

**IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C.
NAVALGUND**

O.S.No.20/2022

Dated this the 07th day of January, 2023

Present : Sri. Santhosh M.S.

B.A., LL.B., (Hons); LL.M.,

Civil Judge and JMFC., Navalgund.

Plaintiff :1. Sri. Shantappa
S/o. Bharamappa Makannavar,
Age: 59 years, Occ: Coolie,
R/o: Annigeri, Tq: Annigeri,
Dist: Dharwad.

(By Sri.PHK., Adv.)

Defendants :1. Smt. Sumangala
W/o. Chandrashekar Makannavar,
Age: 45 years, Occ: Household work,
R/o: Annigeri, Tq: Annigeri,
Dist: Dharwad and others.

(By Sri.SAP Adv.)

PARTIES TO I.A.

Applicant : 1. Sri. Shantappa
S/o. Bharamappa Makannavar,

Versus

Opponents : 1. Smt. Sumangala
W/o. Chandrashekar Makannavar and
others.

**ORDERS ON I.A., FILED BY THE PLAINTIFF UNDER
ORDER XXXIX RULE 1 & 2 OF CPC.**

The present suit is filed for a decree of partition and separate possession by allotments of 1/3rd share in the suit property to the plaintiff. The present application is filed by the plaintiff seeking for

an order of temporary injunction restraining defendant no.2 from alienating the suit property.

2. It is the contention of plaintiff that the suit property is an ancestral joint family property of the plaintiff and defendants. The propositus of the family Bharamappa died on 12.11.1970. His wife Ratnavva Bharamappa Makannavar, who is the mother of plaintiff and defendant no.4, died on 30.10.2021 and all the parties to this suit have succeeded to suit property. However, the defendant no.2 got a registered gift deed executed in his favour through the mother of plaintiff, i.e., Ratnavva, on 03.07.2021. The said aspect was brought to the notice of plaintiff on 21.01.2022. On 17.01.2022 when the plaintiff made demand for effecting partition on the suit property, the defendants refused to effect the same. As such the plaintiff has sought for a decree of partition through the present suit.

3. After filing of this suit the defendant no.2 has filed written statement contending that the suit property is the absolute property of the mother of plaintiff i.e., Ratnavva and it was granted to her under Ashraya Scheme from TMC, Annigeri. During her lifetime she possessed and enjoyed the said property in her own right, title and interest. Due to love and affection on defendant no.2, who is her grandson, the defendant no.2 executed registered gift deed on 03.07.2021. Hence, it is contended that the suit property is self acquired property of Ratnavva and the gift deed is lawfully executed in favour of defendant no.2. As such the defendant no.2 is the absolute owner of the suit property. Hence, it is contended that the plaintiff has no right on the suit property and the decree of

partition as sought for is not accordance with law. As such it is prayed for dismissal of suit and rejection of I.A.

4. Having heard both sides and perused the entire materials placed on record. The following points arise for my consideration which are as under;

POINTS

1. Whether the plaintiffs/applicants have made out prima facie case for the grant of temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiffs/applicants?
3. Whether the plaintiffs will be put to irreparable loss or injury, if an order of temporary injunction is not granted?
4. What Order?

5. My findings on the above said Points are as hereunder:-

Point No.1 : **In the Affirmative,**

Point No.2 : **In the Affirmative,**

Point No.3 : **In the Affirmative.**

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

REASONS

6. **Point No.1 to 3:-** Considering the rival contentions of both the parties as discussed while narrating the contentions of both the parties, it is relevant to note that the nature of suit property being ancestral joint family property is in dispute. The relationship between the plaintiff and defendants is not in dispute. So far as the contentions relating to the suit property being self acquired property of Ratnavva, it is a matter to be decide by holding trial. Whether the grant made in favour of

Ratnavva was for joint family or it was made exclusively to the said Ratnavva can only be decided by conducting trial. At this preliminary stage of suit there are no materials placed on record which can infer such aspect. Hence, this suit involves debatable issues which warrant a detailed trial. Since the relationship of plaintiff is not in dispute, her prima facie right with reference to suit property as successor of Ratnavva cannot be denied. Until the defendant establish that the suit properties are self acquired properties of Ratnavva, the prima facie right of the plaintiff as claimed in the plaint cannot be negated. Hence, there exist prima facie case in favour of plaintiff.

7. The nature of injunction as sought by the plaintiff is to restrain the defendant no.2 from creating charge or alienation of suit property. The defendant no.2 has not made any submission before the Court that he would not alienate the suit property until complete adjudication of this case. By claiming that the suit properties are their separate properties, the said defendant no.2 has claimed exclusive rights on the suit property. As mentioned by me above the said contention is required to be adjudicated by holding trial. Hence, the defendant no.2 is to be restrained from alienating the suit property.

8. The relief sought by the plaintiff restraining defendant no.2 from creating charge is also to be granted for the reason that the suit property is a house property. If the said property is alienated and the plaintiff proves his contention then not only the plaintiff and defendant no.2 but also the purchaser will be put to hardship resulting in multiplicity of proceedings. As such balance of convenience lies in favour of plaintiff and irreparable loss or injury will be caused to the plaintiff if an order of

temporary injunction restraining defendants from creating charge is not granted. As such I answer point no.1 to 3 **in the Affirmative.**

9. **Point No.4:-** For the reasons discussed above, I proceed to pass the following;

ORDER

*The I.A. filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., seeking for grant of an ad-interim order of temporary injunction is hereby **allowed.***

The defendant no.2 is restrained by an order of temporary injunction from alienation of suit property and creating charge on it till disposal of this suit.

The order of temporary injunction dated 10.02.2022 granted by this Court is hereby confirmed.

Issues are framed. For plaintiff evidence, call on 09.02.2023.

(Dictated to the stenographer, transcribed and typed by her, the transcript revised, corrected and then pronounced by me in the Open Court on this **07.01.2023**).

(Santhosh M.S.)
Civil Judge and J.M.F.C.,
Navalgund.
