



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
PRINCIPAL J.M.F.C., TARIKERE**

Present :
SRI VAIDYA SHREEKANT,
B.Sc, LL.B.
SENIOR CIVIL JUDGE & PRL. JMFC.,
Tarikere.

DATED : THE 29th DAY OF MAY 2024.

O.S.NO.150/2022

PLAINTIFF/S : Smt. Nagarathna B.S. W/o
N.Omkaraiah, D/o late
C.N.Siddabasaiah @ Siddaiah,
aged about 56 years, R/o 1st
Cross, Mehadi Nagara, K.E.B.
Circle, Shivamogga City.

(By Sri. Ravi M.D., Advocate)

- Vs -

DEFENDANT/S: 1. Smt.Kanthamma W/o late
C.N.Siddabasaiah @ Siddaiah,
aged about 75 years, R/o
Veerupakshappa Temple Street,
Bukkambudhi village, Shivani
Hobli, Ajjampura Taluk.

2. Darshan S/o late Chandraiah
and B.S.Asha, aged about 32
years,

3. Deepak N.C. S/o late
Chandraiah and B.S.Asha, aged
about 21 years,



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The defendant No.2 and 3 are R/o House No.18, near Mallikarjuna Temple, Opp. To Smart City Infra Developers, Basavanagudi, Shivamogga City.

4. Devaraj B.S. S/o late C.N.Siddabasaiah @ Siddaiah, aged about 52 years, R/o Siddalingeshwara Colony, Bukkambudhi village, Shivani Hobli, Ajjampura Taluk.

5. Smt.Tanuja W/o B.S.Devaraj, aged about 45 years, Computer Operator, R/o Grama Panchayath Office, Bukkambudhi village, Shivani Hobli, Ajjampura Taluk.

6. Smt.Indramma, aged about 40 years, R/o Siddalingeshwara Colony, Bukkambudhi village, Shivani Hobli, Ajjampura Taluk.

7. Gagan S/o B.S. Devaraj, aged about 18 years, R/o Siddalingeshwara Colony, Bukkambudhi village, Shivani Hobli, Ajjampura Taluk.

(D1 & 4 by Sri. T.D.K., defendant No.5 & 7 by Sri. S.N.M., Advocate and defendant No.6 - ex-parte)

PARTIES TO I.A.NO.I

Applicant/s:

Smt.Nagarathna B.S.



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V/s

Opponent/s:

1. Smt.Kanthamma,
4. Devaraj B.S,
5. Smt. Tanuja,
6. Smt. Indramma,
7. Master Gagan.

ORDER ON IA-I

The plaintiff has filed IA No.I under order XXXIX Rule 1 and 2 R/w Sec.151 of CPC praying this court to pass an order of temporary injunction restraining the defendant No.1, 4 to 7 from alienating or creating any charge over suit item No.1 to 5 properties described at schedule 'A' and 'B' of the plaint.

2. In the affidavit annexed to the application, the plaintiff stated that she has filed this suit for the relief of partition and separate possession seeking 1/4th share in all suit schedule properties described at schedule 'A' and 'B' of the plaint.

3. It is deposed that the plaintiff and defendant No.4 are children of one C.N. Siddabasaiah @ Siddaiah and Kanthamma. They have 3 daughters and a son. The daughter namely B.S. Asha died



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leaving behind defendant No.2 and 3. The son Devaraj is arrayed as 4th defendant. Another daughter namely Mamatha died unmarried. The 5th defendant herein is wife of 4th defendant and 7th defendant is their son.

4. The suit schedule properties are ancestral properties inherited from the grandfather of the plaintiff namely Nanjundaiah. In the partition, suit properties fell to the share of the father of the plaintiff. The plaintiff and defendants are in peaceful possession and enjoyment of the suit schedule properties since the date of partition and after death of her father. There is no partition in respect of the suit schedule properties.

5. The father of the plaintiff acquired item No.4 and 5 properties which are Mangalore Tiled Houses and vacant sites. After death of the father of the plaintiff, the said properties were mutated in the name of mother of the plaintiff namely Kanthamma the defendant No.1 herein. The plaintiff being daughter of C.N. Siddabasaiah @ Siddaiah and defendant No.1 is having undivided 1/ 4th share in



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all properties and she is in joint possession and enjoyment of the same along with defendants. The father of the plaintiff died intestate. She demanded for her legitimate share over the suit schedule properties, but the 1st defendant did not come forward for partition. Hence, she constrained to file the suit and present application etc.

6. The defendant No.7 filed written statement and it is adopted by defendant No.5 as well. They orally submitted the written statement may be considered as objection statement to IA No.I also.

7. The defendant No.7 admitted the allegations mentioned in para No.2 to 4 of the plaint and denied the remaining allegations. He contended that there is no cause of action for filing the suit and suit is barred under law of limitation.

8. It is further contended that the defendant No.7 is the absolute owner in possession of suit item No.1 property. The said property fell to the share of his parents as per the partition deed bearing No.57/2005-06. There was some loan over the said property in Corporation Bank, Bukkambudhi. The



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parents of defendant No.7 intended to alienate the said property. In order to avoid alienation of said property to third person, the grandfather of defendant No.7 namely Kumaramurthy has purchased the said property for consideration of Rs.7,45,000/- in the name of defendant No.7 through registered sale deed dated 22.04.2015. The consideration amount was paid by Kumaramurthy. At the time of purchase, the defendant No.7 was minor. After attaining majority, the defendant No.7 became absolute owner in possession of the same without interference of anybody and developed the property as Areca garden.

