

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC, AT
BANGARPET

PRESENT:- Sri. MARIYAPPA
BA. LLB.,
Addl. Civil Judge & JMFC, Bangarpet.

O.S. 182/2009

Dated this the 25th day of April 2015

<u>Plaintiff</u>		<u>Defendants</u>
N. Yadhavan	V/s	N. Venugopal and others
(By Sri. SRS Adv.)		(By Sri. KVP Adv.)

IA No. XIV

Petitioner /Plaintiff :- N. Yadhavan

V/s

Respondent/Defendant No. 2 :- N. Pandurangan

IA No. XV

Petitioner /Defendant No. 2 & 5 :- N. Pandurangan and another

V/s

Respondent/Plaintiff :- N. Yadhavan

COMMON ORDER ON I.A. No. XIV AND XV U/o 39 RULE 1 AND 2
R/w Sec. 151 OF CPC

This is an order arises out of applications filed by the plaintiff and defendants.

2) The plaintiff has filed IA No. XIV U/o 39 rule 1 and 2 against the defendant No. 2 with a prayer to pass an adinterim order of temporary injunction restraining the 2nd defendant, their henchmen, agents, or anybody acting on their behalf from alienating,

mortgaging or creating any right over the schedule property pending disposal of suit.

SCHEDULE

The land bearing Sy. No. 102 to an extent of 13 acres 17 guntas, including 2 acres 15 guntas karab, situated at Bangarpet village, Kasaba Hobli, Bangarpet taluk and the same is bounded by

East : Drainage,
West : Private Land,
North: Grave Yard,
South: Big Drainage (Caluve)

3) The application annexed with an affidavit sworn by the plaintiff contended that, he has filed the above suit against the defendants for the relief of partition, his father was working BGML KGF at maintenance department and he retired in the year 1965. And he purchased the suit schedule property from his retirement benefits and due to his illness he made the registered sale deed in the names of defendant No. 1 and 2 of the schedule property and subsequently he died. The plaintiff and defendants have equal share in the schedule property and the 2nd defendant is claiming exclusive right over the schedule property on false and insufficient grounds. The 2nd defendant making hectic attempts to sell the schedule property to deprive the plaintiff's right in the schedule property and on 20-01-2015 the 2nd defendant brought some person to schedule property and showing and proclaiming that, this is the property he is going to sell. The plaintiff have prima facie case and

balance of convenience in his favour and if his application is not allowed he will be put to hardship and irreparable loss. If the application is allowed no hardship or injury or loss will be caused to the defendants. On these grounds he prayed for allow the application.

4) On the other hand the defendant No. 2 and 5 are filed their objections to the application by denying the averments of the affidavit of the plaintiff and further contended that, the plaintiff filed this suit in the year 2009 and without proceeding with the case he has been filing applications one after another and only to harass the defendant No. 2 and 5. After filing of this suit the defendant No. 1 filed another suit against the plaintiff and others in OS No. 274/2013 on the file of this court for the relief of partition and same is pending before the court. Again the plaintiff's children and others filed a suit against this defendant and others family members in OS No. 23/2012 on the file of Hon'ble Senior Civil Judge at KGF for relief of partition of the same suit schedule property. After contesting by this defendant the suit filed by the plaintiff's children was dismissed against this defendants. And that keeping in mind the plaintiff filed the present application on false and frivolous grounds. The documents produced by the defendant No. 2 and 5 clearly establishes that, they are absolute owners of the suit schedule property in which either the plaintiff or other defendants have no any manner of right, title, interest or much less possession over the same. The plaintiff has not produced single document to show that, he is in possession the suit schedule property. Without proceeding with the case he has filed the present application on false and frivolous ground, and plaintiff has not come to the with

clean hand. If the application is dismissed no hardship or injury will be caused to him. On the other hand this defendant will be put to great hardship and loss. On these grounds they prayed for reject the application.

5) I.A. No. XV filed by the defendants against the plaintiff with a prayer to pass an order of temporary injunction in favour of the defendant No. 2 and 5 and against the plaintiff, restraining the plaintiff, his legal heirs, family members, executors, servants, administrators or any body acting on his behalf not to interfere with the defendant No. 2 and 5 peaceful possession and enjoyment of the schedule property which is morefully described in the schedule herein below to any extent, in any manner or whatsoever from pending disposal of the above case. In the annexed affidavit sworn by the 2nd defendant contended that, in the above suit he and his wife are on various grounds contesting the case and produced the relevant documents to show their possession and enjoyment of the suit schedule property. The plaintiff without any right or possession he frequently attempting to interfere with defendants possession. Hence they filed this instant application against the plaintiff. If the application is allowed no hardship or injury will be caused to the other side, on the other hand defendants will be put to great hardship and loss. On these grounds they prayed for allow the application.

