

**THE COURT OF PRL.SENIOR CIVIL JUDGE AND
J.M.F.C., AT PUTTUR, D.K.**

**PRESENT: Sri R.P. Gowda, M.Com.,LL.B.
Prl.Senior Civil Judge and
J.M.F.C, at Puttur D.K.**

Dated: this the 4th day of April 2024

:: O.S.NO.61/2022 ::

IA No. VI

Mrs Theresa Mascarenhas
Aged 66 years
D/o Late Antony Mascarenhas
Neerakatte, Bajathoor Village
Puttur Taluk Plaintiff/Petitioner

VS

1. Robert Mascarenhas
Aged 61 years

2. Valli Mascarenhas
Aged 56 years

Son of LateAntony Mascarenhas
Neerakatte, Bajathoor Village
Puttur Taluk Defendants/respondents

ORDERS ON IA No.VI FILED U/S O.39 Rule 1 & 2 OF
CPC

This is an application filed by the plaintiff under Order 39 Rule 1 and 2 r/w Sec.151 of CPC seeking a direction to the defendant no.1 to deposit the amount or to execute a security bond in respect of the amount as mentioned in the C schedule property till the disposal of the present suit.

2. The application is supported with the affidavit of the plaintiff. In her affidavit, she has stated that she herself and the defendants are the joint owners of the property bearing Sy.No.351/1 measuring 1.38 acres of land situated at Bajathooru Village, Puttur Taluk, D.K. It is submitted that at the time of grant, the Akrama Sakrama grant was in force and accordingly they have filed joint application before Tahsildar, Puttur for regularization of the same and as per the application filed by them before the Tahshildar, the said land was granted in their favour in NCRSR No.503/91-92 as

per the Saguvali Chit order dated 21-05-2022. As per the said grant, the plaintiff and the defendants are in possession of the land and made vast improvements in the said property. The plaintiff has described the said property in the B schedule as shown in the plaint. It is submitted that the B schedule property was in their joint and constructive possession. The National Highway Authority Hassan, Bantwala Section for the purpose of up gradation of NH 48/four lining, acquired the portion of the B schedule property, about 1619 sq. meter (40 cents) of Bajathoor Village, Puttur Taluk and they have granted compensation which is as shown in the 'C' schedule of the plaint. It is submitted that the amount mentioned in the 'C' schedule is also partible amount and the plaintiff and the defendant no.1 and 2 are equally entitled to the share. Further, she has submitted that she is entitled for 1/3 share in the plaint C schedule amount. She has further submitted that the balance of convenience lies in her favour and not in favour of the defendant no.1. If the temporary injunction is not granted, the defendant no.1 definitely withdraw the amount

which is mentioned in the C schedule property and there is every likelihood of misusing the compensation amount, which this plaintiff is entitled. It is submitted that it is just and necessary to direct the defendant no.1 to deposit the amount or to execute any security for the amount which is as mentioned in the plaint C schedule property till the disposal of the present suit. With these contentions, it is prayed to allow the application.

3. On the other hand, the defendant no.1 and 2 have filed their counter to the application. They have submitted that the application seeking the direction to furnish security in respect of the plaint C schedule property is frivolous, vexatious and not maintainable either at law or on facts of the case. It is submitted that the provision of law quoted in incorrect. No injunction relief could be sought to furnish security in respect to entire C schedule property. It is submitted that the plaintiff having consented for receipt of compensation amount by the defendant no.1 and it was for and on behalf of the plaintiff and the defendant no.2. The said consent letter was indicative of the fact that plaintiff

does not have any right over the plaint C schedule movables. Thus by virtue of the said consent letter, the plaintiff has relinquished her claim and therefore it is emphatically denied that the plaintiff has 1/3 right over the plaint C schedule movables or compensation amount. Further, it is also submitted that the plaintiff is not entitled to seek security for entire plaint C schedule movables or compensation amount when , even according to her, her claim is only to the extent of 1/3 share. When that being the case, the application is not maintainable. With these contentions, it is prayed for rejection of the IA.

4. Heard on both sides.

5. The following points would arise for my consideration.

1. Whether the plaintiff has got any prima facie case and balance of convenience lies in her favour in order to seek the relief as claimed in this application?
2. Whether the plaintiff will be put to irreparable injury and hardship if no interim injunction is granted as prayed in this application?
3. What Order?

6. My findings to the above points are as follows:-

Point No.1 & 2 :: in the Negative

Point No.3 :: As per final order,

for the following:

: REASONS ::

7. **Point No.1 & 2**: Since these points involve similar set of facts, they have been taken together for common discussion to avoid the repetition of facts.

