

IN THE COURT OF THE SENIOR CIVIL JUDGE AT  
HOLENARASIPUR

PRESENT : Sri RANGEGOWDA.C.  
B.A.L., LL.B.  
Senior Civil Judge and J.M.F.C.,  
Holenarasipura.

**Dated this the 30<sup>th</sup> day of May 2018**

**O.S.NO.14/2018**

Plaintiff/s		Defendant/s
H.R.Vanitha and		K.V.Shambulinga
another	-V/s-	and others

**:: IA.No.II and III::**

Applicant/s : H.R.Vanitha and another

-V/s-

Respondent/s : K.V.Shambulinga and others

**:: ORDERS ON IA.No.II and III::**

The plaintiffs have filed application under Order 39 Rule 1 and 2 C.P.C, seeking temporary injunction restraining the defendant no.1 from alienating the suit property. The plaintiffs also filed I.A.No.III seeking temporary injunction restraining the defendant no.3 from changing the khatha of the suit property till disposal of the suit.

2. The plaintiffs have filed this suit seeking relief of partition of 1/2 share in the suit property by metes and bounds. The suit property is described in the schedule as a RCC building consisting of ground floor and 1<sup>st</sup> floor measuring east – west 29 feet and north – south

151 feet bearing khatha no.691, 692, 693, 694, 695, 696 situated at Hallimysore, Holenarasipura Taluk. It is the case of the plaintiffs that, the father of the 1<sup>st</sup> plaintiff by name H.K.Renjekaradhyha had purchased 2 acres of land in Sy.No.43/2 from Puttappashetty under a registered sale deed dated 10.06.1986. Out of the said 2 acres only 4 guntas is converted for non-agricultural purpose by an order of Asst. Commissioner in ALN.No.102/98-99 dated 15.10.1988. The said 4 guntas of non-agricultural land was purchased by the husband of the 1<sup>st</sup> plaintiff by name K.V.Manjunath and 1<sup>st</sup> defendant jointly under a registered sale deed. In the said property the said K.V.Manjunath and 1<sup>st</sup> defendant have jointly constructed the buildings and were running Bhaarath Universal Education Society. The husband of the 1<sup>st</sup> plaintiff i.e. K.V.Manjunath has died on 22.08.2005 and thereafter plaintiffs and 1<sup>st</sup> defendant are in possession and enjoyment of the suit property.

3. The 1<sup>st</sup> defendant has filed application seeking change of khatha to his name and as per the intimation by the 3<sup>rd</sup> defendant the 1<sup>st</sup> plaintiff has went to the office of the 3<sup>rd</sup> defendant and given her statement. Since plaintiffs have got equal share in the suit property plaintiffs asked the 1<sup>st</sup> defendant for dividing the suit property. But the defendant no.1 has not agreed for the same and therefore the plaintiffs have filed this suit seeking partition in respect of the suit property. In the affidavit filed in support of the I.A.No.II and III the 1<sup>st</sup> plaintiff has reiterated the averments of the plaint and

further prayed that the averments of the plaint is considered as part and parcel of the affidavit.

4. The defendant no.1 and 2 appeared through their counsel and filed written statement. The defendant no.1 is the Shambulinga who is also secretary to Bhaarath Universal Education Society. In this case the said Shambulinga is party in his own capacity as defendant no.1 and is also arrayed a defendant no.2 in the capacity of Secretary to Bhaarath Universal Education Society. In his written statement defendant no.1 and 2 have contended that, the suit is not maintainable, the plaintiffs shall be put to strict proof of averments of para 2 of the plaint. It is denied that, the father of 1<sup>st</sup> plaintiff has purchased 2 acres of land in Sy.No.43/2 from one Puttashetty under a registered sale deed dated 10.06.1996. It is also denied that, the father of the 1<sup>st</sup> defendant has obtained an order of non-agricultural purpose in respect of the suit property, but it is contended that the defendant no.1 and 2 personally obtained the order non-agricultural purpose in respect of the suit property and constructed the building. The defendants have also denied the averments of para 3 of the plaint as false and contended that, the suit property was purchased by Bhaarath Universal Education Society through its Adeekshaka K.V.Manjunath and Secretary K.V.Shambulinga and they were running the school and colleges in the suit property as representatives of Bhaarath Universal Education Society and the suit property are not the personal or private property of K.V.Manjunath or

K.V.Shambulinga. The said K.V.Manjunath has also drawn his salary and other benefits for having worked as Adeekshaka in the said society.

