

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: 16-07-2024.

OS No.11/2024

Plaintiff/s :
Neelamma
(Smt/Sri S.v.P., Advocate)

VS

Defendant/s :
Basawaraj and others
(D.1 & 5 by Sri.J.P.A. Exparte)
(D.2 to 4 by Sri.B.T.Advocate)

RANK IN IA 1

Neelamma : Applicant/s/Plft

VS

Basavaraj & others : Opponent/s/
Defts

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	23-01-2024
iv	Number of application	One
v	The date on which the objections are filed by different opponents	30-05-2024 & 05-07-2024
vi	The date on which the orders were passed on the said application	16-07-2024

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 defendant No.2 by way of temporary injunction from alienating the suit schedule properties till disposal of the suit.

2) The plaintiff has sworn to an affidavit in support of IA and stated that the plaintiff is daughter and defendants 2 to 3 are daughter of one Late Erappa @ Eranna. The defendant No.4 is wife of defendant NO.2 and defendant No.5 is son of defendant No.1. One late Siddappa Bidap was the common ancestor of plaintiff and defendants and he had four sons viz Erappa @ Eranna, Mahadevappa, Shankrappa and Gundappa. During the lifetime of the said Siddappa he divided the ancestral properties among his four

sons. In the said partition suit item No.4 and land measuring 13 acres 10 guntas was fallen to the share of Erappa @ Eranna. Thereafter the land measuring 3 acres 5 guntas in Sy.No.827/1 was purchased in the name of defendant No.2 nominally by utilizing the joint family funds through sale deed dated 13.2.1995. So also land measuring 6 acres 25 guntas in Sy.No.827/2 was nominally purchased in the name of Smt.Nagamani W/o Erappa @ Eranna through sale deed dated 13.2.1995 who is mother of the plaintiff and defendants 1 to 3. The said Nagamani sold land measuring 2 acres 36 guntas out of 6 acres 25 guntas to one Narendra Reddy during the year 2011-12. All the suit properties are ancestral and joint family properties of plaintiff and defendants.

3) It is submitted that land measuring 13 acres 10 guntas out of 26 acres 20 guntas in Sy.No.827/3 was standing in the name of Irappa and during the year 2011-12 he sold land measuring 1 acre 14 guntas to one Narendra Reddy. After the death of the said Irappa the remaining land measuring 11 acres 30 guntas was nominally mutated in the name of his wife Nagamani. During the year 2023-24 the defendant No.5 got executed bogus registered sale deed dated 24.8.2023 from the said Nagamani by taking undue advantage of her old age.

4) It is submitted that land measuring 6 acres 25 guntas in Sy.No.827/1 was purchased in the name of defendant No.1 out of the joint family funds. During the year 2011-12 the defendant No.2 sold land measuring 3 acres 20 guntas out of 6 acres 25 guntas to one Ramachandra Reddy and the remaining land measuring 3 acres 02 guntas is nominally standing in the name of defendant No.2.

5) It is submitted that land measuring 9 acres 32 guntas in Sy.No.733/A was standing in the name of Erappa. After his death it was nominally mutated in the name of his wife Nagamani. But the defendants 1 to 3 without consent of the plaintiff got executed registered partition deed dated 5.3.2020. Further the defendant No.2 gifted land measuring 3 acres 10 guntas in Sy.No.733/3 in favour of his wife-defendant No.4 under the Gift deed dated 9.12.2022. The suit properties are ancestral and joint family properties. The plaintiff is having share in the suit properties. She demanded share to the defendants but they have refused to effect partition. Hence, prays to allow the IA.

6) After service of suit summons, the defendants have appeared through their respective counsels and defendant No.1 and 5 have filed written statement together and defendant No.5 has filed separate written statement.

