

IN THE COURT OF THE SENIOR CIVIL JUDGE
& JMFC KUNDGOL

Present

Sri . P.J. PARAMESHWARA B.Com., LL.B.
Senior Civil Judge and JMFC.,
Kungol

Dated 08th day of February 2022

OS.No.77/2021

Plaintiffs: Kumari Pratibha Karigoudra and 2 others.
Vs.

Defendant: Sri. Ravigoudra Karigoudra and 4 others.

ORDER ON IA No.1

The applicants/plaintiffs have filed this application U/O.39 R.1 & 2 R/w Sec.151 of CPC for relief of temporary injunction to restrain the defendants from alienating the suit schedule properties pending disposal of the suit.

In the affidavit filed in support of application plaintiff No.3 sworn that, plaintiff No.1 and 2 are her minor children and they filed the suit for partition and separate possession. The suit schedule properties originally belong to one Parvategouda. The defendant No.1 is wife, defendant No.2 is wife and defendant No.3 and 4 are daughters of said Parvategowda. The defendant No.1 married plaintiff No.3 on 02.09.2010 and from their lawful wedlock plaintiff No.1 and 2 were born. After the birth of plaintiff No.2, defendants colluding with each other thrown out plaintiffs from their house and therefore, they constrained to live in parental house of plaintiff No.3 at Kalasa village. The plaintiff No.3 taking care of children by doing

coolie work. In the meantime, the defendant No.1 developed illicit relationship with defendant No.5 and kept her in his house.

It is further case of the plaintiffs that the defendants colluding with each other have filed the suit in OS No.234/14 before this Court and obtained a decree. Subsequently, they filed FDP 12/2019 without knowledge of the plaintiffs. Soon after plaintiffs came to know about the fraudulent decree in the month of April for the first time, she demanded for partition on 15.04.2021, but the defendants refused. The suit schedule properties are ancestral joint family properties and there was no partition till date. The plaintiffs are entitle for 3/12 share in the suit properties. The revenue records of suit properties stand in the name of defendants and they may alienate at any movement. Therefore, it is necessary to restrain the defendants from alienating the suit properties taking undue advantage of revenue records stand in their name. If the defendant alienated the very purpose of the suit will be defeated and in that event the plaintiffs will be put to irreparable loss. The plaintiffs have made out prima-facie case, balance of convenience tilt in their favour and they will be put to irreparable loss. Therefore, plaintiffs prayed to allow the application.

This application is resisted by defendants adopting their written statement as objection. The defendant No.1 filed his written statement. The defendant No.3 filed written statement and the same is adopted by defendant No.2 and 4. The sum and substance of case of the defendants is that, the defendants denied that, the suit schedule properties are ancestral joint family properties of plaintiffs and defendants. They have also denied that, defendant No.1 married plaintiff No.3 on 02.09.2010 and plaintiff No.1 and 2 born from their wedlock. They have also denied that, the defendant No.1

thrown out the plaintiffs from matrimonial house and subsequently, defendant No.1 developed illicit relationship with defendant No.5. Further they denied that, they filed OS No.234/14 and obtained a fraudulent decree without knowledge of the plaintiffs and when this fact came to the notice of plaintiffs, they demanded for partition on 15.04.2021. They have also denied that, the plaintiffs are entitled for three equal share.

It is the case of defendants that, defendant No.1 is son and defendant No.3 and 4 are daughters of defendant No.2 is wife. The defendant No.1 married defendant No.5 and their marriage was solemnized on 22.12.2017 and from their lawful wedlock, a male child was born. Subsequently, the child named as Eshwaragouda. The defendant No.3 and 4 are married and settled in their matrimonial house. Defendant No.1, 2 and his wife defendant No.5 and their minor son Eshwaragouda are residing in Kalasa village and suit schedule properties are their joint family properties and in joint possession.

The defendant No.1 in his written statement contended that, plaintiff No.3 used to come for tailoring work to Kalasa village, there he developed relationship with her and on account of their relationship plaintiff No.1 and 2 are born. He kept the plaintiffs in Kalasa village by setting up a separate house. Though plaintiff No.3 aware of fact that, defendant No.1 got defendant No.5 as his legally wedded wife and from their lawful wedlock one male child by name Eshwaragouda was born, she married him. The plaintiffs suppressing all these facts, filed the present suit in the name of her minor children.

