

**IN THE COURT OF ADDITIONAL SMALL CAUSES &  
SENIOR CIVIL JUDGE AT MYSURU.**

Present : **Sri. VIJETH. V.** B.A.L, LL.B.  
Judge, Addl. Court of Small Causes.

Dated this the 25<sup>th</sup> day of September 2020.

**O.S. 135 / 2014**

**BETWEEN**

Smt. Puttaboramma,  
Aged about 48 years,  
W/o Ningappa,  
R/at Door No.81, EWS,  
Ramakrishnanagara,  
Mysuru.

**Plaintiff**

( By Sri. S. Kumaraswamy. Advocate )

**AND**

- 1) Boraiah,  
Aged about 80 years,  
S/o Doddahaidegowda.
  
- 2) Puttathayamma,  
Aged about 68 years,  
W/o Boraiah.

Both are residents of  
Door No.2456, 5<sup>th</sup> Cross,  
Siddappaji Temple road,  
K.G. Koppalu,  
Mysuru.

3) Borappa @ Boraiah,  
Since dead by L.Rs.,

3(a) Smt. Savithamma,  
aged about 48 years,  
W/o Late Boraiah.

3(b) Pavithra,  
Aged about 31 years,  
D/o Late Boraiah.

3(c) Pallavi,  
Aged about 29 years,  
D/o Late Boraiah.

3(d) Chandra,  
Aged about 27 years,  
S/o Late Boraiah.

Defendant No.3(a) to (d) are  
R/at Door No.2234,  
Dattagalli, III Stage,  
Chamaraja Mohalla,  
Mysuru.

4) Kumara,  
Aged about 40 years,  
S/o Boraiah, No.  
R/at No.1319, 14<sup>th</sup> Cross,  
E & F Block,  
Ramakrishna Nagar,  
Mysuru.

5) Mahesh,  
Aged about 34 years,  
S/o Boraiah,  
Door No.313/C, Arogyanagar,  
'A' Block, III Stage, Dattagalli,  
Mysuru.

- 6) Jayamma,  
Aged about 38 years,  
W/o Shivannegowda,  
R/at Door No.1297,  
14<sup>th</sup> Cross,  
Ramakrishnanagar,  
Mysuru.
- 7) Lakshamma,  
Aged about 45 years,  
W/o Ningappa,  
No.2760, Hosabeedi,  
3<sup>rd</sup> Main, 14<sup>th</sup> Cross,  
K.G. Koppalu,  
Mysuru.
- 8) Druva,  
Aged about 35 years,  
S/o L. Basavaraju,  
R/at No.1368/1, New No.K-24,  
B.B. Laya, K.R. Mohalla,  
Mysuru.
- 9) Prabhakara,  
aged about 46 years,  
S/o K. Prahlad Rao,  
Door No.206H,  
9<sup>th</sup> Cross, M Block, 2<sup>nd</sup> Stage,  
Kuvempunagar,  
Mysuru.
- 10) K.K. Kalyani,  
Aged about 35 years,  
W/o Anantharaju,  
No.1695, MIG 'K' Block,  
2<sup>nd</sup> Stage, Dattagalli,  
Chamaraja Mohalla,  
Mysuru.

- 11) Srikanta Prasad,  
Aged about 41 years,  
S/o Anantha. D.N.  
Door No.7, Anantha Nilaya,  
Mallige road,  
Vishweshwara Nagar,  
Mysuru.
- 12) K. Rakshith,  
Aged about 24 years,  
S/o Kumara.
- 13) K. Hemath,  
Aged about 21 years,  
S/o Kumara,

Both defendants No.12 & 13  
residing at Door No.2456,  
5<sup>th</sup> Cross, Siddappaji Temple road,  
KG. Koppalu,  
Mysuru.

**Defendants**

( By Sri. PTP. Advocate for D1 to D5 & L.Rs., of D3(a) to D3(d)  
( Defendant No.6, 7, 8 & 10 – Exparte )  
( By Sri. NKM. Advocate for D9 )  
( By Sri. OSB. Advocate for D11 )  
( By Sri. TRL. Advocate for D12 & D13 )

**-: PARTIES TO I.A.No.1 :-**

Smt. Puttaboramma,

**Applicant / Plaintiff**

**AND**

Sri. Boraiah and others.

**Opponents / Defendants**

**-: ORDERS ON I.A.No.1 :-**

The plaintiff filed I.A.No.1 U/o 39 Rule 1 & 2 of C.P.C. and prays to grant ad-interim order of temporary injunction restraining the defendants or their representatives from alienating the plaint schedule properties in any manner pending disposal of the case.