7) The defendant No.1 and 5 in their written statement have denied that the suit properties are ancestral and joint family properties. They have contended that the pedigree shown by the plaintiff is not correct. But they have admitted that the plaintiff and defendants 1 to 3 are daughter and sons of one Erappa @ Eranna and defendant No.4 is wife of defendant No.2 and defendant No.5 is son of defendant No.1. They have also admitted that one Siddappa was the common ancestor of the plaintiff and defendants but they have denied that the said Siddappa had four sons viz Erappa, Mahadevappa, Shankarappa and Gundappa.

8) The defendant No.1 and 5 have contended that the said Siddappa had two wives and through his first wife Neelamma he had 5 children and through his second wife-Chandamma he had 3 children. They have denied that in the partition land measuring 9 acres 32 guntas in Sy.No.733 and land measuring 13 acres 10 guntas in Sy.No.827 was fallen to the share of Erappa @ Eranna. They have also denied that land in Sy.No.827/1 was purchased in the name of defendant No.2 out of the joint family funds and the land measuring 3 acres 27 guntas in Sy.No.827/2 was nominally purchased in the name of Nagamani. They have admitted that land measuring 13 acres 10 guntas was mutated in the name of Erappa but there was no partition between sons of

Siddappa by metes and bounds.

9) It is submitted that the properties of Siddappa situated at Sedam Village and Satpatnahalli and there was no partition among the children of the common ancestor Siddappa. They have submitted that land in Sy.No.827/3 and other non other suited properties situated at Sedam and Satpatnahalli village are all ancestral properties. The plaintiff being coparceners is entitled for 1/4th share in the said land. But the plaintiff has not included all the ancestral properties in the suit schedule. The suit is bad for non-joinder of necessary parties.

10) It is submitted that land measuring 6 acres 25 guntas in Sy.No.827/2 was purchased by Nagamani with the assistance of her maternal family i.e., her parents and brothers. The said land was self acquired property of said Nagamani. The said Nagamani sold 2 acres 36 guntas to one Narendra Reddy through registered sale deed dated 5.12.2009. Thereafter she owned remaining land measuring 3 acres 29 guntas. The said Nagamani gifted land measuring 3 acres 29 guntas in Sy.No.827/2 in favour of defendant No.2 through registered Gift deed dated 23.8.2023. This fact is within the knowledge of the plaintiff and defendants 1 to 4.

11) It is submitted that land measuring 6 acres 25 guntas was nominally purchased in the name of defendant No.2. Taking undue advantage of the same without there being any legal necessity sold 3 acres 20 guntas to one Ramachandra Reddy. The purchasers viz Narendra Reddy and Ramachandra Reddy are not made as parties to the suit. They have denied rest of the plaint averments. Hence, prays to dismiss the IA.

12) The defendant No.3 has filed his written statement admitting the plaint averments and prays to decree the suit.

13) 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?

14) Perused the records. Heard arguments.

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

- 1) IN THE AFFIRMATIVE
- 2) IN THE AFFIRMATIVE
- 3) AS PER THE FINAL ORDER
for the following:

REASONS

16) **POINT No.1 & 2:** Since both these points are interconnected the same are taken together for common discussion.

17) It is the specific case of the plaintiff that the common ancestor of the plaintiff and defendants one Siddappa had four sons and he divided the ancestral properties among his four sons. In the said partition land measuring 9 acres 32 guntas in Sy.No.733 and land measuring 13 acres 10 guntas in Sy.No.827 were fallen to the share of father of the plaintiff and defendants 1 to 3 by name Erappa @ Eranna. On the other hand the defendants 1 and 5 in their written statement have contended that the ancestor Siddappa had two wives by name Neelamma and Chandramma and through his first wife he had four children and through his second wife he had three children. There was no partition effected in between the children of the said Siddappa. The burden to prove that there was a partition as contended by the plaintiff and in the said partition the above

properties fell to the share of father of plaintiff and defendants 1 to 3 is on the plaintiff. Therefore, an opportunity has to be given to the plaintiff to prove his case. Unless and until trial is concluded it is very much difficult to come to the conclusion that either the case of the plaintiff is correct or the case of the defendants 1 and 5 is correct.

