

**IN THE COURT OF PRL., SENIOR CIVIL JUDGE & CJM, AT
DAVANGERE**

**PRESENT: Smt.P.S.Sadarjoshi,
B.A., LL.B.,
Prl., Senior Civil Judge
& CJM., Davanagere.**

DATED THIS THE 19th DAY OF JANUARY 2021

OS No:138/2020

Smt. Mamatha W/o Nagaraja and 4 Others.

.....Plaintiff/s.

Vs.

Manangi Murigeppa S/o K.M.Murigeppa and 3 Others

.....Defendant/s.

IA.No.I

Smt. Mamatha W/o Nagaraja and 4 Others.

.....Applicant No..

Vs.

Manangi Murigeppa S/o K.M.Murigeppa and 3 Others

.....Opponent/s.

ORDERS ON IA.No.I

The learned counsel for the plaintiffs has filed I.A.No.I U/o 39
Rule 1 & 2 R/w Sec.151 of CPC to restrain the defendants, men on

their behalf from alienating suit schedule property infavour of any one in any manner till disposal of the suit.

2. Suit schedule properties are described as mentioned in the application.

3. The said application is accompanied by the affidavit of the plaintiffs stating that, the plaintiff No.1 to 3 are the sisters. The plaintiff No.4 & 5 are the children of the brother of plaintiff. The plaintiffs have filed suit for partition and separate possession. Originally propositus Basappa had a son by name Manangi Murigeppa. The said Manangi Murigeppa had two wives. The name of first wife is Parvathemma. The said Parvathemma and Basappa had given birth to 4 children i.e., Thippeswamy, Premaleela, Mamatha and Bharathi. The said Thippeswamy and Premaleela have expired. The children of Thippeswamy and Premaleela are arrayed as parties to this suit i.e., plaintiff No.3 to 5. Girijamma and Manangi had two children i.e., Manjunatha and Veeresh. They are arrayed as defendant No.2 to 4. The suit properties have fallen to the share of defendant No.1 by way of partition. The suit properties are ancestral joint family properties. Out of usufructs of joint family properties, 02 acres is purchased in

Shiramagoundanahalli village at Davanagere taluk. The said property is the ancestral joint family property, as it is purchased out of usufructs of joint family property. This being the fact, the defendant No.1 & 2 in order to cheat the plaintiffs, the sale deed is executed in favour of defendant No.2 on 23/09/2019 at the time of registration of sale deed.

4. The father of the plaintiff No.4 & 5, mother of defendant No.3 have expired. Without the knowledge of the plaintiffs item No.8 property is transferred in the name of defendant No.2. When the plaintiff enquired the matter, the defendant No.2 replied that as their mother has expired, he got transferred the property in his name. The said property is purchased out of usufructs of joint family property. When the plaintiff demanded their legitimate share, the defendants have postponed the same on one or other pretext. In the month of August 2020 the defendants stated that no property is standing in the name of their ancestors. The defendants did not allot share to the plaintiffs. The item No.7 property is allotted to the defendant No.2 by the father of the defendant No.2 by way of partition. However the defendant No.1 has repaid loan amount standing in the name of father of the defendant No.2. For

the purpose of repayment of loan sale deed is executed. However, inspite of sale, it is mentioned as partition deed. The plaintiffs are entitled to share in Sl.No.7 property also.

5. If any sale deeds are executed with respect to suit property, the said sale deed are not binding on the share of the plaintiffs. The defendants are politically, economically and socially, influential peoples. Only with an intention to harass the plaintiffs, item No.7 & 9 properties in particular and remaining properties in general are not allotted as share to the plaintiffs. If the application is allowed no loss or hardship will be caused to anyone. On the other hand if application is not allowed the plaintiffs will be put to repairable loss. The plaintiffs have made out a prima-facie case. Hence, plaintiffs prayed to allow I.A.No.I.

6. The learned counsel for defendant No.2 & 4 has filed memo to treat written statement as objections to I.A.No.I.

7. The defendant No.2 & 4 have admitted the genealogy furnished by the plaintiffs. The defendants have denied that share is not allotted to the plaintiffs in respect of suit schedule properties.

8. The land bearing RS.No.96 measuring 04 acres 20 guntas was standing in the name of the father of the defendant No.2. Thereafter, it has fallen to the share of the defendant No.2. Out of 04 acres 20 guntas, 02 acres 30 guntas are alienated and remaining portion i.e., 01 acres 30 guntas is the suit schedule No.7

property. The said suit schedule No.7 property is an irrigated land having coconut trees. The defendant No.2 has purchased the said property on 29/09/2009 for a valuable consideration of Rs.9,30,000/- with the aid and help of his father, brothers and out of sale proceeds + financial help by father and brothers. Land revenue is paid by the defendant No.2. Suit schedule No.7 property is the property derived from the father of the defendant No.2 to the defendant No.2. Suit schedule No.7 & 8 properties are the self-acquired properties of the defendant No.2. Neither the plaintiffs nor the defendant No.1, 3 & 4 are having any right, title or interest over the suit schedule No.7 & 8 properties. The plaintiffs have not properly given description of item No.5. The defendants are entitled to share in suit schedule property No.1 to 6 and 02 houses as shown in suit schedule No.5. The defendant No.2 & 4 are entitled to share in suit schedule properties. Hence, the defendants prayed to decide IA as prayed for.

