

**IN THE COURT OF THE ADDITIONAL SENIOR
CIVIL JUDGE AND J.M.F.C., HUNSUR.**

Present: K.M. SHANKAR, B.A.L., LL.B.,
Addl. Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 4th day of September, 2019

O.S.NO.9/2017

Plaintiff : Parvathamma W/o Kumara,
Aged about 45 years,
R/a No.1782, Giriyabovi Palya,
Mysuru.

(By Sri. RC., Advocate)

V/s

Defendants :

1. Mayappa Bovi S/o Dadda Bovi,
Aged about 73 years,
2. Gowramma W/o Krishnappa,
D/o Mayappa Bovi,
Aged about 51 years,
R/a Janatha Site No.17, Giriyabovi Palya,
Mysuru.
3. Krishna Bovi S/o Mayappa Bovi,
Aged about 49 years,
4. Rama Bovi S/o Mayappa Bovi,
Aged about 47 years,
5. Narayana Bovi S/o Mayappa Bovi,
Aged about 43 years,
6. Kamma W/o Swamy, D/o Mayappa Bovi,
Aged about 41 years,
R/a Kampalapura Post, Periyapatna Taluk.
Mysuru District.

7. Giriyamma W/o Mayappa Bovi,
Aged about 69 years,
8. Mahadeva @ Mada Bovi,
S/o Mayappa Bovi,
Aged about 39 years,

Defendants 1, 3, 4, 5, 7 & 8 are
R/a Emme Koppalu Village, Kasaba Hobli,
Hunsur Taluk, Mysuru District.

(D1, 7 & 8 by Sri MRH., Advocate,
D3 by Sri SSG., Advocate,
D9 by Sri HCR., Advocate,
D2 & 4 - Exparte)

ORDERS ON IA-8 FILED U/O 39 RULE 1 & 2 OF CPC

The plaintiff has made the application and sought for an order of temporary injunction against the defendants restraining them from creating any charge over suit schedule properties till the disposal of the suit.

2. It is asserted in the accompanying affidavit of the IA that the plaintiff is the daughter of the 1st defendant and sister of the defendants 2 to 8. The suit schedule properties are ancestral and joint family properties of plaintiff and defendants and are in joint possession of the same. Therefore, the plaintiff has equal share in the suit schedule properties. Such being the situation, the 1st defendant gifted

the item no.1 of the suit properties in favour of his sons and partitioned the item no.2 of the suit properties amongst them. The defendants 2 to 8 are trying to create charge over the suit schedule properties by availing loans from the banks and also trying to mortgage the suit properties. If they are allowed to do so, it leads to multiplicity of proceedings and the plaintiff will be put to great hardship. She has made out prima-facie case, balance of convenience lies in her favour and irreparable loss would be caused to her if the application is not allowed.

3. This application is resisted by the defendants 1, 7 & 8 contending that the suit schedule properties are self acquired properties of the 1st defendant and they were already partitioned and at the time of partition Rs.3,00,000/- was given to the plaintiff towards her share. In spite of it, at the instigation of some other persons the false suit is filed by the plaintiff, and the application cannot be allowed at this stage. Land measuring 3 acre 7 guntas is the only ancestral property and at the time of partition the 1st defendant had given money to the plaintiff towards her share in the said property. The properties mentioned in the schedule of the application are self acquired properties of the 1st defendant and he got the same out of his own earnings and he is leading his life by availing loans from the suit properties and performed the marriages of his children by availing

loans. In the circumstances, if the application is allowed more hardship would be caused to them.

4. I have heard the learned counsel for the parties and perused the material on record.

5. Points that arise for consideration of the court are:

1. Whether the plaintiff has made out prima-facie case?
2. Whether balance of convenience lies in favour of the plaintiff?
3. Whether irreparable loss, which cannot be compensated by any means would be caused to the plaintiff if the present application is dismissed
4. What Order?

