

KACM510003952021



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC AT N.R.PURA, ITINERATE AT KOPPA**

Present: Smt.B.S.Rayannawar, B.A., L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 17th day of June 2023

OS.No.13/2021

BETWEEN:

Mr.Sridhara Adiga and others

...Plaintiffs.

V/s.

AND:

Smt.Kamalakshamma and others

...Defendants.

IA.No.XIII

BETWEEN:

Mr.Sridhara Adiga and others

...Applicants/ Plaintiffs.

V/s.

AND:

Mr.D.Ajith Kalkuli and others

...Opponents/Defendant No.10 to 13.



ORDER PASSED ON IA No.XIII

Applicants/plaintiffs have filed this application U/o. 39 Rule 1 and 2 R/w.Sec.151 of CPC to grant an order of Temporary Injunction restraining the Opponents-Defendant No.10 to 13 and their men and agents or any body claiming through or under them from alienating or other-wise encumbering the suit schedule properties in any manner, till the disposal of this suit.

2. This application is supported by the affidavit of plaintiff No.1 stating that he is swearing this affidavit on behalf of other plaintiffs also. The suit filed by them is for the relief of partition and separate possession of their share in the suit schedule properties. The plaint may be read as part and parcel of this affidavit to avoid repetition of facts.

3. Further stated that, though all the defendants have been served with summons, only the defendant No.5 has filed the written statement. Other defendants have not filed the written statement and as such their written



statement has been taken as not filed. The defendant No.5 in her written statement has admitted the relationship of the plaintiffs and the defendants No.1 to 9 and she has admitted the claim of the plaintiffs.

4. The defendants No.1 to 9 have alienated the suit schedule properties to the defendant No.10 to 13. The item No.1 of the suit schedule property stands in the name of the Defendant No.10. The item No.2 of the suit schedule property stands in the name of the Defendant No.11. The item No.3 of the suit schedule property stands in the name of the Defendant No.12. The item No.4 of the suit schedule property stands in the name of the Defendant No.13. The defendants No.10 to 13 have not filed written statement and their written statement has been taken as not filed by this Court. During the pendency of the suit, the defendants No. 10 to 13 have sold portions of the suit schedule properties to the third parties. The defendant No.10 to 13 are in a hurry to dispose off the entire suit schedule properties by



taking advantage of the fact that the suit schedule properties are standing in their name. The intention of the defendant No.10 to 13 is to defeat their right. Hence without an order from the Court the alienation cannot be controlled. If the suit schedule properties are alienated, they will be put to untold hardship. On the other hand if the alienation is stopped until the disposal of the suit, no hardship will be caused to the opponents-defendant No.10 to 13. Hence prays to allow the IA application.

5. The defendant No.13 contest this application by filing written objections contending that, the application filed by the applicant is not maintainable both in law and on facts of the case and hence the same is liable to be dismissed in limine. Further contended that, the plaintiff / applicant has filed the present application only with an intention to drag the proceedings and to delay the trail and applicant has sworn a false affidavit and suppressed the real fact. The suit without declaration seeking the



declaration for of right title and their right succeed in the properties is not maintainable and plaintiff has clearly averred and admitted the sale transaction between the parties to the sale deed and having knowledge of the transfer and possession of the properties as per the registered sale deed the present suit is not maintainable and it is the case of this respondent / defendant No 13 that, he is in possession and enjoyment of the property and having knowledge that the transaction entered between the plaintiff with respective owner itself is suffices that the suit is not maintainable and plaintiff / applicant is out possession of the property and hence the suit is not maintainable and when the suit itself is not maintainable no interim application will survive for consideration and on the basis of the registered sale deed the Khath of the properties are mutated in to the name of the respondent as per the registered sale deed and entries in made in the revenue document in the previous records and for the present



clearly indicates that the plaintiff / applicant have no right and the plaintiffs have no right under law and previous proceedings is binding on the plaintiff and suit in the present for is not maintainable.

6. That the respondent is the bonfide purchaser of the property and this respondent has taken all the possible steps before purchasing the property and this respondent has invested the huge money in converting the property in to the residential house site and the plaintiff who are having no right either directly or indirectly are filing this application and plaintiff/ applicant have no right in the property and they are totally strangers and they have establish their right by filing comprehensive suit and by establishing their right before this court and present suit is not maintainable and suit of the plaintiff is not properly valued and the plaintiffs / applicant have no right in the property purchased by this defendant/ respondent.



7. That the suit without paying the court fee on the market value of the property the present application is not entertainable one. Hence the present application is also not maintainable. That there is no balance of convenience and suit in the present form is not maintainable and plaintiff / applicant has failed to establish a case before this court with legal right and there is no chance to succeed in the suit and the plaintiff has failed to establish a case and there is chance to succeed in the suit and in case if the order is granted it is the defendant /this respondent is going to suffer lot and in case if the plaintiff establishes the case and plaintiffs are entitle to a share in such circumstance the plaintiffs may restored by compensating the amount and plaintiff/ applicants have got alternative remedy and hence present application is not maintainable. On these grounds prays to dismiss the IA application with heavy costs.

8. Heard both the respective counsels. Learned counsel for plaintiffs furnished citation reported in: ILR



1998 KAR 2127 (Vadde Sanna Hulugappa and others Vs. Vadde Sanna Hulugappa and others).

9. Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration.

POINTS

1. Whether the plaintiffs have established prima facie case?
 2. Whether the balance of convenience lies in favour of plaintiffs?
 3. Whether irreparable loss or hardship will be caused to the plaintiffs if injunction is not granted?
 4. What order?
10. My findings 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 order for the following.

