

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
AT SRIRANGAPATNA**

**Present :-
Smt. Chaitra A.M.,
B.Sc., L.L.B.,
Prl. Civil Judge and JMFC,
Srirangapatna.**

Dated this 22nd day of March, 2017

O. S. No. 219/2016

Plaintiffs :-

1) Sri. H. B. Mariswamappa,
S/o Sri. Bhujangappa,
Aged 48 years,

2) Sri. B. Shivananjappa
S/o Sri. Bhujangappa,
Aged 46 years,

Both are R/at
Huralikyathanahalli Village,
Kasaba Hobli,
Srirangapatna Taluk.

(By Sri. H.R.,-adv)

Vs

Defendant :-

Sri. Madappa,
S/o Late Sri. Basappa,
Aged 55 years,
R/at Huralikyathanahalli Village,
Kasaba Hobli,
Bangalore-1.

(By Sri. B.S.A.,-adv)

:: Orders on application filed by the plaintiff under Order 39 Rule 1 and 2 R/W/Section 151 of CPC::

The plaintiffs have filed the application under order 39 Rule 1 and 2 r/w sec. 151 of CPC seeking for an order of temporary injunction to restrain the defendant from alienating the application schedule property till disposal of the suit.

2. The gist of the application is as follows;

The plaintiffs have filed the affidavit. In the affidavit, it is stated that the propositus of the family is Chikkamadappa. The Chikkamadappa made had two sons by names Muddumadappa and Bhujangappa. The Bhujangappa is the father of plaintiffs. After the death of Chikkamadappa, his two sons got divided all their joint family properties orally before the Panchayathdars and from the date of oral partition, the sons of Chikkamadappa started enjoying the property alleged to their share. Subsequently acting upon the oral partition coupled with actual delivery of possession by mutual consent they got the Khatha of the properties changed to their names as the properties that were allotted to each one of them , in the said oral partition. Thus the father of the plaintiffs became the absolute and exclusive owner of the application schedule property along with other properties. The agricultural land bearing Sy.No.94 was measuring 3 acres 37 guntas. Father of the plaintiff

allotted to 2 Acres 0.25 guntas of land and Muddumadappa allotted got to 1 acre 12 guntas of land in Sy. No.94. After the death of father of plaintiffs, the plaintiffs themselves got divided the suit property wherein 1st plaintiff got 1 acre 16 guntas of land in Sy. No. 94 and 2nd plaintiff got issue 1 acre 09 guntas in Sy. No.94 and as such the plaintiffs become joint and exclusive owners of the suit schedule property. Except the plaintiffs no other person or persons have got any right, title, interest in or over the suit schedule property. The defendant which he got 1 acre 12 guntas of land in Sy. No. 94 which was now phoded as Sy. No 94/1 and as such the defendant is in possession of 1 acre 12 guntas of land only but in order to knock of the plaintiff property, the defendant filed a revenue appeal in R. Mis. (2)116/2012-13 against the father of plaintiff and against plaintiff also and a sought for change of khatha in Sy. No. 94/1 to the extent of 1 acre 0.20 guntas, before the learned Assistant Commissioner, Pandavapura. The Learned Assistant Commissioner, Pandavapura, who did not look into title of the parties blindly ordered for change of Khatha to an 1 acre 20 guntas in the name of defendant. Now the defendant by taking undue advantage of the entry made by the Learned Assistant Commissioner, making hectic attempts to sell 8 guntas of land in suit schedule property and as such the defendant is unnecessary interfering with the plaintiff peaceful possession and enjoyment of the suit schedule property.

Any number of advises made by the plaintiff is of no use. As the defendant is causing obstruction, interference and trying to alienate 8 guntas of land in the application schedule property by taking undue advantage of the order passed by the Learned Assistant Commissioner, being left with no other alternative, the plaintiff filed suit and present application seeking for an order of temporary injunction with respect to the suit schedule property.

3. On the other hand the defendant has filed written statement and memo of adoption, adopting the written statement as objection to the application filed under order 39 Rule 1 and 2 CPC. The defendant has denied that the father of plaintiffs was owner and in possession of the 8 guntas of land in the suit schedule property and after the death of father of plaintiff, the plaintiff become owner and exclusive owner of the 8 guntas of land in the suit schedule property but contended that the defendant has not sold his property and the plaintiff has made false allegations against the defendant. Further contended that, after the death of Chikkamadappa, the khatha of the property bearing Sy. No. 94 measuring 1 acres 59 ares changed to the name of Muddumadappa. Then out of 1 acre 59 guntas, 1 acre 20 guntas of land was mortgaged and the possessing of said land was taken back on 22.04.1970 then on 30.05.1997 the same was sold to the defendant and the father of plaintiff is a signatory to the said document. Therefore the revenue authorities have

not wrongly and blindly inserted the name of father of defendant in the documents. The suit is not maintainable because the plaintiffs ought to have filed separate suits for declaration. On these contentions, the defendants prayed to dismiss the application.

4. Heard arguments on application for plaintiffs and defendant, perused the documents submitted by parties and perused the records.

