

**IN THE COURT OF PRL. CIVIL JUDGE AND
J.M.F.C., MALAVALLI.**

Present

**Smt. Shemida.K, B.A.(Law), LL.B.,
Prl. Civil Judge and J.M.F.C.,
Malavalli.**

Dated this the 3rd day of January, 2020

O.S.No.39/2019

Plaintiffs:

- 1) Sri. Kemparaju, S/o. Sri. Lingegowda,
Aged about 61 years.
- 2) Smt. Chikkamma, W/o. Late.
Chikkalingegowda, Aged about 50 years.
- 3) Sri. Suresha, S/o. Late.
Chikkalingegowda, Aged about 30 years.
- 4) Sri. Ramesha, S/o. Late.
Chikkalingegowda, Aged about 28 years.

All are R/o Dyavapattana Village, B.G. Pura
Village, Malavalli Tauk, Mandya District.

(By Sri.M.N.R., Advocate)

V/s

Defendants:

- 1) Smt. Jayamma, W/o. Late. Rajegowda,
Aged about 65 years.
- 2) Sri. Puttswamy, S/o. Late. Rajegowda,
Aged about 46 years.
- 3) Sri. Siddaraju, S/o. Late. Rajegowda,
Aged about 42 years.

1 to 3 are r/o Dyavapattana Village, B.G. Pura Village, Malavalli Taluk, Mandya District.

4) Sri. Siddegowda, S/o. Late. Lingegowda, Aged about 55 years, r/o Dyavapattana Village, B.G. Pura Village, Malavalli Taluk, Mandya District.

Now R/o No.487, Bhramhaputhra River Road, 4th Main, Bhrindavana Nagara, Shreenagar, Bangalore.

5) The Panachayath Development Officer, B.G. Pura Panchayath Office, B.G. Pura Village, Malavalli Taluk, Mandya District.

(D-1 to D-4 by Sri.H.C.S., Advocate)

(D-5 placed as ex-parte)

I.A. No.II

Applicant : Sri. Kemparaju.

V/s

Opponents : Smt. Jayamma & Others.

:- ORDERS ON I.A.No.II :-

The plaintiff No.1 has filed an interim application **U/O.39 Rule 1 and 2 r/w Section 151 of CPC** seeking an order of Temporary Injunction restraining the defendant No.4, his agents, servants, followers, his power of attorney holders or any persons from putting up any construction over the Item No.1 of the suit schedule property till the pending disposal of the suit in the interest of justice and equity.

2. In the affidavit filed in support of this application, the plaintiff No.1 has stated that, they have filed this suit against the defendants for the relief of partition and separate possession. Further, it is submitted that the defendant No.3 and 4 were colluded with each other and with the help of D-5 now D-4 intends to construct a house in the suit item No.1. Hence he has issued a notice to D-4 on 22.11.18 but he has not complied the same. Thereafter, the plaintiffs have lodged a complaint before the Belakavadi Police Station on 17.11.18 and also given the requisition to D-5 but all went vein. The plaintiffs have got the partition in the said properties since a year, but, the defendants have postponed the same by one or the other pretext, they have not given any profitable accounts in the joint family properties since two years. Hence it is necessary to prohibit the D-4 with regard to the further construction. It is further submitted that the plaintiffs have got prima facie case and the balance of convenience lies in their favour. If the application is not allowed, the plaintiffs will be put too much hardship and trouble. On the other hand, if the application is allowed, nothing will be caused to D-4. On the basis of aforesaid grounds, the plaintiffs have prayed to allow this application.

3. On the other hand, the learned counsel for the defendants has filed written statement and also filed a memo stating that he want to adopt the same as objection to the IA's. The defendants have contended that, the suit schedule

properties are not their ancestral and joint family properties and there is no joint family status and they have admitted their relationship with the plaintiffs. It is further submitted that one Lingegowda is the propositus of the family of the plaintiffs and the defendants No.1 to 4 and he has four sons by name Late. Rajegowda, plaintiff No.1, Late. Chikkalingegowda and defendant No.4. The defendants No.1 to 3 are the legal heirs of deceased Rajegowda, whereas the plaintiff No.2 to 4 are the legal heirs of deceased Chikkalingegowda. Further stated that Item No.1, 3 to 5 are the joint family properties of plaintiffs and the defendant No.1 to 4. Further contends that there was already partition among them as per panchayath partition dated: 05.08.2007 and shares were allotted as per their respective rights. As such, item No.1, 3 to 5 were partitioned between the 04 sons of Lingegowda. Accordingly item No.1 of the suit schedule property along with remaining land of item No.4 towards western side and $1/3^{\text{rd}}$ portion of vacant premises fallen to the share of defendant No.4. Ever since the date of partition, all the share holders are enjoying the properties fell to their share respectively as absolute owners thereof. Further the item No.2 of the suit schedule is the self acquired property of the deceased father of the defendant No.1 to 3 which was the absolute property of one Mahadevappa, S/o. Puttaswamappa resident of Dyavapattana Village, Malavalli Taluk, belongs to Lingayitha Community and he is a close associate of father of