6. Findings of this court on the above points are:

Point No.1: in negative

Point No.2: in negative

Point No.3: in negative and

Point No.4: as per final order for the following:

R E A S O N S

7. Point No.1: prima-facie the material on record goes to show that the plaintiff has filed the suit for the relief of partition and separate possession of her share over the suit schedule properties asserting that they are ancestral and joint family properties of the plaintiff and defendants. The plaintiff is the daughter of the 1st defendant and sister of rest of the defendants, who have refused to give her share in the suit schedule properties. On the other hand, the defendants have admitted their relationship with the plaintiff and have contended that except the land measuring 3 acre 7 guntas in Sy.No. 141/3 rest of the suit properties are self acquired properties of the 1st defendant. Therefore, the plaintiff will not get share in the said properties. Even the share in the said 3 acre 7 guntas was given to the plaintiff at the time of partition by giving Rs.3,00,000/- towards her share. Such being the case, she has no locus-standi to file the suit for partition. In the circumstances, initially the plaintiff has to establish that all the suit schedule properties are ancestral and joint family properties of the plaintiff and defendants and they have refused the share of the plaintiff and there was no partition and no money was given to the plaintiff towards her share.

8. As per the copy of legal notice produced by the plaintiff, she issued the same demanding partition of the suit schedule properties

contending that the 1st defendant has gifted the item no.1 of the suit properties in favour of his sons namely Mahadeva, Krishnabovi, Narayana and Ramabovi and accordingly, they have got transferred khatha in their names in 2009. Further, the item no.2 of the suit properties was partitioned by the 1st defendant among his above referred sons behind the back of the plaintiff and without her knowledge and based on the said partition the khatha was mutated in the names of the sons of the 1st defendant. As per the copies of RTC extract, form no.16 and mutation register produced by the plaintiff the khatha of the properties was transferred in the names of the sons of the 1st defendant based on the alleged gift deed and partition. Except this no document is forthcoming to show that the suit schedule properties are ancestral and joint family properties of the plaintiff and defendants. The plaintiff has filed a copy of sale deed, which is alleged to have been executed by one of the brothers and his family members in favour of one Sujay S. in respect of the land measuring 20 guntas in Sy.No. 141/3. It is mentioned at para 3 of the said document that “ನಮ್ಮ ಬಾಬು ಪಿತ್ರಾರ್ಜಿತ ಮಿಷ್ಕಿ ಜಮೀನು” but, it is not corroborated by any other revenue entry and it is a self serving statement. Therefore, it cannot be relied upon and form an opinion that the said property is ancestral property of the plaintiff and defendants.

9. As per the RTC extracts produced by the defendants 1, 7 & 8 the sons of the 1st defendant have got the khatha of the item no.2 of the suit properties based on partition. Further, RTC extracts reveal that the item no.3 of the suit properties was acquired by the 1st defendant under darkasth and there is no document to show whether the said property was granted for the benefit of the family of the 1st defendant. Rest of the RTC extracts produced by the defendants reveal that the item no.1 of the suit properties was acquired by the sons of the 1st defendant through a gift and khatha was made based on the gift. It is asserted by the defendants that the land measuring 3 acre 7 guntas in Sy.No. 141 is the ancestral property of the plaintiff and defendants. But, there is no prima-facie material to substantiate the same. In the circumstances, the plaintiff is not able to show with prima-facie material that the suit schedule properties are ancestral and joint family properties of the plaintiff and defendants and they are in joint possession of the suit properties. Therefore, at this stage, this court finds no triable issue in the case. Accordingly, the plaintiff has failed to make out prima-facie case. Thus, the point no.1 is answered in negative.

10. Point No.2 & 3; these points are taken up together for common discussion in order to avoid repetition in discussion. As noted supra, the plaintiff is not able to establish prima-facie case. Therefore,

the question of considering balance of convenience and irreparable loss would not arise. Accordingly, these points are answered in negative.

11. Point No.4: in view of the above findings, I proceed to pass the following:

O R D E R

IA-8 filed under Order 39 Rule 1 & 2 R/w

Sec.151 of CPC is hereby dismissed.

There shall be no order as to cost.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in the open Court on this the 4th day of September 2019)

Addl. Senior Civil Judge & J.M.F.C.,
Hunsur.