

KAMS300034132022



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

Present: **Zaibunnisa, B.Com., L.L.B.,**
Addl. Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 21st day of March 2023

O.S.NO.117/2022

Plaintiff : Smt. Sujatha

V/s

Defendants : Seethamma and others

I.A. No. I

Applicant : Smt. Sujatha

V/s

Opponents : Seethamma and others

ORDERS ON I A NO. I

The application is filed by the plaintiff under Order 39 Rule 1 and 2 of CPC; seeking temporary injunction against the defendants to restrain them from alienating and changing khata of the suit schedule properties pending disposal of the suit.

Plaintiff sworn to the affidavit annexed to the application wherein she submitted that she has filed the above suit seeking partition and separate possession of the suit schedule properties. The suit schedule properties are the ancestral properties of the plaintiff herself and defendants No.1 to 9 who are her mother, brothers' wives, children, sisters and their children. That they are all in joint possession and enjoyment of the suit schedule properties. After the death of her father Karigowda, the plaintiff and defendant No.1 to 9 are enjoying the suit schedule properties jointly. The plaintiff and defendant No.1 and 9 are in joint possession of the suit properties. Such being the case, the defendants colluding with revenue officials and against to the interest of plaintiff, trying to create fake documents and also making plan to change the nature of the properties and to dispose off the same without disclosing anything to the plaintiff ignoring her right over the suit properties. Therefore, it is necessary to restrain the defendants temporarily from changing the nature and disposing of the suit properties till disposal of the suit.

2. After service of summons and notice of the application, only defendant No.2, 3 and defendant No.10 appeared before the court and resisted the application by filing written statement and a memo adopting the written statement as objections to the application and prayed to dismiss the application. The facts narrated in the application

and objection will be discussed in detail at the appropriate stage of this order.

3. Heard the arguments of both the side and perused the materials placed and available on record.

4. On the basis of the rival contentions the following points would arise for my consideration:-

1. Whether the plaintiff has made out a prima-facia case in her favour to allow the application?

2. Whether balance of convenience lies in favour of the plaintiff ?

3. Whether irreparable loss and injury caused to the plaintiff in case of non-issuance of temporary injunction?

4. What order?

5. My findings to the above points are as under

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

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

REASONS

6. **Point No.1:-** This is the suit for partition, wherein plaintiff filed I.A-I seeking restraint order against defendants from alienating and also from changing the khata of the suit schedule properties pending disposal of the suit.

7. Materials on record reveal that the plaintiff has come up with the present suit against the defendants seeking the relief of partition and separate possession of her legitimate share in the suit properties. According to plaintiff defendant No.1 is her mother and defendant No.2 and 3 are the wife and daughter of her late brother Vijay, defendant No.4 to 8 are the son and daughters of plaintiff's sister Meenakshi, defendant No.9 is the son of the plaintiff's another late brother Kumar. The suit schedule properties are the ancestral and joint family properties of plaintiff and defendants No.1 to 9, they are in joint possession and enjoyment of the suit schedule properties. During the life time of plaintiff's father Karigowda, he was managing the joint family properties, after the death of Karigowda, the plaintiff and defendant No.1 to 9 were enjoying the suit schedule properties jointly. Now due to the differences the plaintiff and defendant No.1 and 9 could not enjoy the properties jointly. As such plaintiff sought for partition and separate possession of her share in the suit properties, conveyed panchayath in the village, but defendants did not show any interest in this regard. Hence, she has filed this suit for partition of her 1/5th

share in the joint family properties. But the defendant No.1 to 9 colluding with each other and trying to alienate the suit properties in favour of defendant No.10, hence he is made as party to the suit. In view of attempts made by the defendants to change the nature of the suit properties by converting it in order to dispose off, she has filed the instant application to restrain the defendants temporarily from alienating or changing khata of the suit properties pending disposal of the suit.

8. Per contra, the defendants No.2 and 3 who are the wife and daughter of plaintiff's brother late Vijay and defendant No.10 who is the purchaser of suit item No.3, have filed their objection by way of memo adopting their respective written statement contentions and taken a defense that during the lifetime of propositus Karigowda, the ancestral and joint family properties were partitioned between Karigowda and his sons vide registered partition deed dated 21.06.2005 in the office of Sub-Registrar, Hunsur. In fact the suit schedule item No.3 Sy.No.170/9 measuring 25 guntas is self acquired property of husband of defendant No.2 and father of defendant No.3 H.K. Vijayakumar who acquired it through registered partition deed. After the death of H.K. Vijayakumar defendant No.2 and 3 have enjoyed right and possession of the suit schedule properties jointly and disposed the said property in favour of defendant No.10 through registered deed on 28.04.2022. The defendant No.10 has right and possession over Item No.3 property. The defendant

No.2 and 3 have sold the suit schedule item No.3 property bearing Sy.No.170/9 measuring 25 guntas to meet the education, domestic and the marriage expenses of 3rd defendant. The defendant No.10 has been enjoying right and possession without any interruption since the date of purchase. The plaintiff known the fact, the plaintiff and the defendant No.1 to 9 have colluded with each other and filed false suit only to harass the these defendants and to gain unlawfully.

