

KAHS510022452022



Presented on : 16-12-2022
Registered on : 16-12-2022
I.A.No.II Decided on: 13-09-2023
Duration: 8 months, 28 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 13th day of September, 2023

O.S./491/2022

Between:

Sri.Nagaraju S/o Basavegowda,

Aged about 55 years,

R/at: Kyathanakere Village,

Madihalli Hobli, Belur Taluk,

Hassan District.

Presently R/at; Mallanahalli Village,

Kasaba Hobli, Belur Taluk,

Hassan District.

..Plaintiff

(Shri B.S.G.Swamy , Advocate for Plaintiff)

And:

1. Smt.Hemavathi W/o Siddesh,

Aged about 56 years,
R/at: Bakery work,
Kalasapura Village,
Lakya Hobli,
Chikkamagalur Taluk & District.

2. **Smt.Lathamani D/o Bsavegowda,**
Aged about 40 years,
 3. **Shri.Gurushanthe Gowda S/o Basavegowda,**
Aged about 50 years,
 4. **Smt.K.S.Prema W/o Gurushanthe Gowda,**
45 years,
R/at: Kyathanakere Village,
Madihalli Hobli, Belur Taluk,
Hassan District.
Presently R/at; Mallanahalli Village,
Kasaba Hobli, Belur Taluk,
Hassan District.
- ..Defendants**

(Shri.S.N.Chandra, Advocate for defendants)

PARTIES TO THE APPLICATION IA NO. II

Sri.Nagaraju .. **Plaintiff/Applicant**

V/s

Smt.Hemavathi and others .. **Defendants/Opponents**

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	16-12-2022
Number of the application	2

Date of objection filed	23-05-2023
Date of order	13-09-2023

ORDERS ON I.A. No.II

This application is filed by the plaintiff along with the suit under Order 39 Rule 1 and 2 of Civil Procedure Code seeking order of temporary injunction to restrain the defendants from alienating, encumbering, mortgaging or creating charge over the suit schedule properties viz., 1) land bearing Sy.No.193/3 measuring 10 guntas, 2) land bearing Sy.No.196/1 measuring 19 guntas, 3) land bearing Sy.No.198/2 measuring 26 guntas, all the Item No.1 to 3 properties are situated at Mutthuganne village, Kasaba Hobli, Belur Taluk and Item No. 4) land bearing Sy.No.69 measuring 2 Acres, situated at Manchanaykanahalli village, Kasaba Hobli, Belur Taluk, till disposal of the suit.

2. In the affidavit filed in support of the application as well as in the plaint averments, the plaintiff has contended that, the present suit is filed by him seeking for the relief of partition and separate possession of 1/6th share in the suit properties. One Smt. Shivarudramma and Sri. Basavegowda are the parents of plaintiff and Defendants and both are dead. Plaintiff and Defendant No.3 are the sons as well as Defendant No.1 and 2 are the children born to Smt. Shivarudramma and Sri. Basavegowda. Except Defendant No.2 all other parties are

married. Both Defendant No.2 and 3 are physically challenged as they are blind. It is further contended that Item No.1 to 3 of the suit properties are belonging to mother of plaintiff Smt. Shivarudramma being properties of her father. No partition has taken place in respect of these 3 properties during the lifetime of Smt. Shivarudramma. It is contended by the plaintiff that Item No.4 of the suit property was purchased by Sri. Basavegowda in the name of Defendant No.2 Lathamani when she was minor representing her as guardian. The consideration amount for the said sale deed was paid out of the income derived from other ancestral properties belonging to the family. As such, the suit properties are joint family properties and the plaintiff is having equal right and share.

3. It is further contended by the plaintiff that in respect of the ancestral properties related or acquired by the father of plaintiff a separate suit is already pending before this court in O.S. No.212/2019. As such the present suit is filed seeking partition in the properties of mother of plaintiff. Defendant No.4 is the wife of Defendant No.3. The said Defendant No.3 without the knowledge of other family members and without having any exclusive right has executed a registered Gift Deed in favour of his wife Defendant No.4 in respect of Item No.1 to 3 properties. Hence, the Defendant No.4 is made as party to this suit. The said gift deed is not binding on the defendant No.4. Further,

property bearing Sy. No.16/4 measuring 33 guntas of Kyathanagere village is also belonging to the father of plaintiff, but the same is subject matter of the suit which is already pending.