It is further case of defendants that, since there was misunderstanding in their family, defendant No.2 and 4 filed a suit

against defendant No.1 and his wife defendant No.5 in OS No.234/2014 for partition and separate possession and the suit was decreed on 23.09.2017 by allotting 1/4 share to defendant No.2 to 4 in the suit schedule properties. Subsequently, defendant No.2 to 4 filed FDP No.12/2019 against defendant No.1 and 5 for final decree and the same is pending before the Court. The defendants have also contended that, the suit is bad for non-joinder of necessary parties and suit is not properly valued and paid correct court fee. The defendants further contended that, the plaintiffs have not made out prima-facie case. Therefore, the defendants prayed to dismiss the application.

2. In the light of the above rival contention of the parties, the following points that arise for my consideration are :

POINTS

1. Whether the plaintiffs have made out prima-facie case ?
 2. Whether the balance of convenience tilts infavour of plaintiffs ?
 3. Whether the plaintiffs will be put to irreparable loss or injury, if an Order of temporary injunction not granted ?
 4. What Order ?
- 3.** Heard arguments and perused the material placed on record.
- 4.** My answer to the above points are as follows:

Point No.1 to 3: In the affirmative.

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

REASONS

5. Point No.1 to 3: Since these points are inter related to each other, they taken up together for common discussion to avoid repetition of facts and findings.

In the present case, though there is a serious dispute between the parties with regard to relationship of plaintiffs with defendant No.1, it is an admitted fact that, defendant No.1 is son and defendant No.3 and 4 are daughters and defendant No.2 is wife of Parvategouda. It is also not in dispute that, suit schedule properties originally belong to Parvategouda. Further, it is not in dispute that, defendant No.2 to 4 had filed suit against defendant No.1 and defendant No.5 for partition and separate possession in respect of suit schedule properties and the same was decreed by allotting 1/4th share each to defendant No.2 to 4. It is further an admitted fact that, subsequently, defendant No.2 to 4 had filed FDP No.12/2017 for drawing of final decree and the matter is still pending.

It is specific case of plaintiffs that, plaintiff No.3 is legally wedded wife of defendant No.1 and from their lawful wedlock plaintiff No.1 and 2 are born. On the other hand, defendant No.1 in his written statement though denied relationship with the plaintiffs in Para No.6 of his written statement he contended that, he had relationship with the plaintiff No.3 and from their relationship plaintiff No.1 and 2 are born. He also admitted that, he set up a separate house for the plaintiffs in Kalasa village and plaintiff No.3 was looking after plaintiff No.1 and 2. The defendants have contended that, the defendant No.5 is legally wedded wife of defendant No.1 and from their wedlock, a male child by name Eshwaragouda has born, but the plaintiff has suppressed this fact and filed the present suit in the name of her minor children.

Whether the plaintiff No.3 is legally wedded wife of defendant No.1 or defendant No.5 is legally wedded wife of defendant No.1 are all facts which need to be considered at the time of trial based on oral and documentary evidence of the parties, but from these pleadings one thing is clear that, the plaintiff No. 1 and 2 are children of defendant No.1. Whether they legitimate or illegitimate again matter of facts need to be considered in the full fledged trial. In this regard, it can be that the plaintiffs have made out prima-facie case for trial.

The learned counsel for plaintiff has contended that, when defendant No.1 has admitted his relationship with the plaintiffs, it can be said that, the plaintiff has made out prima-facie case. He further contended that, the plaintiffs came to know about the previous suit filed by defendant No.2 to 4 against defendant No.1 and subsequently FDP No.12/2019 only after receipt of notice in FDP No.12/2019. The defendants colluding with each other had obtained decree in OS No.234/2014 without the knowledge of the plaintiffs and now the defendants taking undue advantage of revenue records stand in their name trying to alienate the properties to third party. If the defendant succeeded, the very purpose of filing of suit will be defeated and the plaintiffs have to implead purchaser as party which cause hardship to the plaintiffs. Therefore, the learned counsel prayed to allow the application.

