

KAMD300011152023



Presented on : 21-10-2023
Registered on : 21-10-2023
Decided on : --
Duration :

IN THE COURT OF SENIOR CIVIL JUDGE
AT MADDUR

:PRESENT:

SMT. K. SRIVIDYA, B.A.L., LL.M.,
Senior Civil Judge,
Maddur.

O.S. NO.163/2023

DATED : THIS, THE 12TH DAY OF MARCH-2024.

Plaintiff/s : 1. G.P. Shivalingaiah
S/o Late Puttaswamaiah,
Aged about 49 years.
2. G.P.Raju
S/o Late Puttaswamaiah,
Aged about 57 years.
Both are residing at:
Gejjalagere Colony,
Gejjalagere Post,
Maddur Taluk,
Mandya District.
(Plaintiff- by Sri. Y.M.M., Advocate)

V/s

Defendant/s : 1. Sri. G.L Suresh
S/o Late Lingaiah,
Aged about 60 years.

2. Sri. G.L. Chikkalingiah
S/o Late Lingaiah,
Aged about 58 years.
3. Sri. G.L. Ashoka
S/o Late Lingiaha,
Aged about 57 years.
4. Smt. Doddalamma
W/o Late Lingaiah,
Aged about 70 years.

All are R/at:

Gejjelagere Village
Gejjalagere Post,
Maddur Taluk,
Maddur.

(Def. Nos.1 to 4- by Sri. G.S. Siddaraju.,
Advocate)

Applicants : G.P.Shivalingaiah and Another

Opponents : Sri. G.L. Suresh & Others

Provision under which the application is filed.	:	Under order 39 Rule 1 & 2 r/w/sec 151 of CPC.
Relief sought for.	:	Temporary Injunction
Date on which the application is filed.	:	21.10.2023
Number of the application.	:	I.A.No. II.
Date on which the objections are filed by different opponents/ respondents.	:	27.11.2023
Date on which the orders were passed on the said application.	:	12.03.2024.

ORDERS ON I.A.NO.II

The present application was filed at the time of institution of the suit.

2. IA No.II is filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/w Section 151 of the CPC to temporarily restrain the defendants, their agents, servants from forcefully causing damage to the residential house and forcefully vacating the plaintiffs who are staying in the residential house which is build on Item No.2 of suit schedule property and also from cutting the sugarcane in Item No.2 of suit schedule property, till the disposal of the suit. It is accompanied by the affidavit. Objection is filed by the defendants.

3. In the affidavit accompanying the application, the plaintiffs states that, from 1977 till the death of Lingaiah in 1980, the plaintiffs are in possession of Item No.2 of suit schedule property and defendants are in possession of item No.1 of suit schedule property. The defendants after the death of Lingaiah had sold one acre of land in Sy.No.203 which is Item No.1 of suit schedule property to one M. Rekha Malya under registered sale deed dated 13.07.1984.

4. Further states, the plaintiffs are in possession of Item No.2 of suit schedule property from the date of grant till date and in the year 2010, the plaintiffs father Puttaswamaiah has left behind the plaintiffs as his legal heir. No partition has taken place between Puttaswamiaha and Lingaiah till date. Since, there was no partition the plaintiffs could not get any Katha transferred to their name though they are in possession of Item No.2 of suit schedule property.

5. Further states that, taking advantage of the grant made in the name of defendants father, the defendant No.3 behind the back of the plaintiffs have filed revenue case before Asst. Commissioner in R.Mis 296/2019 in order to get the Katha transferred to his name.

6. Further submits, the plaintiffs have got prima-facie case and balance of convenience lie in their favour and if temporary injunction order is not granted then, they would be put to irreparable loss and injury which cannot be compensated in terms of money. Further contends, the defendants even though have no absolute right, title or interest in respect of Item No.2 of suit schedule property have

already sold their share in Sy.No.203 of Gejjalagere Village, and now, by using the order of the Asst. Commissioner Court in R.Mis No.296/2019 are trying to eject the plaintiffs who are in peaceful possession and enjoyment of the Item No.2 of the property from the year 1977 till date. The plaintiffs are in settled possession by constructing house in Item No.2 of suit property. Hence, prays for allowing the application.