6) On the other hand the plaintiff filed objection stating that, the entire averments of defendants affidavit does not speak of possession of schedule property. That clearly shows that, he is not in exclusive possession of the schedule property and he has no

prima facie case and balance of convenience and to decide who is in possession of the property it needs full pledged trial. The defendant filed this application as a counter blast to the application filed by the plaintiff. The relationship is admitted by the defendant and the plaintiff is having a share in the suit schedule property and the plaintiff and the defendants are in joint possession of the suit schedule property. And in that case no injunction can be granted against the co-owner/sharer. If the application of the defendant is allowed it amounts to granting a decree against the plaintiff and suit does not survive and the defendant will through the plaintiff from the schedule property. On these grounds he prayed for dismiss the application filed by the defendant.

7) Heard arguments.

8) The points would arises for court consideration are as under :

- 1) Whether the plaintiff has made out prima facie case for grant of temporary injunction as sought for ?
- 2) Whether the defendant has made out prima facie case for grant of temporary injunction as sought for ?
- 3) Whether the balance of convenience lies in whose favour ?
- 4) Whether an irreparable loss, injury could be caused to whom in the event of refusal of temporary injunction ?
- 5) What order ?

9) My answers to the above points are as under.

Point No. 1 : In the negative

Point No. 2 : In the negative

Point No. 3 : Does not arise for consideration

Point No. 4 : Does not arise for consideration

Point No. 5 :As per the final order for the following ;

R E A S O N S

10) Point No. 1 to 4 :- On perusal of materials available on record it reveals that, the plaintiff has filed this suit against the defendant for the relief of partition and separate possession, the plaintiff contended that, the plaintiff and defendant No. 1 to 4 are the sons of late Narayanaswamy and they are the joint family members constituted under Hindu law and they are in possession and enjoyment of the suit schedule property which is ancestral property purchased by their father in the names of defendant No. 1 and 2, as per registered sale deed dated 27-03-1965. The father of the plaintiff and defendant No. 1 to 4 was working in BGML KGF and retired in the year 1965 and he purchased the suit schedule property from his retirement benefits and made the registered sale deed in the names of defendant No. 1 and 2 due to his illness and subsequently died on 02-06-1969. The plaintiff and defendant No. 1 to 4 are being the employees and contributed their respective proportionate amount for the improvement of the schedule property and they are jointly cultivating the suit schedule property by contributing the amount equally and enjoying the fruits of the same. The defendant No. 1 and 2 without knowledge of the plaintiff and other defendants have entered into the collusion document which is said to be a released deed executed by the defendant No.1

on 18-05-1984 in favour of defendant No. 2 in respect of suit schedule property and subsequently defendant No. 2 has made a registered sale deed dated 27-06-1984 in respect of portion of land to an extent of 4 acres in the suit schedule property in favour of defendant No. 5. The said fact came to the knowledge to the plaintiff recently and filed this suit and now he filed instant application for seeking interim temporary injunction order against the defendant No. 2 and 5. Per contra the defendant No. 2 and 5 are denied the contention of the plaintiff and further contended that, the 2nd defendant was employed in BGML KGF and the 1st defendant working in a cycle shop. The 2nd defendant was only looking after the entire family and also celebrate the marriage of his sister. The father of the plaintiff and defendant No. 1 to 4 have opted VRS in the year 1965 and died in the year 1969. The sale deed dated 18-5-1984 and the say of the plaintiff that, the suit schedule property was purchased by their father in the names of 1st and 2nd defendant is unbelievable one. The 1st defendant has given undertaking letter by relinquished his entire rights over the suit schedule property for a sum of Rs. 60,000/- and same has paid by the 2nd defendant and khatha of the schedule property changed in the name of 2nd defendant. The plaintiff has left the joint family about 25 years back and settled at Bangalore and acquired so many properties in Bangalore and the plaintiff not included the same in this suit. The father of the plaintiff and defendant No. 1 to 4 has not acquired any property for the welfare of the family, the plaintiff filed this suit after lapse considerable period by creating colourful story to grab the suit schedule property.

11) To substantiate their case the plaintiff have produced documents like the copy of RTC standing in the name of defendant No. 2 and 5 and certified copies of mutation registers transferred in the name of 2nd and 5th defendant. Same are marked as Ex.p. 1 to 3. The defendants have produced the certified copy of sale deed dated 27-03-1965, The certified copy of relinquish deed (release deed) dated 18-05-1984, the certified copy of sale deed dated 27-06-1984, the certified copy of order sheet, the certified copy of plaint, the certified copy of written statement of OS No. 23/2012 on the file of Hon'ble Senior Civil Judge Court at KGF, copies of RTCs and copy of M.R. Extract, which are marked as Ex.D1 To D9.

