

KAKL600011772021



IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
AT: SRINIVASAPUR

Dated this the 21st day of February 2022

:PRESENT:

SHRI. NAGESH NAIK. M.A.,LL.B
Addl. Civil Judge & JMFC.,
Srinivasapur

O.S. NO:178/2021

Plaintiff:

Narasamma,
W/o Dyavalapalli
Venkataswamy,
D/o Late Hanumanthappa,
Aged about 70 years,
R/o Watd No.8,
Hanumanapalya,

(By Sri.J.N.S., Advocate)

V/s

Defendants: 1. **H.Narasimhaiah,**
S/o Late Hanumanthappa,
Aged about 68 years,

2. **K.N.Naveen,**

S/o H.Narasimhaiah,
Aged about 38 years,

3. K.N.Nayana,

*D/o H.Narasimhaiah,
Aged about 32 years,*

*Defendants No.1 to 3 are
R/o # 1054, 8th A Main,
19th Cross, H.S.R Layout,
7th Sector, Bengaluru South,
Bengaluru – 560102.*

4. Acchamma,

*W/o Late Thimmaiah,
D/o Late Hanumanthappa,
Aged about 85 years,
R/o Prasad Road,
Srinivasapur Town.*

5. Shankarappa,

*S/o Late Nagamma,
Aged about 50 years,
R/o Mallapanahalli Village,
Devarayasamudra Village
and Post, Mulbagal Taluk,
Kolar District.*

6. Lakshmiddevamma,

*W/o Ramachandrappa,
D/o Late Nagamma,
Aged about 46 years,
R/o Muthukuru Village
and Post, Pedda Panjani
Mandalam, Palamaneru Taluk,
Chittor District,
Andhra Pradesh.*

- 7. Sujatha,**
W/o Muniraju,
D/o Late Nagamma,
Aged about 38 years,
R/o Mallapanahalli Village,
Devarayasamudhra Post,
Mulabagal Taluk,
Kolar District.
- 8. Venkatamma,**
W/o Late Krishnappa,
D/o Late Hanumanthappa,
Aged about 68 years,
R/o MDL Road,
Srinivasapur Taluk.
- 9. P.Sudhakara,**
S/o Pillareddy,
Aged about 32 years,
R/o Ward No.9,
Mulabagal Road,
Srinivasapur Town.

(D1 to 3, 8, 9 by Sri.K.P., Advo.,)
(D4 by Sri.B.R.N., Advo.,)

CAUSE TITLE ON I.A NO.I

Applicant: **Nagasamma**

V/s

Opponents: **H.Narasimhaiah and others**

ORDER ON I.A. No.I

The Plaintiff/applicant has filed this IA.No.I under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C., with prayer to restrain the Defendant No.9 from alienating or creating charges over the suit schedule properties by way of gift, sale, mortgage or in any other mode to anybody pending disposal of the suit.

2. In the affidavit annexed to the IA-I, plaintiff/applicant has prays to consider her plaint as part and parcel of her affidavit. It is stated in the plaint that, one Hanumappa was the propositor of the family of the plaintiff and defendant No.1 to 8. The said Hanumappa died leaving behind 5 children namely Achamma, Nagamma, Narasamma, Venkatamma and H.Narasimhaiah. The said Nagamma is the plaintiff in this suit. The Achamma is the 4th defendant, Venkatamma is the 8th defendant and H.Narasimahaiah is the 1st defendant in this suit. The said Nagamma is no more and 5th to 7th defendants are her legal heirs. The defendant No.9 is stranger to the suit schedule property.

