

KAHS710005782021



**IN THE COURT OF THE CIVIL JUDGE AT
HOLENARSIPURA**

DATED THIS THE 26th DAY OF August 2022

PRESENT

**Sri. PRAVEEN R.J.S,
B.A.LL.B,
CIVIL JUDGE HOLENARASIPURA.**

ORIGINAL SUIT No.131/2021

Plaintiff/s: Vishalakshi W/o N.B.Girisha,
aged 30 years,
R/at Niduvani Village,
Hallymysore Hobli,
Holenarasipura Taluk.

[Represented by KKR Advocate]

-Vs-

Defendant/s

1. Chandraprabha
W/o Late Mallikarjunaiah,
Aged 60 years,
2. Sandesh S/o Late Kumarswamy,
aged 28 years,
3. Komalesh S/o Late Kumarswamy,
aged 26 years,

All are R/o Niduvani Village,
Hallymysore Hobli,
Holenarasipura Taluk.

(Represented by RDR Advocate)

**ORDERS ON IA NO.II FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 AND 2 C.P.C**

The Plaintiff is seeking an Order of injunction to restrain the Defendants from encroaching into the suit property pending disposal of the suit and it is contended that the Plaintiff is the absolute owner of the suit property having purchased the same under a sale deed dated 20.08.2020; that the Defendants being rank strangers to the suit property are unnecessarily interfering with her possession of the suit property compelling her to file the present suit and application.

2. The Defendants would oppose the said application contending that the husband of the 1st Defendant was one Mallikarjunaiah and that the 2nd and 3rd Defendants are the

children of Kumarswamy; that one Bogappa had three children Malleshaiah, Kumarswamy and Parvathamma; that Malleshaiah and Kumarswamy having died Malleshaiah had four children namely Rani, Prasanna, Gunavathi and Vijayakumar and that they are the relatives of the Defendants; that the deceased Malleshaiah was the owner of Sy.Nos.1/3 to an extent of 7 ½ guntas, ¼ to an extent of 4 guntas, 4/1 to an extent of 1 acre, Sy.No.54/6 to an extent of 33 guntas, Sy.No.67/2B to an extent of 9 ½ guntas and katha No.128 measuring 25 x 58 feet at Niduvani village, Sy.No.29/1 measuring 9 ½ guntas and Sy.No.30 to an extent 23 ½ guntas at Motanayakanahalli village and that all these properties were the ancestral properties. The Defendants would contend that Malleshaiah's wife Dhrakshayannamma was the owner of Sy.No.4/1 to an extent of 1 acre having got the same by way of a Grant. The Defendants would further contend that for repayment of loans 9 ½ guntas in Sy.No.67/2B of Niduvani village, 9 ½ guntas in Sy.No.29/1

and 23 ½ guntas in Sy.No.30 of Motanayakanahalli village were sold.

3. The Defendants would contend that Sy.No.54/6 in Niduvani village to an extent of 33 guntas was the ancestral property of Malleshaiah and the same has been renumbered as Sy.No.54/9 and that out of the said extent 17 guntas was sold in favour of the husband of the Plaintiff without the knowledge of the other legal representatives of Malleshaiah and having regard to these aspects a suit for partition in OS No.123 of 2020 has been filed and that the same is pending; that suppressing all these aspects the Plaintiff has managed to get the revenue entries entered in her name and also has filed the present suit and as such the application requires to be rejected.