7. In the objection, apart from the usual denial of the averments mentioned in the affidavit accompanying the application, the defendants contend that, Lingaiah and defendant No.1 to 3 have sold Item No.2 in favour of M. Rekha Malya under registered sale deed dated 13.07.1984 for their legal necessity. Subsequently, she was in possession and enjoyment of the said property and the Katha was changed in her name. M. Rekha Malya in turn sold the Item No.2 in favour of Ammaiah Balaraju under registered sale deed dated 21.05.1997 and subsequently, Ammaiah Balaraju was in physical possession and enjoyment of the said property and the revenue records were mutated in her name and she is in possession and enjoyment of the said property

as absolute owner thereof. Further contends, Ammaiah Balaraju has constructed Farm House towards southern portion of Item No.2 to keep the agricultural implements and agricultural products by investing huge amount. She has been growing Ragi, jower and ground nut in the said property and the defendants are assisting the Ammaiah Balaraju in carrying out agricultural activities in Item No.2 of suit schedule land and looking after the Farm House on behalf of Ammaiah Balaraju. The plaintiffs have not made out any prima-facie case and the balance of convenience does not lie in their favour.

8. Further contends, the plaintiffs have not approached the Court with clean hands and they have suppressed the facts that, earlier they filed the suit in OS No.90/2023 on the file of I Addl. Civil Judge, Maddur and it was dismissed and also filed R.Mis 643/2018 against Rekha Malya and Ammaiah Balaraju who are the purchasers of Item No.2 of suit property. Hence, the plaintiffs are not entitled for any equitable relief of temporary injunction as sought by them. Hence, prays for dismissal of the application with costs.

9. The following points arise for my determination:

POINTS

- 1. Whether the plaintiffs/applicants prove prima facie case lie in their favour ?***
- 2. Whether the balance of convenience lie in favour of the plaintiffs?***
- 3. Whether the plaintiffs would suffer irreparable loss and injury if temporary injunction order is not granted in their favour ?***
- 4. What order?***

10. Heard the Counsel for plaintiffs Sri. Yadunandan.M.M.

and heard the counsel for defendants Sri. G.S.Siddaraju.

11. My findings on the above points are as under:

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

:: REASONS ::

12. Point No.1: It is well settled principle that, the applicants claiming temporary injunction order should satisfy all the 3 ingredients i.e. prima-facie case, balance of convenience lie in his / her favour and if the temporary injunction is not allowed he / she may suffer irreparable loss

and injury which cannot be compensated in terms of money. With this notion, we have to look into whether the applicants establishes all the 3 ingredients.

In Dalpat Kumar V/s Prahlad Singh, AIR 1993 SC 276 the Apex Court has held:

“Prima-facie case is not to be confused with prima-facie title, which has to be established, on evidence at the trial. Only prima-facie case is a substantial question raised, bonafide, which needs investigation and a decision on merits”.

In the above said citation the Apex Court has held that prima-facie case means the Court has to look into whether the applicant has case to go for trial. With this notion we have to look into whether the applicants establishes prima-facie case.

13. The plaintiffs case is that, no partition has taken place between Puttaswamaiah and Lingaiah and that they are in possession of item no.2 of suit schedule property and residing therein and the defendants are trying to vacate from the residential house built in item no.2 of suit schedule property. Per contra, the defendants contention is that, in previous proceedings the plaintiffs have admitted there was partition

between Puttaswamaiah and Lingaiah and that, item no.2 was sold by the defendants to Rekha Malya who in turn sold to Ammaiah Balaraju.

14. The counsel for the plaintiffs argued that, in the survey report it shows the plaintiffs are in possession of the property and there is no proper evidence of partition having taken place. The counsel for the plaintiffs relied on decision of Apex Court in Vineeta Sharma V/S Rakesh Sharma decided on 11.08.2020. With due respect to the counsel for the plaintiffs above said citation is with reference to whether daughter is coparcener of the joint family or not. Hence, said decision will not come in aid of the plaintiffs. However, it is well settled principle, oral partition is permissible but, the burden of proof remains on the person who asserted the partition.

15. The counsel for the defendants argued that, there is no averment in the plaint when the plaintiffs have received possession of Item No.2 of suit property and in para 10 of the plaint it is pleaded that, the defendants have sold their share which implies partition has taken place. The plaintiffs have not

filed any document to show there is a residential house in Item No.2 of suit property. The plaintiffs have suppressed the fact that, they have filed previous suit OS No.93/2023 which was also for partition. If at all they are aggrieved by the Judgment in OS No.93/2023 then, they should prefer an appeal before the Appellant Court. Further argued, in previous proceeding there is clear recital that, the partition has taken place. The conduct of the plaintiffs establishes that, they have no prima-facie case. Further, the photographs produced by the plaintiffs is not with respect to suit property and the suit property is dry land. The balance of convenience does not lie in favour of the plaintiffs. Further submitted, in different suits different boundaries are described. Hence, prays for the dismissal of the suit. The counsel referred to the following citations.

