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**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Sri Shivakumar.R. B.A.L. LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 17th Day of March 2023

ORIGINAL SUIT NO.50/2022

PLAINTIFF/s :

R.Ravikumar S/o K.Rudrappa, aged 48 years, Coolie, R/o Ambedkar Extension, Beside Police Station, Ajjampura Town, Ajjampura Taluk.

(Reptd. By : Sri T.R.R., Advocate.)

Vs.

DEFENDANT/s:

1) K.Rudrappa S/o Kalasappa, aged 78 years,

2) Smt.Nagamma W/o K.Rudrappa, aged 70 years,

D.1 & 2 are R/o Ambedkar Extension, Beside Police Station, Ajjampura Town, Ajjampura Taluk.

3) Smt.Veena W/o Basavarajappa, D/o K.Rudrappa, aged 50 years, Housewife, R/o Shivani Village, Shivani Hobli, Ajjampura Taluk.

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- 4) Smt.Geetha W/o late Umesh, aged 40 years, Housewife, R/o J.C.Pura Village and Post, Arasikere Taluk, Hassan District.
- 5) Shreyas S/o late Umesh, aged 13 years, Minor, represented by her natural guardian mother Smt.Geetha.
- 6) Smt.Mamatha W/o Suresh, D/o K.Rudrappa, aged 38 years, Housewife, R/o Basaveshwara Extension, Ajjampura Town, Ajjampura Taluk.
- 7) Suresh S/o K.Rudrappa, aged 38 years, Coolie, R/o Ambedkar Extension, Beside Police Station, Ajjampura Town, Ajjampura Taluk.

(D.1 : By Sri T.L.P., Advocate.

D.2 : In person

D.3, 6, & 7 : By Sri T.D.A., Advocate.)

PARTIES TO I.A.NO.I

Applicant : R.Ravikumar

Vs.

Opponent : K.Rudrappa and Nagamma (D.1 & 2)

PARTIES TO I.A.NO.IV

Applicant : K.Rudrappa

Vs.

Opponent : R.Ravikumar

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**COMMON ORDER ON I.A.NO.I AND IV**

The applicant/plaintiff has filed I.A.No.I under Order XXXIX Rule 1 and 2 of CPC for the relief of temporary injunction restraining the defendants No.1 and 2 from alienating the suit schedule property in any manner or from raising any loan from any bank in respect of suit schedule property till disposal of the suit. The defendant No.1 has filed I.A.No.IV under Order XXXIX Rule 4 of CPC and prays for to vacate the exparte order of temporary injunction passed by this court on I.A.No.I by rejecting I.A.No.I.

2. The I.A.No.I is supported with the affidavit of the plaintiff. It is stated in the affidavit that, the plaintiff has filed the above suit against the defendants for the relief of partition and separate possession of his 1/6th share in respect of suit schedule property. It is stated that the plaintiff and defendants are the members of the Hindu undivided joint

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family and the suit schedule property is the ancestral and joint family property of the plaintiff and defendants. It is further stated that the suit schedule property is consisting of RCC house, the same was constructed by the plaintiff and defendants with the aid of joint family nucleus and the plaintiff, the defendants No.1, 2 and 7 are residing therein. It is further stated that the khata of the suit schedule property stands in the name of defendants No.1 and 2, taking advantage of the same, the defendants No.1 and 2 are trying to alienate the suit schedule property to the third parties and also they are trying to raise the loan from the bank by mortgaging the suit schedule property. The plaintiff has demanded the defendants to effect partition of his share in the suit schedule property on 15.01.2022, but the defendants have postponed the same on one or other reason. If the defendants No.1 and 2 have succeeded in their attempts, certainly the plaintiff will be put to great hardship and injury

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which cannot be compensated in any manner. On the other hand, if this I.A., is allowed, there is no harm caused to the other side. Hence, this I.A.

