

IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND JMFC, HUBBALLI

PRESENT

SHRI VENKATESH R. HULGI,
B.Com.LL.B.(Spl)
PRINCIPAL SENIOR CIVIL JUDGE AND JMFC.,
HUBBALLI

ORIGINAL SUIT No.282 / 2017

DATED THIS 6th DAY OF DECEMBER 2018

PLAINTIFFS 1. Smt. Sangeeta W/o. Late
Shivashankar Shettar, **and another.**

(By Shri B.Hosakeri, Advocate)

VERSUS

DEFENDANTS 1. Smt. Nagaratna W/o. Basavaraj
Shettar, **and others.**

(D-1 to 3, 5 & 6 by Shri S.S.Gadagin,
Advocate,
D-4 by Shri S.K.Hegde, Advocate,
D-7 & 8 by Shri S.G.Araganji, Adv.,
D-9 by Shri R.G.Dhongadi, Adv.)

PARTIES TO I.A.No.VII

APPLICANT
DEFT.No.9

Dr. Naresh S/o. Ramakishan Jaiswal
of Alnavar.

VERSUS

OPPONENTS
PLAINTIFFS

Smt. Sangeeta W/o. Late
Shivashankar Shettar, **and others.**

ORDER ON I.A.No.VII

The applicant / defendant No.9 has filed the above application under Order 39 Rule 4 of C.P.C. R/w. Section 151 of C.P.C. praying to vacate the temporary injunction order dated 26.07.2018 passed on I.A.No.I only in respect of suit schedule-B (vi) properties bearing CTS No.2660 and CTS No.2661A/2 both situated at Ghantikeri Oni, Hubballi.

2. In support of the above application, the applicant / defendant No.9 has filed his affidavit, wherein, he has contended that the instant suit is filed by the plaintiffs seeking the relief of partition and separate possession of their share in the suit schedule properties contending that they are the joint family properties of parties to the suit. They have also sought the relief of temporary injunction against the defendant No.1 to 8 from alienating the suit schedule properties till the disposal of the suit. By order dated 26.07.2018, this Court has allowed I.A.No.I filed by the plaintiffs and granted the temporary injunction as referred to above. In fact, the above properties are the self-acquired properties of the defendant No.9 and his wife defendant No.4. Therefore, their names came to be mutated in the Revenue Records as the joint owners. Those properties are

in exclusive possession and enjoyment of the defendant No.9 and 4. Plaintiffs have no right, title or interest whatsoever in respect of the said properties. Defendant No.9 is not a joint family member, but he is the husband of the defendant No.4. Hence, immediately after coming to know about the filing of the suit and obtaining the order on I.A.No.I, the applicant got impleaded himself as the defendant No.9 by filing impleading application and filed this application seeking vacation of temporary injunction order in respect of above two properties. It is contended that, the plaintiffs have falsely included the above properties and have obtained an illegal order of injunction. The said order has seriously affected the rights of the applicant and his interest over those properties. As those properties are not the joint family properties, the suit is not maintainable against them. Therefore, the suit and I.A.No.I are liable to be dismissed in respect of the above properties. However, the plaintiffs by misleading the Court have obtained an illegal order of temporary injunction even in respect of above properties. Therefore, the said order of temporary injunction is liable to be vacated in respect of Schedule-B (vi) properties. The applicant has made out a prima facie case and balance of convenience is

leaning in his favour. If the temporary injunction order is not vacated in respect of above two properties, the applicant would be put to irreparable loss, which cannot be compensated in terms of money. On the other hand, no loss or prejudice would be caused to the plaintiffs if temporary injunction order is vacated in respect of those two properties. Hence, I.A.No.VII.

3. The plaintiffs have filed their objections to the above application denying the each and every allegations made in the affidavit of the applicant / defendant No.9 as false. It is denied as false that Schedule-B (vi) properties are the exclusive properties of the defendant No.9 and his wife-defendant No.4. It is further denied as false that they are in exclusive possession of those two properties and the plaintiffs have no right, title or interest in them. It is contended that, considering the case of the plaintiffs and the documents produced by them the Court has held that the prima facie the suit properties are the joint family properties, hence, by allowing I.A.No.I the Court has granted temporary injunction order against the defendants on record from alienating the suit properties till disposal of the instant suit. Though the defendant No.9 is not a member of joint family, however, his wife defendant No.4 is the member of the

joint family. Under the above circumstances, the plaintiffs have established a prima facie case in getting the temporary injunction order in their favour. If at this stage, temporary injunction order is vacated in respect of those two properties, plaintiffs would be put to irreparable loss as the defendant No.9 may alienate those properties to create third party interest. Hence, the applicant / defendant No.9 has not made out any case much less prima facie case to allow I.A.No.VII. No loss would be caused to him if I.A. is dismissed. Therefore, it is prayed to dismiss I.A.No.VII.

4. I have heard the arguments of learned Advocates for the parties and perused the materials placed on record.

5. The following points arise for my consideration:

1. Whether the applicant / defendant No.9 has made out a prima facie case to set aside the order dated 26.07.2018 passed on I.A.No.I in respect of Schedule-B(vi) properties?
2. Whether the balance of convenience is leaning in favour of the applicant / defendant No.9?
3. Whether the defendant No.9 would be put to irreparable loss if temporary injunction is not vacated in respect of above two properties?
4. What order?