- ***2022(1) ICC 642(SC) between Shri K. Jayaram and Others V/s Bangalore Development Authority and Others.***
- ***2023(1) ICC 385 (SC) between Yashoda (Alias Sodhan) V/s Sukhwinder Singh and Others.***

- ***2017(5) KCCR 922 between M/s Alliance University, Bengaluru V/s Sudhir and Others.***
- ***ILR 1992 KAR 3772 between M/s Patel Enterprises V/s M.P. Ahuja.***
- ***2010(5) KCCR 3221 between Kashi Math Samsthan and Another V/s Srimad Sudhindra Thirtha Swamy and Another.***
- ***2020(1) KCCR 494 between Smt. Sudha Rao V/s S. Srinivasa Reddy and Another.***
- ***2017(5) KCCR 578 between V. Anil Raddy V/s K. Venkataramana Reddy and Others.***
- ***2004(1) KCCR 662 between K. Gopala Reddy (deceased) by LRs V/s Suryanarayana and Others.***
- ***1992(3) Kar L.J. 685 between R. Dilip Kumar V/s S. Ramu and Another.***

16. Perused the principles laid down in the above said citations wherein it is held that, if the party does not come to the Court with clean hands then he is not entitled to the equitable relief of injunction. Further, It is held that, if the suit is not maintainable then, temporary injunction cannot be granted.

17. The defendants to support their contention have produced the following documents.

1. Sale Deed dated 10.07.1966.
2. Sale deed dated 22.10.1969.
3. Grant certificate.
4. Challan.
5. Saguvali Chit.
6. Sale deed dated 12.07.1984.
7. Mutation register extract.
8. 2 RTC Extracts.
9. Sale deed dated 21.05.1997.
10. Mutation Register extract.
11. RTC Extracts
12. Copy of the Memorandum of Complaint under Section 26 and Order 7 Rule 1 of Civil Procedure Code 1908.
13. Copy of the Order on IA No.1 OS No.59/2021 dated 11.07.2022.
14. Copy of the Judgment in OS No.57/2021 dated 18.07.2022.
15. Copy of Order Sheet.
16. Copy of Judgment and decree in OS: No.90/2023 dated 27.06.2023 issued by I Addl. Civil Judge & JMFC, Maddur.
17. Copy of Proceedings in R.Mis 643/2018 dated 24.12.2018 issued by Asst. Commissioner, Mandya Sub Division, Mandya.

18. The plaintiffs to support their contention have produced the following documents.

- Genealogy Tree.
- Darkhast Application.
- Grant certificate.
- Documents relating to Immovable property.
- Sketch issued by Taluk Surveyor, Maddur.
- Saguvali Chit Vide OM.No.LNDGDR:1156/1977-78.
- Saguvali Chit OM No. LNDGDR:1556/1977-78.
- RTC Extract in the year 1970 to 1972.
- Sale deed of Item No.1 property.
- Surveyor Report.
- Asst. Commissioner Order in R.Mis No.296/2019 dated 25.07.2022.
- Photos

19. Heard the counsels and perused the documents and perused the case records. The Item No.2 of suit schedule property is described as Sy.No.203 measuring 1.00 acre situated at Gejjalagere Village, and East by Sy.No.355, West by land of M. Rekha Malya, North by Bengaluru-Mysuru Road and South by Gramatana and Puttaswamy land. Since, the photographs are disputed by the defendants, said photographs cannot be looked into. At this pretrial stage the report of the surveyor cannot be considered because, it has to be proved during the course of trial.