4. It is further contended by the plaintiff that the khatha of the properties is standing in the name of mother of plaintiff. After her death, khatha has been effected in the name of defendant No.3 basing on inheritance and the revenue documents are standing in the name of Defendant No.3. But the plaintiff and other defendants are also in joint possession of the same and they are cultivating vegetables, food grains and such other commercial crops. No partition has taken place in between the plaintiff and defendants. As such, the plaintiff has demanded the defendants to effect partition and allot his separate share. But the defendants have refused to effect partition. Hence the plaintiff has filed this suit and instant application.

5. On service of notice/summons, the defendants have entered appearance through their common counsel. The defendants have filed their written statement and adopted the same as objections to the instant application. At the outset, the defendants have admitted the relationship of the parties to the suit. But denied that the Item No.1 to 3 suit properties are belonging to Smt. Shivarudramma. It is admitted that the Item

No.4 of suit property was purchased by Sri. Basavegowda when the Defendant No.2 was minor. But it is denied that out of joint family income derived from other ancestral properties Item No.4 was purchased. It is further denied that the plaintiff and defendants are in joint possession of the suit properties. The defendants have also denied the right and share of the plaintiff in the suit schedule properties.

6. It is specifically contended by the defendants that the suit properties are the properties of Smt. Shivarudramma who was the sole daughter to her parents. During lifetime of said Smt. Shivarudramma as per partition effected by her the Suit Item No.1 to 3 properties were entered in the name of Defendant No.3 vide M.R. No.H-38/2014-2015. Subsequently all the revenue documents entered in the name of Defendant No.3 and he has been in possession of the same. Likewise, property bearing Sy. No.223/3 measuring 29 guntas of Muttuganne village was entered in the name of Plaintiff as per M.R. No.H15/2015-16 as per partition. Subsequently, the plaintiff has mortgaged the said property and availed loan from Corporation Bank, Hebbalu as per M.R. No.T-60/2015-16. For effecting both the said mutations, the Defendants and Smt. Shivarudramma have given consent. Likewise, the plaintiff was allotted with property bearing Sy. No.19/5 measuring 23 guntas and Sy. No.12/7 measuring 10 guntas of Kyatanagere village vide M.R. No.5/2018-19 and 15/2018-19 respectively. But the

plaintiff has suppressed the said facts in the plaint. All these proceedings were held during the life time of Smt. Shivarudramma. Smt. Shivarudramma has died in the year 2016.

7. It is further contended by the defendants that the Defendant No.3 is complete blind by birth. As such he being physically challenged person and his wife Defendant No.4 being knowledgeable person who can take care of properties, has executed registered Gift Deed dated 20.11.2020 in favour of Defendant No.4 in respect of Suit Item No.1 to 3 properties. Basing on the gift deed, khatha is effected in the name of Defendant No.4 vide M.R. No.22/2020-2021. The defendant No.4 is presently taking care of the suit Item No.1 to 3 properties. Further, the Defendant No.2 Lathamani is also blind since her childhood. Having come to know about said blindness of Defendant No.2, though her father provided medical treatment the blindness was not cured. As such, he has purchased the Suit Item No.4 property in the name of Defendant No.2 by representing her as minor guardian. The suit Item No.4 property was purchased out of self earnings of Sri. Basavegowda. The said Sri. Basavegowda has died in the year 2021 and he had not questioned the said sale deed anywhere. The Defendant No.2 is unmarried. The defendant No.3 and 4 have no issues. Taking advantage of the same, the plaintiff in order to make illegal gain

has filed this suit.