8. Basically, the instant suit has been filed by the plaintiff seeking the relief of partition and separate possession in respect of the plaint B schedule properties and also a direction to the defendant no.1 to pay 1/3 share of the plaint C schedule amount to the plaintiff and this plaintiff has also sought for the future mesne profits against the defendants. In the body of the plaint, it has been submitted that the plaintiffs and the defendants are Christians by religion and they are governed by Indian Succession Act. It is submitted that the relationship between the parties is as per A schedule annexed to the plaint, which discloses that the plaintiff and the defendants no.1 and 2 are sisters and

brothers and their ancestors are no more now. It is the claim of the plaintiff that they are the joint owners of the property bearing Sy.No.381/1 measuring 1.38 acres of land, which is situated in Bajathoor Village, Puttur Taluk, D.K. The said property was granted under Akrama Sakrama Scheme in the joint names of the plaintiff and defendants as per Saguvali chit order dated 25-01-2022 in NCRSR/No.503/91-92. It is submitted that as per the said grant order, the plaintiff and defendants were in possession of the land and made vast improvements in the said property.

9. It is the claim of the plaintiff that the National Highway Authority Hassan, Bantwala Section for up gradation of NH48 four line , it has acquired the portion of the plaint B schedule property, about 1619 sq. Meter (40 cents. The amount of compensation has been credited to the account of the defendant no.1 only. The said amount has been shown in the plaint C schedule property and the plaintiff has also claimed her 1/3 share in the said property. It is the contention of the plaintiff that since they are the joint owners in constructive possession of the said

properties, she is entitled for her 1/3 share in the B schedule property and also 1/3 amount in the 'C' schedule as mentioned in the plaint. In the present suit, after appearance of the defendants the present application has been filed by the plaintiff seeking the direction against the defendant no.1 to deposit the said entire C schedule amount which has been received by him or to furnish security for the said amount shown in the C schedule property.

10. The defendant no.1 has entered his appearance and filed his written statement, which has been adopted by the defendant No.2 and admitted the relationship as shown in the suit. He has denied the averments in respect of the joint ownership over the B schedule property as contended in the present suit. He has also denied the allegations of joint or constructive possession of the plaintiff and the defendants and that of the allegation of the acquisition of the property as stated in the suit. It is submitted that the property more fully detailed in the X schedule of the written statement is in peaceful possession and enjoyment of this plaintiff under an oral arrangement or partition.

Further, it is the contention of the defendant that after the death of their father in the year 2009 the plaintiff demanded her share in the plaint B schedule properties and since the holding was small, the defendant no.1 requested her not to lay claim for partition as the defendant no.1 was managing the entire property. Since the plaintiff has persisted with her claim, she has also claimed the X schedule properties towards her share. The defendant no.2 as a KSRTC driver and residing away from the suit schedule properties. Both the defendants then did not want to get the properties partitioned. Considering the demand of the plaintiff, the oral partition of land was made in respect of entire land granted in favour of father of plaintiff and defendants. As per the said arrangement, the X schedule property within the boundaries detailed in written statement was allotted to the share of the plaintiff. The remaining extent of land was kept intact or joint between the defendants as their shares. Due to non-availability of survey plotted sketch, registered partition deed could not be entered into them. It is submitted that the X schedule allotted to the share of the

plaintiff is at an elevated place from the remaining extent of lands fit to carryout agricultural improvements having road access as well. The property kept to shares of defendants no.1 and 2 were not having any road access, besides unfit for planting areca and coconut plants in view of nature of soil and want of water resources. It is further submitted that in the year 2019, the National Highway authorities while re-aligning the proposed highway, sought acquisition of about a portion of land allotted to the joint shares of defendants only. Accordingly, an extent of 40 cents in R.S.No.351/1P2 has been acquired for the construction of B.C.Road-Hassan National Highway. It is further submitted that the compensation amount detailed in plaint C schedule property is payable to the defendants only and the plaintiff has no right to lay a claim over the C schedule properties as not even an inch of land was acquired from X schedule properties. Besides it was mutually agreed between the parties and the plaintiff would cooperate the defendant no.1 to withdraw the compensation amount and accordingly she has executed the necessary documents including GPA,

consenting the defendant no.1 only to withdraw the compensation amount. With these contentions the defendant no.1 and 2 have prayed for dismissal of the suit. He has also opposed the IA by filing the counter.

11. During the course of arguments, the learned counsel for the plaintiff has submitted a copy of the saguvali chit in form No. & which was granted in the joint names of the plaintiff and the defendants. The RTC extract pertaining to the Sy.No.351/1 is standing in the name of the joint names of the plaintiff and defendants. Further, a copy of voucher of payment of compensation through RTGS which was made in favour of the defendant no.1 is also produced. Further, during the course of arguments, the plaintiff has relied upon a copy of agreement which was said to be entered in between the plaintiff and the defendants on 31-08-2021 wherein the plaintiff and the defendants have agreed to get the compensation amount of Rs.29,36,932/- which has to be paid in favour of the defendant no.1 and after that, the parties are required to get the division of said amount of compensation equally amongst them. However,

as regards to this agreement there is no spell in the plaint or written statement. On the other hand, the defendant who has contested the matter has also produced the copy of the voucher of payment through RTGS and also the photographs pertaining the old house as well as newly constructed house of the plaintiff.