20. The records reveals that, in the plaint they contend that, they are entitled for half share out of 2.00 acres in Sy.No.203. However, the sale deeds dated 10.07.1966 and 22.10.1969 reveals that, there was partition between Puttaswamaiaha and Lingaiah and in the said sale deeds it is described that, there are selling their share to the purchaser. Further, in R.Mis No.643/2018 which is filed by the plaintiffs it is pleaded that, Puttaswamaiah and his brother Lingaiah partitioned the joint family property including the suit schedule property i.e., Sy.No.203/17 of Gejjalagere Village. Further in para 10 of the plaint it is pleaded that, the defendants have sold their share to one M. Rekha Malya. It implies, there was a partition between the Puttaswamaiah and Lingaiah. Hence, the contention of the plaintiffs that, they are entitled for share in share of 1.00 acre out of 2.00 acres in Sy.No.203 at this pretrial stage cannot be accepted.

21. Further, the present plaintiffs had earlier filed suit OS No.90/2023 before Prl. Civil Judge & J.M.F.C. Maddur seeking partition and separate possession against the present defendants. In the said suit, the schedule is

described as Sy.No.203 measuring 1.00 acre and they have claimed for 0.10 guntas of the 1.00 acre in the suit schedule properties and sought for consequential permanent injunction. Said suit has been dismissed as per Judgment dated 27.06.2023. In OS No.90/2023, they claim only 0.10 guntas in Sy.No.203 whereas in the present case, they claim 1.00 acre and both the suits are for partition. The plaintiffs are not clear what sought of relief they intend to seek. If at all they have any share then, they should have challenged the Judgment in OS No.90/2023 or should have filed the suit for declaration to seek their right in the properties. When, already the plaintiffs have filed suit for partition which has been dismissed, this Court views that, they cannot file similar suit with similar relief on same suit schedule property before this Court. As such, the plaintiffs have no prima-facie case to go for trial.

22. Further, no documents are produced by the plaintiffs to show how they came into possession of Item No.2 of suit schedule property and residing in the house situated in item no.2 of suit schedule property. Even in the surveyor report

which is relied by the plaintiffs it does not show that, house is situated in Sy.No.203 and the plaintiffs are residing therein. Hence, this Court views that, when already the plaintiffs had filed the suit for partition, another suit with similar relief for partition is not maintainable.

23. The plaintiffs have sought two reliefs in one application. It is well settled principal that, only one relief should be claimed under one application and two reliefs cannot be claimed. Further, as stated earlier, the plaintiffs have not produced any documents to show the existence of house in Item No.2 of suit schedule property or sugarcane being cultivated. Hence, at this pretrial stage, the plaintiffs have no prima-facie case to go for trial. With this observation, ***Point No.1 is answered in the Negative.***

24. Point No.2: So far as balance of convenience is concerned, this court would like to rely on decision of Apex Court cited above wherein, the Apex Court has discussed the concept of balance of convenience which is reproduced hereunder:

“Balance of convenience” - means the Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, on injunction would be issued”.

Wherein, the Apex Court has held that while considering balance of convenience the Court has to weigh the possibility of injury to the applicants. Based on the affidavit and documents produced by the applicants. With this notion, we have to look into whether the applicants satisfies the said ingredient.

25. The plaintiffs have not produced any document to show the existence of house in Item No.2 of suit schedule property and no document is filed they are residing therein. Hence, the balance of convenience does not lie infavour of the plaintiffs. With this observation, **I answer Point No.2 in the Negative.**

26. Point No.3: So far as irreparable loss and injury are concerned, the Apex Court cited above has discussed the concept of irreparable loss and injury which is reproduced hereunder:-

“Irreparable loss or injury” – means the Court has to further satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession”.

Wherein, the Apex Court has held that while considering irreparable loss & injury the Court has to look into if temporary injunction order is not granted whether the applicants would suffer irreparable injury which cannot be compensated in terms of money. With this notion, we have to look into whether the applicants satisfies the said ingredient.

27. When the plaintiffs failed to produce that, there is house constructed in Item No.2 and they are residing therein, this Court views that, if temporary injunction order is granted as sought by the plaintiffs then, it may lead to multiplicity of the suit. Further, the plaintiffs having suppressed the fact of filing similar suit before another Court they are disentitled to claim the equitable relief of injunction. Hence, with this observation, ***Point No.3 is answered in the Negative.***

28. Point No.4 Based on findings in point No.1 to 3, this Court proceeds to pass the following:

ORDER

I.A. No.II application filed by the plaintiffs under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC seeking temporary injunction relief is hereby dismissed.

For appearance of parties under Section 89 of the CPC.

(Dictated to the Stenographer in part and dictated directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 12th day of March-2024.)

**(SMT. K. SRIVIDYA)
Senior Civil Judge,
Maddur.**