

**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 10th day of December, 2018

Original Suit No.655/2014

Plaintiff : N.Krishnaswamy S/o Late
P.B Nanjaiah, Aged about 84 years,
R/at Farm House, Vellipalayam Road,
Mettupalayam 641301,
Coimbatore District, Tamil Nadu.

-Vs-

Defendants : 1. Jayashree Jayanth W/o Jayanth
Balakrishna, Aged about 56 years,

2. Jayanth Balakrishna S/o Late
Justice H.G Balakrishna,
Aged about 60 years,
R/at 183, Prestige North West
Country, Rajanakunte,
Off Doddaballapura Road,
Bangalore 560064.

I.A No-

Applicants : Jayashri Jayanth & another

-Vs-

Opponent : N.Krishnaswamy

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

The defendant No.1 has filed this application U/o 39 rule 1 and 2 of C.P.C and sought to restrain the plaintiff from alienating the I.A suit schedule properties till disposal of the suit.

2. The defendant No.1 has sworn to an affidavit in support of I.A and stated that, the plaintiff has filed this suit for the relief of permanent injunction. The plaintiff is kartha of the family and defendant No.1 is his daughter. The suit properties are the ancestral and joint family properties and the same have remained unpartitioned. The defendant No.1 is a coparcener and she is having right in the suit properties. The plaintiff is trying to alienate the suit properties. There is legal necessity for the joint family. The plaintiff has not come to the Court with clean hands. She has got prima facie case and balance of convenience lies in favour. Hence, prays to allow the application.

3. In pursuance of the suit summons the plaintiff has put his appearance through his counsel and filed the objection to I.A and contended that the application filed by the defendant No.1 is frivolous and mala fide and deserves to be dismissed with exemplary costs. The suit is for bare injunction and hence the present application filed by the defendant is not maintainable. The defendant No.1 has filed this application only with an intention to prolong the litigation. The plaintiff is lawful owner of the suit properties and hence he cannot be restrained

from alienating the suit properties. The defendant No.1 can file separate suit if she is having cause of action. The suit in O.S 655/2014 filed by the defendant No.1 was dismissed for default. The defendants are not having any interest in the suit properties. She can claim any rights in the suit properties during the lifetime of her father. The suit for partition filed by the defendant No.1 herein in O.S 6285/2008 before the Hon'ble City Civil Court, Bangalore was dismissed and the same was challenged in appeal before the Hon'ble High Court, Bangalore.

4. The suit in O.S 804/2008 filed by the defendant No.1 before the court of the District Judge, Coimbatore in relation to the family properties and the same was dismissed. Aggrieved by the same the defendant No.1 preferred appeal No.573/2001 and the same was also dismissed.

5. The partition suit in O.S 6285/2008 filed by the defendant No.1 before the City Civil Court dismissed on 06-04-2016. Against which the defendant No.1 preferred appeal in RFA No.1226/2016 before the Hon'ble High Court of Karnataka, Bangalore. The same is pending for consideration. In that case the trial Court refused to grant interim relief to the plaintiff therein. The defendant No.1 has initiated number of litigation against the plaintiff seeking various reliefs and failed in all the proceedings. The defendant No.1 has failed to show prima facie case. The balance of convenience lies in favour of the plaintiff. Hence, prays to dismiss the application.

6. On the basis of rival contention 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 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?

7. My findings to the above points are 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 the final order for the following:

REASONS

8. Points No.1 :- The relationship of the parties is not in dispute. It is also is not in dispute that the suit properties earlier belonged to father of the plaintiff by name P.B Nanjaiah. It is also not in dispute that after the death of Nanjaiah his sons plaintiff and his brothers succeeded the suit properties. The defendant No.1 has alleged that she is also one of the coparceners. The RTC extracts of the suit schedule properties show that the suit properties stands in the name of the plaintiff. The plaint in O.S 6285/2008 is at Ex.D-5, wherein the

defendant No.1 herein had filed suit for partition in respect of alleged joint family properties including the suit schedule properties. The judgment in O.S 6285/2008 is produced, wherein suit filed by defendant No.1 is dismissed as not maintainable. In the said judgment at page No.21 the Hon'ble City Civil Court, Bangalore observed as under;

