

KAHS710035282023



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

DATED THIS THE 21st DAY OF JUNE 2024

PRESENT

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

ORIGINAL SUIT No.517/2023

Plaintiff/s: Javaregowda S/o Late Javaregowda
aged 53 years,
R/at Tattékere village, Kasaba Hobli,
Holenarasipura Taluk.

[Represented by MDG., Advocate]

-Vs-

Defendant/s 1. Rajamma
W/o Late T.J.Shettygowda @ Shettygowda,
S/o Late Javaregowda,
aged 59 years,

2. Gayithri D/o Late Manjegowda
aged 40 years,

3. Meghana D/o Late Manjegowda
aged 17 years,

4. Manasa D/o Late Manjegowda,
aged 16 years,

D3 and D4 are minors represented by
their mother 2nd Defendant

5. Preethi
S/o Late T.J.Shettygowda @ Shettygowda
W/o Natesh, aged 38 years,
R/at Uduvare village, Kattaya Hobli,
Hassan Taluk.

6. Prasanna
S/o Late T.J.Shettygowda @ Shettygowda
aged 37 years,

7. Dhrakshayini
D/o Late T.J.Shettygowda @ Shettygowda
aged 30 years,

All are R/at Tattakere village,
Kasaba Hobli, Holenarasipura Taluk.

**(D1 to D7 Represented by Sri.NAU.,
Advocate)**

Date of application filed : **13.12.2023**

Date of objection filed : **15.04.2024**

Date on which the disposed off : **21.06.2024**

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER 39 RULE 1 AND 2 OF THE CODE OF
CIVIL PROCEDURE

The Plaintiff seeks an order of injunction to restrain the Defendants from putting up any construction over suit item No.1 and it is contended that the propositus Javaregowda had two wives Nanjamma and Boramma; that the Plaintiff is the son of Javaregowda through Boramma and that Nanjamma had Shettygowda and Dyavamma as her children and that both the wives of Javaregowda have died; that Dyavamma daughter of Nanjamma has also died; that Shettygowda has a wife Rajamma and through her Manjegowda, Preethi, Prasanna and Dhvakshayini as his children and that Manjegowda has died. The Plaintiff would contend that OS 72 of 2004 had been filed by him for the relief of partition against his father Javaregowda and Shettygowda and that the said suit came to be compromised before the Lok-Adalath on 28.01.2006. The Plaintiff would contend that after the

demise of the propositus Javaregowda it was decided that the share allotted to him would be divided equally between Shettygowda and the Plaintiff and that the 'B' schedule property in OS 72 of 2004 having been submerged the amount was equally shared between the Plaintiff, propositus Javaregowda and the aforesaid Shettygowda. It is contended that they have also shared the additional compensation granted. The Plaintiff would allege that after the demise of the propositus Javaregowda, Shettygowda being the elder son was looking after the family affairs and got the khatha changed in his name and that he has also got a house granted as part of the rehabilitation into his name but that the said property was granted for and on behalf of the joint family and that there has been no partition in the said property. According to the Plaintiff after the death of Shettygowda the 1st Defendant in collusion with the panchayath authorities has got the khatha changed into her name in respect of the

property granted on behalf of the joint family and sufficient requests made for partition having gone unheeded, the present suit has been filed.

2. The Defendants would object to the said application contending that the present application has been filed only with an intent to knock off the property of the Defendants and that deliberately the other family properties have been left out in the suit. According to the Defendants there are around 12 additional properties belonging to the family which are required to be added and as such the application has to be rejected.

3. 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?*

4. Having heard the learned Counsel for the parties, my answers to the above points is as follows:-

POINT No.1 :- In the Negative

POINT No.2 :- Does not survive for consideration

POINT No.3 :- Does not survive for consideration

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

REASONS

5. POINT NO.1 TO 4: The principle regarding arraying all parties and all properties in a suit for partition has long since been laid down by the Hon'ble Apex Court in the case of *Kenchegowda Since dead by Legal Representatives vs. Siddegowda* reported in (1994) 4 SCC 294 as under:

.....*Even otherwise, a suit for partial partition in the absence of the inclusion of other joint family properties and the impleadment of the other co-sharers was not warranted in law.*

In the present case even after the written statement is filed and the Defendants have specifically enumerated the number of properties that belong to the family, the Plaintiff has chosen not to include those properties into the plaint schedule. The contention of Sri.MDG learned Advocate for the Plaintiff that those properties would be added as and when the documents become available cannot be accepted for the reason that it is clear that the Plaintiff has knowledge that those properties belong to the family and yet as on the date of the suit those properties have not been included. It is the lookout of the Plaintiff when he comes to the Court to come with all the documents that are required for the suit. The exercise cannot be undertaken in installments and piecemeal. If the

Plaintiff subsequently chances upon those documents and feels it necessary to add those properties, he would be at liberty to make a fresh application seeking injunction. The suit as it presently stands is defective for want of inclusion of all the family properties. Under such a circumstance the maintainability of the suit, as discussed by the Hon'ble Apex Court above, would come in question. It needs to be said that a prima facie case includes within its contours the maintainability of the suit. When the suit itself, on the face of it appears defective, question of granting injunction would not arise. Reference in this regard may be had to the judgment of the Hon'ble High Court in the case of ***Patel Enterprises v. M.P. Ahuja***, reported in **ILR 1992 Kar 3772** wherein it has been held as under

14. However, one of the factors to be considered by the trial Court while considering the case for temporary injunction is whether prima facie case is made out by the plaintiff. This certainly would include the nature of the suit

filed and its maintainability. If, on the face of it, the suit is not maintainable, question of issuing any temporary injunction would not arise.

Therefore there being a defect apparent on the face of the record, it would but have to be held that the claim of the Plaintiff at this stage is an ambiguous one. It is to be seen that the nature of injunction that the Plaintiff is seeking is one that is in the nature of restraining the Defendants from putting up construction over the suit property. It needs to be said that the principle is that a co-owner cannot seek an injunction against another co-owner. The only recourse that the co-owner might have is to seek for accounts or for any improvements made. Reference in this regard may be had to the judgment of the Hon'ble High Court in *Eswaraiah v. B.S. Siddalingappa*, reported in *ILR 1999 Kar 3037* wherein it has been held as under

5. Even according to the learned Counsel for the appellant there is no difficulty in getting into general proposition of law that there shall not be any injunction against co-owner or persons in joint possession. Infact, the finding of the Trial Court, in respect of such a possession is as follows:

“These documents and evidence show that plaintiff is in joint possession and enjoyment of the suit schedule property by the plaintiff and defendant No. 1.”

The appellate Court confirmed and maintained the finding as follows:

“The plaintiffs contend that themselves and defendant-1 have been in lawful possession and enjoyment of the suit land and in its entirety.”

Therefore, so long, as there is joint possession even according to the claim of the plaintiff, there can never be an injunction against defendant-1.

Therefore the question of this Court injuncting the Defendant 1 from putting up construction, more so having regard to the discussion made as regards the maintainability of the suit referred to supra, would not arise. Consequently it would have to be held that the Plaintiff has not 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.

Therefore for the aforesaid reasons I pass the following:

ORDER

Application/IA III filed by the Plaintiff under Order XXXIX Rule 1 and 2 is dismissed. Call on 24.07.2024 for issues.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this **the 21st day of June 2024**)

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