



IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
GUNDLUPET

24th April 2024

Present

Sri.BASAVARAJ H TALAWAR., B.A., L.L.B.,
Senior Civil Judge and JMFC.,
OS 31/2020

Plaintiff 2 Gowramma W/o late Srikantappa,
D/o late Doddasubbappa,
Aged about 50 years
Residing at Ankahalli village,
Hangala Hobli, Gundlupet Taluk
3 Rathnamma W/o Prabhuswamy
D/o late Doddasubbappa,
Aged about 45 years
Residing at Shivapura village,
Hangala Hobli, Gundlupet Taluk
(Sri.B.S Advocate)

Versus

Defendants Nagappa S/o late Doddasubbappa
and others
(Sri.B.N.S.,Advocate for D5, Sri.K.B.,
Advocate for D8-10, Sri.H.N.M.,
Advocate for D12)

ORDER On I.A.No.XVI

Applicant/Plaintiff Rathnamma
No.2

Versus

Opponents/
Defendants Nagappa and other

i	Provision under which the application is filed	Order 39 Rule 1 and 2 R/w 151 of C.P.C
ii	Relief sought for	Temporary injunction
iii	The date on which the application is filed	23.02.2023
iv	Number of the application	10
v	The date on which the objections are filed by different opponents	20.03.2023
vi	The date on which the orders were passed on the said application	24.04.2024

ORDER ON I.A. NO.X

The instant I.A.No.X is filed by the plaintiff No.2 under Order 39 Rule 1 and 2 R/w 151 of C.P.C., seeking relief of temporary injunction in favour of the plaintiffs by restraining the defendants, their agents supporters or any other persons acting under them from making any mining operation in the item No.1 to 3 suit schedule properties.

2.The application is supported with affidavit of the plaintiff No.2, wherein, stated that they have filed the

suit against the Defendants for relief of partition and separate possession in respect of the suit schedule properties, the plaintiffs have got the right of partition in the suit schedule properties and in the said properties the Defendants have colluding each other's excavating black stone in the application mentioned schedule properties and also dumping the waste stones in the said properties if they have continue the same the nature of the properties will be changed. Hence they have filed this application. It is further stated that the plaintiffs have got the prima-facia case the balance of convenience is also in favor of the plaintiffs and hence kindly grant temporary injunction order as prayed in the application. If the Hon'ble court refuses to allow this application plaintiffs will be put to irreparable loss and injury which cannot be compensated in terms of money. The plaintiffs urges the court to consider this application in the interest of justice.

3. On the other hand, the defendant No.12 has filed detailed objection to the said application and contended that the application is not maintainable. This Defendant denies all allegations made by the Plaintiff in the affidavit filed in support of the aforementioned application. It is submitted that the plaintiffs have not presented truthful facts before this Hon'ble Court. The suit has been filed in collusion with Defendant No.1 to 7 and Defendant No.11, with the aim to cause irreparable loss, injury, and hardship to this Defendant. The defendant No.1 to 3, and husband of the 4th defendant and father of the 5th defendant namely Late Mahesh along with minor children of the Nagappa and Minor children of Nanjappa being represented by their natural guardian and fathers have executed registered Sale Deed dated 06.12.2005 and 07.12.2005 in favour of defendant No 8. in respect of suit schedule item No.1 and 4 properties. As per said sale deed possession handed over infavour of the defendant No 8 and khata also changed in his name. There

after defendant No.8 sold the said properties through registered sale deed dated 28.08.2008 infavour of the L.T. Nanwani S/o Teckchand Nanwani for the valuable consideration for the quarrying purposes.

4.The defendant No.1 to 3, and husband of the 4th defendant and father of the 5th defendant namely Late Mahesh along with minor children of the Nagappa and Minor children of Nanjappa being represented by their natural guardian and fathers have executed another Sale Deed, dated 28.08.2008. with respect to suit schedule item No 1 and 2 bearing Sy No.335/1 measuring 00A-13Guntas and Sy No 336/4 measuring 00A- 10, 1/4 Guntas and Sy No 336/ 6 measuring 01A-33,3/4 Guntas and Sy No.339/1 measuring 02A-16 Guntas in favour of L.T. Nanwani. There after L.T. Nanwani executed registered sale deed dated 18.07.2016 in favour of defendant No 10 by name Sri H.S. Joshi. L.T. Nanwani executed power of attorney to the 10th defendant

regarding properties for quarrying operations in the suit schedule item No 4 property.

5.The defendant No 10 H.S. Joshi sold the item No.1 and 2 properties in favour of Dr. Kamalesh Kumar G Patel, through registered sale deed dated 08.04.2018. Kamalesh Kumar is in possession of the suit schedule properties Item No 1 and 2 as absolute owner and in possession and enjoyment of suit schedule item No 4 property being the GPA holder of H.S.Joshi. And carrying on quarrying operations by investing huge amounts and machineries in the suit schedule item No 1 and 2 and 4 suit schedule properties. who now possesses and operates the quarrying activities. L.T. Nanwani being the propitiator of M/s Jubilee Granities India Pvt Ltd, obtained conversion of lands for quarrying operations, authorized by the Deputy Commissioner. Environmental clearance was obtained by M/s Jubilee Granites (9th Defendant) for quarrying operations. The plaintiffs have misrepresented facts and brought forward false allegations.