On the other hand, the learned counsel for defendants contended that, though the plaintiffs have suppressed the relationship of defendant No.1 with defendant No.5, defendant No.1 in his written statement admitted that, defendant No.5 is his legally wedded wife and one Eshwaragouda was born from his wedlock with defendant No.5. When plaintiffs have suppressed this fact, it shows that the plaintiffs have not come to Court with clean hands. When

minor son of defendant No.1 and 5 Eshwaragouda is not made as party in the present suit, no temporary injunction can be granted for want of non-joinder of necessary parties. When the suit itself not maintainable for want of necessary parties interim relief cannot be granted. The learned counsel further contended that, defendant No.1 in his written statement admits that, plaintiff No.3 is his kept mistress. Therefore, the plaintiff No.3 becomes as his second wife. If it considered that, plaintiff No.3 is liable to be prosecuted for contracting second marriage during lifetime of first wife. The plaintiff No.1 and 2 may be illegitimate children of defendant No.1. At best they are entitle for share in the share of defendant No.1, but not in joint family properties. He further contended that, plaintiffs have not challenged the decree obtained in OS NO.234/2014 till date. FDP proceedings itself shows that, defendant No.2 to 4 filed the suit against defendant No.1 and 5 and admitted the relationship. Until and unless final decree is drawn in FDP, the share of defendant No.1 cannot be determined. As such the plaintiff cannot claim share in the present suit. The suit is not maintainable. The learned counsel further contended that, the plaintiffs at best can claim relief in the share of defendant No.1, but not on the entire suit schedule properties as defendant No.2 to 4 are other co-perceners. The learned counsel further contended that, even if alienation of property has made, it is hit by Sec.52 of Transfer of Property Act as it amounts to lis-pendency.

Per contra the learned counsel for plaintiff in his reply has contended that, when the plaintiffs disputed the very relationship of defendant No.1 with defendant No.5, the question of impleading male child alleged to have born to defendant No.1 and 5 does not arise. He further contended that, the plaintiffs categorically

contended that, defendants colluding with each other obtained decree without knowledge of the plaintiffs. Such being the case the contention of defendant No.1 that, defendant No.2 to 4 admitted case of defendant No.1 cannot be accepted. The learned counsel further contended that, the plaintiffs have produced sufficient materials to prove the relationship of plaintiff with defendant No.1 which itself shows prima-facie case.

A perusal of record it appears that, plaintiffs have produced copy of marriage invitation card, Adhar card, photographs, birth certificates of plaintiff No.1 and 2 and revenue documents of suit schedule properties. A perusal of these documents prima-facie establish that, the plaintiff No.3 married defendant No.1 and from their wedlock plaintiff No.1 and 2 are born prior to filing of earlier suit and birth male child alleged to have born to defendant No.1 and 5.

As discussed supra, in the present case, the very relationship of plaintiff No.3 and defendant No.5 with defendant No.1 is in serious dispute. When there is serious dispute of relationship between the parties, it is not proper to comment anything on the merits and demerits of relationship at this stage as it may prejudice the parties in the trial. In the present application, the plaintiffs have sought for relief of temporary injunction to restrain the defendants from alienating the suit schedule properties only. If an order restraining the defendants from creating any third-party interest or from transferring the suit properties in dispute is not granted the plaintiffs shall suffer irreparable loss and injury.

It is appears from the revenue documents produced by the plaintiffs that the suit schedule properties stand in the name of defendant No.1. Therefore, as rightly contended by the learned

counsel for the plaintiffs that if the defendants are restrained from alienating the suit schedule properties, no hardship would be caused as they restrained from alienating the suit schedule properties only. On the other hand, plaintiff will be put of irreparable loss as they have to implead subsequent purchasers as party in the suit in the even of alienating made by plaintiffs. It may also lead to multiplicity of the proceedings. Merely because, defendant No.1 to 4 admitted that defendant No.5 is wife of defendant No.1 it cannot be said that, the defendant No.5 is legally wedded wife and plaintiff No.3 as kept mistress of defendant No.1 and plaintiff No.1 and 2 are legitimate children of defendant No.1. Therefore, the contention of learned counsel for defendants cannot be accepted. Viewed from any angle that, the plaintiffs have made out prima-facie case for the relief of temporary injunction, balance of convenience tilt in their favour and they will be put to irreparable loss, if an order of temporary injunction is not granted. Accordingly, Point No.1 to 3 is answered in the **affirmative**.

8. Point No.4: In view of the discussion made above and findings given on Point No.1 to 3, I proceed to pass the following:

ORDER

IA No.1 filed U/O.39 R.1 & 2 R/w Sec.151 of CPC is hereby allowed. Consequently, the defendants are hereby restrained from alienating the suit schedule properties pending disposal of the suit.

No order as to cost.

Sd/-
Senior Civil Judge & JMFC
Kundgol.