

KAMS400010112019



**IN THE COURT OF  
SENIOR CIVIL JUDGE AND JMFC AT  
KRISHNARAJANAGARA, MYSURU  
Presided Over by Sujatha Madiwalappa  
Sambrani**

**Dated this 15<sup>th</sup> day of December 2022**

**O.S.No.43/2019**

**PLAINTIFFS :** Smt. Gowramma & others  
Vs

**DEFENDANTS :** Smt. Kamamma and others

**: I.A.NO.2 :**

**APPLICANT :** *Smt. Gowramma,  
D/o late Ramegowda @  
Ramanna,  
W/o. Boregowda,  
Aged about 17 years,  
R/at Cheernahalli village,  
Hebbalu Hobli,  
K.R.Nagar Taluk,  
Mysuru District.  
...Plaintiff No.1*

**Vs**

**OPPONENTS :** *1. Smt. Kamamma,  
Since dead by L.Rs.*

2. Smt. Sakamma,  
Aged about 11 years,  
W/o Madegowda,

3. Sri. Chandrashekar,  
S/o late Ramegowda @  
Ramanna,  
Aged about 41 years,  
**Since dead by L.Rs.**

**3a.** Yashoda,  
W/o late Chandrashekar,

**3b.** Kumara,  
W/o late Chandrashekar,

**3c.** Manjula,  
W/o Mahadeva,  
---All are R/at  
R/at Cheernahalli village,  
Hebbalu Hobli,  
K.R.Nagar Taluk,  
Mysuru District.

4. Smt. Mahadevi,37 years,  
W/o late Gajendra,  
D/o. late Ramegowda @  
Ramanna,

1. Smt. Mamatha,40 years,  
D/o. late Ramegowda @  
Ramanna,

6. Smt. Sunitha, 38 years,  
D/o. late Ramegowda @  
Ramanna,

*7. Sri. Raghavendra,  
S/o late Ramegowda @  
Ramanna,  
Aged about 36 years,  
R/at Chowkahalli village,  
Kasaba Hobli,  
K.R.Nagar Taluk,  
Mysuru District.*

*..... Defendants*

**ORDER ON I.A.No.2 :**

The learned counsel for the plaintiff No.1 has filed this application under Order 39 Rules 1 and 2 R/w. Section 151 of CPC., seeking restraining the defendants No.1, 5, 6 and 7 from restraining them from changing of khatha and from alienating the application schedule Item Nos. 1 to 3 properties till disposal of the suit.

2. This application is objected by the defendants No.1 and 7 by filing their objections.

3. Heard and perused the records.

4. The point that arise for my consideration are as follows:

1. Whether the applicant/plaintiff No.1 has made out a Prima-facie case?

2. Whether there is balance of convenience lies in favour of the applicant/plaintiff No.1?

3. Whether applicant/plaintiff No.1 proves that if temporary injunction is not granted she will be put to irreparable loss and injury?

4. What order?

5. My findings to the above point are as follows:

Point No.1 : In the Negative.

Point No.2 : In favour of defendants.

Point No.3 : In favour of defendants

Point No.4 : As per final order,

for the following:

**: REASONS:**

**POINT Nos.1 TO 3:-**

6. These points are interred linked each other, hence, these issues are taken up together for discussion to avoid repetition of facts.

This is a suit for partition filed by the plaintiffs against the defendants seeking 1/10th share in the suit schedule properties by metes and bounds.

7. During the trial the plaintiff No.1 has filed this application by sworn an affidavit and submitted that, they have filed the suit seeking 1/10th share in the suit schedule properties. The original propositus Sri. Ramegowda @ Ramanna had two wives by name Puttamma and Kamamma. Out of their wedlock, they have got six children by name Madegowda, Gowamma, Parvathamma, Chandrashekar, Rani and Gajendra. Among them, Madegowda and Gajendra were dead and Smt. Sakamma and Gowamma, Parvathamma, Chandrashekar, Rani are their legal representatives of said Puttamma and Ramegowda @ Ramanna. After the death of first wife Puttamma, Sri Ramegowda @ Ramanna got married with Smt. Kamamma and out of their wedlock, they have got 03 children by name Mamatha, Sunitha and Raghavendra. The plaintiffs are the children of 1<sup>st</sup> wife Puttamma. During the lifetime of Ramegowda @ Ramanna he has not partitioned the joint family properties, hence the plaintiffs and the defendants are continued in the joint family status. The deceased Ramegowda @ Ramanna during his lifetime has sold the ancestral properties and purchased the suit schedule properties in the name

