

**IN THE COURT OF IV ADDL. SENIOR CIVIL
JUDGE, & J.M.F.C., DHARWAD**

Present : Smt. Kumari Sujatha.

B.com.L.L.B.,

IV Addl. Senior Civil Judge,
& J.M.F.C., Dharwad.

O.S. No. 363 /2016

Dated : 1st day of February 2018

Plaintiff : Smt. Annapurna bai @ Tayakka W/o
Siddalinga Desai and others.

(R/by Sri. S.I. Doddannavar. Adv.)

V/s.

Defendant : Siddalinga S/o Keshavrao Desai
and others.

(D1 Exparte)

(D2 R/by Sri. S.S.Doddalingannavar. Adv.)

PARTIES TO I. A..No.II

Applicant: Siddalinga S/o Keshavrao Desai
and others.

V/s

Opponents: Smt. Annapurna bai @ Tayakka W/o
Siddalinga Desai and others.

ORDERS ON I.A No.II

The instant application has been filed by the Learned Counsel for plaintiff under Order 39 Rule 1 & 2 R/w Sec. 151 of CPC accompanied with an affidavit of the plaintiff No.1 praying for an order of temporary injunction restraining the defendants, their henchmen or any other persons from alienating the suit schedule property till the disposal of the suit.

2. Learned Counsel for defendant No.2 has filed his detailed objection with a prayer to dismiss the application.

3. Heard. Perused I.A, affidavit and objection and materials available on record.

4. Now, the point arises for the determination of this Court are as follows:

1. Whether the palintiffs have made out prima facie case ?

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

3. Whether the plaintiffs will be put to great hardship, if, TI is not granted ?

4. What order?

5. My answer to the above points are as follows:

Point No.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Affirmative.

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

REASONS

6. Points No.1 to 3: All these points are taken together for common discussions as they are inter linked with each other and to avoid repetition of facts.

7. The instant application has been filed by the Learned Counsel for plaintiffs under Order 39 Rule 1 & 2 R/w Sec. 151 of CPC accompanied with an affidavit of the plaintiff No.1 praying for an order of temporary injunction

restraining the defendants and their men from alienating the suit schedule property till the disposal of the suit. This application is supported by an affidavit of plaintiff No.1 stating that she along with other plaintiffs have filed suit for partition and separate possession of their share in respect of suit schedule property. Further, she stated that the defendants No. 1 & 2 by colluding each other trying to alienate the suit schedule property to some other persons. Therefore, if they are not restrained by an order of temporary injunction from alienating suit schedule property, they would put to great hardship. Further, she stated that the contents of plaint averments be treated as part and parcel of the application and she has made out prima facie case and balance of convenience lies in her favour. On these grounds, Applicant has prayed to allow the Application.

8. This application is resisted by the Learned Counsel for defendant No.2 by filing

detailed objection inter – alia contending that the contents of affidavit are false and manipulated one and plaintiffs have put to strict proof of the same. Further, he contended that suit property is self acquired property of defendant No.2 and she purchased the suit property on 09-01-2002 by investing her own hard earned funds and the plaintiffs are no way concerned to the suit property. Further, he contended that plaintiff No.1 is the divorced wife of defendant No.1, as such, the plaintiff No.1 has no right to file the instant suit and plaintiff No.2 is a married daughter of the defendant No.1, as such she also no right to file suit for partition against her father during his life time. Since, the suit property is the self acquired property of defendant No.2, no injunction can be granted against the true owner of the property. Defendant No.2 has got title and possession of the suit property and therefore if temporary injunction is granted, defendant No.2 would put to great hardship. On these grounds,

the Learned Counsel for defendant No.2 has prayed to dismiss the application.

9. In order to prove the prima facie case, plaintiff has produced copy of MFA No. 101419/2017 and Voter list of 2016, Original Death Certificate of defendant No.1, Certified Copy of Decree of Divorce in MC No.21/2000, Xerox copy of Registration of Marriage, Xerox copy of Birth Certificate of Srujan Urf Basavaprabhu Desai, Xerox copies of Death Summary of defendant No.1, Computerized hospital bill and ID Card of plaintiff No.1, Xerox copies of sale deed dated 09-01-2002, Record of Right, MR. No. 18/2009-2010, Decree of divorce in MC No. 21/2000, the Voter list of Mummigatti Village and School Certificate of plaintiff No.2 & 3 and Adhar Card of plaintiff No.3 and Notarized copy of Death Certificate of defendant No.1 and Postal receipts. On the other hand, the defendant No.2 has produced Certified Copy of

Order in MC No. 21/2000, Xerox copy of the Application filed by the defendant No.3 to Tahashildar, Dharwad, Receipt, Affidavit, Annexure-5, Order, Mutation Register.