5. The defendants have denied the averments of the para 4 and 5 of the plaint as false and further contended that, the suit property is not purchased by K.V.Manjunath and K.V.Shambulinga out of their own money and the said property is the property of Bhaarath Universal Education Society. Hence, there is no question of K.V.Manjunath or plaintiffs having any joint possession of the said property. The defendant have admitted that as per the decision of Executive Committee an application was submitted for change of khatha in the name of Bhaarath Universal Education Society by removing the name of deceased K.V.Manjunath who was the Adeekshaka of the society. But defendants further contended that, they do not know the issuance of notice by 3<sup>rd</sup> defendant and statement if any given by the 1<sup>st</sup> plaintiff. The defendants further denied the averments of para 7 and 8 as false and further contended that, the members of the society have no private right in the property of the society. The defendants further denied that the suit is bad for non-joinder of necessary parties and valuation of the suit property made by the plaintiff is not correct. The defendants also denied the averments of para 9 and 10 as false and contended that the suit is barred by limitation. The defendants further contended that, the plaintiffs have not approached this Court with clean hands.

6. The defendants no.1 and 2 further contended that, at the time of purchasing 2 acres in Sy.No.43/2 a request was submitted to Government for transfer of Bhaarath Universal Education Society from Tiptur and at the time it was not possible to amalgamate the society with any other society. A new temporary society in the name and style of Mathrushree Vidya Samsthe was formed and there was immediate necessity for construction for building of D'Ed college, hence in the year of 1996 two acres of land was purchased. Since, the 1<sup>st</sup> defendant and one Basavarajaiah who was the President of society, are in Government service and sale deed cannot be obtained in their name, hence, sale deed is obtained in the name of Renukaradhya who is none other than the brother-in-law of the 1<sup>st</sup> defendant as per the decision of the Executive Committee dated 10.06.1996 and also dated 27.8.1988. Since there is an obstruction for registering the revenue land directly in the name of the society, the sale deed is obtained in the name of the said Renukaradhya and therefore the said property is not self-acquired or private property of Renukaradhya. Thereafter by virtue of the power of attorney the entire property of Renukaradhya is transferred in the name of the 1<sup>st</sup> defendant and K.V.Manjunath who was working as Principal. In the said land college building and other buildings constructed as per the education department requirement. The funds are also received from bank, private individuals and also from MLA funds.

7. The plaintiff has already filed suit for declaration and other relief in O.S.101/16 before this Court in respect of Sy.No.43/2 in

which suit property situated. The suit property is in possession of Bhaarath Universal Education Society and husband of the 1<sup>st</sup> plaintiff K.V.Manjunath has worked in the capacity of Adeekshaka and Executive Committee member and he has no personal rights in the suit property. With the above contentions the defendants prays for dismissal of the suit.

8. The 3<sup>rd</sup> defendant has filed written statement and stated that, the 3<sup>rd</sup> defendant do not know the averments of para 2 to 7 of the plaint. The 3<sup>rd</sup> defendant contended that, the suit is not properly valued and this Court cannot entertain the suit. Since the plaintiff has not sought any relief against defendant no.3, suit is not maintainable. The defendant no.3 further contended that, as per the request of the defendant no.2 for change of khatha, after obtaining objection from the 1<sup>st</sup> plaintiff and also on perusal of the documents produced by the 1<sup>st</sup> plaintiff, the 3<sup>rd</sup> defendant has changed the khatha of the suit property in the name of 2<sup>nd</sup> defendant. With the above contentions defendant no.3 prays for dismissal of the suit.

9. The counsel for the defendant no.1 and 2 filed objection to I.A.No.II and prays for adopting the written statement as objection to I.A.No.II and III. The counsel for the defendant no.3 has also filed a memo and prays for adopting the written statement filed by defendant no.3 as objection to I.A.No.III.

10. Heard both counsels and perused the pleading and documents produced by both parties.

11. The following points arise for my consideration:-

- 1. Whether the plaintiff has made out prima facie case in her favour for the grant of Temporary Injunction as sought for?**
- 2. Whether the plaintiff has made out sufficient grounds to show that balance of convenience lies in her favour?**
- 3. Whether the plaintiff has made out sufficient grounds to show that the irreparable loss and injury will be caused to her, if the Temporary Injunction is not granted?**
- 4. What order?**

12. My findings to the above points are as follows:

**Point No.1 : Partly in the affirmative**

**Point No.2 : Partly in the affirmative**

**Point No.3 : Partly in the affirmative**

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

### **REASONS**

13. **Point No.1:-** It is the specific case of the plaintiff that she is the joint owner of the suit property as her husband and defendant no.1 have jointly purchased the same though a registered sale deed

and the husband of the plaintiff has died. The plaintiff has specifically contended that the defendant no.1 and 2 have specifically refused to give her share in the suit property. Hence, she has filed this suit seeking partition. The plaintiff has also filed I.A.No.II and seeking temporary injunction against the defendant no.1 restraining him from alienating the suit property till disposal of the suit. The plaintiff through I.A.No.III is seeking an order to restrain the defendant no.3 from changing khatha in respect of the suit property.

