

IN THE COURT OF ADDL. CIVIL JUDGE & JMFC., HIRIYUR.

Present: **Smt. FARHA BEGUM SAYED,**

B.A. LL.B.,

Addl. Civil Judge & JMFC.,

Dated this the 11th day of July 2019

O.S. No.174/2018

PLAINTIFF/S: 1) Sannamarakka D/o Maranayaka,
W/o Obala Nayaka,
Aged about 45 years,
Agriculturist.
R/o Thore Obenahalli Village,
Dharmapura Hobli,
Hiriyur Taluk.

2) Sharadamma D/o Maranayaka,
W/o Late Nagaraja,
Aged about 42 years,
Agriculturist.
R/o (Hosalli) Honnalli Village,
Dharmapura Hobli, Hiriyur Taluk.

(By Sri C.A.U., Advt)

-Versus

DEFENDANT/S: 1) Ningamma W/o Late Chithappa,
Aged about 50 years,
R/o Kodihalli Village,
Dharmapura Hobli, Hiriyur Taluk.

2) Maranayaka W/o Late Chithappa,
Aged about 25 years,
R/o Kodihalli Village,
Dharmapura Hobli, Hiriyur Taluk.

(By Sri. R.V., Advt)

PARTIES TO I.A.No.I**Applicant/Plaintiff :- Sanna Marakka plaintiff No.1****Vrs****Opponents/Defendants : Ningamma & Another****ORDER ON I.A. No. I**

This is an application filed by the plaintiff Under Order XXXIX Rule 1 & 2 CPC, seeking order of injunction restraining the defendants and their men, agents, servants, etc., from alienating or creating encumbrance over the suit schedule properties.

2. Suit/application Schedule Property:-

1) Land bearing R.S. No.100, measuring 9 acres 22 guntas, situated at Kodihally Village, Dharmapura Hobli, Hiriyyur Taluk, and bounded as follows.

East: Land belongs to Ramegowdara Chandranna

West: Land belongs to Kere Angala

North: Lands belongs to A.D. Mallappa,

South: Lands belongs to Muniyappa

2] Land bearing Sy. No. 99/2P4, measuring 2 acres, 30 guntas,

3] Land bearing Sy. No. 99/2P2, measuring 1 acre 35 guntas, that the lands in item no. 2 and 3 are adjacent to each other situated at Kodihally Village, Dharmapura Hobli, Hiriyyur Taluk which are having common boundaries as follows:

EAST: Land belongs to Ramegowdara Chandranna

WEST: Kere Angala.

NORTH: Land belongs to Ramanna,

SOUTH: Land belongs to Chithanayaka.

3. The brief facts of the case of the plaintiff:-

In the affidavit annexed to the application. It has been contended by the plaintiff that the plaintiffs have filed the present suit for the relief partition and separate possession of their 1/3rd share in the suit schedule properties. Further that the father of plaintiffs and father-in-law of defendant No.1 and grandfather of defendant No.2 was permanent residents of Kodihally Village, Hiriyur Taluk by owing and possessing landed properties bearing Sy No.100, measuring 9 acres 22 guntas, Sy No.99/2P4, measuring 2 acres 30 guntas and Sy No.99/2P2, measuring 1 acre 35 guntas all are situated at Kodihally Village, Hiriyur Taluk. That this Maranayaka S/o Chikkanayaka had two wives by name Sakamma and Lakshmakka. That Sakamma had only son by name Chithappa and Lakshmakka is plaintiffs mother. That plaintiffs and their father are constituting undivided joint family and they are in joint peaceful possession and enjoyment of suit schedule properties. That plaintiff father died leaving behind him his two daughters i.e., plaintiffs and his 2nd wife as his legal heirs. After death of plaintiffs father Maranayaka S/o Chikkanayaka, they and Chittappa have inherited and succeeded to the estate of their father. Further that the said Chithappa has also died leaving his wife defendant No.1 and his son defendant No.2. They and

defendants are in joint peaceful possession and enjoyment of the suit schedule properties.