Party to the litigation who seeks an injunction must satisfy the Court that there is a serious question to be tried at the hearing of the suit and every probability tilts in their favour for the relief sought for i.e. prima facie is in their favour.

What the Court has to determine is whether there is a bonafide contention between the parties, whether there is fair and substantial question to be decided as to what the rights of the parties are.

The prima-facie ought to be considered in relation to the available relevant material on record to examine the probability of plaintiffs ultimate success in the suit. In considering the balance of convenience, the court is to consider the comparative mischief or inconvenience of

both the parties. The grant of injunction being an equitable relief, the plaintiff must come with clean hands. The plaintiff/applicant has to satisfy the Court that its interference is necessary to protect him from that species of injury which the Court calls irreparable before his legal right can be established on trial.

The Learned Counsel for plaintiff has relied on the decisions reported in:

1) AIR 2010 (NOC) 36 (BOM) = 2009(5)

**AIR Bom R 753 in between Ashok Kumar
Dulichand Sharma Vs. Jethmal Motilal Jedia**

& Ors, wherein, it is held that:

***“(B) Registration Act (16 of 1908),
Ss.32, 33- Presentation of sale deed for
registration by power of attorney holder
must be registered power of attorney
holder.***

***Section 32 says that the
document must be presented for
registration by the agent duly
authorized by power of attorney***

executed and authenticated in manner as mentioned in Section 33, which section follows after Section 32. It must be registered power of attorney”.

2) (2006) 2 Supreme Court Cases 578, in between SEEMA (Smt) Vs. ASHWANI KUMAR, wherein Hon'ble Supreme Court has held that:

“C. Evidence Act, 1872 – Ss. 77 and 114 – Marriage certificate – Evidentiary value – Presumption arising from – Held, though registration of a marriage itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in family matters – As a natural consequence, effect of non-registration would be that the presumption available from registration of marriages would be denied to a person whose marriage is not registered – Family Law”.

**3) AIR 1965 Supreme Court 1564 (V
52 C 265) (From: Bombay) in between
Bhaurao Shankar Lokhande and another Vs.
The State of Maharashtra and another,
wherein it is held that:**

***“(a) Hindu Marriage Act (1955), Ss. 17
and 3 – Penal Code (1860), S. 494 –
Punishment for bigamy – For
application of S. 494, marriage must
come within 'solemnized marriage' -
'Solemnize' means 'to celebrate the
marriage with proper ceremonies and
in due form'. - Mere going through
certain ceremonies with intention of
marriage will not make the
ceremonies prescribed by law or
approved by custom”.***

**4) Judgment of Criminal Appeal No.
2668/2009 of Hon'ble High Court of
Karnataka, Dharwad Bench, Dharwad in**

**between Smt. Tayawwa Vs. Shri Narasappa
and another.**

5) AIR 2005 RAJASTHAN 114 in between
Gopi Kishan Vs. Shanker Lal Dakot, wherein
it is held that:

***“(B) Evidence Act (1 of 1872), Ss. 76,
77 – Voter list is public document –
Copies of relevant electoral roll
produced and proved to be certified
copies of relevant extract of voter list
– No cross examination directed on
this aspect of evidence - Such copies
are not only admissible in evidence,
they are themselves a substantive
piece of evidence”.***

10. On the other hand, the Learned
Counsel for defendant No.2 has relied on the
decisions reported in:

**1) AIR 2005 RAJASTHAN 114 in
between Gopi Kishan Vs. Shanker Lal Dakot,
wherein it is held that:**

“(B) Evidence Act (1 of 1872), Ss. 76, 77 – Voter list is public document – copies of relevant electoral roll produced and proved to be certified copies of relevant extract of voter list – No cross examination directed on this aspect of evidence -such copies are not only admissible in evidence, they are themselves a substantive piece of evidence”.

