IN THE COURT OF CIVIL JUDGE AND JMFC
AT HOLENARASIPURA

Present:- Sri. **R.Mahesha**, B.A.L., LL.B,
Civil Judge and J.M.F.C,
Holenarasipura.

Dated this the 7th day of July, 2018

O.S.No.161/2017

H.K.Ramesha & another : Plaintiff

(By Sri.B.H.VP., Adv.,)

V/s

1. Kalegowda H.N. & others : Defendants

(D1 By Sri.M.E.S., Adv.,
D2 & 3 By Sri.U.R.S.Adv.,)

ORDERS ON IA- VI

Kalegowda : Applicant/ Defendant

VS

Ramesha : Plaintiff

ORDER ON IA U/O 39 RULE 1 AND 2 OF CPC FILED BY THE DEFENDANT NO.1

This suit filed by the plaintiff against the defendants for the relief of partition and separate possession of suit schedule properties.

2. The present application filed IA.No.VI under order 39 rule 1 and 2 of C.P.C filed by the defendant for the relief of temporary injunction to restrain the plaintiff from not to interfere over the B to D schedule properties.

3. The deponent or applicant sworn an affidavit that the suit schedule A to C properties are not joint family and ancestral properties. Suit schedule A item No.1 to 5 are ancestral properties and they have in possession of the same. Suit schedule B property granted in favour of 1st defendant under darakastu and got khatha in his favour vide M.R.No.5/2003-04. He was in possession and enjoyment of suit schedule B property by paying regular tax to the government. He purchased suit B property out of his own earnings. Suit C schedule item No.1 to 3 and suit D schedule properties are the self acquired properties and same has been purchased out of his own earnings. Suit C and D properties stand in his favour and paying tax to the government in respect of B to D schedule properties. C schedule item No.1 property bearing Sy.No.74/4 extent 14 guntas the 1st defendant executed gift deed infavour of 2nd defendant dated 6/1/2017 and C schedule item No.2 property situated at Amanikere Village bearing Sy.No.74/2 extent 20 guntas the 1st defendant executed gift deed in favour of the 3rd defendant. The plaintiffs having no right over the suit B to D properties trying to interfere with defendants. Hence, the defendant filed this application for the relief as sought in the application.

4. Per contra the plaintiffs opposed this application and filed detailed objection to the said application. In the objection plaintiffs have contends that, the suit schedule items are Hindu undivided and ancestral properties of plaintiff and defendants. The plaintiff and the defendants are the members of Hindu undivided joint family. Suit B schedule property Sy.No.115/6 originally belongs to Mategowda which is his ancestral property. On 11/1/2003 the 1st defendant granted the said B schedule property out of joint family earnings. Suit C schedule property are the joint family and ancestral properties and the same has purchased out of joint family income and executed the same in favour of the 1st defendant with consent of the father of plaintiff. Suit D schedule house property is

also ancestral property and after the death of plaintiff's father, 1st defendant got changed the khatha in his favour. The 1st defendant orally partitioned the properties and fallen to share of plaintiff and have been in possession and enjoyment of the same by growing crops. The 1st defendant executed gift deed in favour of the defendant No.2 and 3 with in intention to fraud. The suit properties are the joint and ancestral properties of plaintiff and defendants, hence having equal share. Hence, prays for dismissal of the application.

5. Heard the argument of both the counsels.

6. The points that arise for my consideration are as follows.

1. Whether the defendant No.1 proves that he has made out prima-facie case in his favour?

2. Whether the defendant No.1 proves that balance of convenience lies in his favour?

3. Whether the defendant No.1 proves that irreparable loss or injury will be caused to him if TI not granted as prayed?

4. What order?

7. I answer 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 the final orders for the following reasons.

R E A S O N S

8. **Point No.1 to 3:-** Since these points are interconnected to each other, hence I propose to take up these points together for discussion.

9. In order to obtain an order of temporary injunction, the applicant has to establish that he has got prima facie case in his favour. If it will establish principles of law that prima facie case does not mean that in all probability. The applicant should succeed in the suit. On the other hand the applicant have to establish that he has got prima facie case to go for trial. Off course, it is well-settled principle of law that prima facie case does not mean that in all probabilities. The plaintiffs should succeed in the suit. Moreover the suit filed by the plaintiff should not to be barred by any other law.

10. It is the contention of the defendant No.1 that, suit schedule A to C properties are not joint family and ancestral properties. Suit schedule A item No.1 to 5 are ancestral properties and they have in possession of the same. Suit schedule B property granted in favour of 1st defendant under darakastu and got khatha in his favour vide M.R.No.5/2003-04. He was in possession and enjoyment of suit schedule B property. Suit C schedule item No.1 to 3 and suit D schedule properties are the self acquired properties and same has been purchased out of his own earnings. Suit C and D properties stand in his favour and paying tax to the government in respect of B to D schedule properties. C schedule item No.1 property bearing Sy.No.74/4 extent 14 guntas the 1st defendant executed gift deed infavour of 2nd defendant dated 6/1/2017 and C schedule item No.2 property situated at Amanikere Village bearing Sy.No.74/2 extent 20 guntas the 1st defendant executed gift deed in favour of the 3rd defendant. The plaintiffs having no right over the suit B to D properties trying to interfere with defendants.

