

**IN THE COURT OF THE
SENIOR CIVIL JUDGE AND J.M.F.C., CHITTAPUR**
Present: **Sri. SANTOSH S PALLEDH, B.A., L.L.B.**
(Spl), Senior Civil Judge and JMFC, Chittapur

O.S. NO.70/2015

DATED THIS THE 17TH DAY OF FEBRUARY, 2023

PLAINTIFF/S:- Sheshank Patil S/o Suresh Patil,
Age: 5 Years, (Since minor represented through
next friend Smt. Namita @ Nandini w/o Suresh Patil,
Age: 28 Years, Occ: Household,
R/o Sulegaon Galli Chittapur,

(By Smt. M.V.L. Advocate)

Vs.

DEFENDANT/S: 1. Basavarajappa S/o Hanumanthappa Dugnoor,
Age: 65 Years, Occ: Agriculture (Since deceased through
legal represented already on record as plaintiff and
defendant No.2 to 5)

2. Shamlu W/o Basawarajappa Dugnoor,
Age: 60 Years, Occ: Agriculture,

3. Suresh Patil S/o Basawarajappa Dugnoor,
Age: 30 Years, Occ: Agriculture,

4. Manjunath S/o Basawarajappa Dugnoor,
Age: 29 Years, Occ: Agriculture,

All above R/o Yegnoor vilalge Tq & Dist: Yadgir

5. Smt. Hema Patil W/o Basangouda(D/o Basawarajappa
Dugnoor) Age: 32 Years, Occ: Agriculture,
R/o Wadloor village, Tq and Dist: Raichur.

(Defendant No.1 to 4 By Sri. B.K/S.A.K. Advocate)

PARTIES TO IA No.VIII

Manjunath

Applicant/Defendant

V/s

Shashank Patil

Opponent/Plaintiff

ORDER S ON I.A. No.8 FILED U/O XXIX RULE 1 & 2 OF CPC:

1. This application is filed by defendant No.2 and 4 seeking to restrain the plaintiff from interfering with the possession of Sy.No.156/1 and 156/2 situated at K. Nagoan village, till disposal of the suit.
2. The said application was filed when the matter was at the stage of notice to proposed defendant.
3. It is contended in the affidavit annexed to the application that the suit is filed for partition and separate possession and the defendants No.1 to 4 have filed written statement denying the contents of plaint and specifically stated that suit properties are not the joint family properties and they are the self acquired properties of defendant No.1, 2 and 4. In this case after commencing evidence of defendants the plaintiff who is minor through the guardian and father of guardian tried to cultivate Sy.No.156/1 and 156/2 with the help of gunda elements, interfered into peaceful possession of these defendants. When it was opposed they tried to assault and already complaint is filed in this regard. The grandfather of plaintiff is behind this act and police shared hand in

gloves. The plaintiff on the ill advise of relatives trying to interfere with peaceful possession of defendant No.2 and 4 without having any right , title or interest. It is not yet decided by the court and hence the defendants seeks to restrain the plaintiff from interfering with their peaceful possession.

4. To this application the plaintiff counsel filed objections contending that the suit is filed for partition and separate possession and the defendant cannot be said to be in exclusive possession over the said lands. In page No.6 of the plaint it is pleaded that the ancestral properties are Sy. No.30 and 51 which were acquired by KIADB in the year 2006 and the compensation received from acquisition by the defendant No.1 being Karta of the family and out of said amount Sy.No.156/1 and 156/2 and other properties are purchased. Thereby these properties are also ancestral properties and defendant No.3 the father of plaintiff met with accident in the year 2012 and suffered severe head injury and he is not in capable to take decisions as such plaintiff and his mother are residing separately. Therefore the application of defendants is not maintainable and hence it is not according to the provisions of Order 39 Rule 1(c) of CPC as such sought to dismiss the application.