11. I have gone through the above said decisions. It is pertinent to note here that during the pendency of the suit, defendant No.1 was reported as dead. Admittedly, documents produced by the plaintiffs prima facie shows that plaintiff No.1 is the wife and plaintiff No.2 & 3 are children of defendant No.1. It is the specific contention of the plaintiffs that the defendants by colluding each other are trying to alienate the suit schedule property to third parties wherein they having their legitimate share. They are the wife and children of the

defendant No.1. On the other hand, the Learned Counsel for defendant No.2 has contended that the plaintiff No.1 is the divorced wife of defendant No.1, as such plaintiff No.1 has no right to file the suit and plaintiff No.2 is the married daughter and she also has no right to seek her share in the suit schedule property during the lifetime of her father. Admittedly, the present suit filed by the plaintiffs against the defendants seeking for their respective share in the suit schedule property. Further, while they approached defendants seeking their share, the defendant No.1 has refused to give their share and while go through the record they found the name of defendant No.2 in the record of rights and then immediately they approached Sub-Registrar Office and they found a Sale deed executed infavour of defendant No.2 in respect of suit property by the defendant No.1 through GPA holder by name Chandrashekar Shivalingappa Sadunavar

who is defendant No.3 in this suit. Thereafter, the plaintiff approached defendant No.1 & 2 for cancellation of Sale deed and requested to allot their share in the suit schedule property. But, defendant No.2 has entirely denied the version of plaintiffs. The Learned Counsel for defendant No.2 has vehemently argued that defendant No.2 has inducted in actual physical and lawful possession of the said property by the vendor through a Registered Sale deed. Further, he argued that marital tie between plaintiff No.1 and defendant No.1 has been dissolved as per the decree passed in MC No.21/2000 on 07-06-2000 on the file of Pri. Civil Judge SD (Family) Dharwad. Further, the Learned Counsel for defendant No.2 has argued that the defendant No.2 has purchased the suit property by her own earned money and in the said property plaintiffs cannot seek their share.

12. Admittedly, at this stage there is no dispute regarding the Sale of suit schedule property by the defendant No.1 through his GPA Holder i.e., defendant No.3 to defendant No.2 through a Sale deed. But, the question is whether the said Sale deed is legal or not and whether the plaintiffs are having their share in the said property or not. Further, the Sale deed executed by the GPA holder of defendant No.1 in favour of defendant No.2 in respect of suit schedule property is valid or not and whether defendant No.3 is empowered to execute Sale deed on the basis of General Power of Attorney or not.

The relationship between the plaintiffs and defendant No.1 is not in dispute. Further, the document produced i.e., copy of Sale deed shows that, the same was executed by the GPA holder on behalf of defendant No.1 in favour of defendant No.2. The other documents shows that the khatha was mutated in the name of

defendant No.2. But, it is the contention of the plaintiffs that suit schedule properties are joint family properties and defendant No.1 is not having right to alienate the same wherein they are also having their share. Whether the suit schedule properties are joint family properties and Sale deed executed by the defendant No.1 through his GPA holder to defendant No.2 is valid or not is the matter of trial, which requires full fledged trial.

13. Therefore, at this stage, the plaintiffs have made out prima facie case to grant temporary injunction and balance of convenience lies in their favour. Therefore, at this stage it is very essential to restrain the defendants from alienating the suit schedule properties till the disposal of the suit by an order of Temporary Injunction, otherwise it will lead to multiplicity of proceedings also. If, the temporary injunction is not granted then, plaintiffs will be put to great hardship. Under

these circumstances, I am opinion that plaintiffs are entitled for Temporary Injunction Order in respect of suit property. Therefore, I answer Point No.1 to 3 **“in the Affirmative”**.

14. **Point NO. 4:** As per my detailed discussion to Point No.1to 3 as stated supra and my answer to the above point No.1 to 3 are **“in the Affirmative”**, I proceed to pass the following:

ORDER

I.A.No.II filed by the learned counsel for plaintiffs U/o 39 Rule 1 & 2 R/w Sec 151 of CPC is hereby allowed.

The defendants are hereby restrained by an order of temporary injunction from alienating suit schedule property till the disposal of the suit.

No order as to cost.

(Dictated to the stenographer, typed by her, corrected, signed and then pronounced by me in the open Court on this the 1st day of February 2018.)

(Smt. Kumari Sujatha.)

IV Addl. Senior Civil Judge,
& J.M.F.C. DHARWAD.