Defendants assert adverse possession rights and argue that the suit is barred by law of limitation. The suit is an attempt to harass the Defendants and cause them further loss. The balance of convenience lies with the Defendants. The Defendants request the Hon'ble Court to dismiss the application with costs.

6. Based upon the above said pleadings, the following points arose for consideration of the court:

1. Whether the plaintiff No 2 and 3 have established the existence of prima facie case in their favour at this stage of the suit?
2. Whether the plaintiff No 2 and 3 have established the existence of balance of convenience in her favour?
3. Whether the plaintiff No 2 and 3 further prove that if the order of temporary injunction is not granted they will be put to irreparable loss and hardship?
4. If so, what order?

7. Having heard and examined the matter, and considering the representations made by both parties and the documents on record, the court proceeds to address as following:

Point No.1	In the Negative
Point No.2	In the Negative
Point No.3	In the Negative
Point No.4	As per the final order for the following:

REASONS

8. **Point No.1 to 3:** These points were taken together, in order to avoid repetition of facts and also for the reason that they are interconnected with each other and for common discussion. The perusal of the records reveals that, originally the plaintiff No.1 was filed the suit seeking relief of partition and separate possession. After filing the suit, the plaintiff No.1, i.e., Jyothi, filed a memo stating that she had settled the matter and requested to the dismissal of the case. However, defendant No.6 and 7 objected to this and sought to be

transposed as plaintiffs No.2 and 3. The court granted this request, allowing them to proceed with the case.

9.Further the plaintiffs have filed this application stating that the suit schedule properties are the ancestral and joint family properties. The plaintiff no 2 and 3 having their share in the suit schedule properties. The defendants colluding with each other excavating black stone in the suit schedule properties and dumping the waste stones in the suit schedule properties. If they have continue the same the nature of the properties will be changed.

10.The contention of the defendant No 12 that plaintiffs and Defendant No.1 to 5 and Defendant No.11, colluding with each other filed this suit to harass the defendant No.12. The defendant No.1 to 3, and husband of the 4th defendant and father of the 5th defendant namely late Mahesh along with minor children of the Nagappa and Minor children of Nanjappa being represented by their natural guardian and fathers have executed registered Sale Deed dated 06.12.2005

and 07.12.2005 in favour of defendant No 8. in respect of suit schedule item No 1 and 4 properties. As per said sale deed possession handed over infavour of the defendant No 8 and khata also changed in his name. There after defendant No 8 sold the said properties through registered sale deed dated 28.08.2008 in favour of the L.T. Nanwani S/o Teckchand Nanwani for the valuable consideration for the quarrying purposes.

11.The defendant No.1 to 3, and husband of the 4th defendant and father of the 5th defendant namely Late Mahesh along with minor children of the Nagappa and Minor children of Nanjappa being represented by their natural guardian and fathers have executed another Sale Deed, dated 28.08.2008. with respect to suit schedule item No 1 and 2 bearing Sy No 335/1 measuring 00A-13Guntas and Sy No 336/4 measuring 00A- 10, 1/4 Guntas and Sy No 336/ 6 measuring 01A-33,3/4 Guntas and Sy No 339/1 measuring 02A-16 Guntas in favour of L.T. Nanwani. There after L.T.

Nanwani executed registered sale deed dated 18.07.2016 in favour of defendant No 10 by name Sri H.S. Joshi. L.T. Nanwani executed power of attorney to the 10th defendant regarding properties for quarrying operations in the suit schedule item No 4 property.

12.The defendant No.10 H.S. Joshi sold the item No.1 and 2 properties in favour of Dr. Kamalesh Kumar G Patel, through registered sale deed dated 08.04.2018. Kamalesh Kumar is in possession of the suit schedule properties Item No 1 and 2 as absolute owner and in possession and enjoyment of suit schedule item No 4 property being the GPA holder of H.S.Joshi. And carrying on quarrying operations by investing huge amounts and machineries in the suit schedule item No 1 and 2 and 4 suit schedule properties. who now possesses and operates the quarrying activities. L.T. Nanwani being the proprietor of M/s Jubilee Granites India Pvt Ltd, obtained conversion of lands for quarrying operations, authorized by the Deputy Commissioner. Environmental

clearance was obtained by M/s Jubilee Granites (9th Defendant) for quarrying operations. The plaintiffs have misrepresented facts and brought forward false allegations. Defendants assert adverse possession rights and argue that the suit is barred by law of limitation. The suit is an attempt to harass the Defendants and cause them further loss. The balance of convenience lies with the Defendants.

