

KAKL200008892022



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

DATED THIS THE 1st DAY OF SEPTEMBER 2022

:PRESENT:

**SRI. AJIT DEVARAMANI., B.SC. LLB.,
Addl. Civil Judge and JMFC, Bangarpet.**

O.S. No. 120/2022

Plaintiff/s :- 1.M.Venkateshappa,
S/o Muniswamappa,
Aged about 65 years,
R/at Kasipura Village,
Inorahosahalli Post,
Kasaba Hobli,
Bangarpet Taluk.

2.Smt.Padmavathi,
W/o Srinivas,
D/o M.Venkateshappa,
Aged about 46 years,
R/at Byadabele Village,
Inorahosahalli Post,
Kasaba Hobli,
Bangarpet Taluk.

3. Smt.Shanthamma,

W/o Ponnuswamy,
D/o M.Venkateshappa,
Aged about 44 years,
R/at Rajendra Layout,
Deshihalli Village,
Kasaba Hobli,
Bangarpet Taluk.

4. Sri.Chandrashekar,
S/o M.Venkateshappa,
Aged about 41 years,
R/at Kasipura Village,
Inorahosahalli Post,
Kasaba Hobli,
Bangarpet Taluk.

5. Smt.Mamatha,
W/o Revanna,
D/o M.Venkateshappa,
Aged about 33 years,
R/at Srinivasa Nilaya,
Opp.Chamundeshwari
Temple, Gulpet, Kolar.

(Reptd. by Sri.N.S.- Advocate.)

V/s

Defendant/s :- Sri. G.Nanjundappa,
D/o Late M.Giriappa,
Aged about 72 years,
R/at Byadabele Village,
Inorahosahalli Post,
Kasaba Hobli,

Bangarpet Taluk.

(Reptd. by Sri.S.A.H.-Advocate)

Applicant/s:- Sri.M.Venkateshappa & Others
/Vs/

Opponent/s:- Sri.G. Nanjundappa

ORDERS ON IA -1

The plaintiffs have filed this interim application U/o 39 rule 1 & 2 read with Section 151 of CPC seeking Temporary injunction to restrain the defendant, his family members, servants and representatives from putting up any construction in the suit schedule property till disposal of the suit.

2) In the affidavit annexed to the application the plaintiffs have contended that, the suit schedule property was originally belonging to Sri.Giriappa and Lakshamma. Wife of the 1st plaintiff namely Rathanamma is the daughter of the said Sri. Giriappa and Lakshamma. The defendant is the son of said Sri. Giriappa and

Lakshamma. The suit schedule property is the joint family property of wife of 1st plaintiff and defendant. The 1st plaintiff's wife namely Rathnamma has filed a suit for partition on the file of this court in O.S.No.13/2009. Said suit was contested and said suit came to be decreed holding that the wife of 1st plaintiff is entitled 1/8th share in the suit schedule property. The defendant has filed appeal before the Senior Civil Judge at K.G.F. and said appeal, appellate court has not granted any stay on the judgment and decree of this court.

Though there is decree with respect to suit schedule property, but defendant is trying to put up construction in the suit schedule property. There is no demarcation of the suit schedule property as per the decree and suit land is still to be divided by metes and bounds and till there is no final decree order. Therefore, the defendant has no right to construct the house in the suit schedule property and he is illegally and

intentionally constructing the house in the suit schedule property. Hence, prays to allow the application.

3) On the other hand, the learned counsel for the defendant has filed objection to the I.A.No.1.,by denying all the averments of the application and specifically contended that, there was a earlier partition with respect to the suit schedule property. On 05.02.1993 Sy.No.61 was divided into 3 (three) shares among Sri.C.Narayanaswamy, Sri.G.Rangaswamy and Sri.G.Srinivas to an extent of 1 acre 15 guntas, 26 guntas and 1 acre 9 guntas respectively. Accordingly entries in the revenue records are standing in the name of Sri.C.Narayanaswamy, Sri.G.Rangaswamy and Sri.G.Srinivas. Further contended that, Sri.Nanjundappa, Sri.Seenappa, Sri.Rangaswamy and Sri.Narayanswamy have put up construction in the Sy.No.61. The defendant was residing in the old house situated in Sy.No.61. Now the building was damaged to the

maximum extent. Therefore, the defendant is trying to construct a house in the suit schedule property. The defendant has already spent lot of money in construction of building in the suit schedule property. The plaintiffs are not having any right to stop the construction building the in the suit schedule property and they are illegally trying to interfere in the construction of the defendant. Further contended that, suit for injunction simplicitor. The interim relief and main relief are one and the same and if he interim application is allowed it is nothing but allowing the main suit itself. Hence, prays to dismiss the application.

