

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.,
HOLENARASIPUR

Dated this the 25th day of April 2017

O.S.NO.37/16

Plaintiff/s : K.C.Mohan S/o Channappajjaiah
Aged about 67 years,
Hallimysore Village,
Hallimysore Hobli,
Holenarasipura taluk.

-V/s-

Defendant/s : 1. Smt. Sundramma W/o
Late Bhujangaswamy,
Aged about 62 years.
2. K.B.Shivakumara S/o
Late Bhujangaswamy,
Aged about 41 years.
3. K.B.Harisha S/o
Late Bhujangaswamy,
Aged about 39 years,
4. Prakasha S/o Late Papanna,
Aged about 43 years,
5. K.P.Darshan S/o Prakash,
Aged about 22 years,
6. Chandrappa S/o
Late Somashekharaiyah,
Aged about 58 years,
All are R/o Kallahalli Village,

Hallimysore Hobli,
Holenarasipura taluk.

7. Smt. Triveni K.B
W/o Mahantesh Patil,
Aged about 43 years,
R/o No.6, 26th block,
SBM colony, Aravinda Nagar,
Srirampura, 2nd stage,
Mysuru-570023.

8. Puttamani W/o Iyanna,
Aged about 60 years,
Mellahalli village,
Madankodi post,
Bookanakere Hobli,
K.R.Pte taluk,
Mandya District.

9. Satisha M.P. S/o
Puttaswamappa,
Aged about 39 years,
Hallimysore village,
Hallimysore Hobli,
Holenarasipura taluk.

:: IA.No. II, III, IV::

Applicant/s : K.C.Mohan

-V/s-

Respondent/s : Smt. Sundramma & others

:: ORDERS ON IA.No.II, III, IV::

The plaintiff has filed I.A.No.II under order 39, rule 1 & 2 C.P.C and sought temporary injunction against the defendants restraining them from alienating the suit schedule 'A' properties in any way till pending decision of this suit.

2. The plaintiff has filed I.A.No.III under order 39, rule 1 & 2 C.P.C and sought temporary injunction against the defendants restraining them from interfering with the possession and enjoyment of the plaintiff over the bore-well drilled in item No.8 of suit schedule 'C' property till pending decision of this suit.

3. The plaintiff has filed I.A.No.IV under order 39, rule 1 & 2 C.P.C and sought temporary injunction against the defendants restraining them from interfering with the possession and enjoyment of the plaintiff over the suit schedule 'C' properties till pending decision of this suit.

4. It is the case of the plaintiff that suit schedule 'A' properties are the ancestral properties and the properties purchased out of the income of the joint family property. There was a oral partition between plaintiff, deceased Bhujangaseamy and their sister Deviramma and Chennajamma. In the said oral partition 'B' schedule properties fallen to the share of Bhujangaswamy, 'C' schedule properties fallen to the share of plaintiffs, 'D' schedule properties fallen to the share of Lathamani who is daughter of Bhujangaswamy and 'E' schedule properties fallen to the share of Deviramma. Thereafter plaintiff is in possession of 'C' schedule properties. The plaintiffs has sold some of lands and house fallen to his shares to the 9th defendant.

5. The 1 to 3rd defendants in collusion with each other have got transferred some properties in 'C' schedule to their name without the

knowledge of the plaintiff. When the plaintiff asked the defendant No.1 to 3 to change Khatha of the said properties in his name, the defendants have refused and also filed a suit. The defendant No.1 to 3 have proclaimed that there was no partition of 'A' schedule properties, hence until partition of 'A' schedule properties, no properties will be transferred in the name of plaintiff. Though plaintiff has convened Panchayath and Panchayathdars have advised the defendant No.1 to 3, they have not heeded to the advice of the Panchayathdars. Therefore, plaintiff has filed this suit seeking declaration that he is the absolute owner of the suit schedule 'C' property and also for injunction. In the alternative plaintiff has also sought for partition and separate possession of his share in 'A' schedule properties by meets and bounds.

