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**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
AND JMFC, MADDUR**

PRESENT : SRI M.C. NANJE GOWDA, B.A.L., LL.M.,
ADDITIONAL SENIOR CIVIL JUDGE AND JMFC,
MADDUR, MANDYA DISTRICT

DATED: THE 29TH DAY OF SEPTEMBER, 2023

OS NO.130 OF 2022

Plaintiff : ***Smt. Manjula and others,***
V/s

Defendants : ***Sri, Kulla Devagowda @***
Devegowda and other,

ORDER ON IA-I

The plaintiffs have filed an application under Or.39 Rule 1 and 2 R/w Sec.151 of CPC (IA-I) praying this court to restrain the defendant No.1 and 2 from alienating the suit properties to any other person in any manner such as sale, gift, mortgage or Hypothecation etc., during the pendency of the suit.

2. In the plaint and application filed for temporary injunction, the plaintiffs have stated that they have filed the suit for partition and separate possession of their alleged 1/5th share in the suit properties. The plaintiffs and defendants are the members of the joint family. The suit properties are ancestral joint family properties of the plaintiffs and defendant No.1. The defendant No.1 being the father of the plaintiffs is the manager and kartha of their family. The suit properties were standing in the name of the defendant no.1. The plaintiff and defendants have got equal right in the suit properties. It is further case of the plaintiffs that the defendant No.1 deserted his wife Nagamma, who is the mother of the plaintiffs and living with another women who is the defendant no.2. He never looked after the welfare of the plaintiffs. The defendant No.1, now has changed the khahta of item No. 12 and 13 in the name of the defendant No.2. Therefore, the plaintiffs approached the defendant No.1 and demanded for the partition. But the defendant No.1 by posing one or other reason is postponing the devision of the suit properties. The plaintiffs also convened a Panchyath. But the defendant No.1 has not complied the request of the

Panchyathdars. Hence, finding no other alternative have filed the present suit.

3. In response to summons issued by this court, the defendant No.1 and 2 appeared through their advocate and filed the written statement. They have filed the written statement and adopted the same as objections to the application. They have denied the entire allegation of the plaint and application. They have contended that the mother of the plaintiffs, by name Nagamma voluntarily deserted and left the company of the defendant no.1 about 30 years back. She also had filed the maintenance petition. Property bearing Sy. No. 8/2 of Bannahalli village (Item No. 12), CA Kere Hobli, Maddur Taluk was the absolute property of Sri. Madegowda adopted son of Boregowda of Gurudevaralli village. He gifted the said property to the defendant No.2-Kadamma and her mother Shankamma. By virtue of the said gift they have become the absolute owners. The said gift has been acted upon and accordingly they have been in possession and enjoyment of the said property. The plaintiffs do not have any locus standi to question the same. Similarly, item no. 2 and 4 to 6 are the properties of the mother of the first

defendant. His mother had bequeathed the said properties to him through a registered will dated 16/7/2013. Virtually the said properties are in possession and enjoyment of the said suit properties. It is further case of the defendants that rest of the suit properties are the self acquired properties of his father Madegowda. The 1st defendant has become the absolute owner of those properties after the death of his father. Therefore, the plaintiffs being the grand children of said Madegowda, do not have any right to seek partition in those properties. The suit is bad for non joinder of the necessary parties. Therefore, the suit as well as application are liable to be dismissed.

4. Heard both sides.

5. Now, the following points arise for consideration of this

Court :

1. Whether plaintiffs have made out prima facie case in their favour?

2. Whether balance of convenience lies in favour of plaintiffs?

3. Whether plaintiffs will be put to loss and injury if temporary injunction is not granted ?

4. What order ?

6. The findings of this Court to the above points are as under :-

Point No.1 : Partly in Affirmative
Point No.2 : Partly in Affirmative
Point No.3 : Partly in Affirmative
Point No.4 : *As per final order*
or the following:

