

KADG220025402022



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI

-: PRESENT :-

Shri. Siddalingayya B. Gangadharamath,
B.Com. LL.B. (Spl),
Prl. Civil Judge & J.M.F.C.,
Channagiri.

Dated: This the 27th Day of February 2023.

ORIGINAL SUIT No.294/2022

PLAINTIFFS : Smt.Gayathridevi and Others

V/s

DEFENDANTS : Sri.C.T.Brahmachar and Others

I.A. NO.II

Applicants/ Plaintiffs : Smt.Gayathridevi and Others

V/s

Opponents/Defendants : Sri.C.T.Brahmachar and Others

ORDER ON I.A.No.II

The plaintiffs filed the instant application under Order 39 Rule 1 and 2 R/w Sec.151 of Code of Civil Procedure praying for an *Ad-Interim exparte* Temporary Injunction against the defendant No.6 to restrain him from alienating, creating of charges and making any kind of encumbrances in and over the suit schedule item No.1 property.

2. FACTS OF THE AFFIDAVIT AS UNDER:

That, 1st plaintiff has sworn the affidavit and she has stated on oath that, the suit schedule properties are the joint family ancestral properties. Wherein, plaintiff and her sisters have got legitimate share in the share of her great grand father Tammaiahchar. He had $\frac{1}{2}$ share and in it plaintiffs have got 1/3rd share in suit schedule properties. In order to defraud the legal rights of the plaintiffs, the defendant No.1 to 5 have got created document without referring the share of plaintiffs and it is behind there back. If the mutation was accepted, the defendant No.6 may alienate the suit schedule item No.1 property to 3rd parties. The defendant No.6 has no manner of right, title or interest in and over the suit properties in any manner. The said defendant came near to the suit schedule item No.1 property during the 1st week of July 2022, he tried to trespass in it and put up the foundation therein. The same was resisted by the plaintiffs with great difficulties. The defendant No.6 is having political background, men and money power and he may at any moment

trespass into the suit property. Thus, the plaintiffs have made out prima facie case, the balance of convenience is in their favour and if the order as prayed for is not granted, they will put to irreparable loss and injustice. Accordingly, the plaintiffs prays to allow the application.

3. STATEMENT OF OBJECTION FILED BY THE DEFENDANT NO.6 AS UNDER:

The defendant No.6 denied the entire averments of the affidavit filed in support of the application. He has denied the alleged assertion of joint family, the relationship of plaintiffs with the family and the alleged trespassing act. This defendant categorically contended that, the plaintiffs are the strangers and have no such subsisting right, title or interest in and over the suit schedule item No.1 property have filed this false suit. The family of Puttaswamy and Thimmaiahchar where residing long back and time immemorial. Suit schedule item No.1 property is the self acquired property of Puttuswamychar. The plaintiffs approach is full of suppression of facts and without disclosing the acquisition of title or proof of it, the plaintiffs cannot get any relief under this application. The plaintiffs are showing false genealogy and claiming right in and over the suit property. The defendant No.6 is the bonafide purchaser and in possession of the same by paying entire sale consideration amount of Rs.20,00,000/-. The necessary mutations were effected on the basis of such sale deed. If the order as prayed for is granted, in that event,

the defendant No.6 will be put to more inconvenience and put under more injustice than the plaintiffs. The plaintiffs have been intentionally creating nuisance and annoyance to the plaintiffs possession in and over the suit schedule property and also obstructing it's cultivation. They have taken the aid of adjacent owners and also the defendant No.1 to 5. Thus, the application is liable to be rejected.

4. Based on the rival contentions raised by the respective parties, the following points would emerges for my consideration;

POINTS

1. Whether the plaintiffs have made out a prima facie case?

2. Whether the balance of convenience lies in favour of plaintiffs?

3. Whether the plaintiffs will be put to irreparable loss, if the order as prayed for is not granted?

4. What order?

5. Heard the learned counsels appearing for the plaintiffs and defendants. Perused the records and on perusal, my findings to above said points are as under :

POINTS

Point No.1 : In the Negative

Point No.2 : In the Negative

Point No.3 : In the Negative

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

REASONS

6. Point No.1 to 3 : I have taken these points together for common discussion, as these points are interrelated and to avoid the repetition of facts.

7. In order to establish the prima facie case, the plaintiffs have produced genealogical tree of the family, in the form of affidavit. Wherein, the plaintiffs have shown there descendance from one Siddappa Akkasali @ Siddachar. The plaintiff No.1 claiming that she is the wife if 1st defendant and the 2nd and 3rd plaintiffs are claiming to be his children. It is in this regard, I would like to take note of the objection statement filed by the defendant No.6. The defendant No.6 has categorically denied the relationship of plaintiffs with the defendant No.1. However, the sale deed executed in favour of defendant No.6 also discloses that, on S.K.Uma is the wife of defendant No.1, Neha and Siri are the daughters of defendant No.1. The defendant No.1 has also filed the written statement and wherein, he categorically stated at para No.1 that, he has got two wives and

children and has not disclosed who is the first wife and second. In Hindu Marriage Act, the 2nd marriage during the subsistence of first marriage is void and therefore such particulars are needs to be tried and determined, whether the 1st plaintiff is 1st wife or 2nd wife. If she be found as 2nd wife then she has no right at all to ask the share or any kind of right in and over the suit schedule properties. Further the rights of the children namely, plaintiff No.2 and 3 are also to be considered in accordance with the settled prepossessions of law laid down by the Hon'ble Apex Court of India, from time to time.