2. The application is supported by an affidavit sworn to by the plaintiff by name Smt. Puttaboramma.

3. On the other hand the defendant No.1 to 5 filed objections and prays to dismiss the application.

4. Heard, perused the materials placed on record.

5. The following points arise for my consideration:

- 1) Whether the plaintiff has made out prima facie case ?
- 2) Whether the plaintiff has made out grounds that balance of convenience lies in her favour.
- 3) Whether the plaintiff has made out grounds that she will be put to irreparable loss and injury if the application is not allowed ?
- 4) What Order ?

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

Point No.1 : As affirmative.

Point No.2 : As affirmative

Point No.3 : As affirmative.

Point No.4 : As per final order for the following,

**-: REASONS :-**

7. **Point No. to 3** :- In order to avoid repetition of facts Point No.1 to 3 have taken for common discussion.

It is the specific case of the plaintiff that, she is daughter of defendant No.1 & 2 and one of the joint family member consisting of defendant No.1 to 7. The land bearing Sy.No.129 measuring 4 Acres 11 Guntas, Sy.No.144 measuring 1 Acre 4 Guntas and Sy.No.146/9 measuring 4 Acres situated at Dattagalli village, Mysuru are the ancestral properties standing in the name of senior members of the family. The said lands situated at Dattagalli Village have acquired by M.U.D.A., Mysuru for the purpose of development of public utility sites. The M.U.D.A., Mysuru has allotted Item No.1 to 6 of 'A' and 'B' schedule residential sites in favour of members of land losers of joint family consisting of plaintiff and defendant No.1 to 7. The defendant No.1 being the elderly person in the family, out of income from the joint family and the compensation amount received

by him has constructed the buildings upon the few items of plaintiff schedule properties and let out the same to many persons on rental basis. Out of compensation and funds of joint family has purchased remaining items of suit schedule properties, as such all the properties are joint family properties. The plaintiff is in joint possession and enjoyment of suit schedule properties having 1/6<sup>th</sup> share of right, title and interest. No partition is effected in respect of suit properties. Due to misunderstanding developed between plaintiff and defendant No.1 to 7, the defendants have attempted to change the khatha of schedule properties in their favour. The defendants without any authority to alienate the joint family properties have created few documents as Sale Deeds and Gift Deeds in respect of few items of plaintiff 'A' and 'B' schedule properties which are joint family properties behind the back of plaintiff by conceiving her right over the properties. The plaintiff also issued legal notice to defendant No.1 to 7. In fact one of the suit schedule property has sold by defendant No.1 to 7 inspite of notice. At the instigation of defendant No.1 to 7, the defendant No.8 to 11 are also trying to sell the suit schedule properties. If the defendants succeeded in their efforts, the plaintiff will be put to irreparable loss and inconvenience which cannot be compensated in any manner.

The act of defendants is only to take away the plaintiff's share, right, title and interest over the suit schedule properties. The plaintiff has made out prima facie case, balance of convenience is also lies in favour of plaintiff. No hardship will be caused to defendants, if the application is allowed and if the application is not allowed the plaintiff will be put to irreparable loss and injury. Hence, prays to allow the application as sought for.

**8.** On the other hand the defendants contended that, the relationship stated by the plaintiff is admitted. That, the Sy.No.129 measuring 4 Acres 11 Guntas and Sy.No.146/9 measuring 4 Acres 11 Guntas situated at Dattagalli Village and in other places of Mysuru are all self acquired properties of defendant No.1 and 2, as the same were purchased by them through separate Sale Deeds. The Sy.No.145/3 measuring 2 Acres 34 Guntas situated at Dattagalli Village, Mysuru was purchased by one Eranna, who is the elder brother of defendant No.2 and maternal aunt of defendant No.1 by name Chikkolamma. The said Eranna gave his share of property in Sy.No.145/3 to his sister defendant No.2. The suit schedule properties are not the joint family properties and the plaintiff is not in joint possession and enjoyment of suit schedule properties. The

plaintiff has no right in the suit schedule properties. If the application is allowed, the defendants will be put to irreparable loss and injury. The plaintiff has not made out prima facie case, balance of convenience is also not lies in her favour. Hence prays to dismiss the application with costs.

**9.** The plaintiff has produced the following documents in support of her contention. Original General Power of Attorney executed by plaintiff in favour of her son, certified copy of Sale Deed executed by M.U.D.A., Mysuru in favour of defendant No.2 Puttathayamma with respect to Site No.3285 of Dattagalli Village, Mysuru, certified copy of Gift Deed dated 29.12.2008 executed by defendant No.2 Puttathayamma in favour of defendant No.6 Jayamma, certified copy of Gift Deed dated 29.12.2008 executed by defendant No.2 Puttathayamma in favour of defendant No.5 Mahesh, certified copy of Sale Deed dated 03.07.2009 executed by defendant No.6 Jayamma in favour of defendant No.8 Dhruva, encumbrance certificate with respect to Site No.3758, certified copy of Land Loser's Grant Certified with respect to Site No.2231, certified copy of Sale Deed executed by M.U.D.A., Mysuru in favour of defendant No.2 Puttathayamma with respect to Site No.2231 of