REASONS

11. **Points No.1 to 3:** Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition, as here under.



12. Undisputedly Plaintiff filed this suit for partition and separate possession. It is the contention of plaintiff that, the suit schedule properties are the property of Smt.Tulasamma, who died intestate, and hence the plaintiffs and ninth defendant being the legal heirs of Smt. Savitramma, the sister of Smt.Tulasamma are entitled for 1/3rd share in the suit schedule properties.

13. In this case in pursuance of summons issued by this court defendant no.1, 4 and defendant no.8 placed exparte, though other defendants appeared through their counsels, but only the defendant no.5 has filed the written statement. Other defendants have not filed the written statement. But defendant no.10 to 13 have filed their objection to the present application.

14. Learned counsel for opponent/defendant no.10 to 13 submits that, the suit without declaration seeking the declaration for of right title and their right succeed in the



properties is not maintainable. Hence learned counsel for the plaintiff submits that, the plaintiffs are not the parties to the transaction. They being the legal heirs of Smt.Savitramma are entitle for share in the suit schedule properties, hence there is no necessary to claim declaration. Hence learned counsel for the plaintiff relied on citation reported in **ILR 1998 KAR 2127 (V.S. Hulugappa and Ors. V/s V.S. Hulaga)-wherein the lordships held that-HINDU LAW-PARTITION - Courts dismissed the suit for partition only on the ground that the plaintiff had not prayed for cancellation of Sale Deeds executed by the 1st Defendant in favour of the fourth defendant. In second Appeal High Court held that it was not necessary to seek cancellation of Sale Deeds or seek setting aside alienations as the plaintiffs were not parties to any of the alienations and as such they are not binding on them.**



15. It bears repetition. In the instant case the plaintiffs are not parties to any of the alienations made by the first defendant and others. So there was no legal obligation on their part to specifically pray that the alienations were not binding on them.

16. But in this case though the opponent/defendant no.10 to 13 have taken several contentions that, the suit of the plaintiff is not maintainable, and plaintiff has clearly averred and admitted the sale transaction between the parties to the sale deed and having knowledge of the transfer and possession of the properties as per the registered sale deed the present suit is not maintainable and it is the case of this respondent / defendant No 13 that, he is in possession and enjoyment of the property and having knowledge that the transaction entered between the plaintiff with respective owner itself suffices that the suit is not maintainable and plaintiff / applicant is out possession of the property and hence the suit is not



maintainable and when the suit itself is not maintainable no interim application will survive for consideration and on the basis of the registered sale deed the Khath of the properties are mutated in to the name of the respondent as per the registered sale deed and entries in made in the revenue document in the previous records and for the present clearly indicates that the plaintiff / applicant have no right and the plaintiffs have no right under law and previous proceedings is binding on the plaintiff and suit in the present for is not maintainable.

17. That the respondent is the bonfide purchaser of the property and this respondent has taken all the possible steps before purchasing the property and this respondent has invested the huge money in converting the property in to the residential house site and the plaintiff who are having no right either directly or indirectly are filing this application and plaintiff/ applicant have no right in the property and they are totally strangers and they have



establish their right by filing comprehensive suit and by establishing their right before this court and present suit is not maintainable and suit of the plaintiff is not properly valued and the plaintiffs / applicant have no right in the property purchased by this defendant/ respondent. That the suit without paying the court fee on the market value of the property the present application is not entertainable one. Hence the present application is also not maintainable. But they have not filed their written statement.

18. Plaintiffs contended that, the defendant no.10 to 13 making efforts to sell the property, but the defendant no.10 to 13 in their objections have not stated single word that they are not going to alienate the suit schedule property. Moreover by perusal of the material on record, the relationship between the plaintiff and defendant no.1 to 9 is not in dispute. Hence the whatever the contention taken by the opponents are to be decided at regular trial. At this juncture, considering the submission made by the parties, it



is obvious that the Plaintiff is made out a case for going trial.

19. It is trite that the very intention of granting of temporary injunction is to maintain the state of things as it is as held by **Hon'ble High Court of Karnataka in ILR 2004 KAR 4076**. In the instant case counsel for plaintiff submits if the defendant alienated the suit schedule property it leads to multiplicity of proceedings. Plaintiffs have further apprehended defendants may alienate the suit properties in favour of third persons. Hence In my considered view, irrespective of the contentions of the parties, it is just and proper and in the ends of justice to maintain the state of things in respect of suit properties as it stands on the date of filing of suit. Hence it is necessary to restrain the defendant no.10 to 13 from alienating the suit properties till disposal of suit just to maintain status-quo. Otherwise it will results into multiplicity of proceedings. To avoid all these things, temporary injunction



is required to be granted. Hence considering all these aspects, I answer **Points No. 1 to 3 in the affirmative.**

20. **Point No.4:-** In view of the reasons assigned above, above, I proceed to pass the following:

ORDER

IA.No.13 filed by the plaintiffs U/o.
39 Rules 1 and 2 R/w Sec. 151 of CPC
is hereby allowed.

Defendants No.10 to 13 and their
men, agents are any body claiming
through or under them are hereby
restrained from alienating or other-wise
encumbering the suit schedule
properties till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on the computer, then
corrected and pronounced by me in the open court on this date the
17th day of June, 2023)

Sd/-

(B.S.Rayannawar)

Senior Civil Judge and JMFC.,
N.R.Pura, Itinerate at Koppa.