

**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC,
SAKALESHPURA.**

**Present : Sri. Nagesh Patil., B.com., L.L.B.,
Addl. Civil Judge and JMFC.,
Sakaleshapura.**

ORIGINAL SUIT No.200 / 2017.
Dated this 6th day of December 2018

Plaintiff : K.P. Erappagowda S/o Late.
Puttegowda, 60 years, Kadagarahalli
village, Maranahalli post,
Sakaleshpura taluk, Hassan district.
(Represented by Sri. T.M.A.,
Advocate, Sakaleshpura)

-V/s-

Defendants : 1. K.P. Devarajegowda S/o Late.
Puttegowda, 62 years,
2. K.P. Krishnegowda S/o Late.
Puttegowda, 64 years,
3. K.P. Manjegowda S/o Late.
Puttegowda, 58 years,
4. K.P. Thippegowda S/o Late.
Puttegowda, 56 years,
5. K.P. Hoovannagowda S/o Late.
Puttegowda, 54 years,
6. Honnamma S/o Late. Puttegowda,
71 years,
7. Subbamma S/o Late. Puttegowda,
69 years,
8. Thungabhadramma S/o Late.
Puttegowda, 65 years, **K.P.**
Puttaswamygowda, dead LRS
represent by his children,
9. Siddamma W/o Late. K.P.
Puttaswamygowda, 62 years,
10. Mahesha S/o Late. K.P.
Puttaswamygowda, 32 years,
11. Ganesha S/o Late. K.P.
Puttaswamygowda, 30 years,
12. Geetha D/o Late. K.P.
Puttaswamygowda, K.P.

- Komarigowda S/o Late.
Puttegowda, dead LRS,
13. H.S. Vanajakshi W/o Late. K.P.
Komarigowda, 50 years,
14. K.K. Sathyakumar S/o Late.
K.P. Komarigowda, 27 years,
15. K.K. Preethi S/o Late. K.P.
Komarigowda, 25 years,
1 to 15 are R/o at Kadagarahalli
village and post, Kasaba hobli,
Sakaleshpura taluk, Hassan district.
16. Chief Executive Officer,
Government of Karnataka,
Bangalore.
(Represented defendant No:2 to 4
and 6 to 15 by Smt. B.P.V.,
Advocate, defendant No:1 Sri. A.P.M.,
Advocate, Sakaleshpura, defendant
No:5 placed experte,)

Parties to IA II

Applicant / Plaintiff : K.P. Erappagowda

-V/s-

Respondents/ : K.P. Devarajegowda and others
Defendants

ORDER ON I.A II

The plaintiff has filed I.A 2 under order 39 Rule 1 and 2 praying this court to pass an order of temporary injunction restraining the defendant No:16 to 18 from disbursing the compensation amount in respect of suit properties in favour of defendant No:1 during the pendency of suit.

2. Along with the I.A 2 plaintiff has filed an affidavit sworn to by him. In the said affidavit it is contended by the plaintiff he was filed present suit for Partition and Separate possession against the defendants in respect of suit properties and contended that suit properties are the ancestral property are plaintiff and defendants No:1 to 15 and plaintiff

and defendants No.1 to 15 are the legal heirs of deceased Puttegowda. The Puttegowda had has got 8 Suns and 3 Daughters and defendants No.9 is the wife of the Puttaswamy defendant no.10 to 12 are suns and Daughters defendants no.9 the defendant 13 is the wife of Komarigowda and defendants no.14 to15 are sun and daughter of defendants no.13. It is further contended that the suit properties are standing in the name of defendant no.1 and defendant No:16 to 18 are in hurry to disburse the compensation amount in favour of defendant No;1 the plaintiff and defendant No:2 to 15 are also having share in the suit property as such the defendant No:1 is in a hurry to get the compensation amount so as to cause loss to the legal right of the plaintiff and defendant No:2 to 15. Hence prays to allow the application.

3. On contrary the defendant No:1 to 4 and 6 to 18 have appeared and defendant No:1 filed detailed W.S and filed memo stating that contents of W.S. may be treated as objection to IA No:2 in the W.S. defendant No:1 denied the contents of application and contended that there is no prima facie case and balance of convenience is not in favour of the plaintiff and it is in favour of the defendant No:1 and further contended that there was already oral partition is taken place in the family of plaintiff and defendants in the year 1985 as per partition plaintiff an defendant No:1 to 15 are in possession of their respective shares. In the said oral partition the suit properties are fell to the share of defendant No:1 and there is a dispute with regard to the boundary between plaintiff and defendant No:1 so with intent to harsh the defendant No:1 plaintiff and defendant No:2 to 15 colluded with each other and filed this false suit. It is further contended that the revenue documents are also coming in their respective names as per oral

partition. Accordingly the defendant No:1 has sought the dismissal of the I.A.2 with compensatory cost.

4. The defendant No:2 to 4 and 6 to 15 have appeared through their counsel and filed detailed written statement admitting the averments of the plaint paras and contended that there is no any partition is taken place in the family of plaintiff and defendants as such they are also entitle to get share in the suit property and also defendant No:2 to 4 and 6 to 15 have sought the dismissal of the IA 2 with compensatory cost.

5. Heard both the sides, perused the applications and documents.

6. Now the points that would arise for the consideration of this court are:

1. **Whether the plaintiff has made out prima facie case against the defendants?**
2. **Whether the balance of convenience lies in favour of the plaintiff?**
3. **Whether the plaintiff will be put to greater hardship and injury if the application is rejected?**
4. **What Order?**

7. On hearing both side perusal of the pleadings and objections on record, my answer to the above points are:

Point No.1 to 3 : In the Negative.

