

**IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.,
CHANNARAYAPATNA**

-:: PRESENT ::-

Miss M.S Shashikala.

B.A.L., LL.B.,
Prl. Civil Judge & J.M.F.C.,
Channarayapatna.

Dated this the 29th day of September, 2015

Original Suit No.553/2014

Plaintiff : Manjamma and others

-Vs-

Defendants : Rangegowda and others

I.A No-4

Applicants : Manjamma and others

-Vs-

Opponents : Rangegowda and others

ORDER ON I.A No-4

This application is filed by the plaintiff seeking prayer to restrain the defendant from constructing in the suit schedule property. This application is supported by an affidavit sworn by plaintiff.

2. It is stated by the plaintiffs that, the plaintiff has filed this suit for partition. The suit properties are the joint and ancestral properties of plaintiffs and defendants. Further it is submitted that, the plaintiffs and defendants jointly enjoying the suit properties and suit property was

purchased out of joint family funds. Hence, the plaintiffs are also having share. Further plaintiff father Ramegowda died on 22-09-2013, after his death the plaintiffs sought partition from defendant and they refused. When plaintiff have taken the documents came to know the defendants by playing fraud got transferred katha of suit properties in their name. Now the first defendant trying to construct house in the item No.1 property. Hence, the plaintiff constrained to file this application.

3. On the other hand, defendants filed objection. It is submitted that, plaintiffs and defendant are Co-owners. It is settled position of law that a Co-owner cannot be granted injunction against the other Co-owner and every Co-owner is supposed to be in possession of every inch of the joint land and on that score alone the above petition is liable to dismissed. It is submitted that, the property in Sy.No.128/1 is owned by this defendant, defendant No.3 to 6, defendant No.7 to 9 each owing 16 guntas, 15 guntas, 15 guntas respectively and enjoying the land individually since long ago, and these facts are well within the knowledge of these plaintiffs. It is stated by the defendants that he had already almost completed the construction of the house in Sy.No.128/1 and just to harass this defendant filed this application. The plaintiffs have not made out any prima facie case and the balance of convenience is not lies in their favour. If this application is allowed the defendants will be put into irreparable loss and injuries. Hence, prays to dismiss the application.

4. I have heard the arguments of learned counsel of both parties. Perused the application, objection documents and entire material on record.

5. The following points arise for my consideration:

- 1) Whether the plaintiff proves that, he has made out prima facie case to grant temporary injunction?
- 2) Whether the plaintiff proves that, balance of convenience lies in his favour?
- 3) Whether the plaintiff proves that, if T.I is not granted in his favour he will be put into irreparable injury?
- 4) What order?

6. My answer to the above said points are as follows:

Point No.1 : In the negative.

Point No.2 : In the negative.

Point No.3 : In the negative.

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

REASONS

7. **Point No.1 to 3** :- These points are inter-linked with each other and require common discussion. In order to avoid repetition of discussion, therefore these points are taken together for common discussion.

8. It is submitted by the plaintiff is that, the plaintiff has filed this suit for partition. The suit properties are the joint and ancestral properties of plaintiffs and defendants. Further it is submitted that, the

plaintiffs and defendants jointly enjoying the suit properties and suit property was purchased out of joint family funds. Hence, the plaintiffs are also having share. Further plaintiff father Ramegowda died on 22-09-2013, after his death the plaintiffs sought partition from defendant and they refused. When plaintiff have taken the documents came to know the defendants by playing fraud got transferred katha of suit properties in their name. Now the first defendant trying to construct house in the item No.1 property. Hence, the plaintiff constrained to file this application.

9. The plaintiff to substantiate his case has produced stay order passed by A.C., photos produced by the plaintiff to show that, defendant are constructing. Further the plaintiff has also produced the Xerox copy of page of Mitra's Co-Ownership and Partition to show that, Co-owner cannot be permitted to change the character of the property and also relied upon Citation.