13. The counsel for defendant No.12 during the argument stated that there is no existence of the joint family as narrated by the plaintiff No.2 and 3. The suit schedule properties are sold by the defendant No 1 to 3 and others in the year of 2005 therefore, the suit of the plaintiff No.2 and 3 is barred by law of limitation and also there is no joint family in existence. If the plaintiffs would have right over the suit schedule properties they would have filed the suit within limitation. The plaintiffs are not seeking the relief as the sale deed executed by the defendant No.1 to 3 are not binding on them. There is no pleading from the plaintiff No.2 and 3. The

plaintiffs are not in joint possession of the suit schedule properties.

14.Further defendants counsel argued that the defendants have obtained all the necessary license and permissions from the competent authorities for the purpose mining in the suit schedule properties. The defendants are in possession of the suit schedule property from 26.10.2010. After obtaining the permission, the defendant No.12 has invested a lot of money for the machines for the extraction of the stone and he also hired so many works to work in the quarrying. Therefore, if the application is allowed the defendant No.12 will be put untold hardship and the damages cannot be compensated in any form. The plaintiffs claiming their rights as suit schedule properties are ancestral and joint family properties. On the other hand defendant No 8 to 12 claiming their rights on the basis of registered sale deeds.

15.Admittedly, to appreciate the said contentions of parties to the suit, it requires a full-fledged trial. It is

settled law that to avail the relief of temporary injunction at this stage, the parties are to establish the existence of a prima-facie case and they also require to prove that the balance of convenience leans in their favour. In addition to it, the parties are required to establish that if the prohibitory order is sought by them if not granted they will be put to loss and hardship. I have gone through the records submitted by the defendants i.e., sale deed dated 06.12.2005, 07.12.2005 and 28.08.2008. The plaintiffs have taken the contention that the suit schedule properties are ancestral and joint family properties. But the plaintiffs are not in joint possession enjoyment of the suit schedule properties as on the date of filing of the suit. Though it is not necessary for the person claiming injunction to prove their title to the suit property and it would be sufficient if they proves that they are in lawful possession of the

property and their possession was invaded or threatened to be invaded by a person who had no title whatsoever.

16. In this case the plaintiffs have only taken the contention that they are joint family members and the suit schedule properties are joint family properties. But the plaintiffs have filed the application to restrain the defendants not continue with any mining work in the suit schedule properties. Admittedly defendants are in possession on the basis of registered sale deed. Since 2005 the plaintiff No 2 and 3 not challenged the sale deed with respect to the suit schedule properties. Even though the plaintiff No 2 and 3 have not filed any suit for partition, but the plaintiff No 1 filed present suit and made plaintiff No 2 and 3 as defendant No 6 and 7 their after on 25.07.2022 the defendant No 6 and 7 were transposed as Plaintiff No 2 and 3 but until this date the plaintiff No 2 and 3 have not challenged the sale deed and

not claiming partition. Therefore it reveals that after the laps of 17 years of execution of sale deeds the present plaintiffs claiming their share in the suit schedule properties. As stated above, the documents pertaining to the suit schedule properties were already mutated in the name of defendants. The party who seeks the aid of the court for an injunction must show that there is real danger to their property and mere apprehension is not a ground for the relief of temporary injunction. Under these circumstances, the plaintiffs have not made out a prima facie case for an order of temporary injunction as sought for in the application. The balance of convenience does not lie in favour of the plaintiffs. If the temporary injunction is not granted, no hardship or irreparable injury will be caused to the plaintiffs.

17. On the other hand injunction is granted against the defendants. The defendants will be put untold hardship

and the damages, because the defendants have invested huge amount and installed machinaries and stored materials for the purpose of their business in the suit schedule properties. taking into consideration, the facts and circumstances of the case on hand, the court is of the opinion that the Plaintiffs have failed to prove the existence of prima-facie case in their favour. The available materials on record, reveals that the Plaintiffs have failed to establish that they have got a concluded right capable of being enforceable at law. Further, the court is of the opinion that the balance of convenience leans in favour of the defendants No.12 and not in favour of Plaintiffs. Apart from this, the court is of the view that in case the instant application is allowed, the defendants will be put to loss and hardship. The contentions of parties to the suit, the court is of the opinion that a full fledged trial has to be conducted to appreciate the rival contentions. Hence,

taking into consideration, all these facts the court is of the opinion that the Plaintiffs have failed to prove the existence of prima-facie case and other two mandatory ingredients to avail the relief of Temporary Injunction, as formulated under Points No.2 and 3. Having discussed above, **the court proceeds to answer Points No.1 to 3 in the Negative.**

18.Point No.4 : In view of my above finding, I proceed to pass the following:

ORDER

I.A.No.X filed by the plaintiff No.2 and 3 under Order 39 Rule 1 and 2 of C.P.C., is hereby rejected.

No order as to costs.

(Directly dictated to Stenographer on computer, and typed by him and corrected by me and then pronounced in the open Court on this 24th April 2024)

(Basavaraj H Talawar)
Senior Civil Judge & JMFC.,
Gundlupet