11. To substantiate his affidavit averment, the defendant No.1 produced original sale deed dated 4/3/2002 executed by Smt. Nanjamma W/o Annajigowda in favour of Kalegowda S/o Channegowda for the

valuable consideration of 69,000/-. certified copy of Sale deed dated 16/10/1989 in favour of Channegowda S/o Motegowda and H.N. Kalegowda by Chandrashekara, Patel Mallappa for valuable consideration of Rs.20,000/-, xerox copy of sale deed dated 7/7/1977 in favour of H.N.Kalegowda S/o Channegowda @ Mategowda by Manjegowda S/o Kengegowda and his minor sons for valuable consideration of Rs.600/-, xerox copy of the notice issued by ADLR office, Halekote Hobli, xerox copy of E swathu khatha extract of D schedule property, original copy of 4 tax paid receipts, xerox copy of saguvali cheeti. two xerox copy of kimmatu paid receipt, original copy of M.R. 5/2003-04, original copy of MR. 3/1994-95, notarized copy of the pensioner payment order, notarized copy of last pay certificate, original copy of gift deed executed by the 1st defendant 6-1-2017 in favour of one Kumara, original copy of gift deed 6-1-2017 executed by the 1st defendant in favour of Ravikumara, certified copy of judgement and decree passed by PCJ and JMFC, Hassan in OS No.571/2010, certified copy of valuation slip furnished in OS NO.571/2010 original copy of computerized RTC extract for the year 2005-06 Haradanahalli village for Sy.No.115/6, original copy of RTC 2006-07 Haradanahalli village 115/6, original copy of RTC 2007-08 Haradanahalli village 115/6, xerox copy of RTC 2017-18 Amanidoddakere village Sy.NO. 74/2 , , xerox copy of RTC 2017-18 Amanidoddakere village Sy.NO. 74/4, , xerox copy of computerized RTC of Sy.NO.115/6 of Haradanahally village for the year 2017-18, , xerox copy of cumpetazired RTC 2017-18 Haradahalli village Sy.NO. 75/3A2 , original copy of cumpetazired RTC 2015-16 Malledevarapura village Sy.NO.90, original copy of MR 2/2002-03 two in numbers.

12. On the other hand, the plaintiffs disputed the plaint averments. They specifically contended that the suit schedule items are Hindu undivided and ancestral properties of plaintiff and defendants. The

plaintiff and the defendants are the members of Hindu undivided joint family. Suit B schedule property Sy.No.115/6 originally belongs to Mategowda which is his ancestral property. On 11/1/2003 the 1st defendant granted the said B schedule property out of joint family earnings. Suit C schedule property are the joint family and ancestral properties and the same has purchased out of joint family income and executed the same in favour of the 1st defendant with consent of the father of plaintiff. Suit D schedule house property is also ancestral property and after the death of plaintiff's father, 1st defendant got changed the khatha in his favour. The 1st defendant orally partitioned the properties and fallen to share of plaintiff and have been in possession and enjoyment of the same by growing crops. The 1st defendant executed gift deed in favour of the defendant No.2 and 3 with in intention to fraud. The suit properties are the joint and ancestral properties of plaintiff and defendants.

13. To substantiate this aspect the plaintiff produced original copy of genealogical tree certified by Deputy Tahasildar, Halekote Hobli H.N.Kalegowda, Original copy of computerized RTC Sy.No.36/4 for the year 2016-17 of Haradanahalli village, Original copy of computerized RTC Sy.No.75/10 for the year 2016-17 of Haradanahalli village, Original copy of computerized RTC Sy.No.96/2 for the year 2016-17 of Haradanahalli village, Original copy of computerized RTC Sy.No.96/7 for the year 2016-17 of Haradanahalli village, Original copy of computerized RTC Sy.No.112/1 for the year 2016-17 of Haradanahalli village, Original copy of computerized RTC Sy.No.115/6 for the year 2016-17 of Haradanahalli village, Original copy of computerized RTC Sy.No.74/4 for the year 2016-17 of Amani Doddakere village, Original copy of computerized RTC Sy.No.90 for the year 2016-17 of Malledevarapura village, Xerox copy E khatha extract, certified copy of MR 5/2003-04, certified copy of MR

3/1994-95, original copy of MR 2/2002-03 two in nos. xerox copy of gift deed dated 6/1/2017, executed by the 1st defendant 6-1-2017 in favour of one Kumara, original copy of gift deed 6-1-2017 executed by the 1st defendant in favour of Ravikumara,

14. Upon careful perusal of entire documents and affidavit averments and objections of plaintiff, it is clear that admittedly item A schedule properties only inherited by defendant No.1 by his ancestors. B to D schedule properties purchased by defendant No.1 when his children are in stage of minor, at the stage plaintiffs have no sufficient income to contribute funds or money for purchase B to D schedule properties in favour of defendant No.1, same is denied and contends by plaintiff all the A to D schedule properties are ancestral and joint family properties of plaintiffs and defendants, its need full pledged trial. At this stage it is very premature to come to conclusion.