Dattagalli Village, Mysuru, encumbrance certificate with respect to Site No.2231, certified copy of Sale Deed dated 05.04.2007 executed by defendant No.2 and 5 in favour of one Y.K. Venu, certified copy of Sale Deed dated 18.06.2007 executed by Y.K. Venu in favour of defendant No.9 Prabhakara, certified copy of Sale Deed dated 19.04.2008 executed by defendant No.2, defendant No.4 and 5 in favour of one Smt. Geetha, certified copy of Sale Deed dated 16.01.2009 executed by Smt. Geetha in favour of defendant No.10 K.K. Kalyani, encumbrance certificate with respect to Site No.322, certified copy of land Loser's certificate with respect to Site No.945/B, certified copy of Sale Deed dated 13.07.2009 executed by defendant No.5 in favour of defendant No.11 Srikanta Prasad, encumbrance certificate with respect to Site No.948/B, Land Loser's grant certificate with respect to Site No.2232, certified copy of Sale Deed executed by M.U.D.A., Mysuru in favour of defendant No.2 Puttathayamma with respect to Site No.2232 of Dattagalli Village, Mysuru, encumbrance certificate with respect to Site No.2232, Land losers Grant Certificate executed in favour of defendant No.1 Boraiah with respect to Site No.313/C of Dattagalli Village, Mysuru, Possession Certificate issued by M.U.D.A., Mysuru in favour of defendant No.1 with respect to Site No.313/C of Dattagalli Village,

Mysuru, certified copy of Sale Deed dated 29.09.1994, encumbrance certificate with respect to house property bearing No.1319, certified copy of Sale Deed dated 08.10.1992, encumbrance certificate with respect to property No.1297, land losers grant certificate issued in favour of defendant No.2 Puttathayamma with respect to Site No.3488, Sale Deed executed by M.U.D.A., Mysuru in favour of defendant No.2 with respect to Site No.3488 Dattagalli Village, Mysuru, encumbrance certificate with respect to Site No.348, computerized R.T.C., extract pertaining to Sy.No.91/2 of Keragalli village, computerised R.T.C., extract pertaining Sy.No.32/2 of Alanahalli Village, computerised R.T.C., extract pertaining to Sy.No.18/2 of Annarayapura Village, death certificate of Puttathayamma, certified copy of of Partition Deed dated 23.01.1950, certificate issued by LAO, CITB LAC 183/1970-71 Sy.No.108 measuring 1 Acre 8 Guntas, encumbrance certificate pertaining to Sy.No.146/5, R.T.C., extract pertaining to Sy.No.91/2 of Keragalli Village, Sy.No.33 of Alanahalli Village and Sy.No.18 of Annarayapura Village, Hunsur Taluk, endorsement issued by SLAO, CITB, Mysuru, R.T.C., extract pertaining to Sy.No.144 of Dattagalli Village and R.T.C., extract pertaining to Sy.No.146/5 of Dattagalli Village, Mysuru.

**10.** On the other hand the defendant No.1 to 5 have produced the photo state copy of MR.No.33/1991-92, R.T.C., extract pertaining to Sy.No.145/3 of Dattagalli Village, land loser's grant certificate pertaining to Site No.3758, land loser's grant certificate pertaining to Site No.3221, land loser's grant certificate pertaining to Site No.3222, land loser's grant certificate pertaining to Site No.945/B, copy of Sale Deed, Patta book, photo state copy of panchayath palu parikath, photo state copy of MR.No.7/1989-90, copy of R.T.C., extract pertaining to Sy.No.129 of Dattagalli Village, copy of land loser's grant certificate pertaining to Site No.2233, copy of Possession Certificate issued by M.U.D.A., Mysuru with respect to Site No.2233, Photo state copy of compromise petition in OS.14/2009 with order sheet, copy of land loser's grant certificate pertaining to Site No.3488, Khatha letter pertaining to Site No.3488, tax receipt to pertaining to Site No.3488, copy of Gift Deed executed by one Ningegowda, copy of MR.No.64/1991-92, copy of R.T.C., extract pertaining to Sy.No.144 of Dattagalli Village, copy of Sale Deed dated 29.09.1994 executed by one Shantha in favour of Puttathayamma, Sale Deed dated 08.10.1992 executed by Sri. C. Ramanna in favour of one Sri. Boraiah, Agricultural Pass Book, copy of Sale Deed dated 17.10.2007 executed by one Kariyappa and his

family members in favour of defendant No.5 Mahesh. Copy of Sale Deed dated 04.06.1969, copy of computerised R.T.C., extract pertaining to Sy.No.33/2 of Alanahally Village and Medical document with respect to treatment taken by defendant No.1.