of his 2<sup>nd</sup> wife Kamalamma. After the death of Ramegowda @ Ramanna, the defendant No.1 has been maintaining those properties. The said Ramegowda @ Ramanna acquired the suit schedule properties in the Tenancy Act and he has sold 1.20 guntas and purchased the property in the name of defendant No.1. The suit schedule properties are in the joint possession of the plaintiffs and defendants. Therefore, the plaintiffs and defendants are entitled for 1/10th share in the suit schedule properties. They have also filed a suit in O.S.No.374/2014 before the Civil Judge at K.R.Nagar, wherein the plaint was returned as the pecuniary jurisdiction of the suit exceeding. Hence the said suit was transferred to this court. The defendants No.1, 5, 6 and 7 are joined to convert the lands into sites and selling the same. If that happened, the plaintiffs would be put to great hardship. Hence in order to maintain the properties in status-quo, an order of injunction is required. Hence the plaintiffs prayed to pass an order of injunction.

8. On the other hand, the defendants No.1 and 7 filed the objections and submitted that, the deceased Ramegowda @ Ramanna during his

lifetime partitioned the suit schedule properties and thereafter the plaintiffs and defendants are in possession and enjoyment of their respective shares and some of them have sold their shares in the suit schedule properties. The suit schedule properties are the self acquired properties of defendant No.1 and also stridhana properties. Except the defendant No.1 nobody is having right, title and interest over the suit schedule properties and these properties are not acquired out of the joint family income. From the date of partition and after the death of Ramegowda @ Ramanna there is no contact between one another. There is no status of joint family over the suit schedule properties. Hence the question of allotting shares does not arise. The defendants No.1 and 7 are the absolute owners of the suit schedule properties and they have not trying to alienate the suit schedule properties in favor of anybody and they have no necessity to sell the same. Even the said suit schedule properties are the self acquired properties of defendants No.1 and 7, hence nobody has right to alienate thee same. Hence prayed to dismiss the application.

9. On perusal of the documents produced by the plaintiffs, the RTC extract in respect of Sy.No. 63/2 measuring 1.05.08 guntas stands in the name of Smt. Kamalamma W/o Ramanna vide MR.No. 17/1985-86 based on sale. The RTC extract in respect of Sy.No. 63 measuring 10.08 guntas stands in the name of Smt. Kamalamma W/o Ramanna vide M.R.No.18/1985-86 based on partition. Further, the RTC in respect of Sy.67 stands in the name of Kamalamma W/o Ramanna to an extent of 24 guntas vide MR.No.19/1985-86 based on partition. These three properties are shown in the application as schedule properties. These RTC extracts prima facie reveals that, Sy.No.63 measuring 1.05.08 guntas mutated in the name of Kamalamma i.e., defendant No.1 based on the sale deed in the year 1985-86. The other two properties in Sy.No. 63 and Sy.No. 67 mutated in the name of defendant NO.1 as partition. These three documents prima facie reveals that, in the year 1985 itself the properties have been partitioned and accordingly khatha has been mutated in the name of defendant No.1.

10. Therefore, based on the documents of the plaintiffs itself at this stage, it cannot be ascertained

that these properties are purchased by Ramegowda @ Ramanna by selling the ancestral and joint family properties. Therefore, a full-fledged trial is required to ascertain that these properties are purchased by defendant No.1 out of the income generated from the ancestral property and there was a partition already held in the family of Ramegowda @ Ramanna during his lifetime. At this stage, based on the RTC extracts produced by the plaintiffs it cannot be held that, these properties are purchased by the defendant No.1 out of the joint family income. Even the defendants NO.1 and 7 have stated that they are not trying to alienate the suit schedule properties and they are not having necessity of the same. Under such circumstances, it is held that the plaintiffs have not made out prima facie case to grant an equitable order of injunction in their favour. If an order of injunction granted against the defendants, they will be put to great hardship and inconvenience. The balance of convenience also lies in favor of the defendants rather than the plaintiffs. Accordingly, I.A.No.2 filed by the plaintiff No.1 seeking an order of injunction restraining the defendants No.1, 5, 6 and 7 from alienating the application schedule properties deserves to be

rejected. Accordingly, **Point No.1 is answered in the Negative and points no.2 and 3 in favor of the defendants.**

**POINT No.4:-**

11. For the reasons stated above, I pass the following:

**: ORDER :**

*I.A.No.2 filed by the plaintiff No.1 under Order 39 Rules 1 and 2 R/w. Section 151 of CPC., seeking restraining the defendants No.1, 5, 6 and 7 from changing the khatha and alienating the application schedule properties till disposal of the suit, is **dismissed with cost.***

(Dictated to the stenographer, transcribed and typed by her, added some paragraph on computer, corrected and then pronounced by me in the open Court, on this the **15<sup>th</sup> December 2022**)

**( Sujatha M. Sambrani)  
Senior Civil Judge & JMFC.,  
K.R.Nagar.**



