

KACM510006952019



**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 22nd day of April 2022

OS.No.08/2019

BETWEEN:

Smt.Sowmya H.S.

...Plaintiff.

V/s.

AND:

Smt.Sahana H.S. and others

...Defendants.

IA.NO.XIV

BETWEEN:

Smt.Sowmya H.S.

...Plaintiff/Applicant.

V/s.

AND:

Smt.Sahana H.S. and others

...Defendants/Opponents.

ORDERS PASSED ON IA NO.XIV

Applicant/plaintiff has filed this application U/o. 39 Rule 1 and 2 R/w.Sec.151 of CPC to restrain the defendant no.10 his agent from alienating destroy or alter the suit item no.1 to 3 by making plots.

2. This application is supported by the affidavit of plaintiff. Defendant no.2 and 3 are her sisters, third defendant is her father and defendant no.4 to 9 are the uncles of plaintiff. Defendant no.10 purchased the item no.1 to 3 property from defendant no.8 after filing the present suit on 07.11.2019. Further stated that, the , suit properties are the joint family properties. Plaintiffs and defendants are in joint possession and enjoyment of suit properties. there is no partition effected between them. However some of the properties are in possession of defendants and some of the suit properties with them. Originally the suit properties are joint family properties of the grand mother of plaintiff that is Smt. Kadamma W/o puttegowda, late Puttama Heggadati

w/o Appegowda and third defendant Puttegowda. The suit properties are the joint family properties of plaintiff and defendant and they are enjoying the property jointly. Defendant no.10 intending to alienate the suit property just to defeat the rights of the plaintiffs. Hence, it is necessary to injunct the defendants, alienating the suit property. On these grounds, they sought for allowing the application.

3. The defendants contest this application by filing objection inter alia denying the contents of the plaint, IA.No.I and affidavit thereto in its entirety. The defendant no.10 deny that suit properties are the joint family properties. the suit schedule properties are not the joint family properties, the suit schedule property is self property of the grand mother of the plaintiff that is the mother of the father of the plaintiff by name Smt.Kadamma W/o Puttegouda, she bequeathed her property in favour of defendant no.8 Smt.Vanjaxi, hence the plaintiff or other defendants not having any right in the suit schedule property. Defendant

no.8 sold the property to the defendant no.10 and he is in possession of the suit item no.1 to 3 properties. Already the validity of will decided in suit filed by fifth defendant against the defendant no.3.4.6 to 9 in O.S.No.66/2007 and R.A.No.106/2013, but plaintiff not whispered about the same in her case, hence plaintiff not come to court with clean hands hence not entitled for the relief sought. All these grounds, they sought for rejection of the application.

4. Heard both the counsels.

5. 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?

6. My findings to the above points are as under.

Point No.1 - In the Affirmative.

Point No.2 - In the Negative.

Point No.3 - In the Negative.

Point No.4 - As per order for the following.

REASONS

7. **Point No.1** According to the plaintiffs suit properties are the joint family properties. According to the defendants there was already partitioned in the joint family and they are in possession and enjoyment of the respective properties fallen to their shares. As this is a suit filed by the plaintiff for partition and claiming plaintiff also got share in the suit schedule property. It is trite that, under Hindu Law a strong presumption arisen in favour of existence of joint family. In a decision rendered by the Hon'ble Supreme Court of India in 2007 (4) SCC 163 (Chinthamani Ammal v. Mandagopal Gounder and another) which reads as under.

“A. Hindu Law-Joint family property-Partition-Presumption against-Burden of proof-Held, the party raising plea of partition has to prove the same since in law there is presumption in regard to continuance of a joint family-Even separate possession of portion of

property by co-sharers itself would not lead to presumption of partition-Several other factors are required to be considered therefor-Evidence Act, 1872, Ss. 101-103.”

Further in 2008(6) KLJ page 285 (G.Rangaiah v. Govindappa and others.), it is held thus:

“A) HINDU LAW-Joint family property-Suit for partition of-Defence plea of earlier partition-Mere fact that party seeking partition is living separately, does not, by itself automatically lead to presumption that there was partition earlier and that party has ceased to be member of joint family-Plea of earlier partition must be proved by positive evidence and cannot be presumed from fact that party is living separately-Non-suiting of party on basis of mere presumption of earlier partition, without positive proof thereof, is to be held perverse.”

