



mutated in the name of K.V.Manjunatha. The said Manjunatha has constructed a house in the said property. After the death of said Manjunatha, plaintiffs are in possession of the said house. The house is the suit item no.2 in this case. Suit item no.3 has fallen to the share of 2<sup>nd</sup> defendant and as per M.R.No.5/98-99 same is mutated in the name of 2<sup>nd</sup> defendant. In the said property 26 guntas of land was acquired and the 2<sup>nd</sup> defendant has received the compensation. Remaining 1 acre 23 guntas of land is in possession of 2<sup>nd</sup> defendant. The suit item no.4 is the house in which 1<sup>st</sup> and 2<sup>nd</sup> defendants are residing. The 1<sup>st</sup> defendant has executed a relinquishment deed in respect of suit item no.3 and 4. Thereafter, defendant no.2 to 4 have executed an agreement of sale in favour of 11<sup>th</sup> defendant in respect of suit item no.3 and in the said agreement it is also mentioned that suit item no.4 property will also be sold. Suit item no.5 is the site purchased in the name of 1<sup>st</sup> defendant out of the income of the joint family. The 1<sup>st</sup> defendant has sold the said property to 9<sup>th</sup> defendant and 9<sup>th</sup> defendant has sold the said property to 10<sup>th</sup> defendant under registered sale deeds. The relinquishment deed executed by 1<sup>st</sup> defendant is not binding on the plaintiffs. Registered sale deeds executed by defendant no.1 and 2 in favour of defendant no.9 and thereafter to defendant no.10 are not binding on the plaintiffs.

3. The above is suit filed by the plaintiffs seeking relief of partition and separate possession of the suit properties and also for mesne profit and other reliefs. In the affidavit filed in support of

I.A.No.1 the plaintiff has reiterated the plaint averments and prays for allowing of the application.

4. The defendants no.1 and 2 filed common written statement and contended that the suit is not maintainable. The averments of para 3 to 7 of the plaint are denied as false. Defendant no.1 and 2 further contended that Court fee paid is not sufficient and plaintiffs are not entitled to relief sought for. The defendant no.1 and 2 denied that, the suit properties are ancestral and joint family properties of plaintiffs and defendant no.1 to 4. It is specifically contended that suit item no.1 is purchased by the defendant no.1 and it is self acquired property of defendant no.1. The 1<sup>st</sup> defendant has constructed the house in suit item no.1 which is shown as suit item no.2 in this case. The husband of the 1<sup>st</sup> plaintiff i.e., K.V. Manjunatha in collusion with the revenue authorities has got mutated his name in respect of the suit item no.1 property. Therefore, the 1<sup>st</sup> defendant has filed a suit in O.S.No.44/16 before Civil Judge Court, Holenarasipura, seeking declaration of title in respect of the suit item no.1 and 2 properties. The plaintiffs or husband of the 1<sup>st</sup> plaintiff were never in possession of the suit item no.1 and 2 property. The plaintiffs also filed a suit in O.S.No.95/16 before Civil Judge Court, Holenarasipura, in respect of suit item no.1 and 2 and sought temporary injunction. The said application is rejected by the Court. The plaintiff has suppressed all these facts and filed this suit. Suit item no.3 is also self acquired property of 1<sup>st</sup> defendant and suit item no.4 is the Sthridhana property received from her parental house.

The 1<sup>st</sup> defendant has executed a relinquishment deed in favour of 2<sup>nd</sup> defendant in respect of suit item no.3 and 4. The 2<sup>nd</sup> defendant has sold suit item no.3 and 4 to 11<sup>th</sup> defendant under a registered sale deed. The suit item no.5 is the self acquired property of 1<sup>st</sup> defendant and she has sold the said property in order to discharge hand loans and also for her livelihood. The defendants 1 and 2 contended that there was no partition of the suit properties as claimed by the plaintiffs and plaintiffs have not approached this Court with clean hands, hence prays for dismissal of the suit. In the objection to I.A.No.2 filed by defendant no.1 and 2, they have reiterated the averments of written statement and contended that plaintiffs have no right to question the alienation made by defendant no.1 and 2 and plaintiffs have suppressed real facts and to obtained ex.parte temporary injunction, hence prays for rejection of the application.

