

IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA

Present : Sri. Kanchi Mayanna Goutam, B.A.L.,LL.M.,
Civil Judge & JMFC., Koppa.

Dated : This the 19rd day of February 2020.

O.S. No. 61/2015

Plaintiff/s : O.D. Ramanna, S/o Late. Duggappa
Gowda, Aged about 60 years,
Agriculturist, R/o Oni Thota, Marithotlu
Village, Andagaru Post, Koppa Taluk.

(Represented by Sri. B.S.Naveen Rao, Adv.,)

V/S

Defendant/s : 1. Sri. Laxamanna, S/o Late. Duggappa
Gowda, Aged about 58 years,
Agriculturist, R/o Oni Thota,
Marithotlu Village, Andagaru Post,
Koppa Taluk.
2. Sri. Ratanakar, S/o Late. Duggappa
Gowda, Aged about 54 years,
R/o Bharath Rice Mill Road,
Koppa Post, Koppa.

3. Sri. Mohana, S/o Late. Duggappa
Gowda, Aged about 52 years,
Agriculturist, R/o Oni Thota, Marithotlu
Village, Andagaru Post, Koppa Taluk.

(Represented by Sri. G.M. Vishwanatha, Adv.,)

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**ORDER ON I.A. NO. 1 FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1, 2 AND 3 R/W 151 OF C.P.C.**

The present application is filed by the plaintiff under Order 39 Rule 1, 2 and 3 R/W section 151 of C.P.C. seeking an order of temporary injunction against the defendants restraining the defendants, their men, agents, servants or any other persons from interfering with the suit schedule 'E' to 'G' properties or causing any damage till the disposal of the suit, in the ends of justice.

2. In the affidavit annexed to the application, the plaintiff stated that the defendants are his brothers and they are the sons of

Late Duggappa Gowda and Late Smt Venkamma. The father of the plaintiff and defendants Duggappa Gowda died intestate on 23-09-1993 leaving behind the plaintiff and defendants and his wife Smt Venkamma as legal heirs for his assets. Smt Venkamma also died intestate on 10-10-2014 by leaving behind the plaintiff and defendants as heirs. The other 6 sisters of the plaintiff and defendants are got married and living separately.

Further submitted that, the joint family properties owned and acquired by Duggappa Gowda as Kartha of the family, has got partitioned between the plaintiff, defendants and Duggappa Gowda through a registered partition deed bearing S.R. No 296/1982-83 registered in the office of the Sub-Registrar, Koppa. After the said partition deed, the plaintiff retained an extent of 26 guntas of land situated in Sy.No. 31 of Marithotlu Village, Kasaba Hobli, Koppa Taluk. Duggappa Gowda has also retained

khatha of the residential house property with two sheds in his share situated in Sy.No. 25 of Marithotlu Village, Kasaba Hobli, Koppa Taluk. The house property is described as suit schedule 'A' property and the two sheds are described as 'C' and 'D' properties and 26 guntas of garden land as 'D' schedule property. After the partition the khatha of the 'A' to 'D' schedule properties is mutated into the name of the father of the plaintiff as per the partition deed.

It is alleged that after the marriage of plaintiff he started to live separately in the shed raised by him on the northern side of the house 'A' schedule property and also using the upstairs of 'A' to 'C' schedule properties. It is further alleged that in addition to the extended portion of the house, which was constructed by him, the plaintiff had also constructed two other sheds separately in Sy.No. 96 of the Marithotlu Village, which is situated in

Government land and same is situated on the Northern side of the 'A' schedule property. The said two sheds are described as suit schedule 'E' and 'F' property. It is also alleged that except the plaintiff no one has the right over the suit schedule 'E' and 'F' properties. The separate kana which is also formed in the northern side of the suit schedule 'A' property by the plaintiff and it is in exclusive possession and enjoyment of the plaintiff and the same is within the 'A' schedule property.

Further submitted that after raising the objection for change of khatha of the 'A' to 'D' schedule properties by the defendants, the defendants have joined together with an intention to harass the plaintiff and started to give trouble to the plaintiff only with an intention to get the consent to the application filed by the defendant No. 3 for change of khatha and thereby the defendants started to interfere with the exclusive possession of the plaintiff

over the suit schedule 'A' to 'G' properties. It is alleged that except the plaintiff no one has right over the suit schedule 'A' to 'G' properties. The 'A' to 'G' properties are the exclusive possession of the plaintiff on which the defendants have no right. Hence, the present suit is filed along with the I.A. to restrain the illegal acts of the defendants.