defendant No.1 to 3 and he is under the care and custody of father of defendant No.1 to 3 who looked after the welfare of said Mahadevappa and he is an orphan having no legal representatives and he has executed a registered WILL dated:05.05.1987 bequeathing the item No.2 of the suit schedule property in favour of the father of defendant No.1 to 3 and other revenue records item No.2 of the suit schedule has been mutated and entered to the name of the father of defendant No.1 to 3. The father of the defendants No.1 to 3 was demised on 03.09.2016. Hence, the defendants No.1 to 3 are inherited the item No.2 of the suit schedule. During the lifetime of their father, the defendants No.2 and 3 got divided the item No.2 of the suit schedule and accordingly, the khata and RTC are entered to their names vide MR.No.23/2001-02. It is submitted that the plaintiff has not mentioned the correct measurement to the item No.2. The correct extent of item No.2 is 02 acre 08 guntas, but not 03 acres 08 guntas. The plaintiffs have not approached this Court with clean hands and they have suppressed the material facts and suggested false things just to make gain unlawfully if possible even though they well aware of panchayath partition dated:05.08.2007. Hence, the defendants No.1 to 4 has prayed to reject this application and the suit with costs.

4. I have heard the arguments from the both the counsels.

5. Having heard and on perusal of the materials on records, the following points that would arise for my consideration:

- 1. Whether the plaintiffs have made out prima-facie case?**
- 2. Whether the balance of convenience lies in favour of plaintiffs?**
- 3. Whether the comparative hardship and injury caused to the plaintiffs are more when compare the same to the defendant No.4?**
- 4. What order?**

6. My findings on the above points are as under;

Point No. 1 : In the Affirmative,

Point No. 2 : In the Negative,

Point No. 3 : In the Negative,

Point No. 4 : As per final order,

for the following;

-: REASONS :-

7. **Point No.1:-** Admittedly, the plaintiff filed the present suit against the defendants for relief of partition and separate possession of the suit schedule properties. It is pertinent to note that, there is no dispute between the parties regarding their relationship and same is admitted by the defendants.

8. Before having discussion on the merits of the application, it is just and necessary to bear in mind that, the

interim order of injunction would be granted as an aid to the main relief. It is pertinent to note that, at this budding stage of the proceedings the Court need not conduct a mini trial. It is also necessary to bear in mind that, even after placing of the requisite materials in respect of aforesaid three ingredients, the Courts are required to consider the conduct of the parties, their approach in seeking equitable relief and has to exercise its discretionary power while granting an order of Temporary injunction as per the provisions of Specific Relief Act.

9. The plaintiffs have stated that, they and defendants are Hindu Joint family members, the schedule properties are their ancestral and joint family properties and there is no partition took place among them in respect of the suit schedule properties. Now the defendant No.4 without effecting the division in the schedule properties, he is putting the building in item No.1 of the suit properties. In this regard the plaintiffs have furnished a photographs with CD which depicting the contention of the plaintiff regarding the construction of some structure and also the copy of complaint given to the IO of Belakavadi Police station and also the copy of requisition given to PDO of B.G.Pura Gramapanchayath furnished which shows that the plaintiff has raised objection for the construction. It is to be noted that, in this case defendant No.4 strongly taken the contention regarding the oral partition pertaining to suit

schedule properties and he has not denied the said alleged construction. On the basis of the said documents placed by the plaintiffs at this preliminary stage of the proceeding, the plaintiffs have made out prima-facie. With these observations, I answer the **Point No. 1 in the Affirmative**

10. **Point No.2 and 3:** Since, these two points are interconnected with each other, the determination of which requires common facts and materials. Hence, these points are taken together for common discussion, in order to avoid repetition of facts.

11. In the present case it is the contention of the defendant No.4 that Item No.1, 3 to 5 are their joint family properties and there was already partition among them as per panchayath partition dated: 05.08.2007 and shares were allotted as per their respective rights. Accordingly item No.1 of the suit schedule property along with remaining land of item No.4 towards western side and $1/3^{\text{rd}}$ portion of vacant premises fallen to the share of defendant No.4 and ever since the date of partition, all the share holders are enjoying the properties fell to their share respectively as absolute owners thereof. In this regard the defendants furnished the Xerox copy of panchayath partition dated: 05.08.2007 which shows the partition between the parties and interestingly the plaintiff No.1 and plaintiff No.3 affixed their signatures. It clearly shows that the plaintiffs are suppressing some facts and not come to the Court with clean hands. The advocate for

the plaintiff submitted that the Xerox copy of panchayath partition dated:05.08.2007 furnished and it can't be considered at this stage. It is to be noted that, during the time of argument the counsel for the defendant has furnished the original copy of panchayath partition dated: 05.08.2007 and same was returned to them after verifying the same with the Xerox copy. Hence the said contention of the advocate for the plaintiff does not hold any water at this stage. Further the burden heavily lies on defendant No.4 to prove that, there is already partition among them. For that the full fledged trail is required. At this stage this Court can't consider that point.

