

**IN THE COURT OF THE ADDITIONAL JUDGE, SMALL CAUSES
AND SENIOR CIVIL JUDGE, MYSORE.**

PRESENT :

**Sri. M. DEVARAJA BHAT, B.Com., LL.B.
Prl. Judge, Court of Small Causes, Mysore,
in Concurrent Charge of Additional Court of
Small Causes, Mysore.**

DATED THIS THE 8th DAY OF JANUARY 2015

I.A.No.XII

in

O.S.No.188/2014

Between:-

Sri. Mohan Raju V. : Applicant/2nd Plaintiff

And

**The Graduates Co-operative Bank,
by its General Manager : Opponent/13th Defendant**

: O R D E R S :

This is an application filed under Order XXXIX Rules 1 and 2 of the Civil Procedure Code filed by the Applicant/2nd Plaintiff, to grant an ad-interim temporary injunction restraining the 13th Defendant from alienating the property mentioned in the Schedule annexed to the said application, till the final disposal of the suit.

2. In the accompanying affidavit, he has contended that during pendency of this suit, the Defendants 7 to 11 have filed a suit against deceased 1st Defendant in O.S.No.683/2010 for the relief of partition of the suit property without making the Plaintiffs as

parties to the said suit and fraudulently compromised the said suit and thereafter the deceased 1st Defendant illegally executed a Gift Deed on 21.07.2011 of the property mentioned in the Schedule annexed to the said application in favour of her son Sri. S. Arun Kumar and thereafter he availed a loan from the 13th Defendant, that the 13th Defendant without scrutinizing the documents properly and colluding with him granted the loan, that after knowing the said contents from the Written Statement of Sri. S. Arun Kumar, the Opponent was impleaded as 13th Defendant, that the 13th Defendant published a Notice in Andolana Kannada Daily dated 05.06.2014 stating that they are going to put the said property for auction on 07.07.2014, that the same was restrained by the Applicant by filing an application under Order XXXIX Rules 1 and 2 of Civil Procedure Code as per the Orders dated 30.06.2014 and thereafter, the said application was dismissed, that taking advantage of the same, 13th Defendant is now trying to alienate the said property, which is illegal and contrary to all norms of law and hence, he prays to allow the said application.

3. The 13th Defendant has filed detailed objections and denied all the contentions in the said affidavit and has contended that only with an intention to harass the 13th Defendant and to delay the auction proceedings, this application is filed and hence, he prays to dismiss the said application

4. I have heard the arguments of both advocates.

5. I formulate the following points for my consideration:

- (1) Whether the Applicant/2nd Plaintiff proves the Prima-facie Case about the attempt of alienating the property mentioned in the Schedule annexed to I.A.No.XII, as contended in his application?
- (2) In whose favour balance of convenience lies?
- (3) Who will suffer irreparable injury, if temporary injunction is granted?
- (4) What Order?

6. My answers to the above said points are as follows:

- Point No.1 : In Negative.
- Point No.2 : Does not survive for my consideration.
- Point No.3 : Does not survive for my consideration.
- Point No.4 : As per my final order for the reasons mentioned below.

REASONS

7. **Point No.1:** In this case, the "Prima-facie Case" involved is about the attempt of alienating the property mentioned in the Schedule annexed to the said application by the Opponent/13th Defendant.

8. As per the contentions of the Plaintiffs and as per the arguments of the learned Advocate for the Plaintiffs, one Sri. Venugopalaraju died intestate was the propositus of the family of the Plaintiffs and Defendants. He had two wives by name Smt.

Subbamma and Smt. Gowramma. The 1st Defendant is the daughter of said deceased Smt. Subbamma. The Defendants 7 to 12 are the children of deceased Smt. Nagarathna, who is also one of the daughters of above said Smt. Subbamma. The above said Smt. Subbamma had one son by name Sri. Lakshmipathiraju, who died as bachelor. The Plaintiffs 1 and 2 and Defendants 2 and 3 are the children of 2nd wife Smt. Gowramma. The suit is filed for the relief of partition. As per the Partition Deed dated 08.02.1969, the suit property was allotted to above mentioned Sri. Lakshmipathiraju, who died intestate. After the death of said Sri. Lakshmipathiraju, this suit is filed.

9. After filing of this suit, the Defendants 7 to 12 filed a suit in O.S.No.683/2010 for the relief of partition, to which the Plaintiffs of this suit are not made as parties. The said suit was compromised and a final decree was passed. Thereafter, the 1st Defendant executed a Registered Gift Deed in favour of Defendant No.1(a)(c). The Defendant No.1(a)(c) borrowed loan from 13th Defendant, by mortgaging the suit property. Since he failed to repay the said loan, the 13th Defendant has initiated action under the provisions of SARFAESI Act. According to the Applicant/2nd Plaintiff, all these transactions are fraudulent and in order to defeat the claim of the Plaintiffs and in case the said property is auctioned, the Plaintiffs will be put to irreparable injury, which cannot be compensated by way of damages. The learned Advocate for the Plaintiff has relied upon following two decisions in support of his arguments: -

- ***A.I.R.-2006-Kar-21 (D.B.) (Krishna and another Vs. Kedaranath and others)***, wherein it is held that jurisdiction of the Civil Court is not barred to try a suit for partition of joint family properties, which also includes properties mortgaged to bank.
- ***2014(2)-K.L.J.-532 (State Bank of Mysuru, Devanahalli Branch, Bengaluru Vs. The Assistant Commissioner, Bengaluru Rural District)***.