3. After service of summons, the defendants appeared through their counsel and filed memo requesting to consider the contents of written statement as objection to I.A. In the objection/written statement the defendants denied the averments made by the plaintiff except by admitting the relationship and also the execution of the registered partition deed amongst the family members of Duggappa Gowda.

The defendants submitted that the suit schedule 'A' to 'C' properties are belongs to 3rd defendant. At the time of partition, 'A' to 'C' schedule properties were old thatched sheds which were in dilapidated condition and worth about Rs.5,000/- only. After the partition, the plaintiff and the defendant No. 1 and 2 were started to live separately by looking after their properties fallen to their respective shares. But, the father and mother of the plaintiff and defendants were residing with the defendant No. 3 till their death and the defendant No. 3 was taking care of them. Either the plaintiff or the defendant No. 1 and 2 never look after the father and mother of the plaintiff and defendants. Therefore, as per the Will clause, all the schedule properties were got mutated to the name of Smt. Venkamma after the death of Sri Duggappa Gowda. Even though in the partition deed the properties given to Smt. Venkamma as life interest, but she has got the absolute right after the death of her husband. Smt. Venkamma with great love and

affection with the defendant No. 3 who has taken care of her in her last days and since, her daughter by name Smt. Nagarathna who was came to her parental house as her husband died and also since she had no source of income for her livelihood, the said Venkamma has bequeathed the schedule properties in favour of the defendant No. 3 and Smt Nagarathna.

The defendants further submit that, Smt Venkamma has bequeathed the schedule properties in favour of the defendant No. 3 and her daughter Smt. Nagarathna under Will which is registered on 8/11/2000 in S.R. No. 29/2000-01. Further, as per the Will dated 21/10/2005, Smt. Venkamma has changed her will and bequeathed the entire 'B' schedule property and 1/3rd portion of the 'C' schedule property in favour of the plaintiff and she had given the 2/3rd of the schedule property in favour of her other son i.e. defendant No. 1. In the said Will another Kottige is

also being allotted to the defendant No. 1 which is measuring 3.64 x 2.43 meters, bearing assessment No. 35, SI. No. 36 of Marithotlu village. In the said will. Smt. Venkamma has allotted the property measuring 5.47 x 3.64 meter kottige bearing SL. No.34, assessment No.33, Khatha No.34 of Marithotlu Village Panchayath in favour of the defendant No. 3. She has also bequeathed the property bearing Khatha No. 32, Assessment No.31, SI.No. 32, measuring 11.24 x 10.94 meter new residential house with the upstairs in favour of the defendant No. 3 and her daughter Smt. Nagarathna jointly. All these sheds/kottige and residential house are situated in Sy.No.25 of Marithotlu village.

The defendant No. 3 further submits that, the property in Sy.No.31 of Marithotlu village measuring 26 guntas of garden land was already given to the Smt. Nagarathna and defendant No. 3 under the earlier will, dated 7/11/2000 bearing S.R.

No.29/2000-01 which is alleged to be stated as 'D' schedule property in the plaint. Hence, the said property was not allotted in the second Will. Hence, to the extent of said 'D' schedule property, the earlier will holds good. The defendant No.3 further submits that, the old house allotted to the father of the plaintiff and defendants are collapsed long ago. The foundation is still existing in front of the present house. The alleged 'G' and 'H' properties are belonged to the defendant No. 3 and Smt. Nagarathna. In the partition deed it is clearly stated that the old house and kottige which are situated in Sy.No. 25 of Marithotlu Village and other buildings which are constructed by the defendant No. 3 by his own efforts. But, those properties are also included in the suit with an intention to grab the same. The defendant No. 3 submits that, the plaintiff is previously residing at Narasipura village panchayath, wherein he has got a house which was granted to him under the Indira Awas Yojana. Recently