18) It is not in dispute that land in Sy.No.827/3 is ancestral property of plaintiff and defendants 1 to 3. the RTC extracts from the year 1973-74 to 1982-83 show that earlier land measuring 26 acres 20 guntas in Sy.No.827 was standing in the name of ancestral of plaintiff and defendants 1 to 3 by name Siddappa and thereafter it was mutated in the name of father of plaintiff and defendants 1 to 3 Erappa S/o Siddappa. The same discloses that suit item No.1 property is ancestral property of plaintiff and defendants 1 to 3.

19) It is the case of the plaintiff that land measuring 6 acres 25 guntas in Sy.No.827/1 was purchased out of joint family funds nominally in the name of defendant No.2 through registered sale deed dated 13.2.1995. During the year 2011-12 the defendant No.2 sold land measuring 3 acres 20 guntas out of 6 acres 25 guntas to one Ramachandra Reddy. Now the remaining land measuring 3 acres 22 guntas is nominally standing in the name of

defendant No.2. But it is the ancestral property of plaintiff and defendants 1 to 3. On the other hand the defendant No.2 though appeared through his counsel has failed to file either written statement or objections to IA denying the case of the plaintiff. The defendants 1 and 5 in their written statement at para No.9 have admitted that land measuring 6 acres 25 guntas in Sy.No.827/1 was nominally purchased in the name of defendant No.2, out of the joint family funds. The defendant No.2 sold land measuring 3 acres 20 guntas in favour of one Ramachandra Reddy and now land measuring 3 acres 02 guntas is nominally standing in the name of defendant No.2 and the same is ancestral property. Only because the defendant No.1 and 5 have admitted it cannot be said that the land in Sy.No.827/1 is nominally standing in the name of defendant No.2 and it was purchased out of the joint family funds. The heavy burden is on the plaintiff to prove the same. Therefore, an opportunity has to be given to defendant No.2 to prove his case. Unless and until trial is concluded it cannot be said that the suit property was purchased out of the joint family funds or it is self acquired property of defendant No.2. The same discloses that the trial is required to decide the issues at hand.

20) It is further case of the plaintiff that the land

measuring 6 acres 25 guntas in Sy.No.827/2 was purchased out of the joint family funds nominally in the name of wife by name Nagamani through registered sale deed dated 19.2.1995. The said Nagamni sold land measuring 2 acres 36 guntas during the year 2011-12 to one Narendra Reddy. Further during the year 2023-24 without the knowledge of the plaintiff the defendant No.5 got executed bogus registered gift deed dated 24.8.2023 from the said Nagamani. The defendants 1 and 5 in their written statement have contended that the said Nagamani purchased the said property with the assistance of her maternal family and it was her self acquired property. The heavy burden is on the plaintiff to prove that the said land was purchased in the name of her mother out of the joint family funds. If she succeeds in proving the same the gift deed has to be held as null and void and not binding on the plaintiff. But on the other hand if the defendants 1 and 5 succeed in proving that the said Nagamani purchased the said property with the assistance of her maternal family then the plaintiff will be out of the court. But this crucial issue has to be decided only after the trial.

21) The plaintiff has contended that the defendants 1 to 3 without her knowledge got executed bogus partition deed dated 5.3.2020. It is not in dispute that the plaintiff is

also one of the coparceners of the joint family. Therefore, prima facie she was also necessary party to the partition deed. But the plaintiff is stating that without her knowledge the defendants 1 to 3 got divided the properties. If that being the case the alleged partition deed will not be binding on the plaintiff.