8. Heard learned counsel for the plaintiffs and learned counsel for defendants. Perused the materials available on record.

9. The points that arise for consideration and determination are as under :-

- 1. Whether the plaintiffs have made out a prima-facie case ?**
- 2. Whether the Balance of convenience lies in favour of the plaintiffs ?**
- 3. Whether irreparable loss and hardship will be caused to the plaintiffs, if I.A. is not allowed?**
- 4. What order?**

10. This Court answers above points as under:

Point No.1: Partly in Affirmative

Point No.2: Partly in Affirmative

Point No.3: Partly in Affirmative

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

REASONS

11. **Point No.1:-** This court has briefly narrated the facts of the case of the plaintiffs and that of defendants. This is a suit for partition and separate possession. The plaintiffs are seeking 4/7th share in suit schedule properties.

12. The genealogy of parties is not in dispute. The point in dispute and crux of matter is whether the suit schedule property No.7 & 8 are joint family properties or whether the suit schedule No.7 & 8 are self-acquired properties of the defendant No.2.

13. In order to prove the case of the plaintiffs, the plaintiffs have furnished affidavit i.e., Vamsharuksha which is not in dispute. ROR of RS.No.49/P2, RS.No.115/2, RS.No.101/P4, RS.No.76/4, RS.No.76/1P8, RS.No.75/2P8, RS.No.54/6, RS.No.96/9, zerox copy of school certificates of Bharathi, Mamatha, Premaleela. These certificates are not in dispute. Zerox copy of sale deed with respect to RS.No.54/3 measuring 02 acres,

the said property is purchased by Girijamma W/o Murigendrappa on 29/09/2009, nil encumbrance certificate, ME.No.51/75-76, Mutation register.No.81 pertaining to RS.No.75/2P8. On perusal of materials available on record issues are not yet framed in this case.

14. It is the specific case of the defendant No.2 & 4 that suit is bad for non-joinder of necessary parties and that suit is bad for non-inclusion of all joint family properties.

15. It is the specific case of the plaintiffs that the Sl.No.7 & 8 properties are purchased out of joint family funds. Whereas it is the specific of the defendant No.2 & 4 that Sl.No.7 & 8 properties are self-acquired properties of the defendant No.2.

16. The defendant No.2 & 4 have no objection to allot share in the suit properties except Sl.No.7 & 8 properties.

17. In order to prove the case of the defendant No.2 the learned counsel for the defendant No.2 & 4 has not produced any documents.

18. Whether the Sl.No.7 & 8 suit properties are joint family properties purchased out of usufructs of joint family or whether the Sl.No.7 & 8 properties are the self-acquired properties of the defendant No.2 requires full-fledged trial.

19. Looking to the facts and circumstances of the case, the plaintiffs have made out prima-facie case to allow their I.A., in part with respect to suit schedule properties except Sl.No.7 & 8 properties. If the plaintiffs are not granted relief with respect to Sl.No.7 & 8 properties no loss or hardship will be caused to the plaintiffs. At this stage the plaintiffs have made out a prima-facie case to partly allow I.A.No.I i.e., with respect to suit properties except Sl.No.7 & 8 properties. Hence, this court inclines to answer point No.1 partly in the affirmative.

20. **Point No.2:-** Balance of convenience partly lies infavour of plaintiffs. As discussed supra whether Sl.No.7 & 8 properties are joint family properties or not required full-fledged trial. Balance of convenience lies infavour of plaintiffs in part. Hence, this court answers point No.2 partly in affirmative.

21. **Point No.3:-**Irreparable loss and hardship will be caused to the plaintiffs if this I.A.No.I is not allowed in part. On the other hand if I.A.No.I is allowed in part no loss or hardship will be caused to the defendants. Hence, this Court answers point No.3 partly in affirmative.

22. **POINT NO.4:-** In view of answering Point No.1 to 3, this Court proceed to pass following:-

ORDER

IA No.I filed U/Order 39 Rule 1 and 2 R/w Sec. 151 of CPC is allowed in part till disposal of the suit.

The defendants, men on their behalf are restrained from alienating the suit schedule properties i.e., Sl.No.1 to 6 properties infavour of any one till disposal of the suit.

It is made clear that I.A.No.I filed U/o.39 Rule 1 & 2 of C.P.C., with respect to Sl.No.7 & 8 properties is dismissed.

Looking to the relationship of the parties no order as to costs.

(Dictated to the stenographer, after his transcription and then corrected by me, signed and pronounced in the Open Court this the 19th day of January 2021).

(Preeti .S Sadarjoshi)
Prl., Senior Civil Judge,
& CJM, Davanagere.