

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
SEDAM

PRESENT:

Sri SAGAR GURUGOUDA PATIL
B.A., LL.B(Spl.)
Senior Civil Judge & JMFC, Sedam

Dated: 19-03-2024.

OS No.70/2023

Plaintiff/s :
Indrabai

(Smt/Sri J.A.P., Advocate)

VS

Defendant/s :
Sabanna and others

(D.2 to 5 Smt/Sri M.V.A., Advocate)
(D6 by Sri.N.R. Advocate)

RANK IN IA 1

Indrabai : Applicant/s

VS

Sabanna & others : Opponent/s

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for partition and separate possession
iii	The date on which the application is filed	02-09-2023
iv	Number of application	One
v	The date on which the objections are filed by different opponents	15-12-2023
vi	The date on which the orders were passed on the said application	19-03-2024

ORDERS ON IA 1
Under Order 39 rule 1 & 2 of CPC

The plaintiff / applicant has filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendants 1 and 6 by way of temporary injunction from alienating the suit schedule property till disposal of the suit.

2) Initially the plaintiff had filed this suit and the IA No.1 only in respect of the land measuring 7 acres 09 guntas in Sy.No.109/1. Therefore, in this order this court is required to deal with only one property.

3) The plaintiff has sworn to an affidavit in support of IA and stated that one Sabanna was the previous owner of the suit properties and he had two sons viz Narasappa and Tippanna. The said Narasappa had a son i.e., defendant No.1 and the said Tippanna had a son viz Dhulappa. The said Narasappa and Dhulappa succeeded the suit properties

and Dhulappa died issueless. After the death of Narasappa Sabanna inherited the suit properties. The suit properties are joint family properties of the plaintiff and defendants 1 to 5. The plaintiff and defendants 2 to 5 are daughters and sons of defendant No.1. The defendant No.1 is Karta of the joint family. The defendant No.6 is in no way concerned either to the suit properties or to the family of plaintiff and defendants 1 to 5. The suit properties are ancestral and joint family properties of plaintiff and defendants 1 to 5. The plaintiff and defendants 1 to 5 are in possession of the suit properties. Recently the plaintiff came to know that the defendant No.6 got executed sale deed through court commissioner on 12.7.2023. The said sale deed is not binding on the share of the plaintiff.

4) The suit properties are coparcenary properties of the plaintiff and defendants 1 to 5. They are having 1/6th share each in the suit properties. The agreement of sale said to be executed by defendant No.1 is not within the knowledge of the plaintiff and there was no legal necessity to alienate the suit properties. The defendant No.1 alone has not right to alienate the suit properties. Now the defendant No.6 is trying to alienate the properties. Hence, prays to allow the IA.

5) After service of suit summons, the defendant No.1 has remained absent and hence he was placed

exparte. The defendant No.6 has put his appearance through his counsel and filed his written statement. In his written statement he has denied the entire plaint averments and contended that the defendant No.1 is the absolute owner and possessors of the suit item No.1 property measuring 07 Acres 09 Guntas in Sy. No. 109/1. Due to his family and private necessities the defendant No.1 offered to sell the suit property and this defendant also accepted the offer and agreed to purchase the suit land for a sale consideration amount of Rs.25,00,000/-. This defendant paid Rs.18,40,000/- and after receipt of the said amount the defendant No.1 executed registered agreement of sale.

6) The defendant No.1 applied for 11-E sketch to the land to an extent of only 3 acres instead of entire extent. Therefore, this defendant got issued legal notice to the defendant No.1 on 13.12.2019. But the defendant No.1 did not reply. Thereafter this defendant filed suit for specific performance in O.S.No.14/2019 on the file of this court. After service of suit summons the defendant No.1 appeared and the matter was settled before the Lok Adalath and accordingly defendant No.1 herein agreed to pay Rs.20,00,000/- on or before Ugadi 2020-21 or execute the sale deed by receiving balance sale consideration amount., But the defendant No.1 did not pay the amount as agreed. Therefore, this defendant had filed execution petition in EP

No.21/2021.

7) The plaintiff has not included the ancestral land in Sy.No.109/3 of Benakanhalli vilalge. He has also not challenged the sale of part of the land in Sy.No.109/3 made by the defendant No.1. The suit land is not ancestral land. Earlier the Survey number of the suit land was Sy.No.109/Aa measuring 5 acres 36 guntas. At the time of survey settlement it was given Sy.No.109/1 and measurement of the land is shown as 7 acres 09 guntas. Earlier it was owned by Dhulappa S/o Tippanna. After the death of the said Dhulappa S/o Tippanna the suit land came to defendant No.1 by way of succession. Therefore, the plaintiff and defendants 2 to 5 have no right or interest in the suit item No.1 property. Hence, prays to dismiss the IA.

8) On the basis of the above facts the following points arise for my consideration:

- 1) Whether the plaintiff has made out prima facie case?
 - 2) Whether the balance of convenience lies in favour of the plaintiff?
 - 3) What order?
- 9) Perused the records. Heard arguments.

10) My answer to the above points are as under:

- 1) IN THE NEGATIVE
- 2) IN THE NEGATIVE
- 3) AS PER THE FINAL ORDER

for the following:

REASONS

11) **POINT Nos.1 and 2:** Since Points 1 & 2 are inter connected with each other I have taken the same together for common discussion in order to avoid repetition of facts & circumstances.

