

KAHS510010402019



Presented on : 18-10-2019
Registered on : 18-10-2019
I.A.No.II Decided on : 14-02-2024
Duration : 4 years, 3 months, 27 days

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT BELUR, HASSAN.**

Presided Over by PRASANNA KUMAR C.,_B.A.L.,LL.B.
Civil Judge and JMFC, Belur.

Dated this the 14th day of February 2024

O.S./338/2019

Between:

Smt.H.C. Usha W/o K.M.Gopalagowda,
Aged about 58 years,
R/at: Hosakumari Estate,
Arehalli Post,
Arehalli Hobli,
Belur Taluk, Hassan District.

.... Plaintiff

(Shri. Ramesh, Advocate for Plaintiff)

And:

- 1. Shri.Ravikumar S/o Late.Thammannagowda,**
Aged about 56 years,
- 2. M.T.Taranath S/o Late.Thammannaogwda,**
Aged about 54 years,

3. Shri.Raju S/o Late.Thammannagowda,

Aged about 52 years,
All are R/at: Arehalli Post,
Arehalli Hobli,
Belur Taluk, Hassan District.

... Defendants

(Sri.C. Boodesha - Advocate for Defendant No.1 and 2

Sri.E.P. Girisha – Advocate for defendant No.3)

PARTIES TO THE APPLICATION IA NO. II**Shri.H.C.Usha****.. Plaintiffs/Applicants****V/s****Shri.Ravikumar and others****..Defendant/Opponent**

Provisions of Law of I.A.No.II	Under Order 39 Rule 1 and 2 of Civil Procedure Code
Relief sought for on I.A.No.II	Temporary injunction against the defendants
Date of application	18-10-2019
Number of the application	2
Date of objection filed	27-11-2019
Date of order	13-02-2024

ORDERS ON I.A. No.II

This application is filed by the plaintiff along with the main suit under Order 39 Rule 1 and 2 R/w Section 151 of Civil Procedure Code seeking for order of temporary injunction to

restrain the defendants or anybody claiming under them from alienating, selling the standing timber, cutting the fencing by interfering with the peaceful possession and enjoyment of the plaintiff over the suit property bearing Sy.No.190 measuring 20 acres situated at Malasavara Village, Arehalli Hobli, Belur Taluk.

2. It is contended by the Plaintiff in the affidavit filed in support of the application as well as in the plaint averments that, the defendants are the brothers of husband of plaintiff. One Julegowda has four sons namely, Subbegowda, Manjegowda, Karigowda and Tamannagowda and the 1st son died issue-less. The 2nd son Manjegowda had two sons namely M.Shankar and Gopalagowda and the plaintiff is the wife of said Gopalagowda and the 3rd son Karigowda left the family long back by taking his share and his family is not known to the plaintiff. The 4th son i.e., Thammannagowda has three sons i.e., defendant No.1 to 3 herein. In the year 1973, there was a Palu Parikattu in the family members of Julegowda wherein the entire family properties were divided into two portions, out of which one portion was fallen into the share of Subbegowda and Manjegowda. The remaining share was fallen into the share of Thammannagowda. As the said Subbegowda was not having any issues, after his death in the year 1988, the share allotted to Subbegowda has come to Manjegowda's son i.e., husband of plaintiff through the Will executed during his lifetime. Further in the palupatti which was

held in the year 1973, the boundaries and extent are correctly mentioned, but the survey number and the name of the village are wrongly entered and as such, there were disturbances among the family members and several panchayaths were held to rectify the said mistakes committed in the palupatti.

3. Further it is contended by the plaintiff that in order to rectify the mistake committed in the palupatti, panchayath was held on 25.01.1986 and an arrangement was made among all the family members of Subbegowda, Manjegowda and Tammannagowda. Further, for the purpose of raising the loan to sell the standing timber, the 1st defendant sent the xerox copy of panchayath resolution held on 25.01.1986 to all the members including the plaintiff. In that Kararupatra mistakes were rectified and accordingly, Sy.No.93 of Sirgura Village measuring 20 acres was fallen into the share of defendants and Sy.No.190 of Malasavara Village was fallen into the share of Manjegowda i.e., father-in-law of plaintiff. Thereafter, since there were disputes, the defendant No.2 herein had filed a suit in O.S. No.119/2007 before this Court seeking for relief of permanent injunction and in that suit, the plaintiff has categorically admitted that there was mistake in the paluparikath made in the year 1973 and as such, an agreement was made amongst the family members on 25.01.1986 and also admitted that Gopala Gowda i.e., husband of plaintiff is in possession and enjoyment of the property in