8. It is further contended by the defendants that plaintiff, defendant No.3 and their father Shri.Basavegowda have entered into registered partition in respect of properties bearing Sy.No.12/7, 19/5, 16/4 of Kyathanakere Village and Sy.No.54/1 of Thattekere village. In the said properties, both plaintiff and defendant No.3 have got allotted with equal share. The plaintiff has not questioned the said partition or subsequent mutation entries. Further the properties bearing Sy.No.19/5 measuring 0.23 guntas and Sy.No.12/7 measuring 0.10 guntas of Kyathanakere Village are not included in the present suit. That apart, the properties bearing Sy.No.8 of Kyathankere Village and Sy.No.53/1 of Manchanayakanahalli Village and also Sy.No.210/3 of Muthuganne village belonged to father of plaintiff are not included in the present suit. Hence, the defendants have sought for dismissal of the suit and consequently the instant application.

9. Basing on the application, affidavit, written statement of Defendants 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 the favour of the Plaintiff?
 3. Whether the plaintiff will be put to irreparable loss and injury if the order of injunction as prayed for is not granted?
 4. What order?
10. Heard arguments of both sides. On the basis of Application, affidavit, written statement averments of defendants adopted as objection statement to the application, pleadings 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

11. **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.
12. This suit is filed by the plaintiff against the defendants seeking for the relief of partition and separate possession in

respect of the suit properties. At the outset, there is no dispute with regard to relationship of the parties. Further, it is also not in dispute that item No.1 to 3 properties are originally belonging to Smt.Shivarudramma (mother of plaintiff and defendant No.1 to 3) and also the item No.4 which is purchased in the name of defendant No.2 represented by her father as minor guardian. The contention taken by the plaintiff is that the suit property originally belonging to Smt.Shivarudramma and without there being any partition, defendant No.3 has got the katha entered in his name in respect of suit item No.1 to 3 properties and subsequently executed gift deed in favour of his wife defendant No.4 without having exclusive right over the said item No.1 to 3 properties. It is further contended by the plaintiff that item No.4 of the suit property is purchased in the name of defendant No.2 when she was minor represented by her father Shri.Basavegowda out of joint family income derived from other ancestral properties.

13. The plaintiff has produced the RTC extract of Sy.No.193/3 (item No.1) measuring 0.09 guntas, RTC extract of Sy.No.196/1 measuring 0.19 guntas (item No.2), RTC extract of Sy.No.198/2 measuring 0.26 guntas (item No.3) and presently the item No.1 to 3 properties are standing in the name of defendant No.4 (wife of defendant No.3) as per gift deed. The plaintiff has also produced the sale deed dated 04.11.1993 in respect of item No.4

property bearing Sy.No.69 measuring 2 acres purchased in the name of the then minor defendant No.2 Kumari.Lathamani represented by her father Shri.Basavegowda. Subsequently, mutation was effected vide M.R.No.2/1997-1998 and there is no dispute with regard to purchase of the said property. The plaintiff has questioned regarding source of income for purchase of item No.4 property. Subsequently, vide M.R.No.H 38/2014-15, katha of item No.1 to 3 suit properties was entered in the name of defendant No.3. Further, as per M.R. No.H22/2020-2021, katha was effected in the name of defendant No.4. While effecting name of defendant No.3, as per M.R.No.H38/2014-15, it is mentioned as partition being mode of acquisition. No such partition deed document is produced by the plaintiff.

14. Per contra, it is the case of the defendants that during the lifetime of Smt.Shivarudramma, she has effected partition and item No.1 to 3 properties were allotted to the share of defendant No.3 and other properties were also entered in the name of plaintiff. The defendants have once again produced the RTC extracts of item No.1 to 4 properties along with mutation orders etc., which the plaintiff has also relied upon. The plaintiff has also produced RTC extract of Sy.No.12/7 of Kyathankere Village standing in the name of plaintiff. Likewise, RTC extract of Sy.No.19/5 of Kyathankere village measuring 23 guntas standing in the name of plaintiff. Those properties have been

acquired by the plaintiff through his father vide M.R.No.H5/2018-19. It is to be noted that some properties are still standing in the name of father of plaintiff and defendant No.1 to 3 against which as claimed by the plaintiff a separate suit is pending before this court in O.S.No.212/2019. Neither of the parties have produced single document to show that what are all properties involved in that suit.