6. The defendant No.1 to 3 have filed written statement and the said written statement is adopted by defendant No.4 to 8. In the written statement relationship between the parties as averred in para No. 2 of the plaint is admitted by the defendants. Defendants have denied that Deviramma is given a share. Other averments of the para No.3 of the plaint are denied. The defendants have admitted that item No.1 of suit schedule 'A' property is purchased by Chennappajaiah. The defendants contended that item No.2, 24, 27, 28 and 37 of the suit schedule 'A' properties are the self-acquired properties of late Bhujangaswamy. The defendants admits that item No.7 and 8 of 'A' schedule properties are purchased by Chennappajaiah, but the defendants contends that item No.8 of 'A'

schedule property is in possession of 2nd defendant as per the decision of Civil Court and Assistant Commissioner. Defendants further denied that item No.3 to 6, 9 to 23, 25, 26, 29, 30 and 33 to 36 are the ancestral properties of Chennappajaiah. Defendants also denied that the suit schedule 'A' properties are ancestral and joint family properties of plaintiff and defendant No.1 to 8. The defendants further contended that suit item No. 31 and 32 are the Stridhana properties of Parvathamma W/o Chennappajaiah.

7. The defendants have denied para No. 5, 6, 7 and 8 as false. The defendants further contended that 3 acres of lands in Sy.No.112/07 and 1 acre of land in Sy.No.106/16 and a house bearing property No.591 are the self acquired properties of Bhujangaswamy. The plaintiff in collusion with the revenue authorities has changed the Khatha of the said properties in his name and sold the said properties to 9th defendant who is brother of wife of plaintiff (Brother in law). Therefore, a suit filed by defendant No. 1 to 3 in O.S.No.23/16 is pending. 1st defendant has got drilled a bore-well in Sy.No.106/15 and she is in possession of the said bore-well. The 1st defendant has also filed a suit in O.S.No.270/16 seeking perpetual injunction in respect of the said bore-well. The defendants further contended that the plaintiff in order to have wrong full gain has filed the false suit. With the above contentions defendants prays for dismissal of the suit.

8. In the affidavit filed in support of I.A.No.II to IV plaintiff has reiterated the averments of the plaint and prays for allowing of the applications. The defendants have filed objections and adopted the averments of the written statement as objections to be I.A. No.II to IV.

9. Heard both counsels. Perused the materials on record.

10. The following points arise for my consideration:-

- 1. Whether the plaintiff has made out prima facie case in his favour for the grant of Temporary Injunction?**
- 2. Whether the plaintiff has made out sufficient grounds to show that balance of convenience lies in his favour?**
- 3. Whether the plaintiff has made out sufficient grounds to show that the irreparable loss and injury will be caused to him, if the Temporary Injunction is not granted as sought in I.A.No.2 to 4?**
- 4. What order?**

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

Point No.1 : 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

12. **Point No.1:-** It is the case of the plaintiff that suit schedule 'A' properties are ancestral properties and properties

purchased out of the income of the joint family. The plaintiff contends that there was a oral partition between plaintiff, deceased Bhujangaswamy and their sisters by name Deviramma and Channajamma. In the said oral partition 'C' schedule properties fallen to the share of plaintiff. Plaintiff is in possession of 'C' schedule properties and plaintiff has sold some landed properties and a house property to the 9th defendant out of the 'C' schedule properties. The plaintiff further contends that the defendant No. 1 to 3 have got to transferred some properties in 'C' schedule in their name without knowledge of the plaintiff and when asked by the plaintiff defendants have denied the right of the plaintiff.