1. AIR 1993 Kerala 272 (Muthu alias Vava Vs. Ammalu and others.)
2. AIR 1985 Madras 283 (Rukmini and others Vs. H.N Thirumalai Chettiar.)

10. On the other hand defendants denied that, plaintiffs and defendant are Co-owners. It is settled position of law that a Co-owner cannot be granted injunction against the other Co-owner and every Co-owner is supposed to be in possession of every inch of the joint land and on that score alone the above petition is liable to dismissed. Further

it is deposed that, the property in Sy.No.128/1 is owned by this defendant, defendant No.3 to 6, defendant No.7 to 9 each owing 16 guntas, 15 guntas, 15 guntas respectively and enjoying the land individually since long ago, and these facts are well within the knowledge of these plaintiffs. Further it is deposed by the defendants that he had already almost completed the construction of the house in Sy.No.128/1 and just to harass this defendant filed this application. The plaintiffs have not made out any prima facie case and the balance of convenience is not lies in their favour. If this application is allowed the defendants will be put into irreparable loss and injuries. Hence, prays to dismiss the application.

11. The defendant to show that, property is self acquired property produced sale deed dated 27-11-1978 and grant certificate. Further the defendant has also produced palupatti to show that there is a partition between plaintiff and defendants. Further the defendants also produced they are constructing house still RCC level if defendant is restraining from construction they will be put into great hardship and inconvenience.

12. The learned counsel for the plaintiff argued that, suit properties are the joint and ancestral properties of plaintiff and defendants. The suit property was purchased by defendant from out of joint family funds. Palupatti reveals that in item No.3 property share had given if really it is self acquired property of defendant No.1 and why they gave share. Even though defendants are Co-owner they

cannot be permitted to construct in the suit property and they also not obtained permission from the construction authority. Hence, prays to allow the application.

13. On the other hand, the defendants counsel submits that, suit property is self acquired property of defendant No.1, out of love and affection he has given share to his brothers. Further it is submitted that already there is a partition between plaintiff and defendants. Now the plaintiff cannot having share in suit properties. Further it is stated that, in Sy.No.128 the plaintiff father Ramegowda has sold 17 guntas and said the property not included in this suit. The plaintiff suppressing the said fact approach the Court with unclean hands. Hence, prays to reject the application.

14. On perusal of the contention and documents produced by the both the parties it is to be noted that, defendants has produced sale deed dated 27-11-1978 to show that he has purchased Sy.No.128. Further the defendant has also produced prima facially palu patti dated 22-11-2010 there is partition between plaintiff and defendants. Further the defendant has also produced sale deed dated 13-05-2015 to show that, the plaintiff father Rangegowda sold 17 guntas in Sy.No.128 fallen to his share and the said property as not included in this suit. It is to be noted that, defendant has taken contention that, item No.1 property is self acquired property. On the other hand, the plaintiff has contended that suit property has purchased out of joint family funds. At this stage

defendants has produced the prima facie documents for purchasing the suit property, but plaintiff have not produced any document suit property has purchased out of joint family funds. The said fact has to be proved suit during trial by both parties. But however the defendant has constructed the house and he is also put RCC. Hence, at this stage it is just and not proper to restraining the defendant for further constructing. Hence, I come to the conclusion that, plaintiff fails to prove his case prima facially and balance of convenience also does not lie in his favour. Hence, the plaintiff is not entitled for any relief as sought in this application. Hence, I answer point No.1 to 3 in Negative.

15. Point No.4:- For the aforesaid reasons, I proceed to pass the following;

-: ORDER :-

I.A No 4 filed by the plaintiff under order 39 rule 1 and 2 R/w 151 of C.P.C is here by dismissed.

For plaintiff evidence on 16-10-2015.

(Dictated to the stenographer, transcription typed by her, corrected, signed and then pronounced by me in open court on 29th day of September, 2015)

(M.S. Shashikala)
Prl. Civil Judge & J.M.F.C.,
Channarayapatna.