3. *It is further stated that the plaintiff and defendant No.1 to 8 are Hindu joint family members governed by the Mithakshara School of law. The 1st defendant is the manager of the joint family. The propositor Hanumappa had acquired the suit schedule property in the year 1974-75 vide order LRM No.1-112/1974-75. The revenue authorities have also changed the katha of the said property in the name of Hanumappa. The said Hanumappa was in possession and enjoyment of the said property till his death. After his death, plaintiff, defendant No.1, 4th to 8 are in possession of the said property. Hence the said property is ancestral and joint family property of the plaintiff and defendant No.1, 4 to 8. Now the katha of the said property is also changed in the name of 1st defendant on the basis of pavathi varasu if the consent of other family members. However 1st defendant has taken advantages of the katha standing in his name and sold the suit schedule property in favour of 9th defendant on 05.07.2021 without the knowledge of the plaintiff. The plaintiff came to know the said fact when the*

9th defendant visited the suit schedule property to cultivate the same.

4. It is further stated that, the plaintiff is poor and helpless person in the locality. The defendants are colluded with each other and they are also trying to knock of the valuable property. The defendant No.1 to 3 have no exclusive right, title interest over the suit schedule property. The plaintiff is having 1/5th share over the suit schedule property, whereas 9th defendant is trying to alienate the suit schedule property in favour of third parties. Hence she has filed this suit along with this application. With these grounds she has prays to allow the application.

5. The defendant No.1 had filed written statement and objection and same has been adopted by the defendant No.2, 3, 8 and 9. The defendant No.4 to 7 have filed common written statement and they have not objections to IA.No.1. The 1st defendant had filed objections by contending that, application

filed by the plaintiff is not maintainable either in law or on facts and same is liable to be dismissed. The plaintiff had filed a false affidavit in support of her application. They further pray to consider their written statement as part and parcel of their objection. They have admitted the relationship with the plaintiff and denied the remaining case of the plaintiff.

6. *It is further contended that, suit schedule property is not the ancestral property and plaintiff has no share in it. The father of the 1st defendant Hanumappa and his wife Sampangamma have not possessed any properties. The said Hanumappa and Sampangamma were doing coolie works during their life time. They have also performed the marriage of their daughters. The 1st defendant and his father were cultivating the suit schedule property as tenants under landlord Narayanajoshi and Narayanasharma. The father of the 1st defendant had filed form No.7 on his behalf and also on behalf of the 1st defendant when the Land Reforms Act came into force.*

The same was registered in LTM 1-112/1974-75 and land was granted on 23.12.1975. The 1st defendant had paid the premium amount of Rs.316-65 and obtained a form No.10 from the Tahasildar, Srinviapur. Thereafter, father of the 1st defendant had hypothecated the said property in favour of PCARD Bank and obtained a loan. The said loan was also cleared by the 1st defendant and he is in possession of the said property. Whereas, plaintiff and other defendants have nothing to do with the said property. The 1st defendant had also spend a considerable amount for the education and for marriages of his sisters, their sons and daughters. The plaintiff had filed this suit by suppressing all these facts. The Government had acquired some portion of the suit schedule property for the formation of road. The transaction between the 1st and 9th defendants are only the loan transaction and not sale transaction. Therefore, the document executed by the 1st defendant in favour of the 9th defendant was canceled on

07.01.2021 through registration No.977/2021-22. With these grounds they have prays to reject the application.

7. Heard the learned counsel for both parties and perused the materials placed on record.

8. Now, the Points that would arise for the consideration of this court are as under:-

1. Whether the plaintiff proves that she has prima facie case in her favour?
2. Whether the balance of convenience lies in her favour?
3. Whether the plaintiff proves that she would be subject to loss and hardship in the event of not allowing the I.A.?
4. What Order?

9. The findings of this court on the above points are as under:-

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

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

:R E A S O N S:

10. POINT NO.1:- The plaintiff has filed this suit against the defendants for partition and separate possession of suit schedule properties. It is the contention of the plaintiff that, suit schedule properties are undivided ancestral and Hindu joint family properties. Hence she has filed this suit. Wherein she has filed this application to restrain the defendant No.9 from alienating or creating charges over the suit schedule properties.

11. In this case, defendant No.4 to 7 have not disputed the existence of joint family and suit schedule property. The defendant No.1 to 3, 8 and 9 have disputed the existence of joint family and also disputed the suit schedule property belongs to the joint family of the plaintiff. It is the contention of

the said defendants that, said property was granted on behalf of 1st defendant and his father Hanumanthappa. Hence it is the absolute property of the 1st defendant and plaintiff and other defendants have no right over it. The sale deed executed in favour of 9th defendant was canceled as the said transaction is loan transaction. Hence they pray to reject the application.

