the name of defendant No.1 on the basis of registered sale deed. From the documents it appears that, the plaintiffs have filed this suit in order to avoid eviction process in execution petition, which was filed on the basis of judgment and decree passed in OS.No.25/2009, which was confirmed in RFA No.275/2017.

19. From the pleadings of the plaintiffs it can be gathered that, they have not stated all the real facts about the previous proceedings regarding “C” schedule property in their pleadings. They have not whispered any thing about the previous proceedings held before the competent civil Court with respect to the “C” schedule property. Mere production of photographs will not prove their contentions made in the pleadings.

20. Prima facie at this stage, the plaintiffs have not made out the grounds to grant prohibitory order against the defendant No.1. By perusing the documents produced before the Court, it appears that, the balance of convenience lies in favour of defendant No.1 and not in favour of the plaintiffs. No loss or hardship would be caused to the plaintiffs in the event of rejection of this application. The defendant No.1 has initiated proceedings to take possession of the “C” schedule property, on the strength of the judgment passed in the previous proceedings. Therefore, the plaintiffs are not entitled to the

relief claimed in I.A.No.1. Accordingly, I answer point No.1 to 3 in negative.

Point No. 4: For the aforesaid reasons, I proceed to pass the following:

ORDER

I.A. No. 1 filed by the plaintiffs U/O
XXXIX R.1 and 2 R/W Sec.151 of CPC is
hereby dismissed.

No orders as to costs. For issues,
Call on 16.09.2020.

[Dictated to the stenographer, the same was typed by her, the transcript thereof is revised and corrected by me and then pronounced in the open Court on this 4th day of July 2020]

[SMT.TATTANDA DAMAYANTI SOMAYYA]
SENIOR CIVIL JUDGE & JMFC.,
HIRIYUR.