Sy.No.190 of Malasavara Village prior to 1973. As such, the plaintiff is in possession and enjoyment of the suit property since from the time immemorial and after the rectification of palaparikattu, the possession has been declared and as such, the plaintiff is in possession of suit schedule property. Further in order to clear the loan borrowed from Thyagaraju S/o Basavaraju, the plaintiff on 25.04.2019 agreed to sell property measuring 20 acres along with the shop premises situated in Sy.No.190 and accordingly, executed the sale agreement in favour of Thyagaraju S/o Basavaraju and invested huge amount by receiving the funds from the said purchaser. The plaintiff further submits that, she has approached the defendants several times and requested them not to interfere with the peaceful possession and enjoyment of her property, but the defendants have refused to do so, Hence, the plaintiff has filed this suit along with instant application.

4. On service of summons/notice, the defendants No.1 and 2 entered appearance through their common counsel. The defendant No.3 entered appearance through his separate counsel. The defendant No.1 and 2 have filed their written statement and adopted the same as objections to instant application. At the outset, the relationship of the parties to the suit is not in core dispute. Further the defendant No.1 and 2 specifically admitted regarding execution of panchayath Palu Parikath on 18.05.1973. However the defendant No.1 and 2

have specifically denied all other averments made in the plaint.

5. It is specific case of the defendants No.1 and 2 that in the partition deed dated 18.05.1973, the father of defendants i.e., Thammannagowda was allotted with 41 acres of coffee land in Sy.No.190 of Malasavara Village which included the suit schedule property along with other properties and accordingly, the defendants and their family members were in possession of the said properties and the plaintiff is well aware of the said facts. Subsequently, the defendants along with their mother through partition deed dated 25.06.1987 got the above said properties divided wherein the suit property was fallen to the share of 2nd defendant and since then, the revenue documents are standing in the name of 2nd defendant and by paying taxes etc., he has become absolute owner and in possession of suit schedule property.

5. Further it is contended by defendant No.1 and 2 that the suit schedule property was never fallen into the share of the father-in-law of plaintiff or his heirs either in partition dated 18.05.1973 or subsequent to it and it is the father of defendants and after him, his heirs and later the 2nd defendant was in peaceful possession and enjoyment of the suit schedule property as its absolute owner. The husband of plaintiff i.e., Late.K.M.Gopalagowda tried to interfere with the suit schedule

property by creating, concocting documents, and as such, defendant No.2 filed suit against him in O.S. No.119/2007 before this court and the same was dismissed on 07.01.2019. Now, the plaintiff has come up with the above false suit in order to knock off the suit schedule property by concocting document. It is also contended that there was no mistakes committed in the partition deed held on 18.05.1973 and in order to rectify the same no conciliatory meeting was held on 25.01.1986 and they are denied by the defendants. As such, the defendant No.1 and 2 have sought for dismissal of the instant application and consequently the suit on the ground of improper valuation of the suit also.

6. Basing on the application, affidavit, written statement of defendant Nos.1 and 2 adopted as objections to the instant application, the following points would arise for consideration of this court.

POINTS

- 1) Whether the plaintiff has made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the Plaintiff?
- 3) Whether the plaintiff will be put to irreparable loss and injury if the order of temporary injunction as prayed for is not granted?

4) What order?

7. At the initial stage of the suit, this court had granted exparte order of temporary injunction directing the defendants from alienating the suit schedule property till appearance of defendants by order dated 18.10.2019. Subsequently, on application filed by the plaintiff, exparte order of temporary injunction was extended till disposal of the instant application. Subsequently, case was taken for consideration on merits of the suit. Accordingly, issues were framed. The plaintiff has commenced evidence, she got herself examined as P.W.1 and got marked Ex.P.1 to Ex.P.16 and closed her side. P.W.1 was also cross-examined by the learned counsel for defendants. Thereafter, the plaintiff has filed I.A.No.5 under Order 26 Rule 4 and 9 of Civil Procedure Code to examine additional witnesses. That apart, another application is filed by the defendants as per I.A. No.6 under Order 14 Rule 5 R/w Section 151 of Civil Procedure Code to cast additional issue with regard to valuation of the suit and also payment of court fee. When the said both I.A.No.5 and 6 were pending for consideration, the defendants have got the case advanced and submitted to consider the instant application I.A.No.2 invoking urgency stating that now the plaintiff taking advantage of exparte order of temporary injunction after her evidence, is now causing obstructions to the agricultural work of defendants in their lands. As such Heard

arguments of both sides. Both the learned counsel for plaintiff and defendants have filed their respective written arguments also. On the basis of Application, affidavit, written statement of defendants to the instant application, pleadings and written arguments of both plaintiff and defendants to the instant application and also all the materials available on record, answer of this court to the above points is 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 final order**
 for the following:

REASONS

8. **Point No.1 to 3:** Since all these three points are interconnected and interlinked with each other, they are taken up together for discussion in order to avoid repetition of facts.

