

**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC AT
BANGARPET**

Present: - Sri. A.C. DAYANANDMURTHY, B.A. LL.M.,
Addl. Civil Judge and JMFC, Bangarpet.

Dated this the 1st day of August, 2017

O.S. 214/2015

- Plaintiffs :
1. Sri. Krishnappa, 80 years,
S/o Late Muniswamappa,
 2. Sri. Venkatesh, 38 years,
S/o Krishnappa,
 3. Sri. Prakash, 35 years,
S/o Krishnappa,
 4. Sri. Muniyappa, 75 years,
S/o Late Muniswamappa,
 5. Sri. Manjunatha, 35 years,
S/o Muniyappa,
 6. Chandra, 29 years,
S/o Muniyappa,
 7. Sri. Earanna, 72 years,
S/o Late Muniswamappa,
 8. Murali, 30 years,
S/o Earanna,

All are R/at Thammenahalli
Village, Bangarpet Taluk.

(By Sri. NN Adv.)

- Vs -

- Defendants: 1. Sri Narayanappa, 70 years, S/o
Late Muniswamy @ Sonnappa
2. Sri. Ipanna, 60 years,
S/o Late Seethappa,
3. Sri. Venkatesh, 48 years,
S/o Late Seethappa,

All are R/at Thammenahalli
Village, Bangarpet Taluk.
(D1 & D3 by Sri. NS Adv.
D2 Ex-parte)

PARTIES TO I.A. No. I

- Applicants: 1. Sri. Krishnappa, 80 years,
S/o Late Muniswamappa,
2. Sri. Venkatesh, 38 years,
S/o Krishnappa,
3. Sri. Prakash, 35 years,
S/o Krishnappa,
4. Sri. Muniyappa, 75 years,
S/o Late Muniswamappa,
5. Sri. Manjunatha, 35 years,
S/o Muniyappa,
6. Chandra, 29 years,
S/o Muniyappa,
7. Sri. Earanna, 72 years,
S/o Late Muniswamappa,

8. Murali, 30 years,
S/o Earanna,

All are R/at Thammenahalli
Village, Bangarpet Taluk.

- Vs -

Opponents: 1. Sri Narayanappa, 70 years, S/o
Late Muniswamy @ Sonnappa

2. Sri. Ipanna, 60 years,
S/o Late Seethappa,

3. Sri. Venkatesh, 48 years,
S/o Late Seethappa,

All are R/at Thammenahalli
Village, Bangarpet Taluk.

ORDER ON I.A. No. I

That, the plaintiffs filed an interim application No. I U/o 39 Rule 1 and 2 R/w sec. 151 of CPC restraining the defendants, their family members, legal heirs, successors, attorneys, agents, or anybody acting their behalf from alienating, mortgaging, Hypothecating or any kind or encumbering the suit schedule property, till disposal of the suit.

2) The case of the plaintiffs' in brief is as under – In an annexed affidavit the plaintiff stated that, originally Landed property bearing Sy. No. 63 measuring 3 acres 36 guntas and 4 guntas of karab, situated at Thammenahalli Village, Robertsonpet Hobli, Bangarpet Taluk which is the item No. 1 of the suit schedule property, was belonged to one Kenchappanavara Muniswamy and all the relevant revenue records were standing in his name and he is possession of the same and after his death his sons by name Kenchappa, Krishnappa, Nanjundappa, Muniyappa and Earanna were inherited and succeeded the suit schedule property and same was fallen to the share in the oral partition took place among their brothers. All of us are in joint physical possession of the suit schedule properties. Recently we have learnt that the defendants were making hectic efforts to hypothecate the suit schedule property to he Canara Bank, Dasarahosahalli Branch in order to

raise a loan. The father of defendant No. 1 and father of the defendant No. 2 and 3 have got fraudulent sale deed dated: 23-08-1956 from one Patel Munegowda in respect of item No. 2 of the suit schedule property. He had not any kind of legal right, title, interest at all to sell the item No. 2 of the same. The father of the defendant No. 1 and father of the defendant No. 2 and 3 have got changed the khatha of the suit schedule property in to their names without the knowledge and consent of the plaintiffs. If the application is not allowed the plaintiffs will be put great hardship and inconvenience on the other hand no hardship or inconvenience would be cause to the other side. Therefore the plaintiffs brought a suit for the relief of declaration and other reliefs along with instant application.