10. By relying upon the said two decisions, the learned Advocate for the Plaintiff has argued that the Securitization Act does not bar jurisdiction of Civil Court to decide the suit for partition, including the properties mortgaged to bank.

11. It may be noted that a similar application was filed by the present Applicant in I.A.No.XI and I dismissed the said application as per my detailed order dated 16.07.2014. In the said Order, I dismissed the same by relying upon a recent decision of the Hon'ble Supreme Court in **Civil Appeal No.9771/2013(arising out of SLP(Civil) No.18/2011(Jagadish Singh Vs. Heeralal and others)**. The learned Advocate for the Plaintiff has argued that in the said decision, the property was self-acquired and not joint family property. However, the ratio of the said decision is about the jurisdiction of the Civil Court not to grant relief of injunction under the provisions of Securitization Act in a suit filed for the relief of partition. I discuss the same later on.

12. The 13th Defendant has produced several documents to show that they have taken appropriate action under the provisions of Securitization Act and that the auction also scheduled to be held on 12.01.2015. He has filed Andolana Kannada Daily dated 08.12.2014, wherein a Public Sale Notice was published.

13. The Hon'ble Supreme Court in the above mentioned Judgment in **Civil Appeal No.9771/2013(arising out of SLP(Civil) No.18/2011(Jagadish Singh Vs. Heeralal and others) dated 30.10.2013**, has considered that the Civil Court has no jurisdiction to grant any relief including the relief of injunction under the provision of Securitization Act. In the said case also, a Civil Suit was filed for the relief of declaration of title, partition and permanent injunction. In the said suit, the bank was also made as party. The Para 17 and 18 of the said decision are as follows:

"17. The expression 'any person' used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person, who may be affected by action under Section 13(4) of the Securitization Act. Reference may be made to the Judgment of this Court in Sathyavathi Tondon's Case(supra).

18. Therefore, the expression 'any person' referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the Civil Suit is maintainable or not, under the Securitization

Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitization Act, in case the bank(secured creditor) adopt any measure including the sale of the secured assets, on which the Plaintiffs claim interest."

14. It is further held at Para 23 as follows:

"23. We are of the view that the Civil Court Jurisdiction is completely barred, so far as the 'measure' taken by a secured creditor under Sub-Section(4) of Section 13 of the Securitization Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal, to determine as to whether there has been any illegality in the 'measures' taken."

15. In view of the ratio of the above said decision of the Hon'ble Supreme Court, it is very clear that either it may be self-acquired property or joint family property, in a suit filed for the relief of partition, the Civil Court has no jurisdiction to pass any ad-interim temporary injunction against the bank restraining them from taking any steps under Securitization Act. In view of the said decision of the Hon'ble Supreme Court, I need not discuss in detail about the above mentioned two decisions i.e. **A.I.R.-2006-Kar-21 and 2014(2)-K.L.J.-534.** The principle laid down by the Hon'ble Supreme Court prevails over the principle laid down by the Hon'ble High Court of Karnataka. Therefore, I bound to follow the ratio laid down in the judgment in **Civil Appeal No.9771/2013(arising out of SLP(Civil) No.18/2011(Jagadish Singh Vs. Heeralal and others) dated 30.10.2013.** Hence, this Court has no jurisdiction either

to entertain the suit against 13th Defendant or to issue any ad-interim injunction against the measures taken by the 13th Defendant under the Securitization Act. Apart from the measures taken under the Securitization Act, the 13th Defendant has not taken any steps to alienate the said property. In order to circumvent the Order passed in I.A.No.XI dated 16.07.2014 and without challenging the said order, the Applicant has filed this application by cleverly drafting that the 13th Defendant is trying to alienate the said property. The contention taken in the Affidavit annexed to I.A.No.XI and the present application is contradictory in nature. The conduct of the Plaintiff is to be considered while granting an equitable relief of Temporary Injunction. By filing application after application, the Plaintiff is restraining a Bank in order to secure the public money. The said conduct itself disentitles the Plaintiff to have any equitable relief. The learned Advocate for the Plaintiff has vehemently argued about fraud and collusion between the 13th Defendant with the above mentioned Sri. S. Arun Kumar. The said contentions have to be established only during the course of a full-fledged trial. At this stage, it cannot be considered. When such being the case, I am of the opinion that the Applicant has no Prima-facie Case, as contended by him. Hence, I answer this point in **Negative**.

16. **Points No.2 & 3:** In view of my findings on Point No.1 above as Negative, these Points do not survive for my consideration.

17. **Point No.3:** Therefore, I proceed to pass the following Order.

ORDER

The application filed under Order XXXIX Rules 1 and 2 of the Civil Procedure Code in I.A. No. XII is dismissed.

The Applicant/Plaintiff shall pay the cost amounting to Rs.200/- to the Opponent/13th Defendant.

(Dictated to the stenographer directly on the Computer, typed by her and corrected by me and pronounced in the open court on **8th day of January 2015**)

(M.DEVARAJA BHAT)

Prl. Judge, Court of small causes,
in C/c of Addl. Court of Small Causes,
Mysore.