

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

Present:- DEEPU B.C., B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Bangarpet.

Dated this the 12th day of July, 2019.

O.S. 222/2018

Plaintiff:- Musakhan, 67 years,
S/o Bhashukhan,
R/at Srinivasagowda Layout,
Bangarpet Town.

(By Sri. MPR - Adv.)

V/s

Defendant:- 1. Makabul, 75 years,
W/o Late Usman Sab,
2. Mahaboob Pasha, 45 years,
S/o Late Usman Sab,

Both are R/at
Vatrakunte Village,
Hudukula Post,
Kasaba Hobli,
Bangarpet Taluk.

(By Sri NS Adv.)

PARTIES TO IA.No. I

Applicant : Musakhan
(Plaintiff)

V/s

Opponents : Makabul and another
(Defendants)

ORDER ON I.A. No. 1

The present application is filed by the plaintiff U/o 39 rule 1 & 2 R/w sec. 151 of C.P.C praying to issuance of ad-interim temporary injunction against the defendants, restraining the defendants from alienating the suit schedule properties till disposal of the suit.

2. The reasons ventilated by the aforesaid plaintiff in the affidavit annexed to the application are that the suit schedule properties are the joint family properties of himself and defendant No.1 and he is having half share in the suit schedule properties, without his knowledge and consent, the defendants forged and created the documents in their favour before the revenue authorities and caused change of RTC and other revenue records in to the name of defendants in respect of suit schedule properties. Now the defendants are trying

to alienate the suit schedule properties based on fraudulent revenue records. Hence it is necessary to restrain them. On these grounds and such other grounds he prayed to allow the said application.

3. Per contra the learned counsel for the defendants filed memo stating that the defendants have adopted their written statement as objection to said application. In their written statement, the defendant No.1 has contended that she has acquired the suit item No.1 property through oral partition and further she has acquired item No. 2 property through registered sale deed executed by the plaintiff on 29-07-1988. In pursuant to the same, the katha and entire revenue records changed in the name of 1st defendant and the defendant No. 1 is an absolute owner in possession over the suit schedule properties and further stated that the defendant No.1 had executed a registered gift deed dated: 16-05-2006

in favour of defendant No. 2. Hence the defendant No.2 has become an absolute owner in possession of the suit item No. 2 property and the katha of the said property is transferred in his favour vide MR No. 36/2005-06. Hence the plaintiff has no right and possession over the suit schedule properties. On these grounds and such other grounds they prayed to reject the said application

4. Heard arguments on both side and perused the materials on record.

5. The points that arise for consideration of this court are as under :

- 1) Whether the plaintiff has got prima-facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the plaintiff suffers irreparable loss and injury if the T.I. is refused?
- 4) What Order?

6. The answers to the above points are :-

Point No. 1 to 3 :- In the negative

Point No. 4 :- As per final order.

For the following:

REASONS

7. **Point Nos. 1 to 3** :- As these points are interconnected with each other, they are taken up together for common discussion, in order to avoid repetition of facts and circumstances. On careful perusal of the entire records, it appears that the present suit is filed for partition and separate possession. The case of the plaintiff is that, his father Bhashukhan and the defendant No. 1 are brother and sister and they are the children of late Sabjan Sab. Originally the suit schedule properties were belongs to one Sabjan Sab who is the grandfather of the plaintiff and father of defendant No. 1. After the death of said Sabjan Sab and father of the plaintiff, the defendant No. 1 was becomes the manager of the joint family. The suit schedule properties are the joint family properties of both plaintiff and 1st defendant. Despite the request made by the plaintiff for partition, the defendant

No.1 has refused the same. In the meanwhile the 1st defendant has illegally executed registered gift deed in favour of defendant No. 2, who is the son of 1st defendant in order to defraud the rights of the plaintiff over the suit schedule properties and further submitted that the plaintiff and defendant No.1 having equal half share in the suit schedule properties, in spite of request made by the plaintiff for partition, the defendant No.1 has not heed his words, Hence the plaintiff has filed this present suit for partition.

8. Per contra the defendants have filed their written statement and stating that after the death of Sabjan Sab the suit schedule properties were partitioned between the father of the plaintiff Bhashukhan and defendant No. 1. In pursuant to the same the suit item No.1 property has fallen to the share of plaintiff's father and item No.2 property has fallen to the share of 1st defendnat. After that the father of the plaintiff has sold the

suit schedule item No.2 property in favour of husband of 1st defendant through oral sale. After that the father of plaintiff was died. In order to avoid any kind of confusion the plaintiff had executed a registered sale deed on 29-07-1988 in favour of defendant No.1 in respect of suit item No. 2 property and due to the same, the katha was mutated in the name of defendant No.1. Hence defendant No.1 is the absolute owner in possession of both suit schedule properties. After that the defendant No. 1 had executed a registered gift deed in favour of his son defendant No. 2 on dated 16-05-2006 in respect of item No. 2 property and the katha was mutated in the name of defendant No.1 and he is the absolute owner of suit item No.2 property.

9. After careful perusal of both pleadings and documents placed on record it clearly appears that the relationship is not disputed and the nature of the property is also not disputed. On perusal of

the documents produced by the plaintiff it clearly shows that the suit schedule properties are standing in the name of defendants. On perusal of the sale deed dated: 29-07-1988 clearly disclosed that the plaintiff has sold the suit schedule item No. 2 property in favour of the 1st defendant. On perusal of copy of Mutation register produced by the defendants it clearly appears that the wife of late Bashukhan who is the father of plaintiff and other sisters have been given their consent for changing the katha in respect of suit schedule item No. 1 property in favor of 1st defendant. Due to the same, the katha of the item No. 1 property was changed in the name of 1st defendant.

10. As per the plaintiff's contention the suit schedule properties are the ancestral properties, still there is no partition held between the plaintiff and defendant No.1. As per the contention of the defendant there was already partition held between the father of the plaintiff and defendant

No. 1. In pursuant to the same item No. 1 property has fallen to the share of defendant No.1 and item No. 2 property has fallen to the share of plaintiff's father. After that the plaintiff himself has sold item No. 2 property in favour of 1st defendant and the katha was mutated in the name of 1st defendant. In support of her contention she has produced RTCs, Mutation Register and sale deeds and the plaintiff has also produced the same documents.

11. On perusal of the aforesaid documents produced by both parties prima facie shows that the suit schedule properties are standing in the name of defendant No. 1 and 2. It is pertinent to note that the plaintiff has come up with this application by apprehension of alienation of the property. But in support of his apprehension he has not produced any document to show that the defendants have made attempt to alienate the suit schedule properties. The documents placed on records prima facie shows that the properties are

standing in the name of defendants. Such being the case if any temporary injunction is granted against the defendants it caused hardship to the defendants. In view of the foregoing discussion this court is of opinion that the plaintiff has failed to prove prima facie case and balance of convenience lies in his favour . In view of the same **this court answers the point No. 1 to 3 are in the negative.**

12. **POINT No. 4** - In view of the findings on the Point No.1 to 3, this court proceeds to pass the following:

ORDER

IA No. 1 filed by the plaintiff U/o 39 rule 1 & 2 R/w sec. 151 of C.P.C. is hereby rejected.

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 12th day of July, 2019.)

(DEEPU B.C.)
Addl. CJ and JMFC, Bangarpet.