15. It is very pertinent to note whether application filed by defendant No.1 U/o 29 Rule 1 and 2 of CPC is sustainable? It is pertient to note down and utilized our Hon'ble High court of Karnataka (Larger Bench) in reported **AIR 2015 Karnataka 13 between Smt Shankunthalamma Vs Smt Kanthamma. The Hon'ble Justice N.Kumar, the Hon'ble Justice B.S.Patil and Hon'ble Justice Rathnakal** held that 39(1) cases in which

39(1) : **Temporary injunction may be granted-where in any suit it is proved by affidavit or otherwise**

a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of decree or

b) that the defendant threatens or intends to remove or dispose of his property with a view defrauding his creditor,

c) that the defendant threatens to disposes the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may be order grant a temporary injunction to

restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation sale removable or disposition of plaintiff or otherwise causing injury to plaintiff in relation to any property in dispute in the suit as the court thinks fit until. The disposal of suit or until further orders a careful reading of the aforesaid provision disclose that the court in empowered to grant three types of orders under three different distinct situations. Firstly when the property in dispute is in danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree, temporary injunction to prevent the same can be granted. The second situationaries when the disputed property is under the treat of being remover or disposed of by the defendant with injunction of defrauding his creditors who include the plaintiff also, the third situation is when the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in respect of disputed property.

15. The legislature has consciously used the words "**any party to the suit**" in rule 1(a) of XXXIX CPC but the same is conspicnly missing in clause (b) and (c). However the words " **the defendants threatens**" appearing in clause (b) and (c) of Rule 1 of order XXXIX CPC makes it clear that the court can grant an order of temporary injunction only in favour of plaintiff because the legislature has expressly not included words "**plaintiff threatens**" and also not used the words "**any party to the suit**" in the all clause.

16. It is worth to use Hon'ble Apex court decision the case of **Veerabhadrappa Vs Mayappa Reported in ILR 1993 Kar 161** has pointed out the distinction between them in the following words: There provisions make it abundantly clear that it is only under sub clause (a) of order 39 Rule 1 CPC that any party to the suit causes be restrained by means of an order of temporary injunction. Which clearly presupposes that either the plaintiff or the defendant could file the application against other party under this partially sub clause, the other two clause Viz (b) and (c) of order 39 Rule 1 CPC as also order 39 Rule 2 of CPC enable the court to grant injunction against defendant restraining him from committing several acts mentioned therein. The words "**any party**

occurring in sub Rule (a) of Rule does not find a place in three rules".

17. The defendant No.1 still alive. According to Hindu Succession Act Section 8 clearly explained how male property disposed. The defendant No.1 clearly contends and produced documents pertaining to purchase by his own earnings. The present plaintiff and defendant No.2 to 4 are at the stage of purchase they definitely depend on the defendant No.1 earnings. This court clearly come to conclusion that the plaintiff and defendant No.2 to 4 have not contribute any single paise to purchase suit schedule B to D properties. Defendant No.1 has absolute owner, he has right to dispossess as per his wish. As per defendant No.1 wish, he executed gift deed in favour of defendant No.2 and 3. Now it is question by his own sons, i.e. plaintiff. It is decided by this court at the end of trial. The documents are stands in the name of defendants. They definitely raise agricultural crops in their lands. By filing this suit itself shows the plaintiff obstruct their possession to control the acts of plaintiff the discretionary relief of injunction ought to granted. Otherwise it creates galata in the land and also chance of makes case and counter case against both parties. The 1st defendant clearly denied the plaintiffs have no share over B to D schedule. The plaintiffs are not co sharer also. They claiming only A schedule properties. By looking into the entire facts and circumstances and documents produced by both parties it is just proper and necessary to grant injunction infavour of 1st defendant. The 1st defendant has made out prima facie case, balance of convenience and made out more harm will be caused to 1st defendant. Hence I answer Point No.1 to 3 in the Affirmative.

18. **Point No.4:-** In view of the above findings on point No.1 to 3, I proceed to pass the following order.

::O R D E R::

The application filed by the defendant No.1 under order 39 rule 1 and 2 of C.P.C which numbers as IA No.6 is hereby allowed.

By way of temporary injunction restraining the plaintiff not to interfere into the suit B to D schedule properties till disposal of the suit.

No order as to cost**.**

(Dictated to stenographer and transcribed by her revised and corrected by me then pronounced in the open court dated this 7th day of July, 2018)

(R.Mahesha)
Civil Judge and J.M.F.C,
Holenarasipura**.**