9. The purchase of the property in the name of the defendant No.7 is well within the knowledge of the plaintiff and remaining defendants. Even then the plaintiff has filed this false suit without questioning the validity of the sale deed. Hence, the plaintiff is not entitled to claim any share over the suit item No.1 property. The suit is also bad for non-joinder of necessary parties i.e., siblings of the defendant No.7. The defendant No.6 is not the wife of defendant No.4 and she is not entitled to get any



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share in the suit schedule properties. Either the plaintiff or other defendants are in joint possession and enjoyment of the suit item No.1 property. Hence, suit is not maintainable, liable to be dismissed etc.

10. Heard the counsel for plaintiff, defendant No.5 and 7, appreciated the material available on record.

11. The following points arise for consideration of this Court :

1. Whether plaintiff has made out prima-facie case for granting temporary injunction order?
2. Whether balance of convenience lies in her favour?
3. Whether plaintiff will be put to irreparable loss and injury if temporary injunction is not granted?
4. What order ?

12. On hearing both sides, I answer the above points 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;



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REASONS

13. **POINT No.1 TO 3** :- All these points are taken up together for common discussion to avoid the repetition of facts and circumstances of the case.

This is the suit filed by the plaintiff for the relief of partition and separate possession. According to plaintiff, the suit schedule properties ancestral joint family properties inherited through her grandfather. The defendant No.1 is her mother. After death of her father, the suit schedule properties were mutated in the name of her mother, the defendant No.1 herein. The defendant No.1 denied for partition of the suit schedule properties and hence she constrained to file the suit for partition and separate possession.

14. Per contra, it is the contention of the defendant No.7 that the suit item No.1 property fell to the share of his parents through registered partition deed. There was some loan over the said property and as such his parents were intending to alienate the said property. His grandfather namely M.N. Kumaramurthy purchased the said property in his name to avoid the alienation to the third parties.



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His grandfather purchased suit item No.1 property by paying huge consideration when he was minor. After attaining majority, he is in peaceful possession and enjoyment of suit item No.1 property, either the plaintiff or other defendants are entitled to get any share over the same.

15. The claim of the defendant No.7 is restricted to suit item No.1 property only. He is not disputing the nature and mode of acquisition of suit item No.2 to 5 properties. The only thing to be considered here is that whether or not suit item No.1 property is self-acquired property of the defendant No.7.

16. The plaintiff herself has filed the photo copy of the sale deed bearing document No.285/2015-16 dated 22.04.2015. It clearly discloses that the suit item No.1 property purchased by one M.N. Kumaramurthy as a guardian of minor defendant No.7. In the sale deed, it has been clearly mentioned that the suit item No.1 property fell to the share of vendors who happens to be parents of defendant No.7 through registered partition deed bearing document No.57/2005-06. Based on the above



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documents one can easily infer that the suit item No.1 property originally belonged to parents of defendant No.7 and they alienated the same in favour of their minor son represented by the guardian namely M.N. Kumaramurthy. It appears the guardian Kumaramurthy is maternal grandfather of the defendant No.7 herein.

17. However, in the sale deed itself it has been mentioned that suit item No.1 property was purchased by father of C.N. Siddabasaiah @ Siddaiah who happens to be the father of the plaintiff. It means, the suit item No.1 property is not yet acquired the nature of ancestral property and no one can exercise birth right over the same.

18. As discussed above, the suit item No.1 property was purchased by M.N. Kumaramurthy as a guardian of defendant No.7 on 22.04.2015. The said document prima-facie establishes that the defendant No.7 became the owner of the property based on the said registered sale deed. The counsel for plaintiff has filed photo copy of gift deed bearing document No.2122/2023-24 dated 17.07.2023 which shows



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that M.N. Kumaramurthy as a guardian of defendant No.7 gifted suit item No.1 property to the defendant No.5 and 7 jointly. I could not understand as to what the necessity was to execute the gift deed in respect of the suit item No.1 property to which the defendant No.7 is the owner again in the joint names of defendant No.5 and 7. It appears, the defendant No.5 and 7 are creating one or other title deeds in respect of suit item No.1 property.

19. In the above said facts and circumstances of the case, it is quite hard to ascertain as to whether or not all the suit schedule properties are ancestral joint family properties. It requires full pledged trial of the suit. The court can not conduct mini trial at this stage to ascertain all these aspects. As discussed above, the defendant No.7 is not denying the fact that suit item No.2 to 5 are ancestral in nature. However, in the given set of circumstances, at this stage it is quite hard to ascertain as to whether the suit item No.1 property is self-acquired property of defendant No.7 or not as discussed supra.



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20. The suit is for partition and separate possession. The plaintiff has made out some prima-facie case to show that the suit schedule properties are ancestral in nature. Under such circumstances, if the suit item No.1 property is alienated again and again, it would definitely prolong the litigation. The plaintiff has made out prima-facie case for granting temporary injunction order and balance of convenience also lies in her favour. Hence, I am of the opinion that the application filed by the plaintiff deserves to be allowed. **Accordingly, I answer Point No.1 to 3 in Affirmative.**

21. **POINT No.4** :- For the reasons stated and findings given on point No.1 to 3, I proceed to pass the following :

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Sec.151 of C.P.C. is hereby allowed.

The defendant No.1, 4 to 7, their men, servants, agents and any person claiming under them are hereby



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restrained from alienating or creating any charge over the suit schedule properties in any manner, till disposal of the suit.

This injunction order shall be in-force for the period of one year from this day. The parties shall co-operate with the court for speedy disposal of the suit within the span of one year.

Sd/-

(VAIDYA SHREEKANT)

**SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.**