“By virtue of the partition deed dated 04-03-1955 there was disruption of joint family status in the family. By virtue of another partition deed dated 26/27-04-1996, the defendant No.1 and his brothers and mother were separated. By virtue of the attraction of Section 8 of Hindu Succession Act there were no ancestral coparcenary properties of joint family properties as on the date of the filing of this Suit. Only in the case of coparcenary property daughter is entitled to equal share with son. When there is no existence of coparcenary properties/ joint family properties as on the date of the filing of the suit there is no question of attraction of Section 6 of Amended 2005 Hindu Succession Act. Essence of coparcenary is a unity of ownership. When the Amendment Act of 2005 is prospective on and from its commencement the plaintiff cannot question the earlier registered partition deeds and other disposition of properties. The plaintiff cannot take shelter under the amended Section 6 of Hindu Succession Act, 2005 to claim her share as coparcener. Consequently, the suit of the plaintiff is not maintainable in the present form.”

9. In the above judgment the Hon'ble City Civil Court came to a conclusion that the suit properties are not the coparcenary properties. This Court gone through the above judgment of the Hon'ble City Civil

Court in detail and find that the Hon'ble Court by considering the facts of the case and position of law came to a conclusion that the suit schedule properties are not coparcenary /joint family properties. The copy of appeal memo at Ex.D-17 show that RFA 1226/2016 is pending for consideration before the Hon'ble High Court of Karnataka. The same makes it clear that there is already a finding of the Hon'ble City Civil Court holding that the suit schedule properties are not the ancestral/joint family properties. Against the same appeal is pending before the Hon'ble High Court of Karnataka.

10. This Court feel that during the subsistence of finding of a court which is superior to this Court is pending for consideration before the Hon'ble High Court the judicial discipline requires no interference in the order of the Hon'ble City Civil Court. Therefore this Court declined to go into the matter once again. The Hon'ble City Civil Court has come to a definite conclusion that a coparcenary is not in existence and there is no coparcenary/joint family propeties. The said finding is challenged before the Hon'ble High Court of Karnataka by filing regular first appeal. The same is still pending for consideration and the Hon'ble High Court of Karnataka has not at passed any orders. Therefore the order of the Hon'ble City Civil Court holds good. Unless and until the said order is reversed by the Hon'ble High Court of Karnataka the defendants herein are estopped from alleging that the suit properties are the joint family properties. Therefore, once the suit properties are not coparcenary properties the plaintiff who is claiming

herself as one of the coparceners is not entitled for joint possession during the lifetime of her father. Once she is not entitled to claim joint possession and she cannot claim joint possession. Once she is not in joint possession the protection of joint possession of the plaintiff does not arise. Once she is not entitled for partition she cannot claim an order to preserve the suit properties intact.

11. The claim of the plaintiff for partition is already dismissed by competent Civil Court and therefore the question of claiming joint possession does not arise. Therefore this Court is of the opinion that the plaintiff has failed to make out prima facie case. **Hence, I answer point No.1 in the negative.**

12. Point No.2 and 3 :- The defendant No.1 has failed to show that the suit properties are coparcenary properties. Therefore she is not having any right in the suit schedule properties. The plaintiff and heirs of his brothers are absolute owners of the suit schedule properties. Therefore, if absolute owners of suit schedule properties are restrained from alienating the suit schedule property it will prejudice the plaintiff and others. Being the absolute owners they cannot be restrained from alienating the suit schedule properties. If they are restrained from alienating the suit properties they will be deprived from dealing with their absolute properties the same will cause inconvenience to them. On the other hand if the plaintiff is not restrained from alienating the suit schedule properties and if the plaintiff alienates the defendant No.1 will

have right to challenge the alienation for want of legal necessity. Therefore if the suit schedule properties are alienated then also no prejudice or inconvenience would be caused to the defendant No.1. **Hence, I answer point No.2 and 3 in the negative.**

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

:- ORDER :-

***The application filed by the defendant
No.1 U/o 39 rule 1 and 2 of C.P.C is here by
dismissed with cost.***

(Dictated to the stenographer, transcription typed by her, corrected, signed and then pronounced by me in open court on 10th day of December, 2018)

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