15. Further, it is to be noted here that a property bearing Sy.No.223/3 measuring 0.29 guntas was standing in the name of Smt.Shivarudramma and katha was effected vide M.R.No.H15/2015-16 in the name of plaintiff and accordingly, his name is entered in the revenue records and RTC extract is also produced. The said property is not subject matter of the present suit. It is to be further noted that the name of defendant No.3 was earlier entered in the item No.3 property vide M.R.No. H38/2014-15 as per partition. Likewise, the said property bearing Sy.No.223/3 was effected in the name of plaintiff as per partition. When such being the case, the contention taken by the defendants that there was already partition and Smt.Shivarudramma during her lifetime has allotted share to plaintiff and defendant No.1 to 3 would certainly holds water. Further, none of the parties have produced partition deed to show as to the recitals of the said partition and the basis on which the mutation was effected. The plaintiff has approached this court without including all these properties more

particularly the land bearing Sy.No.223/3 which is acquired by him through his mother.

16. Further the defendants have produced the partition deed dated 07.09.2017 entered into between plaintiff, defendant No.3 and their father Basavegowda in respect of Sy.No.12/7, 19/5 and 16/4 of Kyathankere Village. Likewise, defendants have also produced another partition deed dated 12-06-2018 in respect of Sy.No.54/1 measuring 7 acres 06 guntas of Thattehalli village. The same shows that there has been already partition in the family. Further, it is contended that separate suit is pending in respect of properties acquired by father of plaintiff and there is no need for examining the same since they are not subject matters of this suit.

17. Furthermore, Item No.4 property bearing Sy.No.69 measuring 2 acres of Manchanayakanahalli Village was purchased by father of plaintiff in the name of defendant No.2 as minor guardian of defendant No.2. Presently, the RTC extract is also standing in the name of defendant No.2. It is an admitted fact that defendant No.2 and 3 are completely blind since their birth. As such, it appears that father of plaintiff has purchased item No.4 of the suit property in the name of defendant No.2 in order to safeguard her future. It is also admitted fact that the defendant No.2 remained unmarried. The question whether the item No.4 property purchased by father of plaintiff out of joint family fund requires to be examined since no such document has

been produced by the plaintiff at this point of time to believe his version.

18. On the other hand, prima facie, Section 14 of the Hindu Succession Act comes into the aid of defendant No.2 at this point of time to believe that the item No.4 of the property is her absolute property. Whether the plaintiff is having any interest over the same or not has to be looked into after going through the evidence to be adduced by both the parties. Therefore, prima facie plaintiff has not established as to whether the suit properties are joint family properties and that they are available for partition. On the other hand, prima facie, the defendants have, at this stage, established that there was partition in the family and accordingly, both plaintiff and defendant No.3 were allotted with different properties. But the plaintiff appears to have intentionally included the property allotted to defendant No.3 alone and he has not included another property which has fallen to his share bearing Sy.No.223/3 measuring 26 guntas. Hence, the balance of convenience is not lying in favour of plaintiff.