4. CONTENTIONS OF THE PARTIES:

Contention of the Plaintiff: Sri.KKR learned Advocate for the Plaintiff would contend;

- a. that the Order passed by the Assistant Commissioner would not be a fetter on this Court to decide the present application;*
- b. that the Plaintiff having made out a prima facie case is entitled to an Order of injunction;*

Contention of the Defendants: Sri.RDR learned Advocate for the Defendants would contend;

- a. that a suit for partition involving the present suit property is already pending adjudication and as such this suit itself is misconceived;*
- b. that the Plaintiff has suppressed the material facts and as such is not entitled to an Order of injunction;*
- c. that the Plaintiff has never been in possession of the suit property and as such the question of the Plaintiff seeking injunction would not arise;*
- d. that the present application is but an attempt to somehow get into the possession of the suit property which the Plaintiff otherwise would not able to;*
- e. that this suit is filed against the third parties rather than against the true owners just so in order to see that the Plaintiff somehow gets an Order of injunction;*

5. Having heard the learned counsel for the parties and perusing the record the points that arise for my consideration are as follows:-

POINTS

1. *Whether the Plaintiff has made out a prima-facie case for grant of temporary injunction?*
2. *Whether the balance of inconvenience is in favor of the Plaintiff?*
3. *Whether the Plaintiff would suffer irreparable loss or injury if the prayer for injunction is not granted?*
4. *What order?*

6. My answer to the above points is as follows:-

POINT No.1 :- In the Negative

POINT No.2 :- Does not arise for consideration

POINT No.3 :- Does not arise for consideration

POINT No.4 :- As per my final order for the following :-

REASONS

7. For the purpose of deciding an application for temporary injunction the Court cannot embark upon a roving enquiry into the various allegations and counter allegations made by either of the parties. Reference in this regard may be had to

the dictum of the Hon'ble Apex Court in the case of **Anand Prasad Agarwalla v. Tarkeshwar Prasad**, reported in (2001) 5 SCC 568 wherein it has been held as under;

6. It may not be appropriate for any Court to hold a mini-trial at the stage of grant of temporary injunction.

8. At the outset one fact that strikes the conscience of this Court is the fact that the Defendants have filed OS No.153 of 2020 on 14.09.2020 and this Plaintiff being the 8th Defendant in the said suit and has entered appearance through her Advocate on 06.12.2020 and the present suit has been filed on 20.04.2021 and yet the Plaintiff has seen it fit not to disclose the pendency of OS No.153 of 2020 which among other properties includes the present suit property. It was incumbent on the Plaintiff to have in the least brought these facts to the knowledge of the Court which she has not done so. It would be profitable to refer to what the Hon'ble Apex Court, in the matter of

the obligation on the parties to disclose material particulars, has said in ***K.Jayaram and Others Vs. Bangalore Development Authority and Others*** reported in **2021 SCC OnLine SC 1194**, as under;

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their

pleadings in order to resolve the dispute between the parties in accordance with law.

17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief.

9. Though there is no bar for multiple suits being filed in respect of a similar subject matter , fact is, it behoves the litigants to place before the Court all material particulars and failure to do so would tantamount to misleading the Court. When the fact is that the present Plaintiff is contesting another suit in respect of the same subject matter in an

earlier filed suit which is also more comprehensive than the present one, this Court feels that the Plaintiff can very well seek redressal of her grievance in that earlier preferred the suit. Therefore going by the mandate of what the Hon'ble Apex Court has held supra, the Plaintiff cannot be said to have made out a prima facie case for grant of injunction. And once that is the circumstance question of this Court having to advert to other aspects would not arise. Reference in this regard made be had to the dictum of the Hon'ble High Court of Karnataka in the case of ***Gowrishankara Swamigalu v. Sri Siddhaganga Mutt***, reported in **ILR 1989 Kar 1701** wherein it has been held as under

25. I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak

and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction.

POINT No. 4:- Therefore for the aforesaid reasons I pass the following:

ORDER

IA No.I filed by the Plaintiff under
Order XXXIX Rule 1 and 2 is dismissed.
Call on 21.09.2022 for Plaintiff evidence.

(Dictated to the Stenographer directly on computer, typed by him, corrected by me and then pronounced in the open Court on this **the 26th day of August 2022**)

(PRAVEEN.R.J.S)
CIVIL JUDGE., HOLENARSIPURA.