**11.** The learned advocate for plaintiff contended that the suit schedule properties are ancestral and joint family properties and the plaintiff being a daughter is having 1/6<sup>th</sup> share in all the suit schedule properties. On the other hand the defendant No.1 to 5 contended that the suit schedule properties are self acquired properties of defendant No.1 and 2.

**12.** It is pertinent to note that it is not in dispute that plaintiff and defendant No.3 to 7 are the children of defendant No.1 and 2, as such the relationship between the parties is an admitted fact.

**13.** According to defendant No.1 to 5 Sy.No.145/3 measuring 2 Acres 34 Guntas was purchased by one Eranna who is the brother of defendant No.2 Puttathayamma and subsequently he has gifted the same to defendant No.2 by way of Gift which was acquired by M.U.D.A., Mysuru and the M.U.D.A., Mysuru has granted Item No.1, 3, 4 and 6 of 'A' schedule properties to the

defendant No.2 after acquisition of the same. In support of his contention he has produced photo state copy of MR.No.33/1991-92 wherein, it reveals that the said property was mutated to the name of defendant No.2 from one Eranna. The defendant No.1 to 5 also produced photo state copy of R.T.C., extract pertaining to Sy.No.145/3 wherein, it reveals that initially land measuring 2 Acres 32 Guntas was standing in the name of one Eranna and subsequently it was transferred to defendant No.2 Puttathayamma, but according to defendant No.1 to 5 the said property was gifted by Eranna in favour of defendant No.2 who is the sister of Eranna. But, the defendant No.1 to 5 have not produced the Gift Deed to show that it was gifted by Eranna to defendant No.2 Puttathayamma. As such, at this juncture it cannot be accepted that the said properties were exclusively acquired by defendant No.2. This is one aspect.

**14.** According to defendant No.1 to 5 Sy.No.129 measuring 3 Acres 38 Guntas purchased by Puttathayamma, as such the said properties were self acquired properties of defendant No.2 out of which Item No.2 of 'A' schedule, Item No.1, 2 and 6 of 'B' schedule are the land loser's sites allotted in the name of defendant No.2, as such the said properties are self acquired properties of defendant

No.2. But, it is pertinent to note that no doubt any property acquired in the name of a woman will be her self acquired property and the person who denies the same should prove that the said property was acquired through joint family nucleus. The said fact has to be considered only after full fledged trial, but at this stage it cannot be held that the said property is exclusive property of defendant No.2. Similarly, according to defendant No.1 to 5 Item No.4 of 'B' schedule property, land bearing Sy.No.129, Sy.No.146/9 of Dattagalli Village, Item No.4 of 'B' schedule property are purchased by defendant No.2 and the same were in exclusive property of defendant No.2 and the same is also cannot be considered at this stage which should be considered only after full fledged trial.

**15.** It is the specific contention of defendant No.1 to 5 that, Sy.No.144 was acquired by mother of defendant No.1 through Gift Deed dated 23.03.1943 and the same was transferred to defendant No.1 and other children. Out of which 22 Guntas fallen to the share of defendant No.1 which was acquired by M.U.D.A., and subsequently M.U.D.A., granted land loser's site i.e., Item No.3 of 'B' schedule property, he has also purchased Item No.5 of 'B' schedule property through Sale Deed dated 08.10.1992, Item No.1 and 3 of

'C' schedule property. Whether the said property is self acquired property of defendant No.1 or not can only be considered after full fledged trial.

**16.** At this juncture, this is being a suit for partition and separate possession of legitimate share of plaintiff, it is the duty cast upon the court to maintain the property as it is till the disposal of the suit on merits and until considering the rights of the parties. As such, if the injunction is not granted there will be more number of transactions which would affect the right of plaintiff if any, as such in order to avoid multiplicity of proceedings and to maintain the property intact it is necessary to grant temporary injunction in favour of the plaintiff. Hence the plaintiff has made out prima facie case, balance of convenience lies in her favour and she will be put to irreparable loss and injury if application is not allowed, as such I answer Point No.1 to 3 as affirmative.

**17. Point No.4 :-** In view of my findings on Point No.1 to 3 as affirmative, I proceed to pass the following,

**ORDER**

I.A.No.1 filed by the applicant / plaintiff U/o 39 Rule 1 & 2 of C.P.C. is hereby allowed.

The defendants or their representatives are restrained from alienating the plaint / application schedule properties in any manner till the disposal of suit.

By considering the relationship between the parties there is no order as to costs.

( Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the Open Court on 25<sup>th</sup> day of September 2020 ).

**Sd/-**  
**( VIJETH. V.)**  
**JUDGE,**  
**Addl. Court of Small Causes,**  
**MYSURU.**