12) It is the specific case of the plaintiff that previously the suit property was belonged to one Sabanna and he had two sons viz Narasappa and Tippanna. The said Narasappa had a son-defendant No.1 and the said Tippanna had a son by name Dhulappa. The said Narasappa and Dhulappa succeeded the suit properties and the said Dhulappa died issueless. The said Narasappa succeeded the suit properties. After his death the defendant No.1 inherited the properties. The plaintiff and defendants 2 to 5 are daughters and sons of defendant No.1. The suit properties are ancestral and joint family properties of the plaintiff and defendants 1 to 5. The defendant No.1 is Karta of the joint family. The defendant No.1 without there being any legal necessity alienated the land measuring 7 acres 9 guntas in Sy.No.109/1 to defendant No.6. The said sale

deed is not binding on the plaintiff.

13) On the other hand the defendant No.6 has contended that the defendant No.1 for his family and private necessity alienated the suit properties for valuable sale consideration amount of Rs.25,00,000/-. The suit property was owned by one Dhulappa S/o Tippanna who was collateral of defendant No.1. After the death of said Dhulappa the defendant No.1 succeeded the suit property. Therefore the plaintiff and defendants 2 to 5 are entitled for any right and interest in the said property.

14) Perused the records. The revenue records of the year 1955-56 to 1958-59 show that earlier the land measuring 5 acres 37 guntas in Sy.No.109/Aa was standing in the name of Narasappa S/o Sabanna. The RTC extracts from the year 1968-69 to 1990-91 show that during the said period the suit property was standing in the name of one Dhulappa S/o Tippanna. The RTC extracts from the year 1988-89 to 1992-93 shows that the name of Dhulappa was rounded off and the name of the defendant No.1 was entered. The RTC extract from the year 1993-94 to 2014 show that during the said period the suit property is standing in the name of defendant No.1. the above documents make it clear that the suit properties were standing in the name of Dhulappa S/o Tippanna and the defendant No.1 succeeded the same. As per the plaint averments the said Dhulappa is

uncle's son of the defendant No.1. The same goes to show that the defendant No.1 did not acquire the suit properties from his father, father's father, father's father's father or maternal grand father. But he has acquired the suit properties from his collateral brother by way of succession. The learned counsel for the defendant NO.6 has argued that since the defendant No.1 acquired the suit property from his collateral brother it was his absolute property and therefore, the said property absolute property of defendant No.1. In support of his arguments he has relied on the decision of the Hon'ble Supreme Court in the case of Madanlal Phulchand Jain V/s State of Maharashtra reported in LAWS (SC)-1992-4-73, wherein the Hon'ble Supreme court held as under:

"It is equally well settled that excluding the property inherited from a maternal grandfather the only property which can be characterized as ancestral property is the property inherited by a person from his father, father's father or father's father's father. That means property inherited by a person from any other relation becomes his separate property and his male issue does not take any interest therein by birth. Thus property inherited by a person from collaterals such as a brother, uncle, etc., cannot be said to be ancestral property and his son cannot claim a share therein as if it were ancestral property. There can, therefore, be no doubt that the property which the appellant inherited from his uncle (natural father) was his separate property in which his major son could not claim any share whatsoever.

15) The above principle of law is aptly applicable to the case at hand. In this case the defendant No.1 acquired

property by way of inheritance from his collateral brother and not from his father, father's father or father's father's father. Therefore, the said property was separate property of defendant No.1. Hence, his children the plaintiff and defendants 2 to 5 are not entitled for any right or interest in the said property during the lifetime of their father defendant No.1. Therefore, at this stage, the plaintiff has not made out prima facie case.

16) It is on record that the defendant No.1 alienated the suit property for a valuable sale consideration amount of Rs.25,00,000/- and the court commissioner had already executed registered sale deed in favour of defendant NO.6 on 12.7.2023 and now only the delivery of possession is remained. Therefore, if at this stage this application is allowed it will cause much inconvenience and financial loss to the defendant No.6. On the other hand if the IA is not allowed no loss will be caused to the plaintiff as she is at liberty to pursue her remedy in a comprehensive suit for partition and separate possession. If the plaintiff succeeds to prove that the defendant No.1 acquired the suit property by way of survivorship and not by way of succession and thereby the suit property is ancestral property of plaintiff and defendants 2 to 5 in that suit and further proves that the alienation or the suit property by defendant No.1 is not for legal necessity then she will be entitled for partition in the suit

property. Unless and until she cannot claim any right over the suit property. But it is pertinent to note that in this suit the plaintiff has not pleaded that her father acquired the suit property by way of survivorship but on the other hand she herself has pleaded that her father inherited the suit property this itself shows that the suit property was separate property of defendant No.1 and the plaintiff and defendants 2 to 5 are not having any right or interest in the suit property. Therefore, the question of causing any loss or hardship to the plaintiff does not arise. Hence, I answer points 1 and 2 in the Negative.

17) **POINT No.3**: For the foregoing reasons, the following:

ORDER

The application filed by the plaintiff under Order 39 Rule 1 & 2 of CPC is hereby dismissed.

(Typed to my dictation by the Stenographer, the same revised, corrected and pronounced in the open court on this the **19th day of March 2024.**)

(SAGAR GURUGOUDA PATIL)
Senior Civil Judge & JMFC, Sedam.