

KAKL400051522022



IN THE COURT OF THE PRL. CIVIL JUDGE & J.M.F.C.

AT : MULBAGAL

DATED THIS THE 26TH DAY OF JUNE, 2024

:PRESENT:

SRI.NARASIMHA MURTHY M.

B.A.LLM., UGC – NET, JRF,
PRL. CIVIL JUDGE & JMFC, MULBAGAL

ORIGINAL SUIT No.486/2022

PLAINTIFF/s : 1. Smt. Parvathamma W/o Subramani,
D/o Gangireddy,
Aged About 37 years,
R/at R.Gaddur Village,
G.Marandahalli Post,
Tayalur Hobli,
Mulbagal Taluk,
Kolar District.

2. Smt. Rajeshwari W/o Muniswamireddy,
D/o Gangireddy,
R/at Rayalamanedinne Village,
G.Marandahalli Post,
Tayalur Hobli,
Mulbagal Taluk,
Kolar District.

(By Shri. **K.R.Rajanna.**,
Advocate)

Vs

DEFENDANT/s : 1. Sri. Gangireddy

S/o late Yerrapapireddy,
Aged About 74 years,

2. Sri. Vishwanath Reddy S/o Gangireddy,
Aged About 32 years,

D1 & D2 are
R/at Pitchaguntlahalli Village,
Kasaba Hobli,
Mulbagal Taluk,
Kolar District.

3. Sri. Venkataramareddy

S/o Guruvareddy,
Aged About 45 years,
R/at Bevanatha Village,
Tayalur Hobli,
Mulbagal Taluk,
Kolar District.

4. Sri. P.Narayanareddy S/o late Gantlareddy,
Aged About 60 years,**5. Sri. Gantlareddy** S/o late Ramareddy,
Aged About 89 years,

D4 & D5 are
R/at Pitchaguntlahalli Village,
Kasaba Hobli,
Mulbagal Taluk,
Kolar District.

(D1 By Shri. S.Balakrishna.,
Advocate)

(D2 Ex-Parte)

(D3 to D5 By Shri. N.Shekar.,
Advocate)

PARTIES TO THE I.A. NO.I**BETWEEN :** SMT. PARVATHAMMA & ANOTHER**.....APPLICANT/PLAINTIFFS.****Vs****AND :** SRI. GANGIREDDY & OTHERS**RESPONDENTS/DEFENDANTS.**

* * * *

ORDERS ON I.A.NO.I

The plaintiffs have filed present I.A. No.I under order 39 Rule 1 & 2 read with Section 151 of *Civil Procedure Code.*, seeking an ad-interim order temporary injunction restraining the defendant no.1 to 3 from alienating or encumbering the suit schedule properties, till pending disposal of the suit.

2. The plaintiff no.1 averred in the affidavit annexed to the application that, they have filed the present suit against the defendants for the relief of partition of the ancestral and joint family properties. The defendant no.1 & 2 colluded together and created the revenue documents in the name of defendant no.1 and created the sale agreement in favour of defendant no.3

without their consent or knowledge to deprive their legal right of share in item no.1 of the suit schedule property. Further, the defendant no.1 to 3 trying/attempting to sell the suit item no.1 & 2 in favour of third parties without the knowledge and consent of the plaintiffs. In that regard, the plaintiff no.2 conveyed a panchayath and demanded to allot her share but defendants did not care the words of panchayathdars and refused to allot the share in the suit schedule properties. The defendant no.1 alone have no right to sell the item no.1 in favour of defendant no.3 without the knowledge or consent of the plaintiffs. Hence, the plaintiffs made out *prima-facie* case and balance of convenience lies in their favour. If the application is not allowed, they will be put to greater hardship and inconvenience. On the other hand, if the application is allowed, no prejudice will be caused to the other side. Hence, the plaintiffs pray to allow I.A.No.I.