22) The plaintiff has further contended that the defendant No.2 gifted land measuring 3 acres 10 guntas in land Sy.No.733/3 through registered gift deed dated 9.12.2022 in favour of his wife-defendant No.4. As already discussed the validity of the alleged gift deed depends on the outcome of the issue that whether the said property was purchased out of the joint family funds or it was self acquired property of defendant No.2. If it is joint family property the alleged gift deed will become void. If it was self acquired property of defendant No.2 the gift deed has to be held as valid. Therefore, without conclusion of the trial the validity of the gift cannot be decided.

23) The RTC extracts from the year 2001 to 2019 shows that the suit item No.1 property was standing in the name of father of plaintiff and defendants 1 to 3. The RTC extract The RTC extract of the year 2019 shows that the suit item No.1 property is standing in the name of wife of Erappa

i.e., Nagamani. In the column NO.10 of the RTC extract the mode of possession is shown as inheritance. The RTC extract from the year 1973-74 to 1999-2000 and RTC extract from the year 2001 to 2019 shows that suit item No.3 property was standing in the name of father of plaintiff and defendants 1 to 3. The RTC extract of the year 2019-2020 shows that the said property is standing in the name of Nagamani. In the column NO.10 of the RTC extract the mode of possession is shown as inheritance. The same shows that after the death of Erappa the suit item No.1 and 4 properties were mutated in the name of his wife Nagamani. The RTC extracts of Sy.No.827/2 shows that still the suit item No.2 was standing in the name of Nagamani till the year 2023. The RTC extracts of the year 2023 shows that now the suit item No.2 is standing in the name of defendant No.5. The RTC extract from the year 2003 to 2011 shows that suit item No.3 property is standing in the name of defendant No.2.

24) The above discussion makes it clear that the case at hand involves serious question of facts and law and the same has to be answered only after the trial.

25) At this stage it is useful to refer the decision of the Hon'ble High Court of Karnataka in the case of

Chinnamma VS Nagaraj, reported in ILR 1995 KAR 1561
wherein the Hon'ble High Court held as under:

CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908)
- Order 39 Rules 1 & 2 - Disputes relating to agricultural lands
& joint family property : grant of interim orders - Principles.

HELD:

Disputes relating to agricultural lands and disputes relating to joint family property are quite common in the Civil litigation of this Country. Courts have therefore been required to evolve certain broad principles which have now become almost well defined while dealing with disputes of this type which principally take into account the fact that the litigation takes some time and that if certain changes take place in the character of the property under dispute during the interim period, that it would only give rise to further litigation and sometimes renders the relief itself infructuous. For this purpose, more as a measure of safety, caution and legal expediency, the Courts have culled out certain well defined principles which ordinarily ought not to be departed from. One of this principles is that where there is a dispute in relation to immovable property which happens to be vacant, that if the property were to be encumbered, alienated, built upon or if third party rights are permitted to be created during the interim period that the situation might become and in fact does become totally irreversible by the time the Court passes final orders. It is a well defined principle of law that a Court is required to be equally fair to the defendant Nos.1 & 7s as also to the parties who have approached the Court and therefore, necessary safety precautions in relation to the plaintiffs' interest are also of some consequence. This is in fact essence of the principle behind the grant for interim orders.

26) The above principle of law is aptly applicable to the case at hand. In this case in order to avoid creating of third party rights over the suit schedule properties till disposal of the suit it is just & necessary to restrain the defendants from alienating the suit schedule

properties. The plaintiff has stated that now the defendants are trying to sell the suit properties. Therefore, if they succeed in their attempt and alienate the suit properties to third parties it will complicate the matter and lead to multiplicity of suits and also cause irreparable loss & untold hardship to the plaintiff. On the other hand if the defendants are restrained from alienating the suit properties for some period i.e. till disposal of the suit no prejudice would be caused to the defendants. Hence I answer Points 1 & 2 in the affirmative.

27) **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 allowed.

The defendants are hereby restrained by way of temporary injunction from alienating suit schedule properties till disposal of the suit.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **16th day of July 2024.**)

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