9. During the course of arguments on the application, the leaned counsel for plaintiff rightly brought to the notice of this court that relationship between the plaintiff and defendants is not in dispute nor anyone disputed the origin of the suit schedule properties. It is also admitted that the partition took place in the year 2005 under a registered partition deed was between the plaintiff's father Karigowda and his sons. However, the issue caused bitter dissension in the plaintiff is that the said partition took place only between male members of the family. It is a crucial point to the consideration of the court that, plaintiff has not whispered anything in her plaint and in the instant application about the registered partition of the ancestral and joint family properties that took place between her father and brothers during the life time of her father Karigowda. It is also pertinent to note the documents those relied on by the plaintiff in support of her application. The plaintiff has produced the genealogical Tree of the family which is admittedly not in dispute, she has produced the RTC extracts of the year 2021-2022 pertaining

to the suit schedule item No. **1 to 4** (In the plaint schedule, described 4 items but those are mentioned as item No.1 to 3 instead of item No.1 to 4 since Sl.No.3 is repeated twice may be by oversight) and a copy of her Aadhaar card. The RTC produced along with the plaint discloses that the khata of the suit properties standing in the names defendant No.2 and 3 jointly to certain extent and remaining property is standing in the name of defendant No.9, on the basis of partition. Apart from the said documents she has also produced the RTC extracts of the suit schedule survey number properties for the year 2004-2005 which are shown to be standing in the name of plaintiff's father Karigowda during the said period.

10. The defendants No. 1 and 2 have furnished and relied on the documents like, registered partition deed dated 21.06.2005, Mutation register and RTC extracts of the suit schedule properties, encumbrance certificates, registered sale deed executed by defendants No.2 and 3 in favour of defendant No.10 in respect of suit schedule item No.3 property measuring 0-25 guntas. Learned counsel for defendant No.2 and 3 relying on the para 11 of their written statement vehemently argued that the plaintiff's father Karigowda had orally allotted 4-38 acres of the land in Sy.No.25/39, 40, 41B situated at Vaaranchi village to her daughters, the plaintiff and her sister Meenakshi, the late mother of defendant No. 4 to 8, towards their share but the khata of the said properties continued in the name of Karigowda, since the said land was a darkasth property.

Later, for the legal necessity of the plaintiff said land was sold by plaintiff, her parents and brothers jointly to one Donald Peter Wash under registered sale agreement dated 08.02.2016 for Rs.16,00,000/-. But plaintiff and above said persons failed to execute the absolute sale deed to said Donald Peter Wash. Hence, he brought a suit for specific performance of the contract against the said persons including this plaintiff in OS.No.37/2018 on the file of this court which was ended in compromise on the condition that the said purchaser shall pay additional consideration amount of Rs.5,00,000/- to this plaintiff and others. Therefore, at that time, the plaintiff also undertaken that she would not claim any share in the suit properties. In spite of that the plaintiff colluding with defendant No.4 to 9 came up with the present suit to harass the defendant No.2, 3 and 10, hence, the suit is liable to be dismissed so also the application on hand.

11. At this stage a perusal of documents pertaining to suit schedule item No.1 to 4 discloses that the properties inherited by plaintiff's father Karigowda was partitioned between said Karigowda and his two sons under a registered partition deed dated 21.06.2005, and it is not to be ruled out that a proceedings in OS.No.37/2018 was filed between one Donald Peter Wash and the plaintiff and defendants.

12. There is no doubt that the grant of interim injunction is rests with the discretion of the trial court, however it is also incumbent upon the court that it should

exercise the said discretionary power judiciously and with utmost caution. Here, in the case on hand, the above referred records clearly disclose that the suit properties are not remained as joint family properties of plaintiff's father Karigowda and those are distributed among his sons and after the death of both sons, those are mutated in favour of their legal heirs as per the law of succession. Why the plaintiff kept in all these years since 2005 is not disclosed anywhere. This aspect creates a doubt in the mind of the court with respect to bonafide intention on the part of the plaintiff and it appears that the plaintiff failed to make out prima facie case in her favour. However the contention and rival contentions raised by the parties need trial and at this premature stage, this court cannot come to any conclusion which favours the claim of the plaintiff as sought in the application. One more thing to be noted here that, the defendant No.10 undertaken in unequivocal terms that he will not alienate the suit item No.3 property in favour of anybody pending disposal of the suit.

13. Now at this stage and in the background of above stated materials, here I just wanted to reiterate that 'While considering an application for injunction, it is well-settled, that the courts would pass an order thereupon having regard to : (i) Prima facie case (ii) Balance of convenience (iii) irreparable injury. A finding on 'prima facie case' would be a finding of fact. However, while arriving at such finding of fact, the court not only must arrive at a conclusion that a case for trial has

been made out but also other factors requisite for grant of injunction exist. The Supreme Court in Shanti Kumar Panda V/s Shakuntala Devi, it is held thus: At the stage of passing an interlocutory order such as on an application for the grant of ad interim injunction under Rule 1 or 2 of order 39 of the CPC, the competent court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and the irreparable injury, the three pillars on which rests the foundation of any order of injunction.

14. As stated above grant of temporary injunction is governed by three basic principles, i.e., prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. However, it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction. That the civil court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure. No prima-facie document is produced to show the joint possession of the suit properties with the plaintiff. In the case at hand, absolutely, the plaintiff failed to show her bonafideness in seeking the relief at the hands of this courts. Thus, it is crystal clear that the plaintiff failed to make out the prima-facie case. Accordingly, the point No.1 is answered in negative.

15. **Point No. 2 and 3** : These points are taken up together for common discussion in order to avoid repetition in discussion. As discussed herein above, the plaintiff is not able to establish a prima-facie case in her favour. Therefore, the question of considering the balance of convenience and irreparable loss does not arise. Thus, these points are also answered in negative.

16. **Point No.4**: in view of the findings arrived on the point No. 1, I proceed to pass the following:

O R D E R

The IA No.I filed under Order 39 Rule 1 & 2 of CPC is hereby dismissed.

No order as to cost.

(Dictated to the stenographer, directly on the computer, typed by her, corrected and then pronounced by me in the open Court on this day, the 21st March 2023)

(Zaibunnisa)
Addl. Senior Civil Judge & JMFC
Hunsur