12. Further defendant No.4 contends that, the item No.2 of the suit schedule is the self acquired property of the deceased father of the defendants No.1 to 3 which was the absolute property of one Mahadevappa, and he is a close associate of father of defendants No.1 to 3 and he has executed a registered WILL dated:05.05.1987 bequeathing the item No.2 of the suit schedule property in favour of the father of defendant No.1 to 3. In this regard the defendants furnished Xerox copy of registered WILL dtd:05.05.1987. Further the counsel for the plaintiff has furnished the Xerox copy of the Will dated 19.08.95 which shows that it was executed by Mahadevappa. It is to be noted that '**Will**' is the legal declaration of a person's intention which he wishes to be performed after his death and as per Section 68 of Indian Evidence Act at least any one of the attesting witness should

be examined to prove the documents. Hence for these aspects a full pledged trial is required and not determined at this stage.

13. It is to be noted that the plaintiff is seeking injunction order against the defendant No.4 in respect of item No.1 of the suit schedule property. Further as per the case of the plaintiffs and the defendants are joint family members and they are having joint possession over the suit schedule properties. It means that they are the co-sharers. It is to be noted that in the reported decision in **CIVIL APPEAL No.3408/19-T.RAMALINGESWARA RAO(Dead) Their LR's and another V/s N.MADHAVA RAO AND OTHERS** - our Hon'ble Apex Court held that, *'in our view even assuming that the plaintiffs claimed to be in possession of the suit property for claiming injunction, yet they were not entitled to claim injunction against the other co-sharers over the suit property.'* Further it is mentioned that it is settled principle of law that the possession of one co-sharer is possession of all co-sharers, it can't be adverse to them, unless there is a denial of their right to their knowledge by the person in possession and exclusion and ouster following thereon for the statutory period. The ratio held in the said decisions is aptly applicable to the present case. More over the copy of panchayath partition dated: 05.08.2007 also furnished wherein some of the plaintiffs have affixed their signatures also.

14. Further in **SHOBHA DEVELOPERS Ltd., V/s LANKA SITARAM KAMTHE AND OTHERS-2014(3) Mh.L.J.445**, it is held that *‘the plaintiff claiming share in family property, sought injunction against defendants from alienating and creating third party interest. But an agreement for development of property was already entered and development of property was also started and right of third party was created. It was held that developing property can’t cause prejudice to plaintiff and so not entitled to injunction.’* The ratio held in the above decision is aptly applicable to the present case on hand as the plaintiff is seeking in share in the properties.

15. Further it is to be noted that Prima-facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima-facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily as held in **PRAKASH SINGH V/s STATE OF HARYANA 2002 (4) Civil L.J 71 (P.H)**. In this case the plaintiffs proved their prima-facie case regarding the construction of structure by defendant No.4 in the suit schedule property. In view of ratio held in above said decisions and especially in **SHOBHA DEVELOPERS Ltd. Case (as stated supra)** my discussions, I am of the considered opinion that, the plaintiffs have made out prima-

facie case but balance of convenience not lies in favour of plaintiffs. In such circumstances, if temporary injunction as prayed is granted in favour of plaintiffs, the irreparable hardship will cause to the defendant No.4 than the plaintiff as on the suit schedule properties. Further the plaintiffs have not stated anything regarding the said panchayath partition dated: 05.08.2007. On considering the relationship between the parties there is no order for costs. With these observations, I answer **Points No.2 and 3 in the NEGATIVE.**

16. **Point No.4:-** In view of my findings to the Points No. 1 to 3, I proceed to pass the following;

:- O R D E R :-

***The I.A.No.II filed by the plaintiffs
U/Order 39 Rule 1 and 2 R/w Section 151
of C.P.C is hereby rejected.***

The parties shall bear their own cost.

***In such circumstances, the ex-parte
temporary injunction granted earlier is
stands cancelled.***

(Dictated to the Stenographer, directly on computer, revised and corrected by me then pronounced by me in the open Court, this the 3rd day of January, 2020)

***(Shemida.K)
Prl. Civil Judge and J.M.F.C.
Malavalli.***