

KAKL510016432021



**IN THE COURT OF II ADDITIONAL CIVIL JUDGE &
JMFC., KGF**

Dated this the 28th day of June, 2022

PRESENT

**Sri. Manju.M, B.Sc., L.L.B.,
IIAddl. Civil Judge & JMFC.,
KGF.**

O.S.No.219/2021

Plaintiff : Smt. M.S.Rani and others

V/s

Defendants : Sri. V.Suresh Babu

Applicant : Smt. M.S.Rani and others

V/s

Opponents : Sri. V.Suresh Babu

Orders on I.A.No.2 filed by the Plaintiffs under

Order 39 rule 1 and 2 R/W sec. 151 of CPC

This is an application under Order 39 Rule 1 and 2 R/W Sec. 151 of CPC filed by the Plaintiffs praying for an order to restraining the Defendants, his family members,

agents, servants, and others acting on behalf of the defendant from alienating the suit schedule property in any manner whatsoever till disposal of the suit.

2. This application is supported by an affidavit of the Plaintiff. In the said affidavit the Applicant has contended that, the suit schedule property originally belongs to one T. Venkateshalu Naidu and Rajeshwari having got the same from A.Duraiswamy for valuable consideration under registered sale deed dated 14.04.1979 and all the relevant documents are jointly standing in the name of Venkateshalu Naidu and Rajeshwari. Further it is contended that, plaintiff married V.Purushothaman on 23.10.1994. The plaintiff's husband had a sister namely Ramadevi and she was also possessing a site item No.2 of schedule property bearing No. 107, measuring East to West 30 feet and North to South 40 feet. The said item No.2 was purchased by the Ramadevi but the amount paid by the V. Purushothaman and the properties are the joint family property, the said Ramadevi died on 13.08.2020, but yet they have not divided by metes and bounds.

3. The defendant had taken all the documents including the original documents of item No.1 and 2 of the suit schedule properties. Smt. Vijayalakshmi being the daughter of the said Ramadevi and she died on 10.09.2020. The plaintiff's husband died on 07.03.2021. The defendant started to incorporate his name in the relevant records in respect of katha No. 1181 in respect of item No.1 of the suit schedule property and the plaintiff No.1 herein had given letter to the city municipality KGF on 07.07.2001 not to open Ekatha in the name of defendant. Further it is contended that, suit schedule properties are the joint family properties of plaintiffs and defendant and item No.2 of the suit property was purchased by Smt. Ramadevi. Further it is contended that, the plaintiffs and defendant intended to divide the suit schedule property and the plaintiffs have demanded the defendant to divide the suit schedule property but the defendant evading to partition the suit properties. Further it is contended that, the plaintiffs and defendant are entitled for half share in the suit schedule properties. Further, the defendant having no right, title or exclusive possession over the suit schedule property trying to

alienate the suit property to the 3rd person . Further it is contended that till today there is no partition I respect of the suit schedule properties and the plaintiffs are co-owners along with the defendant entitling for equal share in the suit schedule property. By contending so, the Applicant has prayed for allowing this application.

4. This application is opposed by the Defendant by filing memo to adopt the written statement as objections. The Defendant has denied the plaint averments and contended that, there is no joint family in existence between the plaintiffs and defendant and the plaintiffs are not the joint family members and the properties are not joint family properties. The plaint suit schedule item No.1 is the absolute and separate property of T.Venkateshalu Naidu and it is self acquired property under registered sale deed dated 14.04.1979 and item No.2 is the absolute property of V.Ramadevi and the contention that suit item No. 1 and 2 are joint family properties is a far fetched theory. Further it is contended that, the said Venkateshalu Naidu got married his son V.Purushothaman with plaintiff No.1.

5. Further it is contended that, after the marriage his son and his wife went Andhra Pradesh and started living independently and he was not contributing anything to the family and was also not looking after his parents. The defendant was living with his parents and looking after them and their welfare and well being. The defendant father T.Venkateshalu Naidu out of his love and affection, he has bequeathed the item No.1 of the schedule property in favour of defendant under WILL dated 20.01.1999 and in the said WILL he has written in detail about his family and reason for bequeathing the item No.1 of the schedule property in favour of defendant. Further it is contended that, defendant sister Ramadevi is a widow, the defendant look after his sister and unmarried daughter Vijayalakshmi. The defendant has performed marriage of said Vijayalakshmi but later her husband deserted her and he whereabouts were not known and defendant continued to support her and look after her and the said Vijayalakshmi died on 10.09.2020 without any issues.

