

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C, AT ALUR.

Present: Asha K.S, B.A.L.,L.L.B.,
Civil Judge & JMFC, Alur.

Dated this 5th day of July - 2016

O.S.No.61/2016.

Sri. Abdul Basith
& Others

//Versus//

Smt.Nusrath Fathima
& Others

I.A.No.I.

Applicants/Plaintiffs:-

1. Sri.Abdul Basith, S/o Late Abdul Sattar Saheb,
Aged 70 years, R/o Adarshanagar, Mysore, Road,
C.R.Patna Town and Taluk.
2. Sri.Mohammed Israb, S/o Late Mohammed Jakriya,
Aged 34 years, R/o Diamond Tyre Works, Santhepete,
Hassan City and Taluk.
3. Smt. N.A.Jamunnisa, W/o Late Syed Ameer Jaan,
Aged 64 years, R/o Police Quarters, Chikkanalu,
Hassan City and Taluk.
4. Smt. Saleemunnisa, W/o Walijaan, Aged 60 years,
R/o Kanchugara Street, C.R.Patna Town and Taluk.
5. Smt. Meharunnisa, W/o Iliyaz Pasha, Aged 58 years,
R/o Ambedkarnagar, Hassan City and Taluk.

(By Sri. B.D.S., Advocate)

//VERSUS//

Opponents/Defendants:-

1. Smt. Nusrath Fathima, W/o Late Ejaz Ahmed, Aged 54 years,
2. Sri. Tabrez Ahmedd, S/o Late Ejaj Ahmed, Aged 34 years,
3. Smt. Thabasum, W/o Naheed, Aged 30 years,
4. Smt. Tharannum, W/o Surjeed, Aged 28 years,
5. Smt. Thahaseena, W/o Iliyaz, Aged 25 years,

Defendant No.1 to 5 are R/o Khaji Mohalla, Alur Town and Taluk.

6. Sri.Althaaf Hussain, S/o Abdul Rehman, Aged 75 years,
R/o Beside Jamiya Masjid, B.M.Raod, Alur Town and Taluk.

(D.1, 2 & 4 by Sri. H.D.M, and D.6 by Sri.K.N.,Advocate)

ORDER ON I.A.No.I.

This order arises out of an application filed U/o 39 Rule 1 & 2 CPC filed by the plaintiffs seeking Temporary injunction restraining the Defendant No.1, 2 and 4 from alienate the suit schedule property till disposal of the suit.

2. The suit is for the relief of partition and separate possession against the defendants case of the plaintiffs is that suit scheduled

properties are ancestral and joint family properties of plaintiffs and defendant No.1 to 5. Abdul Sattar the common ancestor of the plaintiffs and defendant No.1 to 5 was the absolute owner of the suit schedule property. After the death of Abdul Sattar we are all in joint possession of schedule properties. Thereafter to perform the marriage of 5th plaintiffs sold the schedule property to the 6th defendant for Rs.5,500/- by executing the nominal registered sale deed with the condition to vacate the schedule properties at the time of clearance of loan amount of Rs.5,500/-. In that nominal deed 6th defendant has not conferred any right, interest over the schedule property and in the month of August 2015 all the plaintiffs gathered and planed to mobilize the amount of Rs.5,500/- to clear the loan and get sale deed from 6th defendant. The 6th defendant went on seeking time to execute sale deed and suddenly the 1st defendant got filed caveat against these plaintiffs. When these plaintiffs enquired about caveat. The 6th defendant reveals that, he has already executed sale deed in favour of

1st defendant. Hence, these plaintiffs filed above suit against the defendants.

3. After issuance of suit summons from this Hon'ble Court the defendant No.1, 2, 4 and 6 appeared through their Advocate and filed written statement. Wherein they have taken contention that there is no concept of joint family property in Mohammedan Law. It is not joint family as per the plaint averments they themselves agreed that they are residing separately. Abdul Sathar and his children (plaintiffs and defendant No.1 to 5) executed absolute sale deed in favour of 6th defendant on 13.11.1986 daughters also signed to the sale deed as concert witnesses consideration amount of Rs.5,500/- received on the same day, possession also delivered on same day. There is no recital in sale deed about the loan transaction in-between vender and purchaser and at no point of time plaintiffs demanded to get re sale deed it is barred by limitation. Hence, suit of the plaintiffs may be dismissed.

4. The plaintiffs have filed affidavit in support of I.A.1 thereafter I heard Arguments advanced by both the side on I.A.1.

5. The Points that arises for my consideration are as under:
- 1) Whether the plaintiffs have made out a prima facie for the grant of T.I. as sought in I.A.1?
 - 2) In whose favour the balance of convenience lies?
 - 3) Whether on irreparable injury which cannot be compensated in terms of money would be caused to the plaintiffs in the event of refusal of T.I. sought?
 - 4) What order
6. My findings on the above points are follows:-
- 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

7. **Point No.1 to 3** : Since all these points are interlined with each other in order to avoid the repetition of facts they have been taken up for common discussion.

8. Prima facie case means a case, which is neither false nor vexatious.

9. On perusal of the pleadings and documents one thing is very cleared that the recitals mentioned in the document is clearly shows that document is absolute sale deed and not mortgage deed or any other document. As on the date of the same deed 6th defendant was in possession and enjoyment of the schedule land. He acquired absolute title right over the schedule property. The important recitals in the document is that there is a preemption class that, ಯಾರೇ ಆಗಲಿ ನಿಮಗೆ ಈ ಮೊಬಲಗನ್ನು ಕೊಟ್ಟಾಗೂ ಸಹ ಹಣ ಪಡೆದುಕೊಂಡು ವಾಪಾಸ್ಸು ಪತ್ರ ಬರೆದು ರಿಜಿಸ್ಟ್ರಾರ್ ಮೂಲಕ ಬಿಟ್ಟು ಕೊಡುವುದು. The plaintiffs are defendant No.1 to 5 were never reserved their preemption class for the benefit of the whole family. As per recital in the sale deed anyone can refund the amount and repurchase the property. The 6th defendant has not breach the contract. 1st defendant is also one of the family member he also has every right to repurchase. If purchaser is the stranger to the family then definitely plaintiffs can file preemption suit against 6th defendant.

10. At this stage Court cannot come to the conclusion that the property acquired by the 1st defendant is became joint family property

or self acquired property. Only to protect the schedule property and to avoid multiplicity of proceedings the defendant No.1, 2 and 4 are restraining from alienate the suit schedule property till disposal of the suit. So at this stage as per the documents available on record I am of the opinion that the plaintiffs have made out a prima facie case and balance of convenience is also has lies in their favour and regarding the concept of joint family and limitation it requires as same pledged trial and it will be considered at trial stage and as such I answered point No.1 to 3 in the **Affirmative**.

11. **Point No.4:** In view of my above discussion, I proceed to pass the following:

ORDER

I.A-1 filed by the plaintiff Under Order 39 rule 1 & 2 CPC is hereby allowed the defendant No.1, 2 and 4 are hereby restrained from alienating the suit property till the disposal of suit.

No order has to cost.

(Typed to my dictation by the Stenographer, corrected, initialed and then pronounced by me, in the Open Court, on this 5th day of July 2016)

(Asha K.S),
Civil Judge & J.M. F.C,
Alur.