14. On the other hand it is the specific case of the defendant no.1 and 2 that the suit property is purchased in the name of Bhaarath Universal Society represented by the husband of the plaintiff and also the defendant no.1 jointly, therefore the husband of the plaintiff or the plaintiff have no right or interest in the suit property. The defendants further contended that suit property is not the self-acquired property of the husband of plaintiff. Therefore, defendants pray for rejection of the application. The defendant no.3 in its written statement has contended that, as per the request of the defendant no.2 after calling for objection and on perusal of the documents produced by the 1<sup>st</sup> plaintiff and defendant no.2, has changed the khatha of the suit property in the name of 2<sup>nd</sup> defendant and hence prays for rejection of the application.

15. The plaintiff has produced G-tree, copy of the 2 sale deeds, demand register extract, notice issued by Grama Panchayath, tax paid receipts, copy of the N.A. order, copy of the licence and sketch

and also death certificate. On the other hand the defendant no.1 and 2 have produced about 25 documents with list such as copies of sale deed, documents in respect of O.S.No.1/16 and other documents in respect of the suit property and construction of the building etc. The defendant no.3 has produced order passed by the P.D.O changing the khatha in respect of the suit property.

16. The dispute in respect of suit property as to whether plaintiffs have got half share in the suit property or the sale deed obtained in favour of husband of the plaintiff and defendant No.1 is in their personal capacity or the sale deed is obtained by husband of the plaintiff and defendant no.1 in their capacity as Adeekshaka and Secretary of the said Society, has to be decided only after trial.

17. However, on perusal of the pleadings of both parties and documents produced by both parties it could be gathered that suit property is in possession of defendant no.1 and 2 and defendant no.2 is running Bhaarath Universal Education Society. At this stage, on perusal of the pleadings and documents, nothing is forthcoming from the records, which renders the suit of the plaintiff as false, frivolous and vexatious. The learned counsel for the defendant no.1 and 2 also not brought to the notice of the court anything to show that the suit of the plaintiff is barred by any law or false and vexatious. The dispute between the parties is to be decided only after trial. At this stage, the plaintiff has made out a triable case. Therefore, this court has come to the conclusion that the plaintiff has made out prima

facie case for granting of Temporary Injunction, in so far as I.A.No.II is concerned at this stage. Hence, point No.1 is answered in the partly in the affirmative.

18. **Point No.2 and 3:-** Since these points are inter-related, therefore they are taken together for consideration.

19. On perusal of the documents produced by the plaintiff and upon considering the application and objection of both parties, it is clear at this stage that, suit property is in the possession of defendant no.1 and 2 and defendant no.2 is running Bhaarath Universal Education Society. If the defendant no.1 is allowed to alienate the suit property to third parties, then the very purpose of filing this suit by the plaintiffs will be frustrated and it also leads to multiplicity of proceedings. Therefore, if the defendant no.1 is allowed to sell the suit property, then it is the plaintiffs who will be put to irreparable loss and injury. If the Temporary Injunction as prayed in I.A.No.II is not granted, the comparative inconvenience will also be caused to the plaintiffs. On the other hand, if the Temporary Injunction is granted, no hardship or prejudice will be caused to the defendant no.1. Therefore, this court has come to the conclusion that, in order to preserve the suit property till the rights of the parties are decided on merits, it is just and necessary to restrain the defendant no.1 from alienating the suit property. In view of the above discussion, this court has come to the conclusion that it is a fit

case, wherein discretion U/o 39, R.1 and 2 C.P.C is to be exercised in favour of the plaintiffs in so far as I.A.No.II is concerned.

20. The plaintiffs have sought temporary injunction restraining defendant no.3 from changing khatha. However, the defendant no.3 has filed written statement along with order passed by P.D.O changing the khatha of the suit property in the name of defendant no.2. The documents produced by the defendant no.3 indicates that said order is passed before filing of the suit. Therefore, I.A.No.III has become infructuous and therefore I.A.No.III does not survive for consideration. In view of the above discussions point No.2 and 3 are answered partly in the affirmative.

21. **Point No.4:-** For the foregoing reasons and findings on point No.1 to 3, I proceed to pass the following:

### **ORDER**

The IA.No.II filed by the plaintiffs, U/o 39, R.1 & 2 C.P.C, is hereby allowed.

By an order of temporary injunction, defendant no.1 is hereby restrained from alienating the suit property till disposal of the suit.

However, the above order of temporary injunction shall not come in the way of defendant no.1 and 2 running schools and colleges through the Bhaarath Universal Education Society by obtaining appropriate directions or sanctions from the concerned department.

The I.A.No.III filed by the plaintiffs U.o.39 Rule 1 & 2 of C.P.C is hereby rejected as infructuous.

Considering the circumstances of the case, no order as to cost.

(Partly dictated to the stenographer and partly dictated directly on computer, typed by her, revised by me and after corrections, pronounced in the Open Court on this the 30<sup>th</sup> day of May 2018)

(RANGEGOWDA.C)  
Senior Civil Judge, H.N Pura.