3) Per contra, the defendants have filed memo and prayed for adopt the written statement as objection to the IA No. 1. The defendant No. 1 and

3 in their written statement contended that, the suit schedule land Sy. No. 63 was originally joint family property of Kenchappanavara Munisway and Ippanna, he and his brothers along with Ippanna formed members of joint Hindu family owning the schedule Sy. No. 63 and other lands. Seethappa S/o Ippanna had to be married and hence there was legal necessity to sell the joint family land. In Sy. No. 63 to an extent of 1 acre 39 guntas to the share of the said Seethappa so that he can sell his share of land and perform his marriage. Remaining half share i.e., 1 acre 39 guntas of land was fallen to the share of Kenchappanvara Muniswamy. The said Seethappa sold the schedule land item No. 2 – 1 acre 39 guntas in favour of Patel Munegowda under the registered sale deed dated: 29-03-1954 and later and said land was purchased by Sonnappa and Seethappa from Patel Munegowda under the registered sale deed dated: 23-08-1956 and they are in possession of the suit schedule item No. 2

measuring 1 acre 39 guntas. The said Sonnappa is the father of 1st defendant and Seethappa is the father of defendant No. 2 and 3. After the death of Sonnappa and Seethappa their sons were in possession of the same and raising crops therein. The plaintiffs have no manner of right or title over the land Sy. No. 63 to an extent of 1 acre 39 guntas. The plaintiffs have not approach the court with clean hands. The suit is not maintainable

4) Thereafter, I have heard the arguments by the learned counsel for the plaintiffs and the defendants.

5) The points that would arise for my consideration are as under -

1. Whether the plaintiffs have made out prima facie case?
2. If, so in whose favour balance of convenience and hardship lies?
3. What order?

6) My findings to the above points are as under –

Point No.1 :- In the partly affirmative

Point No.2 :- In the partly affirmative

Point No.3 :- As per final order

for the following ;

REASONS

7) **POINT NO.1 AND 2** :- These two points are intermixed with each other as such they are taken up for discussion together. I have already setout in the brief as to what the case of the plaintiffs is and what the case of the defendants. In the nutshell the case of the plaintiffs is that, originally Landed property bearing Sy. No. 63 measuring 3 acres 36 guntas and 4 guntas of karab, situated at Thammenahalli Village, Robertsonpet Hobli, Bangarpet Taluk which is the item No. 1 of the suit schedule property, was belonged to one Kenchappanavara Muniswamy and all the relevant revenue records were

standing in his name and he is possession of the same and after his death his sons by name Kenchappa, Krishnappa, Nanjundappa, Muniyappa and Earanna were inherited and succeeded the suit schedule property and same was fallen to the share in the oral partition took place among their brothers. All of us are in joint physical possession of the suit schedule properties. Recently we have learnt that the defendants were making hectic efforts to hypothecate the suit schedule property to he Canara Bank, Dasarahosahalli Branch in order to raise a loan. The father of defendant No. 1 and father of the defendant No. 2 and 3 have got fraudulent sale deed dated: 23-08-1956 from one Patel Munegowda in respect of item No. 2 of the suit schedule property. He had not any kind of legal right, title, interest at all to sell the item No. 2 of the same. The father of the defendant No. 1 and father of the defendant No. 2 and 3 have got changed the khatha of the suit schedule property

in to their names without the knowledge and consent of the plaintiffs. If the application is not allowed the plaintiffs will be put great hardship and inconvenience on the other hand no hardship or inconvenience would be cause to the other side. Therefore the plaintiffs brought a suit for the relief of declaration and other reliefs along with instant application.

8) Per contra, the defendants have filed memo and prayed for adopt the written statement as objection to the IA No. 1. The defendant No. 1 and 3 in their written statement contended that, the suit schedule land Sy. No. 63 was originally joint family property of Kenchappanavara Munisway and Ippanna, he and his brothers along with Ippanna formed members of joint Hindu family owning the schedule Sy. No. 63 and other lands. Seethappa S/o Ippanna had to be married an hence there was legal necessity to sell the joint family land. In Sy. No. 63 to an extent of 1 acre 39 guntas to the share of the said Seethappa so that

he can sell his share of land and perform his marriage. Remaining half share i.e., 1 acre 39 guntas of land was fallen to the share of Kenchappanvara Muniswamy. The said Seethappa sold the schedule land item No. 2 - 1 acre 39 guntas in favour of Patel Munegowda under the registered sale deed dated: 29-03-1954 and later and said land was purchased by Sonnappa and Seethappa from Patel Munegowda under the registered sale deed dated: 23-08-1956 and they are in possession of the suit schedule item No. 2 measuring 1 acre 39 guntas. The said Sonnappa is the father of 1st defendant and Seethappa is the father of defendant No. 2 and 3. After the death of Sonnappa and Seethappa their sons were in possession of the same and raising crops therein. The plaintiffs have no manner of right or title over the land Sy. No. 63 to an extent of 1 acre 39 guntas. The plaintiffs have not approach the court with clean hands. The suit is not maintainable