3. On the other hand, the defendant no.1 has not filed the objection to IA No.1. Hence, the same has been taken as NIL. The defendant no.2 not appeared before the Court. Hence, he has been placed as Ex-Parte. The defendant no.3 to 5 appeared

before the Court through their counsels. The defendant no.3 has filed the Written Statement and the defendant no.4 & 5 have filed separate Written Statement. The defendant no.3 to 5 have filed memo to treat the Written Statements as objection to IA No.1. In the Written Statement of defendant no.3, he has submits that, the defendant no.1 & 2 due to their financial problems they have intending to sell the item no.1 of the suit schedule property. Accordingly, they have executed an registered agreement of sale in favour of defendant no.3 on 26.09.2018 and received an advance amount of Rs.2,70,000/- out of total sale consideration amount of Rs.3,00,000/-. Thereafter, the defendant no.1 & 2 have not performed their part of contract. Hence, the defendant no.3 has filed as suit in OS No.318/2020 before the Additional Civil Judge & JMFC., Mulbagal. The said suit has been decreed in favour of defendant no.3 on 31.07.2021. Thereafter, the defendant no.3 has filed execution petition no.21/2021 against the defendant no.1 as per the orders of the said Court. The Court Commissioner has executed the registered sale deed in respect of item no.1 of the suit schedule property in favour of defendant no.3 on 19.04.2022. The defendant no.3 submits that, he is the

bonafide purchaser of the item no.1 of the suit schedule property. Hence, the defendant no.3 pray to dismiss the suit filed by the plaintiffs.

The defendant no.4 & 5 have filed separate Written Statement and contended that, the item no.5 & 6 of the suit schedule properties purely belongs to them and defendant no.1 & 2 family and the said property is not the joint family properties of the plaintiffs and defendant no.1 & 2 and they never in possession and enjoyment of the said properties. Hence, the defendant no.4 & 5 pray to dismiss the suit filed by the plaintiffs.

4. Heard the arguments and perused the materials available on record.

5. The following points arise for my consideration:

- 1. Whether the plaintiffs had established the existence of prima-facie case in their favour at this stage of the suit?**
- 2. Whether the plaintiff had established the existence of balance of convenience in their favour?**

3. Whether the plaintiffs further prove that, if the order of temporary injunction is not granted they will be put to irreparable loss and hardship?

4. If so, what order?

6. My answer to the above points are as under:

Point No.1 : In the **PARTLY AFFIRMATIVE**

Point No.2 : In the **AFFIRMATIVE**

Point No.3 : In the **PARTLY AFFIRMATIVE**

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

REASONS

7. **POINT NO.1 TO 3 :-**

The finding of Point No.1 will have bearing on point No.2 and 3. Hence to avoid repetition, both these points are taken together for common discussion.

The plaintiffs have filed present suit against the defendants for the relief of partition and separate possession with respect of of the suit schedule properties. The plaintiffs have filed the present application seeking temporary injunction restraining

defendant no.1 to 4 from alienating the suit schedule properties till pending disposal of the suit.

8. The specific case of the plaintiffs is that, the defendant no.1 & 2 colluded together and created the revenue documents in the name of defendant no.1 and created the sale agreement in favour of defendant no.3 without their consent or knowledge to deprive their legal right of share in item no.1 of the suit schedule property. The defendant no.1 to 3 trying/attempting to sell the suit item no.1 & 2 in favour of third parties without the knowledge and consent of the plaintiffs. In that regard, the plaintiff no.2 conveyed a panchayath and demanded to allot her share but defendants did not care the words of panchayathdars and refused to allot the share in the suit schedule properties. The defendant no.1 alone have no right to sell the item no.1 in favour of defendant no.3 without the knowledge or consent of the plaintiffs.

9. At this stage, the plaintiffs have produced certified copy of RTC Extracts of Sy.no.12/2, Sy.no.8/1, Genealogical Tree, certified copy of RTC Extract of Sy.no.12/2, Mutation Register Extracts of Sy.no.12/2, RTC Extract of Sy.no.12/1 & 12/2,

certified copy of RTC Extracts of Sy.no.24/2, RTC Extract of Sy.no.8/01, RTC Extract of Sy.no.59, RTC Extract of Sy.no.12/03, Assessment Register Extract, Demand Register Extract, copy of Registered Agreement of sale dated 26.09.2018, certified copy of decree in OS No.318/2020 & Court proceedings in Ex.No.21/2021, copy of sale deed dated 19.04.2022.