4) On the basis of the above contentions the points that would arise for my consideration are as under:

- 1) Whether the plaintiffs have made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiffs?

3) If injunction is not allowed, whether the plaintiffs will be put to irreparable loss and injury?

4) What order?

5) Heard arguments of both counsel and perused the materials available on record.

6) My findings to the above points are as follows:

Point No.1 to 3 : In the **Affirmative**

Point No.4 : As per final order,
for the following :

REASONS

7) **Point No.1 to 3**: All these three points are inter linked to each other. I have taken these 3 points together for common discussion to avoid repetition facts and for better appreciation of evidence.

The plaintiffs have filed this suit against the defendant for the relief of permanent injunction with respect to suit schedule property.

8) The learned counsel for the plaintiffs have argued that, this court has passed preliminary decree with respect to suit schedule property, in O.S.No.13/2019. Suit item No.8 in O.S.No.13/2019 is the present suit schedule property. This court granted $1/8^{\text{th}}$ share in the suit schedule property to the plaintiff No.2. Challenging the judgment of this court the defendant has filed appeal in R.A. before the Senior Civil Judge at KGF, but there is no stay from the appellate court. Further argued that, on the preliminary decree, till today there is no demarcation of the suit schedule property. There is no final decree order. Further argued that, as per the judgment and decree where $1/8^{\text{th}}$ share will come is still not known to anybody. If the defendant succeeds in construction of the house in the suit schedule property, then it will be very difficult for the plaintiffs to get from $1/8^{\text{th}}$ share. In the demarcation and final decree proceedings if the $1/8^{\text{th}}$ share of plaintiffs falls under the area where the house is constructing by the defendant,

then the plaintiffs will not be able to get her share in the suit schedule property. Further argued that if the 1/8th share falls in the area where the house is constructed by the defendant then plaintiffs have to pay the cost of the building.

9) On the other hand learned counsel for the defendant has argued that, the defendant is ready to give the share of the plaintiffs. Further argued that, the defendant was stayed in the old house situated in the suit schedule property from several years. Old house has damaged to the maximum extent. Hence, defendant is constructing house. Further argued that the defendant has spent huge amount of money for constructing house. If he is restrained from the constructing house, the defendant will be put great loss and injury. Hence prays to reject the application.

10) On perusal of the materials on record in O.S.No.13/2009 the plaintiffs of the present case

have filed a suit for partition against the present defendant and others. On perusal of the judgment and decree it reveals that, this court has passed the preliminary decree with respect to suit schedule property, allotted 1/8th share to the plaintiffs. There is no stay from the appellate court. Further there is final decree order. If the suit schedule property is not demarcated as per the preliminary decree in O.S.No.13/2009. In the final decree proceedings and Execution proceedings 1/8th share of the plaintiffs falls within the area where defendant is trying to construct the house, then it will be very difficult for the plaintiffs to get their shares. Further it is very difficult for the court to demarcate the suit schedule property as per preliminary decree in O.S.No.13/2009, Hence, this court is of the opinion that, at this stage plaintiffs have made out a prima facie case and the balance of convenience lies in their favour. If the injunction is not granted, the plaintiffs will be put to great

loss and hardship. Hence, I answered **point No. 1 to 3 in the affirmative.**

11) **Point No. 4:-** In view of the above discussions on on Point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiffs
U/o 39 Rule 1 & 2 read with
Section 151 of CPC is hereby
allowed.

Defendant, his family members,
servants and representatives from
putting up any construction in the
suit schedule property till disposal
of the suit.

(Dictated to the steno, transcribed on computer, typed by her corrected and then pronounced by me in open court on this 1st day of September 2022).

(AJIT DEVARAMANI)
Addl. CJ and JMFC, Bangarpet.

