

ORDER ON I.A.No.2

The present application is filed by plaintiff U/Sec. 151 of CPC and prays to directing the defendant No.1 to deposit the entire rental income of Rs.2,00,000/- per month derived from the suit schedule property to this Court from the date of filing the suit i.e., 30-10-2023 and to continue the deposit all future rental income derived from the suit schedule property, in order to prevent the defendant No.1 from mis-appropriating the same and also to aid the main relief sought for by her in the suit. Along with the application plaintiff filed affidavit. In the affidavit it is stated that, the suit schedule property is consisting of Ground Floor, 1st floor, 2nd floor and all of them have been let out to the tenants on rental basis by the 1st defendant and the 1st defendant has been managing the affairs of the said property and collecting rent of Rs.2,00,000/- every month from the respective tenants. Further, defendant No.1 in order to harass her in one or other way is misappropriating the rental income accruing from the suit schedule property as ascertained which is a valuable asset in which she have an equal legitimate share and hence if the same is not safe guarded by this Court pending final adjudication of the dispute which may take considerable time, she will be put to untold loss, immense legal injury and hardships which cannot be compensated by any means at all. Both prima facie case and

balance of convenience are in her favour and prays to allow the application and hence prays to direct the defendant NO.1 to deposit the entire rental income derived from the suit schedule property. Along with the applicant filed photographs of the suit schedule property to show running of shops by the tenants.

2. Per contra, advocate for defendants opposed the application by filing objections. In the objection defendants denied the entire affidavit of plaintiff and stated that plaintiff is not entitle for any relief much less the relief claimed in the instant application. The application is not maintainable either in law or on facts and the plaintiff has no locus standi to file this type of application. As such the application filed by the plaintiff is highly vexatious. Further, the plaintiff has filed the above case by seeking the relief of partition and separate possession of her alleged Share in the suit schedule property. On perusal of the relief column, the mesne profit. Even if at all the plaintiff is succeeded in the instant case, she is entitled to claim rent or whatever it may be by way of mesne profit. Further, the very contention of the defendants is that the suit schedule property is not an ancestral joint family property as claimed by the plaintiff. Further, the suit schedule property is an absolute property of defendant no. 1. The defendant no. 1 has bequithed the suit schedule property in favour of defendant no. 2 and defendant no. 3 under a registered gift deed dated 26.11.2021 And hence plaintiff has no right over the suit's property and the present application is highly

vexatious and same is liable to be dismissed and on other grounds prays for the dismissal of the application.

3. Heard arguments of both the parties and perused the materials placed on record. On perusal of the same, the following points that arise for consideration:

1. Whether the plaintiff made out grounds to pass an order of direction by directing the defendants to deposit the rents that have been accrued from the suit schedule property?

2. What order?

4. My findings on the above points are as under;

Point No.1: In the affirmative

Point No.2 : As per final Order, for the following:

REASONS

5. Point No.1 :- This is the suit filed by the plaintiff for the relief of partition and for separate possession of her legitimate share in the suit schedule property. As per the contention of the plaintiff, suit schedule property fallen to the share of defendant no. 1 who is her

father under a registered partition deed dated 10.04.1996 which was executed in between the family of defendant no. 1. The defendant no. 1 has been looking after the management and affairs of the joint family properties that fell to him in the said partition. The plaintiff is married and And residing in her matrimonial home at Bangalore. Further, Plaintiff stated that the defendant no. 1 is not the absolute owner of the suit schedule property even though he has executed the registered gift deed dated 26.11.2021. In favour of defendant no. 2 and defendant no. 3 without the knowledge and consent of the plaintiff behind her back. Further plaintiff stated that even though the defendant no. 1 executed said registered gifted, but he is the person who managing the affairs of the suit schedule property And hence plaintiff claiming her legitimate share over the suit schedule property.

6. The defendant's filed written statement and contented that the defendant no. 1 started enjoying the suit schedule property as an absolute owner, being in possession of the same after effecting the partition in the year 1996. Further, the first defendant being the duty-bound father has given sufficiently and also performed the marriage of plaintiff with high dignity as expected by his son-in-law and his family members. In the meantime, this defendant no. 1 is started suffering some health issues due to the age factor and to avoid litigations amongst his children and also to get himself retired from the responsibilities. He has bequathed the scheduled property in the name of his sons under a registered gift deed dated 26.11.2021. And

said gifted is duly acted upon and accordingly defendant no. 2 and 3 are enjoying the scheduled property as an absolute owners being in possession of the same. Therefore, except the defendant no. 2 and 3, nobody is having any semblance of right, title or interest over the suit schedule property. Accordingly, denied the claim of the plaintiff for partition and for separate possession of her share over the suit schedule property.

7. Further, during the course of proceedings, plaintiff filed present application under Section 151 CPC to direct defendant no. 1 to deposit the rents accrued from the suit schedule property. The very contention of the plaintiff in the present application is that defendant no. 1 in order to harass her in one or the other way is misappropriating the rental income accruing from the suit schedule property as ascertained which is a valuable asset in which she has an equal legitimate share and hence if the same is not safeguarded by this Hon'ble Court, Pending final adjudication of the dispute, which may take considerable time, and she will be put to untold loss, immense legal injury, and hardships which cannot be compensated by any means at all.

8. On the other hand, the very contention of the defendants for the said DA is that they have relied on the contention of the written statement that the suit shaded property is not the ancestral and joint family property. Instead of that the defendant no. 1 is the absolute

owner of the suit shaded property. And he being the absolute owner has executed the gifted in favour of defendant no. 2 and 3 and accordingly the defendant no. 2 and 3 became the owners and in possession and enjoying the sole shared property and also denied the claim of the plaintiff as claimed in the IA.

9. On careful perusal of the pleadings of both the parties, it shows that though the defendants contended that the suit schedule property is an absolute property of defendant no. 1, but they have not denied the facts that the suit schedule property is owned by defendant no. 1 under a partition deed in the year 1996. And also the contention of the defendants is that the defendant no. 1 is enjoying the suit schedule property as an absolute owner since the date of partition in the year 1996. This admission of the defendants clearly shows that the defendant no. 1 owned the suit schedule property under a family partition. Furthermore, it is not the case of the defendant that the photographs annexed to the application filed by the plaintiff is not the suit schedule property and they have not accrued any rental as stated by the plaintiff. Under such circumstances, prima facie it shows that plaintiff being the daughter of defendant no. 1 is also entitled for her share in the suit schedule property. However, the final adjudication is pending and the contention of the defendant regarding the absolute ownership of the defendant no. 1 over the suit schedule property will be decided after the full-fledged trial only. However, The final disposal of the suit may

take time, as it requires a full-fledged trial to come to conclusion by the court to pass the final judgment. Till then directing the defendants to deposit the rent accrued out of the suit schedule property before the court is just and proper to safeguard the questioned legitimate share of the plaintiff till the final outcome of the present suit. Accordingly, I proceed to pass the following:-

ORDER

The application filed by the plaintiff under Section 151 CPC is hereby allowed.

Further, the Defendants no. 1 to 3 are hereby directed to deposit the rental amount accrued from the suit schedule property before the court till disposal of the present suit since the date of this order.

For cross of PW-1 by 05-06-2026.

**(Reshma H.K.)
Prl. Senior Civil Judge
and CJM., Davanagere.**