12) On careful reading of materials available on record there is no dispute about relationship between the parties. The suit schedule property purchased by the defendant No. 1 and 2 in the year 1965 through registered sale deed dated 27-03-1965 this fact reveals from the Ex.D1 and the 1st and 2nd defendant have put in possession over the same, and the Ex. D2 reveals that, the defendant No. 1 relinquished his right over the suit schedule property by receiving the amount from the 2nd defendant and Ex. D3 reveals that, the defendant No. 2 sold the property in favour of defendant No. 5 and RTC stands in the name of defendant No. 2 and 5. The plaintiff has contended that, the suit schedule property purchased in the name of defendant No. 1 and 2 from the retirement benefits of father of the plaintiff and defendant No. 1 to 4, since from the date of filing this suit now the case setdown for cross of DW 1 the plaintiff has not produced any documents to show the prima facie case against the defendants to prove his contention.

Per contra on perusal of the documents which have already marked as Ex. D1 to D3 and RTCs reveals that, the suit schedule property purchased by the defendant No. 1 and 2 and the defendant No. 1 relinquished his right over the suit schedule property in favour of the 2nd defendant and the 2nd defendant has sold the portion of the suit schedule property in favour of the 5th defendant and they are in possession over the property.

13) The counsel for the plaintiff much argued about, in a suit for partition, the property must be reserved till final adjudication. In the present suit the plaintiff though stated the suit schedule property is purchased in the names of defendant NO. 1 and 2 from the amount of retirement benefits of the father of the plaintiff and defendant No. 1 to 4. But in order to show the prima facie case the plaintiff not produced any documents to substantiate his contention. Hence in the opinion of the court the plaintiff fail to prove the prima facie case to grant temporary injunction order as prayed in his application.

14) The defendant filed application seeking temporary injunction against the plaintiff to restrain him not to interfere with the defendants peaceful possession and enjoyment of the schedule property. The suit filed by the plaintiff against the defendants for the relief of partition on the grounds that, the suit schedule property purchased in the names of defendant No. 1 and 2 by the father of the plaintiff and defendant No. 1 to 4 from his retirement benefits amount. From the date of purchase all are in possession over the suit schedule property. The plaintiff claimed his relief as a joint family member. The burden will be on the plaintiff to prove the suit

schedule property is joint family property and purchased by his father in the names of defendant No. 1 and 2 and they are all in possession of the suit schedule property. Per contra the defendant contended that, the suit schedule property is self acquired property of defendant No. 2 and 5 and they are in possession over the suit schedule property as per the Ex. D1 to D3 and RTCs. Now the case is set down for cross of DW1. At this stage the plaintiff made an application for seeking adinterim injunction against the defendant No. 2 and 5 and the defendant No. 2 and 5 are also filed an application against the plaintiff for seeking the relief of adinterim injunction restraining the plaintiff not to interfering in the suit schedule property. The defendant sought this relief at belated stage, it creates a doubt why the defendant has not sought the relief at earlier stage of the suit. When the doubt regarding prima facie case to consider the application to grant injunction as sought for. Even though the defendants having the relevant documents in their favour, they have not sought the relief of TI order against the plaintiff to not to interference in the suit schedule property at earliest stage. Hence the defendant No. 2 and 5 have failed to made out a prima facie case to consider their application at belated stage.

15) The plaintiff and defendant have not made out prima facie case to consider their applications to grant the temporary injunction order as prayed for. When the both have failed to made out prima facie case for grant of temporary injunction order, the question of considering the balance of convenience and irreparable loss and injury does not arise. Hence I answered the point No. 1 and 2 in the negative, Point No. 3 and 4 are does not arise for

consideration.

16) Point No. 5 :- For the above foregoing reasons and findings I proceed to pass the following;

ORDER

I.A. No. XIV U/o 39 Rule 1 and 2 R/w sec. 151 OF CPC filed by the plaintiff is hereby rejected.

I.A. No. XV U/o 39 Rule 1 and 2 R/w sec. 151 OF CPC filed by the defendant No. 2 and 5 is hereby rejected.

No order as to the costs.

(Dictated to the stenographer transcribed by her, corrected by me and then pronounced in the open court on this the 25th day of April 2015.)

(MARIYAPPA)
Addl. C.J. & JMFC., Bangarpet.

Order pronounced in the open court
(vide separate order)

ORDER

I.A. No. XIV U/o 39 Rule 1 and 2
R/w sec. 151 OF CPC filed by the
plaintiff is hereby rejected.

I.A. No. XV U/o 39 Rule 1 and 2
R/w sec. 151 OF CPC filed by the
defendant No. 2 and 5 is here by
rejected.

No order as to the costs.

Addl. C.J. & JMFC., Bangarpet.