4. Further plaintiffs contended that there arose misunderstanding between plaintiffs and defendants which culminated plaintiffs to claim their each 1/3rd share in the suit schedule properties. That at the beginning the defendants agreed to give plaintiffs share in the suit schedule properties. But later they refused to give plaintiff respective shares. That plaintiffs have convened the panchayath and all their efforts went in vain. That the suit schedule properties are the ancestral properties of the plaintiffs and defendants and they are having plaintiff respective equal shares right, title in the suit schedule properties. That the defendants have no exclusive right, title interest in the suit schedule properties.

5. Further plaintiffs contended that in order to file this partition suit made attempts to obtained the revenue documents pertaining to suit schedule properties, that at this juncture they came to know that revenue documents with respect to suit schedule properties are standing in the name of defendant No.1 and also came to know that defendants colluding with each other have making hectic efforts to alienate the suit schedule properties. That when they inquired about this the defendants started to abuse plaintiffs in filthy language and stated that the suit schedule properties belongs to them and they can do whatever they wants.

6. Further plaintiffs contended that all the entires of the revenue records are made behind the back of plaintiffs by the defendants and are making hectic efforts to dispose of the suit schedule properties by creating documents in favour of them in order to deprive plaintiff rights in the suit schedule properties. That if there is any deed or any created documents with respect to the suit schedule properties those are not binding on plaintiffs shares.

7. That the plaintiffs got prima facie case. Balance of convenience lies in their favour. If the application is allowed no loss or injustice will be caused to the defendants. On the other hand if the same is refused they will be put into greater hardship and loss. Therefore, the plaintiffs are before the Court seeking for the reliefs.

8. On the service of the summons the defendants have appeared through their counsel and filed their written statement and objections to I/A No.1. The defendants have denied all the application averments. Further it is the contentions of the defendants that, the plaintiffs have no prima facie case and also balance of convenience not lies in their faovur, on the other hand the defendants have got prima-facie case and balance of convenience lies in favour of the defendants. If the application is allowed defendants will be put to great hardship and injustice on the other hand if the application is dismissed no hardship or injustice will be caused to the plaintiffs.

9. Further that the plaintiffs are stranger to the family of the defendants, and that the plaintiffs are not concerned either to the family of the defendants and also not concerned to the suit schedule properties. Further that the Plaintiffs by Suppressing the real facts with malafide intention have filed the untenable application same is not maintainable in law on facts. That the plaintiffs have not approached this Hon'ble Court with clean hands, and have filed the false application by creating the false story, same is not tenable in law and with other contentions prayed to dismiss the application with costs.

10. On the basis of pleadings of the parties and documents produced, following point arise for my consideration:

- 1. Whether the plaintiffs have made out a prima facie case for grant of temporary injunction?**
- 2. Whether the balance of convenience lies in favor of the plaintiffs ?**
- 3. Whether the plaintiffs will be put to irreparable injury, if an order of Temporary Injunction is not granted?**
- 4. What Order?**

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

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

Point No.4: As per final order

for the following:

-:: R E A S O N S ::-

12.POINT No.1:-

The plaintiffs have filed the suit for partition and separate possession. It is the case of the plaintiffs that the plaintiffs have filed the present suit for the relief partition and separate possession of their 1/3rd share in the suit schedule properties. Further that the father of plaintiffs and father-in-law of defendant No.1 and grandfather of defendant No.2 was owning the suit schedule properties. That this Maranayaka S/o Chikkanayaka had two wives by name Sakamma and Lakshmakka. That Sakamma had only son by name Chithappa and Lakshmakka is plaintiffs mother. The plaintiffs have submitted that they were residing with the father by constituting Hindu Joint family and were in possession of the suit schedule properties along with defendants. Later after the demise of plaintiffs father, the plaintiffs and the defendants were continued to be in possession of suit schedule properties. Later the said Chithappa was also died leaving behind his legal heirs i.e., defendants. The plaintiffs demanded their 1/3rd share in the suit schedule properties from the

defendants. But the defendants have refused the same. Hence this suit.

13. The defendants have denied all the claims of the plaintiffs and have stated that the plaintiffs are the stranger to the family and have no right, and interest in the suit schedule properties. The defendants and the plaintiffs have filed revenue records in support of their contentions wherein the suit schedule properties stands in the name of Late Chithappa and defendant No.1.