REASONS

7. POINTS NO.1 :- It is the specific case of plaintiffs that they and defendants are the members of the joint family. The suit properties are ancestral joint family properties of their family. The defendant No.1 being the father of the plaintiffs is the manager and kartha of their family. The suit properties were standing in the name of the defendant no.1. The plaintiff and defendants have got equal right in the suit properties. It is further case of the plaintiffs that the defendant No.1 deserted his wife Nagamma, who is the mother of the plaintiffs and living with another women who is the defendant no.2. He never looked after the welfare of the plaintiffs. The defendant No.1, now has changed the khahta of item No. 12 and 13 in the name of the defendant No.2. Therefore, the plaintiffs approached the defendant No.1 and

demanded for the partition. They also convened a Panchyath. But the defendant No.1 has not complied the request of the Panchyathdars. Hence, finding no other alternative have filed the present suit.

8. On the other hand the defendants have denied the entire allegation of the plaint and application. They have contended that the mother of the plaintiffs, by name Nagamma voluntarily deserted and left the company of the defendant no.1 about 30 years back. Property bearing Sy. No. 8/2 of Bannahalli village (Item No. 12), CA Kere Hobli, Maddur Taluk was the absolute property of Sri. Madegowda adopted son of Boregowda of Gurudevaralli village. He gifted the said property to the defendant No.2-Kadamma and her mother Shankamma. By virtue of the said gift they have become the absolute owners of the said property. The said gift has been acted upon and accordingly they have been in possession and enjoyment of the said property. The plaintiffs do not have any locus standi to question the gift. Similarly, item no. 2 and 4 to 6 are the salef acquired and absolute properties of the mother of the first defendant. His mother had bequeathed the said properties to him through a

registered will. Virtually the said properties are in possession and enjoyment of the said suit properties. It is further case of the defendants that rest of the suit properties are the self acquired properties of his father Madegowda. The 1st defendant has become the absolute owner of those properties after the death of his father. Therefore, the plaintiffs being the grand children of said Madegowda, do not have any right to seek partition in those properties. The suit is bad for non joinder of the necessary parties. Therefore, the suit as well as application are liable to be dismissed.

9. At the out set, it is pertinent to note that there is no dispute about the relation ship among the parties. The defendant No.1 is none other than the father of the plaintiffs. Though the defendant no.1 and 2 have contended that the suit is bad for non-joinder of the alleged brother and sisters of the defendant No.1, it is well settled principle of law that non-joinder of necessary parties is a curable defect. It can be cured at any stage of the proceedings before pronouncement of the judgement. Therefore, at this initial stage the contention of the defendants that the suit is bad for non-joinder of necessary

parties, need not be dealt with by this court. It is settled principle of law that, all Hindu families are joint, unless contrary is proved. However, such presumption would not extend to existence of joint family property. In the present case, it is not the contention of the defendants that already there is partition between the plaintiffs and defendant No.1. Therefore, all presumption will have to be drawn that there exist a joint family between the plaintiffs and defendant No.1. According to the defendants item No. 2, 4 to 6 properties originally belongs to the mother of the 1st defendant and he has acquired them from his mother through a will. In this regard the defendants No.1 and 2, apart from contending so, have also produced the copy of the registered will dated 6/1/2000. A careful examination of the said will clearly disclose that the mother of the defendant no.1 by name Karadamma has executed the said will in favour of defendant No.1 and bequeathed Sy. No. 6/1C, 7/3B, 7/3C and Sy. No. 185/6 i.e., item No. 2 and 4 to 6 to him. It is to be noted that the said document has come into existence about more than 22 years back. It is a registered one. Till this day, there is no challenge to it. Based on this document, already revenue

entries have taken place. The plaintiffs have not filed any rejoinder disputing this registered document. Therefore, at this initial stage, there are no reasons to discard this document which has come into existence at undisputed point of time. Therefore, at this stage, it shall be deemed that the defendant No.1 has proved his independent right prima facie over item no. 2, 4 to 6 of the plaint schedule properties. Therefore, the plaintiffs have failed to prima facie to show that there are ancestral or joint family properties of them and defendant No.1.