5. Heard the arguments from both sides. The following points arise for determination:

- 1. Whether the application filed by defendant No.2 and 4 U/o 39 Rule 1 and 2 of CPC is maintainable?**
 - 2. If so, whether they prove prima-facie case and balance of convenience lies in their favour ?**
 - 3. What Order?**
6. My findings to the above points are as under:

POINT NO.1: In the Negative

POINT NO.2: In the Negative

POINT NO.3: As per final order for the following:

REASONS:

7. **POINTS NO.1 & 2 :** In this case the plaintiff has filed the suit for partition claiming against his father, grandfather and others. It is specifically pleaded in the plaint that out of compensation amount received by the acquisition of ancestral properties in Sy.No.30 and 51, the suit properties are purchased by defendant No.1 being Karta of the family. In counter to this the defendants have filed written statement contending that suit properties are the self acquired properties. It is also contended that the suit is not maintainable without challenging the compromise decree arrived in R.A.No.11/2010. It is further contended that Sy.No.156/1 is the self acquired property of defendant No.2 and she has purchased it on 5-8-2011 and defendant No.4 purchased Sy.No.156/2 on 6-8-2011.
8. The counsel for defendant No.2 and 4 argued that unless the compromise decree in R.A.No.11/2010 is impeached, the suit is not maintainable because defendant No.3 has been already given share in Sy.No.10/2, Sy.No.37. Therefore the plaintiff who has filed the suit

against defendant No.3 who is his father, cannot seek partition again. There is no joint family and ancestral properties and as such seeks to allow the application. On the other hand counsel for plaintiff argued that the suit is for partition and unless the rights are crystallized it is to be deemed that there is joint possession and the injunction against co-owner is not maintainable.

9. After going through the records it is noticed that the counsel for plaintiff has relied upon the judgment in W.P.No.58906/13 and 16412/2014. The Hon'ble High Court of Karnataka wherein has discussed scope of granting injunction when sought by defendants. It is held in para No.15 that the word “ any party to the suit is missing U/o 39 Rule 1 (b) and (c) and it is only the plaintiff who can seek injunction and the defendant cannot seek relief of injunction”. It also discussed about the discretionary power of court to grant relief U/sec. 151 of CPC and restriction U/o 39 Rule 1 of CPC. So from the said judgment it is clear that the defendant has got only right to invoke Order 39 Rule 1(a) of CPC which speaks about when any property in dispute in a suit is in danger , wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of decree. In this regard it is noticeable that the defendant No.2 and 4 have claimed that plaintiff is illegally interfering in their possession as they are the absolute owners of Sy.No.156/1 and 156/2 properties.

10. So it is clear that the defendant can also seek the relief of injunction for preventing waste of the property, damages and alienation if any. The grounds urged in the application/ affidavit shows that it is pleaded that they interfered with gunda elements without having any right or title. So the basic ingredients as contained in Order 39 Rule 1(a) of CPC are not set out in the application. Further only defendant No.4 has sworn the affidavit and defendant No.2 has not sworn the affidavit. Though it is stated in the complaint given to the police that plaintiffs have interfered from cultivating and sowing but the same are not pleaded in affidavit.

11. It is clear that in this suit for partition and separate possession and cause of action also pleaded by plaintiff and cause of action for injunction is pleaded subsequently by defendants. It is settled law that injunction can not be granted against co-parcener and no doubt in this case the rights are yet to be crystallized. The defendants have produced sale deeds and copy of R.A.No.11/2010 judgment, filed before the learned Senior Civil Judge Raichur against the judgment and decree passed in O.S.No.227/2007. It is noticed that the decree drawn in the said decision these two properties are not included. Thereby it is clear that the contention of defendants that unless the compromise decree is set aside the suit is not maintainable, at this stage it is not acceptable. Hence in my opinion defendants have not made out grounds to allow the application and balance of convenience lies in favour of plaintiff and irreparable loss will be caused, if injunction is

granted which may give undue advantage to the defendants to change the properties. Therefore I am of the considered opinion that the application filed is not maintainable. **Hence I answered points No.1 and 2 in the Negative.**

12. **POINT NO.3:** In view of my answers to points No. 1 & 2 as above I proceed to pass the following:

ORDER

The IA No.8 filed by defendant No.2 and 4 U/o XXXIX Rule 1 and 2 of CPC is hereby rejected.

(Dictated to the stenographer, transcribed by him on computer, corrected by me, then pronounced by me in the open court on this 17th Day of February, 2023)

(SANTOSH S PALLEDH)

Senior Civil Judge
& JMFC Chittapur