12. *There is no dispute that, Hanumanthappa is the father of the plaintiff and defendant No.1, 4 and 8. The grant certificates produced by the plaintiff itself discloses that suit schedule property was granted by the Tahasildar in favour of Hanumathappa. It is not the contention of the defendants that they have divided the suit schedule properties. When such being the case, the plaintiff and other defendants being the successors of Hanumanthappa had a right over the property. Whether the said property was granted on behalf of 1st defendant or on behalf of joint family will come to know only after trial. Who had paid the upset price for grant of land also a*

question of trial. Therefore, at this stage this court is not able to arrive a conclusion that said property is not the joint family property.

13. *The plaintiff has filed this application and sought relief only against the 9th defendant. The said defendants have contended that sale deed executed in favour of 9th defendant is canceled on 07.09.2021 and 9th defendant is nowhere concerned to the suit schedule property. However the defendants have not produced any documents to show that sale deed executed by the 9th defendant is canceled. Therefore, there is no material before the court to know that sale deed executed by the 1st defendant in favour of 9th defendant is canceled. Under these circumstances, if the 9th defendant is restrained from alienating or creating charges over the suit schedule property, no injustice will cause to defendants.*

14. *Hence, At this stage, without going in to the merits of the case and holding mini trial, this court has considered the*

aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

15. *The power to grant temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.*

16. *The first rule is that the applicant must make out a prima facie case in support of the right claimed by her. 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 decision on merits and on the facts*

before the court there is a probability of the applicant being entitled to the relief claimed by her. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

17. *At this point of time, I would like to place reliance on the decisions reported in (2010) 1 SCC 689 – Kashi Mata Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and anther. In the Hon’ble Supreme Court held in para 16 that:*

“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience of

irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.....”.

*The ratio laid down in the above decision clarifies that the plaintiff has to made out prima facie case in order to obtain temporary injunction. In view of above discussion and on the basis of pleadings and materials placed by both the parties, I am of the considered opinion that the Plaintiff has made out prima facie case in her favour. Accordingly, Point No.1 is answered in **Affirmative**.*

18. POINT NOS.2 & 3: *As these points are interconnected with each other, I have taken up together for consideration in order to avoid repetition of facts.*

19. *The object of interlocutory injunction is to protect the applicant against the injury by violation of her right for which she could not be adequately compensated if issues were resolved in her favour at the trial. In the present case, it could be seen that, there is dispute by both the parties in respect of title and possession of the suit schedule property and in the mean time the applicant/plaintiff has made out prima facie case in her favour. Therefore at this stage, if the prayer of the Plaintiff is not allowed it may further make difficult the matter & it also may results in multiplicity of proceedings and irreparable situation may arise.*

20. *The temporary injunction order can be passed on settled principles taking into account, the three basic grounds are prima facie case, balance of convenience and irreparable loss. But, in the case on hand, the plaintiff has made out grounds for prima facie case. Thus, in the present situation, if the prayer of the Plaintiff is allowed, no loss or hardship is*

going to be caused to other side. Therefore, there are sufficient materials on record to hold that the balance of convenience lies in favour of applicant/plaintiff. In view of my above discussion, I answered point Nos.2 and 3 are in the **Affirmative**.

21. POINT NO.4: In view of my above discussion under point No.1 to 3, I proceed to pass the following:

:O R D E R:

The I.A-I filed by the plaintiff/ applicant under order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant No.9 is hereby restrained from alienating or crating charges over the suit schedule property pending disposal of the suit.

*(Dictated to the Stenographer, on computer and computerized by her, corrected by me, and then pronounced in the open court on this the **21st day of February, 2022.**)*

(NAGESH NAIK)
Addl. Civi Judge & JMFC,
Srinivasapur.