13. On the other hand defendants have denied the oral partition as contended by the plaintiff in para No. 5 of plaint as false. The defendants further contended that Item No.1 of suit schedule 'A' property is purchased by Channappajaiah, the suit item No.2, 24, 27, 28 and 37 of 'A' schedule properties are self acquired properties of Late Bhujangaswamy. The defendants further contended that item No.7 and 8 of the suit properties are purchased by Channappajaiah, but item No.8 is in possession of 2nd defendant. The defendants denied that item No.3 to 6, 9 to 23, 25, 26, 29, 30 and 33 to 36 are the ancestral properties of channappajaiah. The defendants specifically contended that suit item No. 31, 32 are the Stridhana properties of Parvathamma W/o Channappajaiah. The defendants further contended that the 1st defendant has got drilled a bore-well in Sy.No.106/15 and she is in possession of the said bore-well.

14. On perusal of the above pleadings and contentions, at this stage, it becomes clear that plaintiff claims to be the owner of 'C' schedule property on the basis of a oral partition. The said oral partition is not admitted and specifically denied by the defendants. Plaintiff contends that all the suit properties are the ancestral properties and properties purchased out of the income of the joint family. The defendants have denied that all the suit properties are ancestral properties.

15. The dispute in respect of suit properties as to whether the suit properties are ancestral properties or not and whether there was any oral partition as claimed by the plaintiff, have to be decided only after trial.

16. However, on perusal of the RTC extracts and other documents produced by the both parties it could be gathered that some of the suit properties are standing in the name of defendants. 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 or 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, at this stage. Hence, point No.1 is answered in the affirmative.

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

18. 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 some of the suit properties are in the name of defendants. If the defendants are allowed to alienate the suit properties to third parties or allowed to create charge over the suit properties, then the very purpose of filing this suit by the plaintiff will be frustrated and it also leads to multiplicity of proceedings. Therefore, if the defendants are allowed to sell the suit properties, then it is the plaintiff who will be put to irreparable loss and injury. If the Temporary Injunction is not granted, the comparative inconvenience caused to the plaintiff will be more. 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 properties. 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 plaintiff and defendants are

to be restrained from alienating the 'A' schedule properties till pending decision of the suit as prayed in I.A.No.II.

19. On perusal of the documents produced by the plaintiff, at this stage, it becomes clear that he has got drilled the bore-well in item No.8 of 'C' schedule property. On the other hand the defendants have not produced any documents to show that they have got drilled the bore-well and they are paying electricity charges. Therefore, at this stage prima facie the plaintiff has shown that he is in possession of the said bore-well. Therefore, this court has come to the conclusion that plaintiff is entitle to temporary injunction restraining the defendants from the interfering with the possession of the plaintiff over the bore-well situated in item No.8 of the suit schedule 'C' property till pending decision of the suit as prayed in I.A.No.III.

20. The plaintiff has sought temporary injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiff over the 'C' schedule properties. Plaintiffs contends that he is in possession of 'C' schedule property as per the oral partition. The defendants have denied the said oral partition. Therefore, the dispute between the parties as to whether there was a oral partition or not is to be decided only after trial. The plaintiff has to prove the oral partition before the court by producing reliable and cogent evidence, until then in a partition suit it is inappropriate to grant temporary injunction in favour of the plaintiff as prayed in I.A.No.IV. Therefore, this court has come to the conclusion that, at

this stage, plaintiff is not entitled to temporary injunction as prayed in I.A.No.IV. Hence, 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

IA.No.II, filed by the plaintiff, U/o 39, R.1 & 2 C.P.C, is hereby allowed. By an order of temporary injunction, defendants are hereby restrained from alienating the suit schedule 'A' properties till disposal of the suit.

IA.No.III, filed by the plaintiff, U/o 39, R.1 & 2 C.P.C, is hereby allowed. By an order of temporary injunction, defendants are hereby restrained from interfering with the plaintiff's use of water from the bore-well situated in item No.8 of suit schedule 'C' properties till disposal of the suit.

IA.No.IV, filed by the plaintiff, U/o 39, R.1 & 2 C.P.C, is hereby rejected.

Considering the relationship between the parties, no order as to cost.

(Dictated to the stenographer directly on computer, transcribed by her, revised by me and after corrections, pronounced in the Open Court on this the 25th day of April 2017.)

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