9. This suit is filed by the plaintiff for the relief of declaration in favour of plaintiff in respect of suit property and consequential relief of permanent injunction to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit property. The plaintiff has not specifically stated as to what is the nature of declaratory relief she has sought for in the suit.

10. It is the case of the plaintiff that one Shri.Julegowda was the Propositus of the family of both plaintiff and defendants. He had 4 sons by name Subbegowda, Manjegowda, Karigowda and Thammannagowda. On 18.05.1973, there was partition in the family by way of Panchayath Palu patti wherein all the joint family properties were put under common hotch-pot. As per the said partition, the elder sons by name Subbegowda and Manjegowda were allotted with one share together and on the other hand, the 3rd son Thammannagowda was allotted with one share. The said Thammannagowda was allotted with 41 acres of land in Sy.No.190 of Malasavara Village with other properties. However, it is specifically contended by the plaintiff that since there were disturbances and though the extent of boundaries described in the schedule of the panchayath palu patti dated 18.05.1973 were correct, there were variations in the Survey numbers and as such, another partition was executed on 25.01.1986 by way of kararupatra. The plaintiff has not produced such partition/kararupatra dated 25.01.1986 in order to show at this point of time that the suit property was allotted to Manjegowda or Subbegowda as claimed in the plaint.

11. Per contra, it is the specific case of the defendants that after partition dated 18.05.1973, once again the wife and children of Thammannagowda have entered into partition on 25.06.1987 by way of Panchayath palu patti. Accordingly, the suit property

bearing Sy.No.190 measuring 20 acres was allotted to the share of defendant No.2 herein and remaining extent of 21 acres was allotted to the share of defendant No.1 herein. Subsequently, the revenue records pertaining to suit property bearing Sy.No.190 standing in the name of defendant No.2 herein. It appears that there was dispute between defendant No.2 herein and husband of plaintiff by name Shri. Gopalagowda. Accordingly, the suit in O.S.No.119/2007 was filed by defendant No.2 herein seeking the relief of permanent injunction. Thereafter, on the death of husband of plaintiff, the suit was dismissed as abated.

12. It is contended by the defendants that after dismissal of the suit in the year 2019, the plaintiff started to interfere with possession of defendants in the suit property. However, she herself has filed this suit. After obtaining the interim order restraining the defendants from alienating the suit property, the defendants did not bother to question the same since there was no any disturbance to their possession in the suit property. After filing this suit, the plaintiff alleged to have entered into agreement of sale with one Shri.Thyagaraju and others and has been causing obstruction to the agricultural work of defendants over the suit property. As such, the defendants have moved this court seeking for disposal of instant application on merits. This court after lapse of nearly 4 ½ years has to consider the instant

application on the submission made by the learned counsel for defendants and with consent of learned counsel for plaintiff. However, since the evidence of plaintiff side is completed, this court without going through and without influenced by the evidence deposed by plaintiff/P.W.1, this court has independently considered the prima facie case alone for deciding the instant application.

13. As already discussed above, the plaintiff has contended that since the terms of panchayath palu patti dated 18.05.1973 was not proper and since the survey number of the property allotted differed and the same was wrong except the boundaries and extent, there was disturbance and galata among the family members. Hence, it was come to the conclusion that palu patti held in the year 1973 was defective one and accordingly, they have entered into palu patti again on 25.01.1986. As already stated above, the plaintiff has not produced the said palu patti/kararupatra which is rectified form of earlier palu patti dated 18.05.1973. The plaintiff has contended that in O.S. No.119/2007 filed by the defendant No.2 herein, in the plaint he has admitted regarding execution of kararupatra dated 25.01.1986. However, as per available materials on record, the said suit came to be dismissed as abated without there being any observation on the said fact. That apart, the defendants have vehemently denied for having effected such rectified palu