Point No.4: As per final order for the Following.,

REASONS

8. Point No.1: It is the specific contention of the plaintiff he was filed present suit for Partition and Separate possession against the defendants in respect of suit properties and contended that suit properties are the ancestral property are plaintiff and defendants No:1 to

15 and plaintiff and defendants No.1 to 15 are the legal heirs of deceased Puttegowda. The Puttegowda had has got 8 Suns and 3 Daughters and defendants No.9 is the wife of the Puttaswamy defendant no.10 to 12 are suns and Daughters defendants no.9 the defendant 13 is the wife of Komarigowda and defendants no.14 to15 are sun and daughter of defendants no.13. It is further contended that the suit properties are standing in the name of defendant no.1 and defendant No:16 to 18 are in hurry to disburse the compensation amount in favour of defendant No;1 the plaintiff and defendant No:2 to 15 are also having share in the suit property as such the defendant No:1 is in a hurry to get the compensation amount so as to cause loss to the legal right of the plaintiff and defendant No:2 to 15. Hence prays to allow the application.

9. At the out set it is relevant to mention that plaintiff and defendants have not denied the relationship and existence of the suit properties and plaintiff has claimed share in the suit properties. The learned counsel for the plaintiff argued that the plaintiff has got share in the suit properties and plaintiff has sought relief of partition and separate possession in respect of suit properties and if the defendant No:16 to 18 are disburse the compensation amount in favour of defendant No:1 the plaintiff would cause much loss and injury accordingly prays to allow the application. On the contrary learned counsel for defendant No:1 contended that the suit property is fell to the share of defendant No:1 as per oral partition taken place in the family of plaintiff and defendant No:1 to 15 in the year 1985 since then the defendant No;1 is in possession of the suit properties and the revenue documents are coming in the name of defendant No;1 but the plaintiff and defendant No:2 to 15 so as to harsh the defendant No:1 filed this suit accordingly prays to dismiss the

IA. On hearing both side and perusal of the papers available on record it discloses that plaintiff has produced 2 RTC of the suit properties on perusal of the same it prima facie discloses that in column No:9 of the RTC name of the defendant No:1 is appeared. On the contrary the defendant No:1 has produced 14 documents and on perusal of the same the document No:2 it discloses that the same is standing in the name of plaintiff and defendant No:1 and 2 and in the column No:11 of the RTC the mode of possession it is mentioned as division and defendant No:3 it discloses that the same is standing in the name of plaintiff and defendant No:2 and in the column No:11 of the RTC the mode of possession it is mentioned as sharer and document No:4 it discloses that the same is standing in the name of plaintiff and defendant No:3 and in the column No:11 of the RTC the mode of possession it is mentioned as sharer and defendant No:5 it discloses that the same is standing in the name of plaintiff and defendant No:4 and in the column No:11 of the RTC the mode of possession it is mentioned as division and document No:6 it discloses that the same is standing in the name of plaintiff and defendant No:5 and in the column No:11 of the RTC the mode of possession it is mentioned as ancestral, document No:7 it discloses that the same is standing in the name of plaintiff and defendant No:9 to 11 and in the column No:9 of the RTC the name of the defendant No:9 to 11 appeared, document No:8 it discloses that the same is standing in the name of plaintiff and defendant No:14 and in the column No:11 of the RTC the mode of possession it is mentioned as division, document No:10 is the certified copy of written statement filed by the present plaintiff in OS No:149/2017 before this Court in the said written statement at page No:3 at para No:2 the very plaintiff contended as “ಈ ಸ್ವತ್ತನ್ನು ಪ್ರತಿವಾದಿಯ

ಕುಟುಂಬದ ಸದಸ್ಯರು ಜುಮಾನೆ ಹಿಸ್ಸೆಯ ಮೂಲಕ ಪ್ರತಿವಾದಿಗೆ ಕೊಟ್ಟಿರುವ ಜಮೀನು ಆಗಿರುತ್ತದೆ.” On perusal of the same it discloses that the plaintiff has admitted that there was a partition and the said admission is judicial admission hence the plaintiff cannot plead against the admission made by him in the written statement. The defendants have not disputed about the documents produced by the defendant No:1 to show that the properties are divided as per oral partition hence the contention of the defendant No:2 to 4 and 6 to 15 and the plaintiff is not acceptable. Under these circumstances it is necessary to mention that the plaintiff himself admitted that there was a partition is taken place in their family and he has been allotted share in the partition in their family. Hence plaintiff has not made out prima facie case against the defendant No:1. **Accordingly Point No.1 is held in the Negative.**

10. Point No.2 and 3: As stated above the plaintiff fails to made out prima facie case to allow the application. Therefore the comparative hardship that may be caused to the defendant No:1 is greater than compared to the plaintiff. No hardship and injuries are caused to the plaintiff if the application is rejected. Therefore even the balance of convenience also lies in favour of defendant No:1. Under the circumstances this Court has no other options expect come to the conclusion that the plaintiff has not made out valid grounds to allow the application. **Accordingly Point No.2 and 3 are held in the Negative.**

11. Point No.4 : For the forgoing reasons and discussions made above and finding on the above points, I proceed to pass the following:

ORDER

**I.A No:2 filed by the plaintiff under
Order 39 Rule 1 and 2 CPC is hereby
dismissed.**

There is no order to cost.

(Dictated to Stenographer directly on computer, after corrections pronounced by me in the open court on 6th day of December 2018)

(Nagesh Patil)
Addl. Civil Judge and J.M.F.C.,
Sakaleshpura.