

KACM020012952021



IN THE COURT OF PRL. SENIOR CIVIL JUDGE & CJM
CHIKKAMAGALURU

Present: **SRI.VEERANNA SOMASEKHARA**
B.Com, LL.B.,
Prl. Sr. Civil Judge and CJM,
Chikkamagaluru

O.S. No.66/2021

Dated 7th August 2021

Plaintiffs : Sri. D. Gopinath & Another.

(By Sri. Halekote A. Thejaswi, Advocate)

V/s

Defendants: Sri. B.N. Manjunath & Others.

(D.1 to 9 by: Sri. B.M.Laxmana Gowda,
Advocate, D.10 absent)

PARTIES TO I.A.No.I

Applicants/

Plaintiffs: Sri. D. Gopinath and another.

V/s

Opponents/

Defendants: Sri. B.N. Manjunath and others.

* * * * *

ORDERS ON I.A.NO.I

The plaintiffs have filed this application U/O 39 rule 1 and 2 r/w sec.151 of C.P.C. praying to grant for an ad-interim temporary injunction by restraining the defendants from alienation or sale of the property to anybody in any manner till disposal of the suit.

2. In support of the application, an affidavit of plaintiff no.2 is filed and she has contended in her affidavit that she is the 2nd plaintiff in this case and she and the 1st plaintiff has filed this suit against the defendants for the relief of partition, separate possession and mesne profits in respect of the suit schedule properties. Further she contended that she and the plaintiff no.1 have got 1/5th share in the suit schedule properties as the said properties are the ancestral joint family properties of plaintiffs and defendants. Further she contended that in spite of the best efforts, the defendants seem to have no intention to settle the dispute and they are not ready to give the share of the plaintiffs over the suit schedule

properties. On the other hand the defendants have been trying to develop the land and sell the plots to innocent buyers with an intention to cause harm to the plaintiffs. Further she contended that she has got prima-facie case and balance of convenience lies in her favour and as such, at this stage, if the defendants are not restrain from alienating the suit schedule property, then the plaintiffs will be put to great hardship rather than the defendants. Contending the above facts, she prays to allow the application filed by her and the 1st plaintiff.

3. Copy served to the defendants. In response to the suit summons, the defendants no.1 to 9 have appeared before the court through their respective counsel and defendant no.1 has filed the written statement and the defendants no.2 to 8 have filed the memo contending that they have adopting the written statement filed by the defendant no.1, on the other hand the defendant no.9 has filed the separate written statement. Further counsel for the defendants have filed the

memo contending that the written statement filed by the defendants no.1 and 9 may be treated as objection to the application.

4. The brief contents of written statement of defendants no.1 and 9 are as under:

The defendant no.1 has denied the contents of para no.1 of the plaint in toto. On the other hand the defendant no.1 has admitted the relationship of the defendants and plaintiffs as shown in para no.2 of the plaint and denied the other contents of the said para. Further the defendants no.1 and 9 have denied the contents of para no.3 to 5 of the plaint in toto and also they have denied cause of action shown by the plaintiffs in their plaint. Further the defendant no.1 contended in his written statement that one B.N.Manjaiah was original propositor of Hindu Undivided Joint Family of plaintiffs and defendants and he had two wives viz., Thimamma and Lakshmiddevamma. Further he contended that, the said B.N.Manjaiah had got two sons viz., Venkatasubbaiah and

Sheshagiri through 1st wife Smt.Thimamma and he has got one son and five daughters viz., Janardanaiah, Nanjamma, Venkatalakshmamma, Nagalakshmi, Sharadamma and Jayalakshmi through 2nd wife. Further the defendant no.1 contended that Sri. Venkatasubbaiah has got two sons viz., Srikantaiah and Manjunath and three daughters viz., Saraswathi, Seethalakshmi and Swarnamba. Further the said Srikantaiah is the husband of 5th defendant and father of defendant no.6 to 8 and Manjunath is the 1st defendant herein and Sri.Saraswathi is the mother of plaintiffs herein and Seethalakshmi is the mother of defendants no.9 and 10 and defendants no.11 to 14 are the children of Smt.Swarnamba. Further the contention of the defendants is that, in the year 1965 Sri.Manjunath, Venkatasubbaiah, Thimamma and Sheshagiri are passed away.