about one year back, at the time of repair of said house situated at Narasipura village, the plaintiff was asked the defendant No.3 to give the permission to reside in the upstairs portion of the house belonged to the defendant No. 3 and Smt. Nagarathna. On his request the defendant No. 3 has permitted the plaintiff to reside in a portion of said building. After the repair of his house at Narasipura Village, the defendant No. 3 has asked the plaintiff to vacate the upstairs portion, but he has dragged the matter on one or other grounds and now with malafide intention to have unlawful gain has filed this false suit. The defendant No. 3 submits that, the defendant No. 1 has encroached about 6 acres of government land in Sy.No. 96 of Marithotlu Village and he has planted areca garden therein. The defendant No. 1 has invested his hard earned money for the development of the said encroached land. To knock of the said property the plaintiff has intentionally stated that he has constructed the house in the

Sy.No. 96 which is absolutely false. The plaintiff intentionally stated that the schedule 'E' and 'F' properties are situated in Sy.No. 96 and he has constructed the said properties which are false and incorrect. The deceased Duggappa Gowda and Venkamma have got total 10 children, out of which, 4 sons and 6 daughters. Hence, the daughters of Duggappa Gowda are also the necessary parties to this suit. If the properties left by the deceased Duggappa Gowda are to be partitioned, then all the sisters of the plaintiff and defendants are also got their equal right over the same. The defendant No. 3 submits that, the two wills executed by Smt. Venkamma are valid and accordingly as per the will, the plaintiff and defendants and Smt.Nagarathna are allotted the properties and they have got right to change the khatha of the respective properties allotted in the will and also to enjoy their respective properties. The defendant No. 3 submits that, since the Wills are executed subsequent to the partition and also on the

rights conferred in the partition, Smt. Venkamma has bequeathed the properties in favour of the plaintiff and defendants, accordingly the Wills executed by Smt. Venkamma are genuine and in accordance with law. Hence, neither the plaintiff nor the other defendants have got no manner of right, title or interest over the properties allotted to the defendant No. 3 and Smt. Nagarathna. Hence, prays for dismissal of the I.A.

4. Heard the counsel for plaintiff and defendants. Upon perusal of the averments in affidavit accompanying the application, the objection put-forth by the defendants and other materials submitted by the plaintiff and defendants, the following points were arisen for my consideration:

- 1) Whether the plaintiffs made out prima facie case to grant temporary injunction?

- 2) Whether the plaintiffs prove that the balance of convenience lies in their favour?
 - 3) Whether the plaintiffs prove that they will be put to irreparable loss and injury if temporary injunction is not granted?
 - 4) Whether the plaintiffs are entitled for an order of discretionary relief of temporary injunction as prayed in I.A. No. I ?
 - 5) What order?
5. My findings to the above points are as under:

Point No. 1 : In the negative

Point No. 2 : In the negative

Point No. 3 : In the negative.

Point No. 4 : In the negative

Point No. 5 : As per the final order
for the following reasons.

REASONS

6. **Point No. 1:** It is the case of the plaintiff that the suit schedule 'A' to 'D' properties are the joint family properties and suit schedule 'E' to 'H' properties are the own properties. Hence, prays for partition in the suit schedule 'A' to 'D' properties and prays for the order of injunction by restraining the defendants from trespassing in the suit schedule 'E' to 'H' properties. On the other hand, the defendants have admitted the relationship with the plaintiff, but denied the nature of the properties as alleged by the plaintiff. The plaintiff along with suit has produced copy of partition deed, dated 16.12.1982, RTC of Sy.No. 31 of Marithotlu Village, assessment register extract, copy of the proceedings of Marithotlu Village Panchayath, endorsement given by the Marithotlu Village Panchayath, bill and report, application dated 25.1.2015 and 17.1.2005, order of Thahasildar in RRT(D)