9) So far as grant to temporary injunction is concerned it should be a small steps during the progress of suit or proceeding towards the preservation of its subject matter which could be property or any other right has now gained enormous importance and some times, it becomes even more important then the final result of the suit or proceedings with the change of the time the dilemma of the judicial Court or tribunal is that initially it has treat the truth and falsehood as per and has to give the same treatment, protection and hearing until it concludes its investigation, find out which is right or wrong, false or true. This process takes a long time during which by some interim measure, the subject matter of the dispute between the parties has to preserved and it is dis-anxiety for preservation of the property on the part of the judicial Court, which is misused and abused by the side which has come before the Court with a

wrong or false case or a doubtful case which has been filed only to take a chance.

10) It is pertinent to note that, injunction is an equitable relief. For grant of order of injunction by the Court, it should always be kept in mind that, its origin is from equitable jurisdiction and before passing the order claim must be tested and the particulars of the normal requirements with the application praying for the injunction and have a good prima facie case, chance of suffering irreparable injury and balance of convenience is in his favour and other particulars connected with the matter the Court should have extra cautious approach in testing the prima facie case, for a certain amount of extra rigor avoid the abuse of the trust of the Court.

11) It is pertinent to note that, it is well settled that in granting or refusing to grant temporary injunction, the Court has very wide discretion. The exercise of the discretion should be in a

judicial manner, depending upon the circumstances of each case. No hard and fast rule can be laid down for the guidance of the Court to that effect. It is well settled that, while granting injunction plaintiff must show –

- i. existence of prima facie case,
- ii. balance of convenience and
- iii. the injury must be of an irreparable loss that can not be compensated in terms of money.

12) The first rule is that, the applicant must make out a prima facie case in support of the right claimed by him. The Court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the Court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a

condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the Court by leading evidence or otherwise that he has a prima facie case in his favour.

13) Prima facie case, however, should not be confused with a case proved to the hilt. It is no part of the Court's function at that stage to try neither to resolve a conflict of evidence nor to decide complicated questions of fact and of law which call for detailed arguments and mature considerations. These are matters to be dealt with at the trial. In other word, the Court should not examine the merits of the case closely at that stage because it is not expected to decide the suit finally. In deciding a prima facie case, the Court is to be guided by the plaintiff's case as revealed in the plaint, affidavits or other materials produced by them.

14) The plaintiff should come before the Court with clean hands. If he suppresses material

facts, documents then he is not entitled for the relief of injunction and further points of balance of convenience, irreparable injury even not required to be considered in such case.

15) It is pertinent to note that, the existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the second condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. In other words, the Court must be satisfied that refusal to grant injunction would result in 'irreparable injury' to the party seeking relief and he needs to be protected from the consequences of apprehended injury. Granting of injunction is an equitable relief and such a power can be exercised when judicial intervention is absolutely necessary to protect rights and interests of the applicant.

The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages.

16) It is pertinent to note that, the third condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

17) At this stage, we are concerned that, the prima facie case made out by the parties to which Court has to relay on the documents produced by

the both parties. The plaintiffs filed certified copy of registered sale deed. 22 RTC extracts.

18) Per contra the defendants filed certified copy of registered sale deed dated; 29-03-1954, certified copy of registered sale deed dated: 23-08-1956, certified copy of mutation register extract, certified copies of 6 Manual RTC extracts, 3 computerized RTC extracts, encumbrance certificate from 1-04-1956 to 31-03-1966.

19) The plaintiff's counsel vehemently argued that, the plaintiffs are in peaceful possession of the suit schedule property in Sy. No. 63 measuring 3 acres 36 guntas and 4 guntas of karab and along with schedule item No. 2. Per contra the defendant vehemently argued that, the plaintiff is not having possession over the suit schedule property over the suit schedule item No. 2. If the plaintiffs having possession over the suit schedule item No. 2 they should give one schedule to the suit schedule property instead of

giving 1 schedule is giving 2 schedules to the suit schedule property. Further he argued that, the plaintiff fraudulently have the sale deed. Therefore the suit schedule property sure in different. But the plaintiff counsel vehemently argued that, the suit schedule property has purchased by the defendants through the sale deeds and mutation extract and RTC extract along with the encumbrance certificate clearly shows that, the defendants are having peaceful possession over the suit schedule property. Therefore they prays for dismissal of the application. On perusal of the argument by both side the sale deed which has produced by the plaintiff is fraudulent or not. It will be decide at the later stage after completion of trial. While deciding the inter locutory application court should gone through the documents and facts of the case of the both side and if court finds prima facie in favour of the plaintiff, then court may grant temporary injunction against the defendant. But in the present suit the plaintiff has

filed RTC extract since from the year 1881-82 to 1997 and 1998. The said RTC extracts shows the name of the plaintiffs. But recently in the year 2015 and 2016 the RTC extracts shows that the name of the father of the defendant No.1 and other defendants. Per contra the defendants have filed certified copy of Sale deed dated: 29-03-1954 and 23-08-1956 and one mutation register extract. From these sale deed and mutation extract the defendants are also having possession over the suit schedule property.