5. Further the contention of the defendants is that on 22.01.1981 Smt.Lakshmiddevamma i.e., 2nd wife of propositor Manjaiah and her children viz., Smt.Sharadamma,

Janardanaiah and Srikantaiah and their children have entered into registered and oral partition and in the said partition the suit schedule properties were equally divided between the parties. Further at the time of said partition, the mother of the plaintiffs and mother of the defendants no.9 to 14 have also present and orally released their right over the suit schedule properties in favour of defendant no.1 and husband of defendant no.5 viz., Srikantaiah and since the date of partition, the mother of the plaintiffs and other defendants are residing separately and as such, there is no joint family status from the year 1981. Further the contention of the defendants is that the mother of the plaintiffs has orally relinquished her right over the suit schedule properties in the year 1981 and as such, the plaintiffs have not got any right over the suit schedule properties as contended in the suit.

6. Further the defendants have admitted that they have formed 41 sites in the suit schedule 'A' properties and out of them 15 sites have already been sold to various persons and as

such, at present if the defendants are restrained from alienating the sites formed in suit schedule properties, then the defendant no.1 and other defendants would be put to great hardship rather than the plaintiffs. Further the contention of the defendants is that the suit filed by the plaintiffs is not maintainable one as they have not impleaded the purchasers of the sites and also they have not included all the members of the family as a defendants in this suit and as such, the suit is bad for non-joinder of necessary parties and as such, when the suit filed by the plaintiffs is not maintainable one, then question of granting the interim relief as prayed for by the plaintiffs in the application doesn't arise. Contending the above facts, the defendants no.1 to 9 pray to dismiss the suit along with the application filed by the plaintiffs with cost.

7. On perusal of the contents of affidavit filed by the plaintiff no.2, in support of this application and also looking to the contents of written statement filed by the defendant no.1 and 9, the following points that arises for my

consideration are:

1. Whether the plaintiffs have made out a prima-facie case lies in their favour for grant of temporary injunction as prayed for?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether plaintiffs are put to irreparable loss if temporary injunction is refused?
4. What order?

8. Heard the arguments of both sides and perused the material available on records:

9. My answers to the above said 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:

REASONS

10. **POINT NO.1 TO 3:** All these points are inter connected with each other, hence in order to avoid the repetition of facts, these points are taken together for common

consideration.

11. During the course of arguments, learned counsel for the plaintiffs argued by reiterating the contents of affidavit filed by the plaintiff no.2 and also by reiterating the contents of plaint. Further learned counsel for the plaintiffs argued that, the plaintiffs have produced the sufficient documents to show that, there is a prima-facie case lies in their favour and as such if the I.A. filed by the plaintiffs is not allowed by restraining the defendants from alienating the suit schedule properties, then the plaintiffs will be put to great hardship and it will cause multiplicity of proceedings. Further he argued that before filing the suit, the plaintiffs have got issued legal notice to the defendants through their counsel and after receipt of the said notice, the defendants have send the reply, wherein it is clearly mentioned that the suit schedule properties are the ancestral joint family properties of plaintiffs and defendants and as such the plaintiffs have got share over the suit schedule properties and as such at this stage, if the defendants are not restrained as prayed

for in this application, then the plaintiffs will be put to great hardship. Contending the above facts, he prays to allow the application filed by the plaintiffs.

12. Per contra, learned counsel for the defendants argued by reiterating the contents of written statement filed by the defendants no.1 and 9. Further learned counsel for the defendants argued that in the year 1981 itself the partition was took place between the joint family members of plaintiffs and defendants and as such, since the date of partition there is no joint family status is existence and as such, the plaintiffs have not got any right over the suit schedule properties and as such, at this stage, question of granting relief as prayed for in this application doesn't arise. Further he argued that, the defendants have specifically contended in their written statement that already they have sold some sites to some persons, in spite of that the plaintiffs have not impleaded those purchasers as defendants in the suit and also they have not impleaded all the family members as a defendants in this suit and as such, the suit

filed by the plaintiffs is bad for non joinder of necessary parties and when the suit itself is not maintainable, then the plaintiffs are not entitled for the interim relief as prayed for in this application.

13. Further he argued that, the plaintiffs have not shown any prima-facie case lies in their favour and as such, at this stage, if the defendants are restrained as prayed for in this application, then the defendants will be put to great hardship rather than the plaintiffs. Contending the above facts, he prays to dismiss the application filed by the plaintiffs.

14. On rival contention urged by both the parties, I intend to discuss the merits of this application.

Before being entitled for the relief of temporary injunction, the plaintiff/applicants must make out a prima-facie case lies in their favour. The existence of prima-facie case in favour of the plaintiffs is most essential factor in the matter of granting discretionary relief of temporary injunction.

15. On perusal of the contents of plaint and written statement discloses that, it is an admitted fact that, the plaintiffs

and defendants are the legal representatives of deceased Venkatasubbaiah and Smt.Seethamma. Further it is an admitted fact that, at present the said Venkatasubbaiah and Smt.Seethamma are no more.