8. The plaintiff has produced the MR No.6/2012-13 and through this mutation the name of 1st to 5th defendant came to be mutated in revenue records pertaining to suit item No.1 property and the proceedings were as per the inheritance case No.4/12-13. The plaintiffs have produced copy of RTC of suit item No.1 property dt:05.7.2022 and it is disclosing the names of defendant No.2 to 5. Plaintiffs have also produced suit item No.2 property's assessments and are disclosing the name of Akkasali Siddappa. The plaintiffs produced copy of sale deed dt: 06.07.2022, which is in favour of 6th defendant executed by all the defendant No.1 to 5 and the wife of 1st defendant, his children.

9. As against this, in order to disprove the existence of prima facie case, the defendant No.6 has produced the certified copy of sale deed dt: 05.11.1967 and it is in between one C.B.Vishwanath S/o Bhirappachar and K.Puttaswamy. The said sale deed pertaining to

the property bearing Sy.No.103, which is nothing but suit schedule item No.1 property. According to this document, the said property was purchased by K.Puttaswamy. Defendant No.6 produced RTC of suit item No.1 property for the period of 1985 to 2011 and in all these documents the name of K.Puttaswamy is appearing. MR No.6/2012-13 is produced and it also disclosing the inheritance proceedings as is referred above, while consideration the documents placed by the plaintiffs. The defendant No.6 produced RTC of suit item No.1 property dt: 04.06.2022. The defendant No.6 produced MR No.T20/2012-23 by this mutation the name of defendant No.6 came to be mutated in revenue records of suit item No.1 property in place of defendant No.1 to 5. Consequently, the RTC came in existence it is also placed on record.

10. Having referred the aforesaid prima facie documents, what it appears is, the father of defendant No.2 to 5 purchased the suit item No.1 property in the year 1967 under registered sale deed and his name was appearing in the revenue records still 2011-12. In the year 2011-12, the names of defendant No.1 to 5 came to be mutated under inheritance proceedings. However, it is not clear that, how the name of 1st defendant came to be mutated along with defendant No.2 to 5. It is in this regard, the written statement of 1st defendant is prima facie material to be considered. The 1st defendant at para No.11 and 12 of the written statement has stated that, the suit item No.1 property was the self acquired property of father of defendant No.2 to 5 and in order to help them for mutation entry, he made an

application mutation of their names. In that process, his name also came to be mutated. This statement sanctifies that, the father of defendant No.2 to 5 was the absolute owner in possession of the suit property and without any such legally acceptable document, the name of 1st defendant came to be mutated in the revenue records and also he arrayed as party to the sale deed to meet the registration requirements.

11. The 1st defendant has also contended that, his grand father was not having any properties and he died in the year 1961. He also stated that, he owed 2 wives namely, 1st plaintiff and one Uma. However, no such clarity as to the 1st marriage and who is the 1st wife is seen in pleadings of either plaintiffs or defendants. Since the parties are belonging to Hindu Community and their marriages are governed under the Hindu Marriage Act. As per the said Act, the 2nd marriage is void in the presence of 1st marriage. Thus, the said facts needs to be ascertained during the course of trial.

12. Further, the 1st defendant has also contended that, the father of defendant No.2 to 5 and his father never lived together in joint family and were working in different area and in different capacity as teachers. The said persons out of their self earned income, purchased properties, likewise, the father of defendant No.2 to 5 purchased the suit item No.1 property. The plaintiffs having pleaded the jointness and the acquisition of the property with the aid of joint family, have not placed any prima facie materials to

sustain their claim at this stage to stall the exercise of ownership by defendant No.6, who acquired title in accordance with law. Mere mutation of the name of first defendant without any title, does not give right to plaintiffs to contend the suit item no. 6 property as ancestral property. All those matters are absolutely decided in full fledged trial. Thus, the plaintiffs have not made out prima facie case to grant the temporary injunction.

13. The learned counsel for defendant No.6 has referred the following decisions in support of their contentions raised under objections.

1. 2014(5) KCCR 64
2. AIR 1975 Supreme Court 1810
3. 2012 (4) KCCR 3393 (DB)
4. AIR 2012 Karnataka 107
5. 2014(4) Kar. L.J. 139 (DB)
6. 2014(3) Kar. L.J. 107 (DB)
7. 2013 (1) KCCR 363 (DB)
8. AIR 2014 Supreme Court 2665
9. 2015(5) Kar. L.J. 356 (DB)
10. 2022 (1) KCCR 463
11. Karnataka Law Journal 2007(5)
12. 2022 (1) KCCR SN 58 (SC)

13. 2015(3) Kar. L.J.357 (DB)

14. AIR 2014 Supreme Court 1830

15. 2015 (1) KCCR 1022

16. 2015 (2) KCCR 1437 (DB)

All the decisions are referred and I respectfully do conceded with the ratios laid thereunder.

14. As the plaintiffs failed to prove the prima facie case, there is no consideration of balance of convenience and irreparable injury which are incumbent upon the existence of prima facie case. Therefore, the **point No.1 to 3** are answered in the **Negative**.

15. **Point No.4:** As a result, I proceed to pass the following:

ORDER

**The IA No.II filed U/O. 39 Rule 1 and 2
R/w Sec.151 of CPC by the plaintiffs is
hereby rejected.**

(Dictated to the stenographer typed by her, corrected by me and then pronounced in the open court on this the **27th Day of February, 2023**)

Sd/-

**(Shri. Siddalingayya B. Gangadharamath)
Prl. Civil Judge & J.M.F.C.,
Channagiri.**