CR.2/2015-16, copy of wills, photographs with C.D and information obtained under RTI. On the other hand, the defendants produced RTC of Sy.No. 31 and 25/P1 of Marithotlu Village, original partition deed, dated 16.12.1980, original registered will dated 7.11.2000 and original unregistered will dated 21.10.2005. At this stage the two facts are arises for the consideration. When the suit for partition is filed seeking partition in the properties of Duggappa Gowda or in the joint family properties of Duggappa Gowda, all the legal heirs of Duggappa Gowda are the necessary and proper parties for adjudication of the suit. Admittedly, the 6 daughters of the Duggappa Gowda are not made as a parties in the suit. The plaintiff not averred anything about the share of the daughters of Duggappa Gowda. Whether the share of the daughters of Duggappa Gowda is relinquished or already allotted is also not averred by the plaintiff. Secondly, the present I.A. is filed only

with respect to the properties which are described as suit schedule 'E' to 'G' properties. But, the suit schedule 'E' to 'G' properties are in the government land in Sy.No. 96 of Marithotlu Village. Whether these properties are granted to the plaintiff or not is also not explained by the plaintiff. The plaintiff at this stage has not produced any documents to show that these properties are in the exclusive possession of the plaintiff. On the other hand, the defendants are being the brothers denied the nature of the properties as alleged by the plaintiff. Without making the daughters of Duggappa Gowda as parties to the suit, the claim of partition on the properties of Duggappa Gowda cannot be adjudicated. Even after filing of the written statement by the defendants the plaintiff has not put any effort to bring the daughters of Duggappa Gowda on record. The plaintiff has amended the plaint but not chosen to make the daughters of Duggappa Gowda as necessary parties to the suit. Before giving

any order of injunction on suit schedule 'E' to 'G' properties, the nature of the properties has to be adjudicated. The injunction order cannot be granted on the government land without any proper documents. By considering all these reasons, at this stage, the prima facie case is not made out by the plaintiff to allow the application. Accordingly, point No. 1 is answered in the negative.

7. **Point No. 2 and 3 :** In view of my finding on Point No. 1, it would not be incumbent on the part of this court to answer the point No. 2 and 3. The suit schedule 'E' and 'F' properties are in the government land. The plaintiff has not made out prima facie grounds for interim order of injunction. When the plaintiff has not made out prima facie grounds, considering the balance of convenience and irreparable loss will not arise. At this stage, the injunction can not be given and the

facts of the case requires evidence and full fledged adjudication. The said view is also supported by the decision of our own Hon'ble High Court in Sri. Gowrishankara Swamigalu V/S Sri. Siddhaganga Mutt and reported in ILR 1989 KAR 1701, 1989 (2) Kar.L.J. 548, wherein the Hon'ble High Court has observed as under:

“The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit leap-frogging by the plaintiff directly

to an injunction without crossing the other hurdles in between Even granting that the plaintiff has an invincible prima facie case, he will not be entitled ex debitaie justiciae, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiff might have an unbeatable prima facie case.”

Hence, point No. 2 and 3 are answered in the negative.

8. **Point No. 4:** The one who claims discretionary relief of the injunction has to approach the court with clean hand. He has to plead the contents of his case with full clear and unambiguous averments. The plaintiff not produced documents to show the ownership or the possession of suit schedule 'E' and 'F' properties. The photographs are not disclosing who is in the possession of these properties. Before considering the plea of plaintiff, it is just and necessary to examine the evidence going to be placed by both parties. The plaintiff not produced any documents to show

his exclusive possession over the suit schedule 'E' to 'G' properties. The defendants are also claiming ownership and the exclusive possession of the plaintiff over the properties are denied by the defendants. Hence, before giving an injunction order the nature of the properties and the point of exclusive possession has to be adjudicated. When there is a doubt over the nature and ownership, it is not safe to issue an injunction order before taking evidence in this regard.

9. By considering all these reasons, at this stage, the plaintiff is not made out sufficient grounds for discretionary relief of injunction. This case requires proper adjudication and proper evidence before any order is going to be passed. Hence, even though the plaintiff is not made out grounds for injunction, this court is under the opinion that some order has to be there to

protect the nature of the property. Hence, point No. 4 is answered in the negative.

10. **Point No. 5**: On the above said reasoning, I proceed to pass the following order.

ORDER

I.A. No. 1 filed by the plaintiff under order 39 rule 1, 2 and 3 R/W section 151 of C.P.C. is hereby dismissed.

Both parties are hereby directed to maintain status-quo with respect to the suit schedule 'E' to 'G' properties, till the disposal of this case or till further orders.

No order as to cost.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 19th day of February, 2020)

Sd/-xxxx 19/2/2020
(Kanchi Mayanna Goutam)
Civil Judge & JMFC.,
Koppa.