patti/kararupatra dated 25.01.1986. However, the plaintiff who claim the panchayath palu patti dated 18.05.1973 was defective, property bearing Sy.No.93 measuring 20 acres which was allotted to the share of Shri.Subbegowda who has purchased the same on 18.07.1952 which was also subject matter of said panchayath palu patti has sold through registered sale deed dated 25.04.2019 in favour of one Shri.Thyagaraju. The plaintiff has contended in the plaint that as per rectification palupatti/kararupatra Sy. No.93 was allotted to the defendant No.2 and Sy. No.190 measuring 20 guntas (suit property) was allotted to the husband of plaintiff. The said statement itself is contrary to the pleadings and the sale deed executed by her in respect of Sy. No.93. When such being the case, it can be said that prima facie, the panchayath palu patti dated 18.05.1973 was acted upon and there are no variations or disputes as contended by the plaintiff. Even in the recitals of the sale deed dated 25.04.2019, the plaintiff has narrated about the mode of acquisition of property bearing Sy. No.93 in consonance with the panchayat palupatti dated 18.05.1973.

14. On the other hand, as already discussed, as per the palupatti dated 18.05.1973, the land bearing Sy.No.190 measuring 41 acres was fallen to the share of father of defendants Shri.Thammannagowda. Subsequently, the said property was divided amongst defendant No.1 and 2 and

accordingly, defendant No.2 was allotted with the suit property bearing Sy.No.190 measuring 20 acres of Malasavara Village and presently in the RTC, the name of defendant No.2 is appearing. The plaintiff has not challenged the said partition deed dated 18.05.1973 or 25.06.1987. She is claiming her right through alleged partition deed dated 25.01.1986 which is not before this court at this stage of the suit. Therefore, prima facie considering the fact that in the absence of any document standing in the name of defendant or her husband or father-in-law of plaintiff, prima facie this court is not inclined to accept that the plaintiff is having any sort of right over the suit property at this point of time. As already trial has commenced, it is just and necessary to wait till conclusion of trial and the right of the plaintiff will be decided only at the time of final adjudication of the suit on the basis of evidence adduced by both the parties.

15. It is also contended by the learned counsel for defendants that instant application is not maintainable under Rule 23 of Karnataka Civil Rules of Practice since multiple reliefs have been claimed in the application. This court while granting exparte order of temporary injunction has considered the urgency and restrained the defendants from alienating the suit property without passing any orders in respect of interference etc., as contended in the application. However, this court has already come to the conclusion that the plaintiff has not made out prima

facie case. The plaintiff seeks the relief to restrain the defendants from alienating the suit property etc., but the averments made in the application and the plaint is only respect of alleged interference of defendants and no allegation of attempt of defendants regarding alienation of the suit property as well as attempt to cut down the timber, etc. is forthcoming. Further, the plaintiff herself has entered into agreement of sale of suit property with one Sri. Thyagaraju and herself is seeking relief to restrain the defendants from alienating the suit property which cannot be accepted. As such, the balance of convenience is not lying in favour of the plaintiff.

16. On perusal of the documents, photographs produced by the defendants and also that both the parties have approached police lodging complaints regarding alleged disturbance against each others in the suit land. However the right of the plaintiff is at peril at this stage of the suit and this court cannot come to the conclusion regarding right and possession of plaintiff over the suit property. She has not convincingly established regarding mode of acquisition of her right over the suit property since all the revenue documents prima facie are standing in the name of defendant No.2. Under the circumstances, the plaintiff has failed to establish that the suit property is in danger of being wasted by the act of defendants. Therefore, the plaintiff is not entitled to the order of equitable relief of temporary injunction.

Hence, the application deserves to be dismissed. Accordingly, this court answered Point No. 1 to 3 in the **Negative.**

17. **Point No.4:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

:: ORDER ::

- I.A.No.II filed by the plaintiff Under Order 39 Rule 1 and 2 read with section 151 of Civil Procedure Code is hereby dismissed.
- Earlier ad-interim ex-parte order of temporary injunction granted by this court stands vacated.
- No order as to costs.

(Dictated to the stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court, on this the 14th day of February 2024)

(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.

(Order on I.A. No.II signed and pronounced in the open court vide separate order)

:: ORDER ::

- I.A.No.II filed by the plaintiff Under Order 39 Rule 1 and 2 read with section 151 of Civil Procedure Code is hereby dismissed.

- Earlier ad-interim ex-parte order of temporary injunction granted by this court stands vacated.

- No order as to costs.
- To hear on I.A.No.5 and 6, Call on **08.04.2024.**

(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.