6. My findings on the above points are as under:

- Point No.1 : In the negative.
- Point No.2 : In the negative.
- Point No.3 : In the negative.
- Point No.4 : As per the final order,
for the following,

REASONS

7. **POINT No.1 TO 3:** As these three points are interconnected to each other, hence, they are taken together for common discussion, to avoid repetition of facts.

8. Admittedly, the present suit is filed by the plaintiffs for the relief of partition and separate possession of their share in respect of the suit properties on the premise that, the suit properties are the ancestral joint family properties of the parties to the suit. Initially, the suit was filed against the defendant No.1 to 8, as they are the only joint family members. Subsequently, on the application of defendant No.9 under Order 1 Rule 10 (2) of C.P.C., he has been impleaded in the suit as the defendant No.9. It is an admitted fact that the defendant No.9 is none other than the husband of the defendant No.4, who is the sister

of deceased Shivashankar Shettar, the husband of the plaintiff No.1 and father of the plaintiff No.2.

9. The applicant / defendant No.9 has contended that the suit schedule-B(vi) properties bearing CTS No.2660 measuring 316 sq. yards and CTS No.2661A/2 measuring 215 sq. yards both situated at Ghantikeri Oni, Hubballi are the self-acquired properties of the applicant and his wife defendant No.4. Hence, their names came to be mutated in the Revenue records as the joint owners and consequently they are in exclusive possession and enjoyment of the above properties. It is further contended by the applicant / defendant N9.9 that, the plaintiffs have no right, title or interest whatsoever manner in respect of above properties. Hence, if the temporary injunction as claimed in I.A.No.I is continued, the defendant No.9 would be put to irreparable loss and hardship.

10. Contrary to the above, the plaintiffs contended that, all the suit properties including the above referred two properties are the joint family properties in which the plaintiffs have a share.

11. During the course of argument, Shri R.G.Dhongadi, learned Advocate for the applicant / defendant No.9 by referring

to the Property Extracts in respect of above two properties and also the extracts of Statement of Banks Account and the sale deed would argue that, the above materials are sufficient to hold that the above referred two properties are the self-acquisition made by the defendant No.4 and defendant No.9. Defendant No.9 is not the joint family member, therefore, if temporary injunction is not vacated, the defendant No.9 would be put to irreparable loss.

12. It is not in dispute that the deceased Shivashankar Shettar was the P.A.Holder of the defendant No.9. In the beginning, agreement for sale in respect of the aforesaid two properties was executed by the vendors in favour of Shivashankar Shettar. The Account extracts produced by the defendant No.9 would indicate that the earnest money of Rs.4,00,000/- was paid to the vendors on the date of agreement for sale from the joint Account of late Shivashankar and D-1 to D-4. As noted above, defendant No.1 to 8 are the joint family members. If we consider the above facts, it becomes very clear that Shivashankar Shettar had entered into agreement for sale with the vendors of the above properties and earnest money was transferred from the joint Account of

the joint family members. However, the balance sale consideration amount of Rs.5,00,000/- was paid from the joint Account of the defendant No.9 and defendant No.4. This itself at this stage is not sufficient to hold that the said property are the self-acquisition made by the defendant No.9 and defendant No.4 based on the above documents. On the other hand, the materials produced by the plaintiffs and the defendant No.9 himself would indicate that, prima facie there are sufficient documents to show that the above two properties are purchased from the joint family funds. Hence, I am unable to accept the argument advanced by the learned Advocate for the defendant No.9 for vacation of temporary injunction in respect of above referred two properties.

13. It is not out of place to mention here that by claiming similar relief defendant No.4 had filed I.A.No.V. She had set up similar contention seeking setting aside the temporary injunction order in respect of above two properties. The said application came to be dismissed by this Court vide order dated 26.07.2018. In paragraph No.15 and 16 of the said order, this Court has observed that there are prima facie material to indicate that suit schedule-B properties are also the joint family

properties even though they are standing in the joint names of the defendant No.4 and defendant No.9. Consequently, by placing reliance on the judgment of Hon'ble High Court of Karnataka in the case of **Fakrusab Vs. Saidusab and Others (ILR 2004 Karnataka, 4076)** this Court rejected I.A.No.V holding that, at this stage the defendant No.4 has not made out any case much less a prima facie case to set aside the order of temporary injunction in respect of above two properties.

14. The said order remained unchallenged. Therefore, on the same reasons, the present application also does not deserve any consideration. Hence, I am of the opinion that the applicant / defendant No.9 has failed to make out a prima facie case for setting aside the temporary injunction order against suit schedule-B (vi) properties. The question of balance of convenience and irreparable loss would not arise at all. Hence, for the reasons and discussions made above, I answer the point No.1 to 3 accordingly.

15. **POINT No.4:** In view of above reasons and discussions, I proceed to pass the following,

ORDER

I.A.No.VII filed by the applicant / defendant
No.9 under Order 39 Rule 4 R/w. Section 151 of
C.P.C. is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer, transcribed and typed by him,
corrected and pronounced by in the open Court on this **6th day of
December, 2018**)

(VENKATESH R. HULGI)
Principal Senior Civil Judge and
JMFC.,Hubballi