5. The following points arise for my consideration is as follows:

1. Whether the plaintiffs have made out prima facie case against the defendant?
2. In whose favour, the balance of convenience lies?
3. Who will be put to irreparable loss and legal injury?
4. What Order?
6. My findings to the above points are as follows: -

Point No.1 :- In the affirmative

Point No.2 :- In favour of plaintiffs

Point No.3 :- In favour of plaintiffs

Point No.4 :- As per the final order, for the flowing;

REASONS

7. Point No.1: The plaintiff has filed the application for an order of temporary injunction to restrain the defendants from alienating the application schedule property on the allegations that in a oral partition effected between the father of plaintiff and uncle of plaintiff, the father of plaintiff got the suit schedule property in oral partition and after the death of father of plaintiff, the plaintiffs have divided the suit schedule property and as such the plaintiffs are owners to the suit schedule property. But the defendant is trying to alienate 8 guntas of land in the application schedule property by taking undue advantage of the entry made in the Khatha by the Learned Assistant Commissioner, Pandavapura,. The plaintiffs are owners to the suit schedule property but now by virtue of passing an order by Learned Assistant Commissioner, Pandavapura,. As the name of defendant is entered in the Khatha, the defendants are trying to alienate the suit schedule property even though they are not owners of the suit schedule property. On the other hand the defendants have denied the allegations made by the plaintiff and contended that the defendant has sold his property and the plaintiff is making false allegations. But contended that after the death of Chikkamadapa, the Khatha of property bearing Sy. No. 94 measuring 1 acre 59 guntas , 1 acre 20 guntas of land was mortgaged and later taken back possession on

22.04.1970 then on 30.05.1977 the same was sold to the defendant and the father of plaintiff is a signatory to the said document. Therefore the revenue authorities have not wrongly and blindly inserted the name of father of defendant in the documents. and hence defendant prays to dismiss the application filed by the plaintiff.

8. The plaintiff produced M.R. Extract of **the year 1986-1987** which goes to show that Sy. No. 94 measuring 2 acre 25 guntas is effected in the name of father of plaintiff. The plaintiff produced RTC to Sy.No. 94/P-2 measuring 2 acre 25 guntas coming in the name of father of plaintiff. The plaintiff produced RTC to Sy. No. 94/2 measuring 2 acre 25 guntas in the name of father of plaintiff and 1 acre 12 guntas in the name of defendant. Plaintiff produced another RTC to Sy. No. 94/2 measuring 1 acre 16 guntas coming in the name of 1st plaintiff. The plaintiff produced another RTC to Sy. No.94/3 measuring 1 acre 9 guntas coming in the name of 2nd plaintiff. The plaintiff produced 2 RTC to Sy. No.94/1 measuring 1 acre 12 guntas coming in the name of defendant. The plaintiff produced order copy of R. Mis. (2)116/2012-13 to show that an order is passed to effect 8 guntas of land in the name of defendant. The defendant produced sale deed to show 1 acre 20 guntas of land is sold. The defendant produced M.R. Extract to show 1 acre 20 guntas of land was effected in the name of defendant. The defendant also produced copy of R.Mis.(2)116/2012-13, to show Assistant

Commissioner, Pandavapura has changed by passed orders for 8 guntas of land in the name of defendant.

9. The suit is one for the relief of declaration of title. The plaintiffs contends that they are the owners to the suit schedule property. On the other hand defendant contends that he is the owner to 1 acre 20 guntas of land in Sy.No.94 i.e., (8 guntas of land in suit schedule property). As the plaintiff and defendant are making allegation against each other at this stage it is not possible to ascertain who is actual owner of the suit schedule property. The same requires proper, cogent, oral as well as documentary evidence. However as the present application is filed not to alienate the suit schedule. In view of the documents produced by the plaintiff i.e., RTC, at this stage as the extent given in the suit schedule property is 1 acre 16 guntas in SY. No. 94/2 and 1 acre 9 guntas in Sy. No. 94/3 which are coming in the name of plaintiffs . At this stage the plaintiffs have made out prima-facie case. No doubt the defendant has also produced sale deed. But if at this stage sale deed taken into consideration it will touches to the merits of the case. However in view of documents produced by the plaintiff, at this stage the plaintiffs have made out prima-facie case against the defendant. In view of above discussion I answer this point in affirmative.

10. Point No.2 and 3:- As the present application is filed one for the relief of temporary injunction to restrain the defendant from alienating the application schedule property. As discussion made on point no.1, if any of the parties were to alienate the application schedule property during the pendency of the suit it will definitely lead to multiplicity of the proceedings and the party may suffer and the balance of convenience is in favour of plaintiffs and if T.I. is not granted, plaintiffs will be put to heavy irreparable loss and legal injury. In view of above discussion I answer these points in affirmative.

11. Point No.4:- In view of above discussion on point no. 1 to 3, I proceed to pass the following:-

: O R D E R :

The application filed by the plaintiffs under order 39 Rule 1 and 2 CPC is hereby allowed.

The defendant is hereby restrained from alienating with the application schedule property till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer on line computer, and then corrected by me and pronounced in the Open Court this the 22nd day of March, 2017.)

**(Chaitra A. M.),
Prl. Civil Judge and JMFC,
Srirangapatna.**

Order pronounced in the Open Court
(Vide Separate Order)

: O R D E R :

The application filed by the plaintiffs under order 39 Rule 1 and 2 CPC is hereby allowed.

The defendant is hereby restrained from alienating with the application schedule property till disposal of the suit.

No order as to costs.

Prl. Civil Judge and JMFC,
Srirangapatna.