10. On the other hand, the defendant no.3 has contended that, the defendant no.1 & 2 due to their financial problems they have intending to sell the item no.1 of the suit schedule property. Accordingly, they have executed an registered agreement of sale in favour of defendant no.3 on 26.09.2018 and received an advance amount of Rs.2,70,000/- out of total sale consideration amount of Rs.3,00,000/-. Thereafter, the defendant no.1 & 2 have not performed their part of contract. Hence, the defendant no.3 has filed as suit in OS No.318/2020 before the Additional Civil Judge & JMFC., Mulbagal. The said suit has been decreed in favour of defendant no.3 on 31.07.2021. Thereafter, the defendant no.3 has filed execution petition no.21/2021 against the defendant no.1 as per the orders of the said Court. The Court Commissioner has executed the registered sale deed in

respect of item no.1 of the suit schedule property in favour of defendant no.3 on 19.04.2022. The defendant no.3 submits that, he is the bonafide purchaser of the item no.1 of the suit schedule property. The defendant no.4 & 5 have filed separate Written Statement and contended that, the item no.5 & 6 of the suit schedule properties purely belongs to them and defendant no.1 & 2 family and the said property is not the joint family properties of the plaintiffs and defendant no.1 & 2 and they never in possession and enjoyment of the said properties. Hence, the defendant no.3 to 5 pray to dismiss the suit filed by the plaintiffs.

11. At this stage, the defendants have not produced any documents.

12. I have carefully perused the materials available on record. On perusal of the RTC Extracts and demand register extracts, wherein, it appears that, the item no.1, 2, 3, 4 & 7 of the suit schedule properties stands in the name of of defendant no.1 & 2. Hence, at this stage, the contention of the plaintiffs is that the suit schedule properties are the joint family property cannot be ruled out at this stage. Further, at this stage, the

plaintiffs have not produced any documents to show that the item no.5 & 6 are related to their family.

13. The very object of granting temporary injunction in favour of the parties is to protect the property until the rights of the parties are adjudicated by full-fledged trial. In this suit, the apprehension of the plaintiffs that, the defendant no.1 to 3 alienating the suit schedule properties. As such, if injunction is not granted to the plaintiffs, it will affect the interest of the plaintiffs and it may lead to multiplicity of proceedings and cause hardship to the plaintiffs. At this stage, the plaintiffs have made out *prima-facie* case. Hence, I answer Point No.1 in the **PARTLY AFFIRMATIVE.**

14. POINT NO.2:

At this stage, if the injunction is not granted to the plaintiffs, they will be put to more inconvenience than the defendants. At this stage, the balance of convenience lies in favour of the plaintiffs. Accordingly, I answer Point No.2 in the **AFFIRMATIVE.**

15. POINT NO.3 :

If the defendants are restrained from alienating the suit schedule properties, no hardship or prejudice will be caused to them. But, if the defendant no.1 to 3 are not restrained, the plaintiffs will be put to more loss and hardship which cannot be compensated in terms of money. The materials available on record and the facts and circumstances of the case, it is just and proper, the defendant no.1 to 3 have to be restrained from alienating the suit schedule properties except item no.5 & 6, the rights of parties are adjudicate by full-fledged trial. Hence, I answer Point No.3 in the **Partly AFFIRMATIVE**.

16. POINT NO.4: In view of the findings on Point No.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiffs under Order 39 Rule 1 and 2 read with Section 151 of *Civil Procedure Code.*, is hereby partly allowed.

The defendant no.1 to 3 are hereby temporarily restrained from alienating the suit schedule properties except item no.5 & 6, till disposal of the suit.

*(Dictated to the Stenographer, transcribed by him, Order corrected and signed by me, then pronounced by me in the Open Court on this the **26TH day of June, 2024**).*

(NARASIMHA MURTHY. M)
PRL. CIVIL JUDGE & JMFC.,
MULBAGAL.

ssm*/-