12. On going through the entire contentions taken in the present suit as well as the present application, it is very clear that the claim of the plaintiff is seeking the partition of the B and C schedule properties on the ground that she is entitled for 1/3 share in the both properties. Admittedly the B schedule property is shown as the entire land which was granted under Akrama Sakrama Scheme in the joint names of the plaintiff and the defendants. However, the C schedule property is the compensation amount which was said to be received by the defendant no.1 wherein Highway authorities have acquired the portion of the land in the B schedule. It is the claim of the plaintiff that the said C schedule amount is partible amount and she is entitled for 1/3 share. However the defendant no.1 has putforth a specific defence that the

property shown as X schedule was allotted in favour of the plaintiff in the year 2009 in an oral partition and the property which was acquired by National Highway Authority was from the property of the defendants no.1 and 2 and hence, the plaintiff is no way concerned to the said amount.

13. By looking into the above said rival contentions and also by taking into consideration of the interim relief as claimed in the present application, at this stage, it is very clear that the question will arise that whether this plaintiff is seeking the interim mandatory injunction against the defendant in order to direct him to deposit the entire compensation amount or to furnish security for the said C schedule amount. In this regard, it is very relevant thing to consider that when such direction to the defendant is sought, it would not fall under Rule 1 and 2 of Order 39 of CPC. It is to be noted that the said interim direction to the defendant no.1 to deposit the entire compensation amount in the Court or otherwise direct him to furnish security in respect of the C schedule is not the relief of injunction. A direction to deposit the amount or to furnish security is not

considered to be an injunction as held by the **Hon'ble Apex Court reported in AIR 2009 SC 2330 (Food Courts of India Vs Sukh Deo Prasad)**. In the said decision, the Hon'ble Apex Court held that a direction to pay money either by way of final or interim order is not considered to be an "injunction". In this regard the said relief claimed by the plaintiff is not to be considered as the relief of interim injunction. Further, it is very important thing to note that whenever a temporary injunction is to be granted, the Court is required to consider that the party seeking the interim injunction has to prove that any property in dispute in a suit is in danger of being wasted, damaged or altered by any party to the suit or wrongfully sale as of a decree , or (2) that the defendant suspects or intends to remove or dispose of his property with a view to defraud his creditors (3) the defendant threatens or dispossess the plaintiff or otherwise injury to the plaintiff in relation of any property in dispute in the suit , (4) the Court is of the opinion that the interest of possession so required. If these conditions are satisfied then the court can grant the interim injunction. In the case on

hand, the plaintiff has sought the interim relief in respect of the C schedule property, which is nothing but a direction to the defendant to pay/deposit the money. Admittedly the defendant no.1 has received the said amount., if at all the plaintiff is able to prove that she has got 1/3 right in the C schedule property, definitely she is entitle for the same and after passing the judgment and decree she is entitled to recover the same. But, at this initial stage, it is revealed that there are two rival versions of the parties in respect of C schedule amount are urged in the present suit. One is that the plaintiff has contended that the defendant no.1 has agreed to receive the said amount and thereafter agreed to divide the said amount into three shares amongst the plaintiff and the defendant no.2. Though the plaintiff has not pleaded such things, she has produced a copy of agreement to that effect. However, the defendant no.1 has alleged different version by stating that the property which was acquired by the National High way Authority from the property which was allotted to his share and not from the share of the plaintiff. According to him, the plaintiff and

defendant no.2 have consented for the receipt of the compensation by him by taking into consideration that the X schedule property was allotted in favour of the plaintiff in an arrangement and she has got no right in respect of the B schedule property. By looking into these things, I am of the opinion that at this stage without having full-fledged trial, the plaintiff cannot be granted with the relief as claimed in the application. If the plaintiff is able to prove that she is entitled for the same after having full-fledged trial, she is at liberty to recover the same from the defendant no.1 or even she can get the attachment of property of the defendant No.1 to recover her share. Apart from this, at this juncture no prima facie case proved by the plaintiff nor balance of convenience lies in her favour.

14.Coming to the another aspect, i.e irreparable injury that would be caused to the plaintiff, it is to be noted that already the defendant no.1 has received the said amount from the competent authority and he is the holder of the said amount. Hence, there is no question of restraining him from receiving the said amount. Now, the question is

whether the plaintiff will be put to untold hardship or irreparable injury in case if the defendant No.1 has not deposited the said compensation amount in the court. In this regard, it is to be noted that till today, there is no adjudication of the rights of the plaintiff in respect of the C Schedule property. If at all the plaintiff is able to prove that she is having 1/3 share in the said C schedule property, then she is at liberty to recover the same together with interest. However, without there being a full fledged trial, her rights cannot be adjudicated. Withholding of such an interim relief would not amount to frustrating the rights of this plaintiff. At this juncture, in this suit by looking into the reliefs sought in the suit, I hold that there are no grounds made out to consider that the plaintiff is put to irreparable loss and injury. Hence, I answer these points in the negative.

15. **Point No.2:** As per the discussion made on point No.1, this court has come to the conclusion that the plaintiff has not made out grounds to allow the application. Hence, I proceed to pass the following:

: ORDER :

The application Under Order 39 Rule 1 and 2 of CPC filed by the plaintiff in I.A. No. VI is hereby dismissed.

No order as to costs.

Dictated to the steno, typed by her, corrected by me and then pronounced in the Open Court today the 4-04-2024)

**Prl Senior Civil Judge &
JMFC,Puttur D.K.**

OS 25/2023