14. The plaintiffs have also filed a registered will dated:18/01/1993 executed by the Maranayaka S/o Chithappa infavour of the Plaintiffs. Wherein the said Maranayaka S/o Chithappa has stated that the plaintiffs are the daughters of said Maranayaka through his 2nd wife Lakshamaka and therefore he intends to allot his properties i.e., suit schedule item No.1 in favour of his daughters. The said Maranayaka has also stated that he is having a son by name Chithappa through his 1st wife Sakamma. Whether the said alleged Will was acted upon or it had been subsequently cancelled by the testator is the question to be deteremined on the basis of the oral and documentary evidence adduced by the parties, in the full fledge trial.

15. But at this stage, in view aforementioned facts it appears that the plaintiffs are the daughters of Maranayaka and are the members of his joint family. The plaintiffs claiming the relief with respect to joint family properties of their father.

Whether partition has taken place or not is the matter to be decided after the trial. At this stage, it appears that the plaintiffs filed this suit with respect to joint family properties for the relief of partition and separate possession. But the joint family properties are standing in the name of Defendant No.1 and therefore plaintiffs apprehend that the defendants may alienate the same to defeat Plaintiffs legitimate claim. Hence, Plaintiffs have sought for the Temporary injunction restraining the defendants from alienating the Suit Schedule properties.

16. Cases in which temporary injunction may be granted.- Where in any suit it is proved by affidavit or otherwise-

- A. That any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*
- B. That the defendant threatens- or intends to remove or dispose of his property with a view to defrauding his creditors,*
- C. That the defendant threatens to dispossess the plaintiff or otherwise the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.*

17. The Court may order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit) as the Court thinks fit, until the disposal of the suit or until further orders.”

18. On the basis of above provision of law, the plaintiffs claim that the subject matter of the Suit would be alienated during the pendency of the suit to defeat the claim of the Plaintiffs holds water. Hence, I am of the view that at this stage the plaintiffs have made out prima facie case against the defendants. But, the view expressed is only tentatively without prejudice to both the parties. **Hence, I answer point No.1 in the Affirmative.**

19. POINT NO 2 and 3:- I have taken these points together for common discussion as these points are interrelated. It is not enough, that plaintiff makes out a prima facie case, further, plaintiff has to show that the balance of convenience. The Court has to consider to whom more hardship or inconvenience would be caused. The suit schedule properties are the agricultural land which are under cultivation by the parties. The parties even if the the Temporary Injunction is granted to not to alienate the same can continue to cultivate the same without any hindrance and no more hardship will caused to the defendants. If the injunction is not granted, the defendants may by taking undue

advantage as the suit schedule properties stands in the name of Defendant No. 1 and his deceased husband alienate the same in any manner. The same may lead to multiplicity of the proceedings and would also defeat the purpose of filing this suit. Therefore the grant of temporary injunction will be just and necessary to avoid any irreversible consequences by the time the suit is disposed off. Therefore, it appears that more hardship would be caused to the plaintiff than to the defendants.

20. Consequently, the plaintiffs does show the existence of the prima facie case, Balance of convenience and also substantiate the contention raised in the plaint. Hence, the plaintiffs have made out a prima facie case and balance of convenience does lie in their favor, much less the greater hardship and inconvenience. **Accordingly, I answer point No. 2 and 3 in Affirmative.**

21. POINT No.4:

In view of my above discussion and conclusion arrived at point No. 1 to 3, the application filed by the plaintiffs is liable to be allowed. **Accordingly, I proceed to pass the following.**

-:: O R D E R ::-

**I.A. No. I filed by the plaintiffs
Under Order XXXIX rule 1 and 2 of
CPC is hereby allowed.**

**The Defendants their men,
agents, servants are hereby
restrained from alienating or
creating encumbrance, or disposing
the Suit Schedule properties in any
manner till disposal of the suit.**

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 11th day of July 2019)

(FARHA BEGUM SAYED)
Addl. Civil Judge & JMFC.,
Hiriyur.

(Order pronounced in the open court, vide separate order)

-:: O R D E R ::-

I.A. No. I filed by the plaintiffs Under Order XXXIX rule 1 and 2 of CPC is hereby allowed.

The Defendants their men, agents, servants are hereby restrained from alienating or creating encumbrance, or disposing the Suit Schedule properties in any manner till disposal of the suit.

**Addl Civil Judge & JMFC.
Hiriyur**