10. Similarly, it is the specific contention of the defendants that item no. 12 is the property gifted by Madegowda S/o Boregowda of Gurudeveranahalli village to the defendant No.2. Therefore, it is their absolute property and hence the said property is not a joint family property. In this regard, to prove that the said property is their self acquired property, the defendants have produced the gift deed dated 30/4/2003 and RTC standing in her name. As rightly contended by the defendants the said document has got initial presumptive value under law. Under section 14 of Hindu succession act also, every property acquired in the name of women, shall be deemed to be

her self acquired or absolute property unless contrary is proved. Therefore, at this stage, there are no reasons to discard or disbelieve the version of the defendants and documents produced by them in so far as item No. 2, 4 to 6 and 12 suit properties, are concern.

11. However, it is to be noted that though the defendant No.1 has contended that other suit properties i.e., item no.1, 3, 7 to 11 and 13 are the self acquired properties of his father Madegowda and after his death they have become his (Defendant No.1) self acquired properties, there are no title documents placed at this stage to substantiate the said contentions. Moreover, unless trial is conducted, no finding can be given as to whether those properties are self acquired properties of his father or not. It is also necessary to to know how he alone is entitled to those properties after the death of his father. Therefore, under these circumstances, this court is of the opinion that though the plaintiffs have made out prima-facie case that item No. 1,3,7 to, 11 and 13 are ancestral or joint family properties of them and the defendant no.1, they have failed to make out prima-facie case, in so far as item no. 2, 4 to

6 and 12 are concerned. **Accordingly, point No.1 is held partly in affirmative.**

12. **Point No.2 and 3:-** As both these points are interconnected each other, for the purpose of brevity and convenience and to avoid the confundation and perplexity, both these points are taken together for consideration and discussion. In so far as the balance of convenience and hard ship are concerned, it is pertinent to note that the defendants have contended that virtually they are in the joint possession and enjoyment of the suit schedule properties and hence if the temporary injunction is ordered, it would cause hard ship to them for enjoyment. But it is pertinent to note that the plaintiffs have not sought relief of prohibitory temporary injunction of not to interfere or not make any construction or improvement of the land/properties. Their request is not to alienate the suit properties to third persons and not to create any charge over the suit properties. The defendants have not specifically stated how they will be put to hard ship and injury. They have not stated what is the urgency for them to sell or create charges over the suit properties. Therefore, no hard ship and injury will

be caused to them, if an order of temporary injunction is granted. On the other hand, the plaintiffs have made out prima facia right over the suit properties. Such being case, if the properties are alienated during the pendency of the suit, very purpose of the suit will be defeated and such alienation would certainly take away the very right of the plaintiffs over the suit properties. It would also result in multiplicity of the proceedings. It is well settled principle of law that the purpose of granting the temporary is to protect the suit property till the disposal of the suit so that the party succeeding the suit would get the fruits of the decree. Therefore, the balance of convenience lies in favour of the plaintiffs and more hard ship and injury will be caused to the plaintiff, if the temporary injunction is not granted. Therefore, the plaintiffs are entitled for relief sought against the defendants in part in so far as No. 1,3,7 to, 11 and 13. Accordingly, **Point Nos.2 and 3 are answered in Affirmative in part.**

13. **POINT No.4** :- For the reasons stated and findings given on Points, this court proceed to pass the following :

ORDER

I.A.No.I filed by the plaintiff under order 39 Rule 1 and 2 r/w Sec.151 of C.P.C is hereby allowed in part. The defendants are hereby restrained, by way of Ad-interim / temporary injunction from alienating and creating charge in so far as item No. 1,3,7 to, 11 and 13 suit properties during the pendency of the suit.

The application filed by the plaintiffs is rejected in so far as item No. 2, 4 to 6 and 12 suit schedule properties are concerned.

No order as to costs.

(Dictated to the Stenographer, transcribed by her, the transcript corrected and pronounced by me in the open court on this the 29th day of September, 2023).

**(M.C. NANJE GOWDA)
ADDITIONAL SENIOR CIVIL JUDGE &
JMFC., MADDUR.**