6. Further it is contended that, the plaintiffs are well aware of the WILL now they falsely claiming it to be

fabricated. The item No.2 of suit schedule property is self acquired property of his sister Ramadevi purchased under registered sale deed dated 17.10.2006 from KGF Urban Development Authority. The said Ramadevi after her marriage her husband was a drunkard and completely neglected and failed to look after her. The said V.Ramadevi is a employee in ESI and was getting income which was insufficient for her maintenance and she was suffering from diabetic and liver problems and the defendant was looking after her and medical treatment food and other expenditures. The said Ramadevi out of her own desire and out of her love and affection she has bequeathed the item No.2 of the schedule property in favour of defendant under WILL dated 27.01.2020 and written in detail about her family and reason for bequeathing the item No.2 property in favour of defendant. Hence, prayed to dismiss the application.

7. I have heard the arguments addressed by the learned advocate for Plaintiff and Defendants.

8. Following points arise for my consideration.

1. Whether the Plaintiff has made out a prima facie case for grant of temporary injunction?

2. Whether the Plaintiff will be put to irreparable loss and hardship, if the injunction is not granted?
3. Whether the balance of convenience lies in favour of the Plaintiff?
4. What order?

9. My findings on the above points are as follows:-

Point No.1 : In the Negative
Point No.2 : In the Negative
Point No.3 : In the Negative
Point No.4 : As per final order
For the following:-

REASONS

Point Nos.1 to 3:

9. Since these three points are interlinked to each other, they are taken up together for common discussion in order to avoid repetition of facts and circumstances.

10. The law relating to grant of temporary injunction is well settled. The Plaintiff who approaches the court has to prove three basic principles namely existence of prima facie case, balance of convenience and irreparable loss and injury. The court must be satisfied that there must be a prima facie case in favour of the Plaintiff that there is balance of convenience in favour of the Plaintiff and if the temporary injunction is refused the Plaintiff would be put

to irreparable loss and injury. Apart from this the conduct of the party approaching the court has also to be considered. Injunctive relief is a discretionary relief and an equitable relief. Thus being the case, the person who seeks equity must do equity.

11. In order to grant relief of temporary injunction the Plaintiff has to establish that three vital aspects, i.e., prima facie case, balance of convenience lies in his favour and that they would be put to irreparable loss and injury in case injunction is not granted.

12. In order to substantiate their contention, the plaintiff has produced photo copy of registered sale deed dated 14.4.1979 executed by A.Duraiswamy Naidu in favour of Sri. T.Venkateshalu Naidu and Smt. Rajeshwari, Encumbrance Certificate, Geneological tree, Death certificate of Venkateshalu Naidu, Marriage Invitation of Rani and Purushothaman, Aadhar card of V.Purushothaman, Death Certificate of V.Purushothaman, Aadhar Card of Ramadevi, Death certificate of Ramadevi, Death certificate of N.Gururaj, husband of Ramadevi, Death certificate of Vijayalakshmi, Aadhar Card of

plaintiffs, Aadhar card of defendant, Ration card of plaintiffs, Election Identity card of V.Purushothaman, Election Identity card of plaintiff, Electricity Bill, Notice, Acknowledgement, Endorsement, copy of letter to the Commissioner, KUDA, Robertsonpet, KGF dated 28.09.2020.

13. On the other hand the Defendants have not produced any documents.

14. The counsel for Plaintiff vehemently argued that, the suit schedule property originally belongs to one T. Venkateshalu Naidu and Rajeshwari having got the same from A.Duraiswamy for valuable consideration under registered sale deed dated 14.04.1979 and all the relevant documents are jointly standing in the name of Venkateshalu Naidu and Rajeshwari. Further it is contended that, plaintiff married V.Purushothaman on 23.10.1994. The plaintiff's husband had a sister namely Ramadevi and she was also possessing a site item No.2 of schedule property bearing No. 107, measuring East to West 30 feet and North to South 40 feet. The said item No.2 was purchased by the Ramadevi but the amount paid

by the V. Purushothaman and the properties are the joint family property, the said Ramadevi died on 13.08.2020, but yet they have not divided by metes and bounds. The defendant had taken all the documents including the original documents of item No.1 and 2 of the suit schedule properties. Smt. Vijayalakshmi being the daughter of the said Ramadevi and she died on 10.09.2020. The plaintiff's husband died on 07.03.2021. The defendant started to incorporate his name in the relevant records in respect of katha No. 1181 in respect of item No.1 of the suit schedule property and the plaintiff No.1 herein had given letter to the city municipality KGF on 07.07.2001 not to open Ekatha in the name of defendant. Further it is contended that, suit schedule properties are the joint family properties of plaintiffs and defendant and item NO.2 of the suit property was purchased by Smt. Ramadevi. Further it is contended that, the plaintiffs and defendant intended to divide the suit schedule property and the plaintiffs have demanded the defendant to divide the suit schedule property but the defendant evading to partition the suit properties. Further it is contended that, the plaintiffs and defendant are entitled for half share in the suit schedule

properties. Further, the defendant not having no right, title or exclusive possession over the suit schedule property trying to alienate the suit property to the 3rd person. Further it is contended that till today there is no partition in respect of the suit schedule properties and the plaintiffs are co-owners along with the defendant entitling for equal share in the suit schedule property. Hence prays to allow the application as prayed for.