16. Further on perusal of the copy of katha extract produced by the plaintiffs discloses that, the suit schedule 'A' property was standing in the name of husband of defendant no.5 and father of defendants no.6 to 8 and defendant no.1. Further on perusal of the form no.11-A issued by Grama Panchayath, Allampura, wherein the name of the defendants no.1 and 5 is appeared has owner of the suit schedule "A" property. Further on perusal of the copy of notice available in the file it reveals that, before filing the suit the plaintiffs have got issued the said legal notice to the defendants no.1 and 5 and the said notice was served to the defendants no.1 and 5. Further on perusal of the reply notice produced by the plaintiffs discloses that, after receipt of the said notice the defendants no.1 and 5 have sent the reply to the plaintiffs.

17. Further on perusal of the para no.2 of the plaint it reveals that, the contention of the plaintiffs is that, the suit schedule “A” and “B” properties are the ancestral joint family properties of plaintiffs and defendants and till today the said properties are not got partitioned between the joint family members and as such, at present the suit schedule properties are liable for partition and the plaintiffs are entitled 1/5th share in the suit schedule properties. On the other hand on perusal of the contents of written statement filed by the defendants no.1 and 9 it reveals that, the contention of the defendants is that on 22.01.1981, the partition was took place in between the family members of the plaintiffs and defendants and in the said partition the suit schedule properties are fallen to the share of defendant no.1 and husband of defendant no.5 and father of defendants no.6 to 8. Further it is the contention of the defendants is that during the said partition, the mother of the plaintiffs and mother of the defendants no.9 and 10 and mother of the defendants no.11 to 14 have also participated and orally they have

relinquished their right over the suit schedule properties. But on perusal of the records it reveals that, to substantiate the said contention the defendants have not produced any supportive prima-facie documents. Further on perusal of the contents of copy of reply notice, wherein the defendants no.1 and 5 have clearly admitted that, the suit schedule properties are the ancestral property and at present they are making arrangements to form the residential sites in order to sell the same to the purchasers.

18. Further as stated above that, to substantiate the contention of the defendants is that in the year 1981 itself the partition took place between the legal heirs of the original propositor viz., Venkatasubbaaiah and Smt.Seethamma, the defendants have not produced any supportive documents. Considering the above facts and for the above reason, I am of the opinion that, at this stage, this court cannot go on merits of the case that whether earlier the partition was took place between the family members of plaintiffs and defendants and during said

partition the mother of the plaintiffs have relinquished her rights over the suit schedule properties or not and the said fact, has to be considered only after full pledged trial and it requires enquiry of both the parties.

19. Considering the above facts and on perusal of the contents of affidavit filed by the plaintiff no.2 coupled with contents of above mentioned documents and for the above reason, I am of the opinion that, at this stage, the plaintiffs have made out prima-facie case lies in their favour by producing proper documents.

20. Further as stated above that, the plaintiffs have filed the suit against the defendants for the relief of partition, separate possession and mesne profits in respect of the suit schedule properties and as such, after completion of the trial, if this court holds that, the plaintiffs have got share over the suit schedule properties and before that if the defendants have sold the suit schedule properties in favour of anybody then it will cause inconvenience to the plaintiffs and then the plaintiffs will to put

to great hardship rather than the defendants. Further the defendant no.1 has clearly mentioned in his written statement that, in the suit schedule “A” property 41 sites were formed and out of that 15 sites have already been sold to the various persons. Considering the above facts, I am of the opinion that at this stage, if the defendants are not restrained from alienating the suit schedule property and after full pledged trial if this court comes to the conclusion that, the plaintiffs have got share over the suit schedule properties, then it will create multiplicity of proceedings and then the plaintiffs will be put to great hardship.

21. Considering the above facts and circumstances of the case and for the above reasons, I am of the opinion that at this stage, the plaintiffs have made out a prima-facie case lies in their favour and also made out that, the balance of convenience is lies in their favour. Considering the above facts and for the above reason, I am of the opinion that at this stage, if the defendants are not restrained from alienating the suit schedule properties in any manner, then plaintiffs will be put to irreparable loss.

Considering the above facts and circumstances of the case and for the above reason, I answer the point no.1 to 3 in the Affirmative.

22. **POINT NO.4:** In view of my findings on point no.1 to 3, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiffs U/O 39 Rule 1 and 2 r/w Sec.151 of CPC is hereby allowed.

The defendants, their agents, servants or anybody claiming through them are hereby restrained by way of temporary injunction from alienating the suit schedule properties to anybody in any manner till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 7th day of August 2021.)

Sd/-

(VEERANNA SOMASEKHARA)
PRL.SR.CIVIL JUDGE & C.J.M.,
CHIKKAMAGALURU.

*BSM/-

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