3. After service of suit summons, the defendant No.1 has appeared through his counsel and filed the written statement and also filed memo adopting the written statement averments as objections to the I.A.No.I. The defendant No.2 personally appeared before the court, but she has not filed written statement as well as objections to I.A.No.I. In the written statement, the defendant No.1 has totally denied the plaint averments and inter alia contended that the suit schedule property originally belonged to Ajjampura Town Municipality and the same was sold in a public auction dated 18.05.1983 and Smt.Gowramma W/o Kalasappa was the highest bidder of the property and the same was confirmed by executing the sale certificate dated 26.11.1983 by the

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Ajjampura Town Municipality in favour of said Smt.Gowramma who is none other than the mother of defendant No.1. It is further contended that the mother of defendant No.1 was died leaving behind the defendant No.1 as her sole legal heir. Hence, the defendant No.1 acquired the suit schedule property by virtue of the Section 15 and 16 of Hindu Succession Act, 1956. Therefore, the suit schedule property is the self acquired property of defendant No.1, but it is not a co-parcener, ancestral and joint family property. Therefore, either the plaintiff or defendants No.3 to 7 will not acquire any right over the suit schedule property. Hence, the suit of the plaintiff is not maintainable in the eye of law. For considering all these reasons, the defendant No.1 prays for to reject the I.A.No.I with cost.

4. The defendant No.1 has filed affidavit in support of I.A.No.IV. In the affidavit, he has reiterated the averments of

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written statement filed by him and prays for to allow the I.A.No.IV by vacating the exparte order passed by this court on I.A.No.I.

5. Heard arguments on both sides. Perused the materials available on record.

6. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the plaintiff/applicant has made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff/applicant?
- 3) Whether the plaintiff/applicant will be put to irreparable loss and injury, if the temporary injunction is not granted as prayed in the I.A.?
- 4) Whether the defendant No.1 has made out sufficient grounds to allow the I.A.No.IV filed under Order 39 Rule 4 of CPC?
- 5) What order?

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7. My answer 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 Affirmative,

Point No.5 : As per the Order,

for the following:

REASONS

8. **POINT NO.1 TO 4** : These points are inter related with each other. Hence, these points are taken up together for common discussion in order to avoid repetition of facts and findings. On perusal of the materials available on record, admittedly, the plaintiff has filed this suit against the defendants for the relief of partition and separate possession of his 1/6th share in the suit schedule property. According to the plaintiff, the suit schedule property is the ancestral and joint family property of plaintiff and defendants, the plaintiff has constructed the house in the suit schedule property by

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raising loan from the bank, now the plaintiff and defendants No.1, 2 and 7 are residing therein. It is apprehension of the plaintiff that the khata of the suit schedule property is stands in the name of defendants No.1 and 2, by taking advantage of the same the defendants No.1 and 2 are trying to alienate the suit schedule property and also trying to raise loan from the financial institution by mortgaging the suit schedule property. If they have succeeded in their attempts, certainly the rights of the plaintiff will be deprived. At this stage, to substantiate the contention of the plaintiff, the plaintiff has produced genealogical tree of plaintiff and defendants family and certified copy of assessment extract in respect of suit schedule property.

9. On the other hand, the defendant No.1 contended that his mother namely Smt.Gowramma had acquired the suit schedule property by way of public auction dated

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18.05.1983, accordingly the Ajjampura Town Municipality has confirmed the same by executing the sale certificate dated 26.11.1983 in respect of suit schedule property. Therefore, the suit schedule property is the absolute property of his mother, the mother of defendant No.1 was died leaving behind the defendant No.1 as her sole legal heir, accordingly he has inherited the said property. Therefore, the suit schedule property is not a coparcenary and ancestral and joint family property of plaintiff and defendant No.2 to 7 and it is separate property of the defendant No.1. Therefore, the suit of the plaintiff is not tenable. At this stage, in order to substantiate the contention of defendant No.1, the defendant No.1 has produced the xerox copy of sale certificate dated 07.10.1983.