19. It is very much important to mention here that in the application, the plaintiff has sought for the relief as under:

“ ಸದರಿ ದಾವವು ತೀರ್ಮಾನವಾಗುವವರೆಗೆ ಪ್ರತಿವಾದಿಯರಾಗಲೀ, ಅವರ

ಕಡೆಯವರಾಗಲೀ, ಅವರ ಏಜೆಂಟರಾಗಲೀ ಅಥವಾ ಬೇರೆ ಯಾರೇ ಆಗಲೀ ವಾದಿಯ ದಾವಾ ಅನುಸೂಚಿ ಸ್ವತ್ತನ್ನು ಬೇರೆಯವರಿಗೆ ಕ್ರಯ ಆಧಾರ, ಬೋಗ್ಯ, ಮಾರಾಟ, ಮಾಡದಂತೆ ಪ್ರತಿವಾದಿಯರ ಮತ್ತು ಅವರ ಕಡೆಯವರ ವಿರುದ್ಧ ಏಕಪಕ್ಷೀಯ ತಾತ್ಕಾಲಿಕ ನಿರ್ಬಂಧಕಾಜ್ಜಿ ಮೂಲಕ ನಿರ್ಬಂಧಿಸಬೇಕಾಗಿರುವುದು ನ್ಯಾಯಾಭಿವೃದ್ಧಿ ದೃಷ್ಟಿಯಿಂದ ಅತ್ಯಾವಶ್ಯಕವೆಂದು ವಾದಿಯ ಪ್ರಾರ್ಥನೆ"

But in the affidavit filed in support of the application, plaintiff has sought for the relief as under:

“ ಆದುದರಿಂದ ಮೇಲ್ಕಂಡ ಕಾರಣಗಳಿಗಾಗಿ ಘನ ನ್ಯಾಯಾಲಯದವರು ಕೃಪೆ ಮಾಡಿ ಸದರಿ ದಾವಾವು ತೀರ್ಮಾನವಾಗುವವರೆಗೂ ಪ್ರತಿವಾದಿಯಾಗಲಿ ಅವರ ಕಡೆ ಯಾರೆ ಆಗಲಿ ಅತಿಕ್ರಮಪ್ರವೇಶ ಮಾಡದಂತೆ ತಂಟೆ - ತಕರಾರು ಮಾಡದಂತೆ ಪ್ರತಿವಾದಿಯರ ಮತ್ತು ಅವರ ಕಡೆಯವರ ವಿರುದ್ಧ ಏಕಪಕ್ಷೀಯ ತಾತ್ಕಾಲಿಕ ನಿರ್ಬಂಧಕಾಜ್ಜಿ ಮೂಲಕ ನಿರ್ಬಂಧಿಸಬೇಕಾಗಿ ನ್ಯಾಯಾಭಿವೃದ್ಧಿ ದೃಷ್ಟಿಯಿಂದ ಅತ್ಯಾವಶ್ಯಕವೆಂದು ಈ ಕೂಡ ಪ್ರಮಾಣ ಮಾಡುತ್ತೇನೆ”.

20. Therefore, in the application the plaintiff has sought for the relief to restrain the defendants from alienating, encumbering or creating charge over the suit properties, but in the affidavit, the

plaintiff has sought for the relief of temporary injunction to restrain the defendants from interfering with the possession of plaintiff over the suit properties. The prayer sought for in the application and in the affidavit are inconsistent and not related to each other. That apart there is no pleading in the affidavit as to attempt of defendants in alienating the suit property. No material particulars have been given as to when the defendants have made attempt to alienate the suit property or whether they have threatened regarding disposal of the suit properties by neglecting the alleged right of the plaintiff. In the absence of any such pleadings and inconsistency in the relief sought for in the application and the affidavit, prima facie, the plaintiff would not get the benefit of order of temporary injunction.

21. That apart, this court while discussing the facts and documents elaborately as above has already come to the conclusion that the plaintiff has not made out prima facie case. Hence, the balance of convenience is certainly not lying in favour of the plaintiff. Therefore, if the order of temporary injunction as sought for by the plaintiff, which could not be granted, no hardship or prejudice will be caused to the plaintiff. As such, the plaintiff has failed to establish the ingredients to be considered for passing equitable order of temporary injunction. That apart, plaintiff has also not established at this point of time that the suit properties are in danger of being wasted by the act of defendants. Hence, the plaintiff is not entitled to the reliefs

sought for in the application. Therefore, the application deserves to be dismissed. Accordingly, this court answered Point Nos.1 to 3 in the **Negative.**

22. **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 of Civil Procedure Code is hereby dismissed.
- No order as to costs.
- The earlier ex-parte order of temporary injunction granted by this court hereby stands vacated.

(Dictated to the stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court, on this the 13th day of September, 2023)

**(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 of Civil Procedure Code is hereby dismissed.
- No order as to costs.
- The earlier ex-parte order of temporary injunction granted by this court hereby stands vacated.

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