8. In view of the principles enunciated in the above referred decisions it is clear that, merely residing separately in pursuance of mutual agreement does not amount to actual partition. In this case plaintiff produced genealogical tree, form no.7, form no.10 A issued in favour of kadamma, Death certificate of kadama, mutation register extracts, will

dated 14.06.1996. RTC, Order of Land Tribunal, statement of one B.Mahalingashetty. In the instant case factum of prior partition or whether the suit properties are the joint family properties or not is to be decided in the course of regular trial. Considering the materials placed on record plaintiff has established an arguable case, which is fit for going to the trial. Hence, plaintiffs have established prima facie case. Therefore, I answer the **point No.1 in Affirmative.**

9. **Points No. 2 & 3:-** Since these issues are interlinked with each other, they are taken up together for consideration in order to avoid repetition, as here under. It is trite that, prima facie case alone is not sufficient for grant of temporary injunction unless co-existence of other two essential ingredients i.e. balance of convenience and irreparable loss and hardship.

10. Law relating to grant or refusal to grant temporary injunction has been called out by the Supreme Court of India in AIR 1999 SUPREME COURT 3105 (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,) it is held as under.

“Civil P.C. (5 of 1908), O. 39,R.1.

Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible; (v)

The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”

Further the Supreme Court in M/S. GUJARAT BOTTLING CO.LTD V. COCA COLA COMPANY - AIR 1995 SC 2372 has laid down law thus:

“46. The grant of interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests-(i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory in injunction has to be taken at a time when the existence of the legal right

assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighted against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated.....

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50.....Since the reliefs is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not reasonable for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking the relief. His conduct should be fair and honest....”

11. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in these decisions, let me advert to weigh the balance of interest between the parties. Defendant no.6 to 10 have also placed Copy of Grant Certificate issued in favour of father of plaintiff, copy of Mutation, RTC in the name of Shankarappa, Copy of Form No.7, Order of Land Tribunal in favour of Father of Plaintiff, and copy of W.P.No.8956/2021. It is the contention of defendant no.6 to 10 that, the suit schedule properties are not the joint family properties, the suit schedule property is self property of the grand mother of the plaintiff that is the mother of the father of the plaintiff by name Smt.Kadamma W/o Puttegouda, she bequeathed her property in favour of defendant no.8 Smt.Vanjaxi, hence the plaintiff or other defendants not having any right in the suit schedule property. Defendant no.10 produced Copy of will, death certificate of Smt.Kadama Heggadathi, Mutation register extract, Certified copy of Judgment and decree in O.S.No.66/2007,

Certified copy of judgment and decree in R.A.No.106/2013, no objection certificate, original sale deed bearing SR.No.1037/2019-20, copy of Mutation register extract, copy of RTC, the copy of the genealogical tree, copy of application given before Hariharapura police and the endorsement, copy of statement of the 3rd defendant, copy of statement of 3rd defendant filed in O.S.No.66/2007.

12. O.S.No.66/2007 filed by fifth defendant against defendant no.3, 4, 6 to 9 before Civil Judge and JMFC Koppa for the relief of partition and separate possession. In the said suit it is proved that, the will executed by Smt.Kadamma in favour of 8th defendant is proved. Judgment and decree challenged by fifth defendant in R.A.No.106/2013 which was also dismissed, so the will executed by Smt.Kadamma infavour of defendant no.8 is confirmed. Plaintiff not produced any document to show they have preferred any appeal challenging the above judgments. Defendant no.8 sold the property to the

defendant no.10 and it is the contention of 10th defendant that he is the bonafied purchaser and in possession of the suit schedule item no.1 to 3 properties. hence the remedy is available under section 52 of Transfer of Property Act. Hence in this case the burden is on the plaintiff to prove that the suit schedule properties are ancestral properties and proving the same is matter of trial. If 10th defendant made any damage to the suit item no.1 to 3 property , the same is made subject to the ultimate decision of this suit, in the event of plaintiffs succeeds in the space. Already there are two judgment with regard to suit properties, Hence, this court is not inclined to grant temporary injunction in favour of plaintiffs only on the ground that 10th defendant is trying to level the property and going to form site or damage the suit schedule property as the defendant no.10 purchased the property will leads to irreparable loss and hardship to the defendants.

13. Considering all these aspects of the case and totality of circumstances, balance of convenience tilts in favour of defendants and irreparable loss and hardship will be caused to the defendants if injunction is granted. Hence, I answer the **point No.2 and 3 in Negative.**

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

ORDER

I.A.No.XIV filed by the plaintiff
under Order XXXIX Rule 1 and 2 R/w
Section 151 of CPC is hereby dismissed
with costs.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 22nd day of April, 2022)

Sd/-

(B.S.Rayannawar)

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