10. On perusal of the materials placed on record, admittedly it is a suit for partition and separate possession.

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The plaintiff and defendants No.3 to 7 are the children of defendant No.1, and defendant No.2 is the wife of defendant No.1. According to the plaintiff the suit schedule property is the ancestral and joint family property of plaintiff and defendants. On the other hand, the defendant No.1 contended that the suit schedule property was acquired by the mother of the defendant No.1 namely Smt.Gowramma by virtue of public auction dated 18.05.1983, accordingly the Ajjampura Town Municipality has confirmed the same by executing the sale certificate dated 26.11.1983 in favour of said Gowramma in respect of suit schedule property. The said Gowramma is none other than the mother of defendant No.1. After demise of said Gowramma, the defendant No.1 succeeded the suit schedule property. Therefore, the suit schedule property is the self acquired property or separate property of defendant No.1. In order to substantiate the contention of defendant No.1, at this stage the defendant No.1 has produced the xerox

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copy of sale certificate dated 07.10.1983, on perusal of the same at this stage it discloses that the Ajjampura Town Municipality authority has executed the sale certificate in favour of Gowramma by confirming the auction of sale in respect of suit schedule property. It is very pertinent to note that, as per the plaint averments, the plaintiff has specifically pleaded that earlier the suit schedule property was standing in the name of plaintiff's grand mother namely Gowramma W/o Kalasappa. In the instant suit, the relationship between the parties is not in dispute and also the death of said Gowramma is also not in dispute.

11. As per Section 14 of the Hindu Succession Act, any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. In the instant suit, as per the contention of defendant No.1, the

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mother of defendant No.1 namely Smt.Gowramma acquired the suit schedule property by way of public auction held by Ajjampura Municipality on 18.05.1983, accordingly the said authority have executed the sale certificate dated 26.11.1983 in favour of said Smt.Gowramma in respect of suit schedule property. Therefore, the suit schedule property is the absolute property of the said Smt.Gowramma. According to defendant No.1, the said Smt.Gowramma is none other than the mother of defendant No.1, she was died leaving the defendant No.1 as her sole legal heir. Hence, he succeeded the suit schedule property by virtue of the Section 15 and 16 of the Hindu Succession Act. Therefore, at this stage the suit schedule property cannot be considered as the coparcenery, ancestral and joint family property of plaintiff and defendants, but it is the separate property of the defendant No.1. It is well settled law that, during the lifetime of defendant No.1 either the plaintiff or defendants No.2 to 7 have no right over the suit

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schedule property. At this stage, the rights of the parties cannot be considered, it needs full fledged trial.

12. Looking into the pleadings and documents produced by the plaintiff and defendant No.1, opinion of this court is that at this stage the plaintiff has not made out prima facie case, the balance of convenience is not lies upon the plaintiff. If the I.A.No.I is allowed, the defendants No.1 and 2 will be put to great hardship and injury. On the other hand, if the I.A.No.I is not allowed, there is no hardship and injury caused to the plaintiff. The defendant No.1 has made out valid grounds to allow I.A.No.IV and to vacate the exparte temporary injunction order passed by this court on I.A.No.I. For considering all these reasons, I answer Point No.1 to 3 in the Negative and Point No.4 in the Affirmative.

13. **POINT NO.5** : In the light of the above discussion on Point No.1 to 4, I proceed the following :

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**ORDER**

I.A.No.I filed by the plaintiff/applicant under Order XXXIX Rule 1 and 2 of CPC is hereby rejected.

I.A.No.IV filed by the defendant No.1/ applicant under Order XXXIX Rule 4 of CPC is hereby allowed.

The ex parte temporary injunction order passed by this court on I.A.No.I is vacated.

No order as to cost.

(Dictated to the Stenographer on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of 17th day of March 2023.)

sd/-

(SHIVAKUMAR.R)
ADDL.CIVIL JUDGE &
J.M.F.C., TARIKERE.