5. The defendant no.10 has filed written statement and denied all material averment of the plaint as false and contended that, the suit item no.5 is self acquired property of the defendant no.1 and the same is purchased by the defendant no.9 and thereafter defendant no.10 has purchased that property. Defendant no.1 has become the absolute owner of suit item no.5 by virtue of Sec.14(1) of Hindu Succession Act. With the above contentions defendant no.10 prays for dismissal of the suit. The defendant no.5, 7 and 8 have filed written statement admitting all the averments of the plaint and

sought counter claim for partition of their share by paying Court fee. The defendant no.10 has not filed any objection to I.A.No.2.

6. Heard both counsels. Perused the materials on record and written arguments submitted by defendant no.1 and 2. The following points arise for my consideration:-

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

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

**Point No.1 : In the affirmative**

**Point No.2 : In the affirmative**

**Point No.3 : In the affirmative**

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

### **REASONS**

8. **Point No.1:-** It is the specific case of the plaintiffs that, suit properties are ancestral and joint family properties of plaintiffs and defendant no.1 to 4. Plaintiffs also contended that there is a

partition during the life time of the husband of the 1<sup>st</sup> plaintiff by name K.V.Manjunatha and as per the said partition suit item no. 1 property fallen to the share of Manjunatha and thereafter he has constructed house in the said property. It is specifically contended in the plaint that, at the time of the partition it was agreed that during the life time of the 1<sup>st</sup> defendant the suit item no.5 property shall allowed to be in the name of 1<sup>st</sup> defendant and after her death the said property shall be divided between K.V.Manjunath and 2<sup>nd</sup> defendant equally. But, the 1<sup>st</sup> defendant has alienated the said property. Therefore plaintiffs have filed this suit for partition and separate possession in respect of all the properties.

9. On the other hand, the defendant no.1 and 2 have specifically contended that, all the suit properties are self acquired properties of defendant no.1 and the defendants have denied that the suit properties are joint family properties of plaintiffs and defendant no.1 to 4.

10. The plaintiff has produced genealogical tree, mutation register extract and RTC extracts of suit properties. She has also produced tax paid receipt and electricity bill paid receipts in respect of suit item no.2. Plaintiff also produced copy of relinquishment deed executed by defendant no.1 and also two sale deeds in respect of suit item no.5 property. Plaintiff also produced other documents in respect of the suit properties. The defendants no.1 and 2 have produced copies of 4 sale deeds in respect of suit item no.1, 3, 4 and

5 properties. They also filed copies of the RTC extract in respect of the suit schedule item no.1 property.

11. On perusal of the above pleadings and documents at this it could be noticed that, the plaintiff has claimed that all the properties are joint family properties purchased out of the joint family income in the name of defendant no.1. On the other hand defendant no.1 and 2 have specifically contended that the suit properties are self acquired properties of defendant no.1. The above dispute between the parties can only be decided after trail.

12. 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 defendants 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. Though it is contended by defendants that plaintiff has filed suit in respect of suit item no.1 and 2 before the Civil Judge, Holenarasipura, but no documents are produced to show that whether the plaintiff have filed suit for partition or any other relief. Therefore, this Court has come to the conclusion that at this stage, the plaintiff has made out prima facie case for granting of Temporary Injunction. Hence, point No.1 is answered in the affirmative.

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

14. On perusal of the pleadings and documents produced by the plaintiff and upon considering the application and objection of both parties, it is clear at this stage that, suit item no.3 and 4 are standing in the name of defendants no.2 and suit item no.5 is standing in the name of defendant no.10. If the defendants are allowed to alienate the said properties to third parties or allowed to create charge over the said properties, 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 defendants are allowed to sell the said properties, then it is the plaintiffs who will be put to irreparable loss and injury. If the Temporary Injunction 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 defendants. Therefore, this court has come to the conclusion that, in order to preserve the suit properties till the rights of the parties are decided on merits, it is just and necessary to restrain the defendants from alienating the suit item no.3, 4 and 5. 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. Therefore, point No.2 and 3 are answered in the affirmative.

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

**ORDER**

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.2 to 4 and 10 are hereby restrained from alienating the suit schedule item no.3, 4 and 5, till disposal of the suit.

Cost shall follow the result of the suit.

(Dictated to the stenographer directly on computer, typed by her, revised by me and after corrections, pronounced in the Open Court on this the 13<sup>th</sup> day of July 2016.)

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