20) The defendants counsel vehemently argued that, the plaintiff is having his property in Sy. No. 63 but the defendants also having the property as per the schedule item No. 2 of the plaint. The plaintiff shows that, the defendants are having their property on the side of northern side. Sy. No. 63 is having 3 acre 36 guntas and 4 guntas of karab land. Out of 3 acre 36 guntas the plaintiffs are having 1 acre 39 guntas of land. As per the schedule given by the plaintiffs the

defendants have having their property on the northern side of the plaintiff schedule property. The plaintiff are filed the suit only to grab the property of the defendants.

21) It is pertinent to note that, there is no dispute between the land of the defendants and land of the plaintiffs. The only dispute between the both parties is that, the demarcation of their lands. When the plaintiffs or the defendants measure their property in accordance with the law along with the relevant documents. The exact property of the plaintiffs and defendants will find out. If injunction has granted the plaintiffs may miss utilize the order of injunction and he dispossess the defendants. If injunction is not granted the defendants may miss utilize the order of this court and may dispossess the plaintiff from the plaintiffs suit schedule property. Therefore I am of the opinion that, it is a fit case to pass the order to maintain status quo by both parties till disposal of the suit.

22) It is well settled law that, while deciding interim application, the Trial Court should not hold mini trial for which, I place the decision reported in **(2001) SCC 568 in case of Anand Prasad Agarwalla Vs. Tarakeshwar Prasad** wherein it was held that, the Court should not hold any mini trial at this stage. It is pertinent to note that, U/o.39 Rule 1 and 2 of CPC primarily concerned with the preservation of the property in dispute till legal right are adjudicated; injunction is a judicial process for which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court on exercise power of granting ad interim injunction is to preserve the subject matter of the suit in statue quo for the time being. It is well settled law that, the grant of injunction is discretionary relief.

23) It is pertinent to note that, the decision reported in **(2000) 9 SCC 572 in case of State of**

Karnataka Vs. State A.P. wherein the Hon'ble Supreme Court of India held that, - injunction being a discretionary remedy, the Court may grant an order of injunction even if all the necessary ingredients are established and those ingredients are prima facie case of infraction of legal rights. Such infraction cases, irreparable loss and injury to the plaintiff and the injury is such nature that it cannot be compensated by way damages.

24) The present legal rights of the parties are not yet adjudicate as the matter was posted for evidence after framing the issues. The Preservation of the property is dispute till legal rights are adjudicated, injunction is required. It is in nature of preventive relief to a litigant to prevent future possible injury. If the injunction is not granted in such a case undue hardship would be caused to the plaintiff. Under these circumstances in order to protect the property during the pendency of the suit it is necessary to

issue temporary injunction to maintain status-quo in respect of suit schedule property pending disposal of the suit. At this stage I am of the considered opinion that, the plaintiffs have made out prima facie case and balance of convenience, hardship lies in favour them. In order to protect property during the pendency of the suit it is necessary to direct the defendants to maintain status-quo in balance of convenience pending the disposal of the suit. Under these circumstances I hold that, the plaintiffs made out prima facie case in respect of the suit schedule property. Hence, I answered **Point No.1 in the Affirmative.** Further I hold that, the balance of convenience and hardship in favour of plaintiffs, hence I answered **Point No.2 in favour of the plaintiffs.**

25) **POINT NO.3** - In view of the findings on the Point No.1 and 2, I proceed to pass the following :

ORDER

I.A. No. I U/o 39 Rule 1 and 2
R/w Sec.151 of CPC filed by the
plaintiffs is hereby partly allowed.

Further it is ordered that, the
plaintiffs and defendants are hereby
directed to maintain status-quo till
disposal of the suit.

In view of the facts and
circumstances of the case, parties are
directed to bear their own costs.

(Dictated to the steno, directly on computer and typed by her, corrected signed &
then pronounced by me in the open Court on this 1st day of August 2017).

(A.C. DAYANANDMURTHY)
Addl. Civil Judge and JMFC,
Bangarpet.