15. On the other hand, the learned counsel for Defendants vehemently argued that, there is no joint family in existence between the plaintiffs and defendant and the plaintiffs are not the joint family members and the properties are not joint family properties. The suit schedule item No.1 is the absolute and separate property of T.Venkateshalu Naidu and it is self acquired property under registered sale deed dated 14.04.1979 and item No.2 is the absolute property of V.Ramadevi and the contention that suit item No. 1 and 2 are joint family properties is a far fetched theory. Further it is contended that, the said Venkateshalu Naidu got married his son V.Purushothaman with plaintiff No.1.

16. Further it is contended that, after the marriage his son and his wife went Andhra Pradesh and started living independently and he was not contributing anything to the family and was also not looking after his parents. The defendant was living with his parents and looking after them and their welfare and well being. The defendant father T.Venkateshalu Naidu out of his love and affection, he has bequeathed the item No.1 of the schedule property in favour of defendant under WILL dated 20.01.1999 and in the said WILL he has written in detail about his family and reason for bequeathing the item No.1 of the schedule property in favour of defendant. Further it is contended that, defendant sister Ramadevi is a widow, the defendant look after his sister and unmarried daughter Vijayalakshmi. The defendant has performed marriage of said Vijayalakshmi but later her husband deserted her and he whereabouts were not known and defendant continued to support her and look after her and the said Vijayalakshmi died on 10.09.2020 without any issues.

17. Further it is contended that, the plaintiffs are well aware of the WILL now they falsely claiming it to be

fabricated. The item No.2 of suit schedule property is self acquired property of his sister Ramadevi purchased under registered sale deed dated 17.10.2006 from KGF Urban Development Authority. The said Ramadevi after her marriage her husband was a drunkard and completely neglected and failed to look after her. The said V.Ramadevi is a employee in ESI and was getting income which was insufficient for her maintenance and she was suffering from diabetic and liver problems and the defendant was looking after her and medical treatment food and other expenditures. The said Ramadevi out of her own desire and out of her love and affection she has bequeathed the item No.2 of the schedule property in favour of defendant under WILL dated 27.01.2020 and written in detail about her family and reason for bequeathing the item No.2 property in favour of defendant. Hence prays to dismiss the application as prayed for.

18. On over all perusal of the materials available on record, it is relevant to note that the plaintiffs have not produced recent documents with respect to suit schedule property. Further the defendants have seriously disputed

the rights of the plaintiffs over the suit schedule property . Further, the defendant has contended that, in view of the WILL dated 21.09.1999 and 27.01.2020 he had acquired the suit schedule properties. At this stage, the Plaintiffs have not made out a prima facie case. In order to consider the respective contention of the parties, full fledged trial is required. At this stage the Plaintiffs have not made out a prima facie case and balance of convenience also not lies in favour of the Plaintiffs. Considering all these facts, this court is of the opinion that, the Plaintiffs have failed to prove that the above said three mandatory component are in his favour at this stage.

19. The contention of the Plaintiffs in the affidavit annexed to the I.A.No.2 cannot be consider at this stage. It is well settled law that while deciding application under Order 39 rule 1 and 2 of CPC the court has look into three aspects. (1) Discover, whether the Plaintiffs case is frivolous or vexatious or he has established prima facie case?, (2) In whose favour the balance of convenience lies and (3) If the equitable relief of injunction is not granted

who will suffer? It is true that the terms prima facie case and prima facie title are entirely different. To avail relief of temporary injunction the Plaintiffs have to prove his prima facie possession only. The prima facie case really means that there is a case, which required trial, and the case is not the one based on erroneous and vexatious ground. The Plaintiffs are yet to prove his case to the satisfaction of the court. Hence, at very inception the court is of opinion that, the Plaintiffs have not made out a prima facie case in his favour at this stage.

20. The Plaintiffs if they have avail preventive relief of temporary injunction, they have to establish existence of prima facie case and also they have established that the intervention of court is necessary safe guard in respect of suit property. The Plaintiffs shall also establish that, they have got concluded right over the suit schedule property and the intervention of the court is also very much essential. The Plaintiffs also proves that balance of convenience lies in his favour and if an order of temporary injunction is not granted they will be put to loss and hardship. However, in this case at this stage it appears

that the Plaintiffs have not established their prima facie in their favour and the Plaintiffs have failed to establish alleged apprehension. Accordingly, I proceed to answer **point No.1 to 3 in the negative.**

Point No.4:

21. In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.2 filed by the Plaintiffs under Order 39 Rule 1 and 2 R/w sec. 151 of CPC is hereby rejected.

Consequently, the exparte order of temporary injunction passed by this court on 20.07.2021 is hereby stands vacated.

Under the circumstances parties shall bear their own cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected and signed by me and then pronounced in the open Court, on this 28th day of June 2002)

SD/-
(Sri. Manju.M)
II Addl. Civil Judge & JMFC,
KGF.