

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

-:: **PRESENT** ::-

Sri. Sagar G. Patil.

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

Dated this the 4th day of July, 2017

Original Suit No.553/2014

Plaintiffs : Manjamma & others

-Vs-

Defendants : Rangegowda & others

I.A No-5

Applicants : Manjamma & others

-Vs-

Opponents : Rangegowda & others

ORDER ON I.A U/o 39 RULE 1 & 2 OF C.P.C.,

The plaintiff has filed this application U/o 39 rule 1 and 2 of C.P.C and sought to restrain the defendants by way of temporary injunction from alienating the suit properties.

2. The plaintiff has sworn to an affidavit in support of I.A and stated that, he has filed this suit for the relief of partition and separate possession. The plaintiff and defendants are the joint family members. The suit schedule properties are the ancestral and joint family

properties. The husband of plaintiff No.1 and father of plaintiffs 2 to 4 died on 22-09-2013 and after a week the plaintiffs have claimed their share in the suit properties. But the defendants have refused to effect partition. The plaintiffs have come to know that, the defendant No.1 got muted his name in the revenue records by deleting the name of father of plaintiffs 2 to 4. On the strength of the same the defendants are trying to alienate the suit properties. Hence, prays to allow the application.

3. The defendants 1, 3, 4, 5, 7 to 9 have filed objections to I.A and denied the entire contents of I.A and affidavit and contended that, the application is not maintainable. Earlier the plaintiff had filed application U/o 39 rule 1 and 2 of CPC and same was dismissed and agreed by the same the plaintiffs have preferred appeal in M.A 14/15 on the file of the Hon'ble Senior Civil Judge, Channarayapatna and the same is still pending. If an order of TI is passed much loss will be caused to the defendants. Hence, prays to dismiss the application.

4. On the basis of rival contention the following points arise for my consideration:

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

5. My findings to the above points are as under:

Point No.1 : In the affirmative.

Point No.2 : In the affirmative.

Point No.3 : In the affirmative.

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

REASONS

6. Points No.1 to 3:- The plaintiffs have filed this suit for the relief of partition and separate possession. In order to prove their case the plaintiffs have placed on record genealogical tree of the family. The relationship is not in dispute. The RTC extracts of the suit properties stand in the name of the defendant No.1 on the basis of partition. The defendants have placed on record certified copy of the sale deed dated 27-11-1978 to show that, the defendant No.1 purchased suit item No.1. The defendants have also produced palupatti dated 22-11-2010 to show that, there is a partition between the plaintiffs and defendants. The same prima facie reveals that, there was a partition. Further the defendants have also produced sale deed dated 13-05-2015 to show that, the defendant No.1 has sold 17 guntas of land in Sy.No.128 which was fallen to his share in the partition. This document prima facie shows that, partition dated 22-11-2010 is acted upon. But, since the plaintiffs are claiming that, there was no partition in the joint family and the palupatti is unregistered and therefore at the stage the Court cannot come to the conclusion that, there was a partition in the joint family.

7. The plaintiff have contended that, suit item NO.1 was purchased in the name of defendant No.1 out of the joint family funds and the defendant No.1 has contended that, the suit No.1 is his self-acquired property. At the stage the defendants have produced the sale deed dated 27-11-1978 to show that the defendant No.1 purchased the suit item NO.1. The panchayath palupatti dated 27-11-2010 relied by the defendants itself is evident of the fact that, the plaintiffs and defendants were in the joint family till 22-11-2010. Therefore at this stage the Court cannot come to the conclusion as to the nature of the suit properties. Whether the suit item No.1 was purchased out of joint family funds or not is a matter of trial and at this stage the Court cannot hold mini trial. Similarly the defendants have produced grant certificate dated 16-07-2001, were in the Tahasildar, Channarayapatna granted suit item No.2 in the name of defendant No.1. Whether the same was granted individually to defendant No.1 or it was granted for and on behalf of the joint family is also a matter of trial. Further the grant was made in the year 2001. Therefore this Court is of the opinion that the plaintiffs have made out a case necessitating the trial.

8. The plaintiffs have filed this suit for the relief of partition and separate possession and claims that they are having their legitimate share in the suit properties and if during pendency of the suit the defendants alienates the suit schedule properties the plaintiff will be put to inconvenience, on the contrary, if the defendants are restrained from alienating the suit schedule properties for a specific period i.e., till

disposal of the suit no inconvenience would be caused to the defendants. Therefore, the balance of convenience lies in favor of the plaintiff.

9. If the defendants are restrained by way of temporary injunction from alienating the suit schedule properties till disposal of the suit no loss or hardship will be caused to the defendants. On the other hand there is clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. If the defendants succeed in alienating the suit schedule properties during pendency of the suit the plaintiffs would be put to irreparable loss and untold hardship and the same cannot be compensated in terms of money or moneys worth.

10. AT this stage, it is useful to refer the decision of the **Hon'ble High Court of Karnataka reported in ILR 2004 Kar 4076 (Fakirasab Vs. Syedusab and others) where it is held that:**

“Civil Procedure Code, 1908 – Order 39 Rules 1 and 2 – Object of – while considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit.”

11. Further the **Hon'ble High Court of Karnataka in Channamma Vs. Nagaraj reported in ILR 1995 Karnataka 1561.**

“Disputes relating to agricultural lands and disputes relating to joint family properties are quite common in the civil litigation of this Country. Courts have therefore been required to evolve certain broad principles which have now become almost well defined while dealing with disputes of this type which principally take into account the fact that, the litigation takes some time and that if certain changes take place in the character of the property under dispute during the interim period, that it would only give rise to further litigation and sometimes renders the relief itself infructuous. For this purpose, more as a measures of safety, caution and legal expediency, the Courts have culled out certain well-defined principles, which ordinarily ought to be departed from. One of this principles is that where there is a dispute in relation to immovable property which happens to be vacant, that it the property were to be encumbered, alienated, built upon or it third party rights are permitted to be created during the interim period that the situation might become and in fact does become totally irreversible by the time the Court passes final orders. It is a well defined principles of law that a Court is required to be equally fair to the defendants as also the parties who have approached the Court and therefore, necessary safety precautions in relation to the plaintiff's interest are also of some consequence. This is in fact essence of the principle behind the grant of interim order.”

12. The above dictums led down by the Hon'ble High Court are aptly applicable to the case at hand. In order to protect the properties from being alienated wasted or damaged grant of temporary injunction is necessary. Therefore I answered aforesaid points accordingly.

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

-: ORDER :-

The application filed by the applicant/plaintiff U/o 39 rule 1 and 2 of C.P.C is here by allowed.

The defendants, their agents, servants, attorneys anybody on behalf of them are hereby restrained from alienating the suit schedule properties till disposal of the suit.

(Dictated to the stenographer, transcription typed by her, corrected, signed and then pronounced by me in open court on 4th day of July, 2017)

(Sri. Sagar G. Patil)
Prl. Civil Judge & J.M.F.C.,
Channarayapatna.