

KAMS410005012024



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR

PRESENT

Sri. Chandan S, B.Com., LL.B
Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 02ND DAY OF SEPTEMBER 2024

O.S./131/2024

Plaintiffs : Shivannegowda and others

-V/s-

Defendants : Jayamma and another

I.A. No.I

Applicants : Shivannegowda and others

--- Plaintiffs

-V/s-

Opponents : Jayamma and another

---Defendants

ORDER ON IA NO.1 FILED U/O 39 R-1 AND 2 OF C.P.C

The plaintiff/applicant filed this application to restrain the defendants or anybody acting on their behalf from illegally trespass into the application schedule property and to carryout any agricultural operations in the schedule property.

2. Further the applicant Shivannegowda filed his affidavit along with the application. Further, the affidavit of the applicant discloses that, the plaintiff filed this suit against the defendants claiming partition and separate possession of the schedule

property. Further in the affidavit the applicant stated that, the suit schedule property is their ancestral and joint family property of the plaintiffs and defendants. Accordingly, the plaintiffs are having common share in the schedule property along with the defendants. However, the defendants denying the right and share of the plaintiffs, in collusion with the revenue officials, they were able to transfer the revenue documents pertaining to schedule property in their name and they are trying to illegally encroach upon the schedule property and also they are making efforts to carryout the agricultural operations in the alleged schedule property. Accordingly, the applicant is seeking to restrain the defendants from conducting any agricultural activities in the alleged property by way of injunction. Accordingly, the plaintiffs are seeking to restrain the defendants by allowing the application.

3. Upon service of summons the defendants appeared before this court through their counsel protesting and disputing the pleadings of the plaint and he has filed his written statement and adopted the same as objection. Wherein in the statement of objections discloses that, originally the schedule property was granted in the name and favour of one Smt. Gowamma of Hampapura Village by the land tribunal. Thereafter, as per the order passed by the land tribunal, the property stood in the name of said Gowamma W/o Kenchegowda. Thereafter, after the demise of said grantee Smt. Gowamma her only daughter Jayamma succeeded the revenue documents in respect of the property in her name. Further, she inturn the said Jayamma

sole daughter of Gowramma who has succeeded the property in her favour after the death of her mother on 30.07.2021 she has executed a document called and styled as relinquishment deed (release deed) in favour of her son who is the 2nd defendant herein namely Cheluvegowda. Thereafter, as per the said relinquishment deed, the defendant No.2 transferred the documents into his name. Accordingly, the defendants are the absolute owner of the schedule property and it is stated by the defendants that, the plaintiffs without having any manner of right, title, interest over the schedule property. They have approached this court in order to deceive the legitimate right of the defendants and in order to dolose the right of the defendants. Accordingly, the defendants prays for dismissal of the application.

4. Heard the counsel appearing for the parties regarding the pleadings of the application and contrary to each other and also gone through the documents produced before this court.

5. The following points arise for this court's consideration.

1) Whether the applicants/plaintiffs made out that, they have got a prima-facie case on hand?

2) Whether the applicants further made out that, the balance of convenience lies in their favour?

3) Whether the applicant further made out that, it will cause untold hardship and

irreparable damages to them, if the present application is not allowed?

4) What order?

6. This court findings on the above points for consideration 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

7. POINT NO.1 TO 3:

For the facts and circumstance of the application are concern these three points are interlinked and to avoid the repetition of facts these points are taken up together for common discussion.

8. On verifying the pleadings and counter pleadings of the rival parties to the litigation, the relationship has coated by the plaintiffs is not under dispute. Accordingly, the same is not required any discussion. However, the disputed factors in the pleadings which requires adjudication is, the applicant is claiming share asserting the schedule property is their ancestral property. However, the same is specifically repudiated and denied by the defendants in their statements. Wherein according to the defendants the property granted to one Gowramma. Thereafter, her daughter by name Jayamma succeeded interstate property of her mother and executed the same through relinquishment deed

in favour of the defendant No.2 Cheluvegowda who has transferred the documents in his name.

9. Accordingly, since the pleadings of the plaint in respect of the alleged right of the plaintiffs denied by the defendants in their statements. It is the burden to be proved and establish the pleadings of the plaint is on the plaintiff during the course of trial that may be held subsequently and the plaintiffs will be provided adequate opportunities so as to substantiate her pleadings of plaint by leading proper cogent and convenience materials and evidence before this court.

10. However, since we are adjudicating an a issue raised in an application and the relief claimed by the applicant. Admittedly they are seeking to restrain the defendants by way of injunction to restrain them from conducting any agricultural activities and operations and entering into the suit schedule property. In respect of the said prayer and pleading thereto while considering the application for grant of injunction, the court as to look into consideration the basic elements in relation to existence of prima-facie case, the balance of convenience and irreparable injury and loss.

11. Further, the court has also taken into consideration the conduct and act of the parties and the nature of the suit and subject matter which is pending for adjudication. Further, grant of an injunction order is an equitable relief, a person who has sought for injunction against the co-sharer or owner alleging tress pass and conducting agricultural activities cannot be held

to be genuine or correct. Admittedly it is according to the very plaintiffs, the suit schedule property is the property of the plaintiffs and defendants who are having joint and common right, interest, and share over the schedule property.

12. Though, the said limited right of the plaintiffs in respect of their share is a matter of trial which is to be looked and considered at the final result of the suit. At this very stage, the plaintiffs themselves admitted the relationship of the defendants and the very name of the schedule property is the parties having similar and joint interest. When the defendants admittedly as per the pleadings itself are the co-sharers or owners and where the plaintiffs are claiming a particular share over the schedule property, they have admitted the right of the defendants in respect of the remaining portion of the schedule property at that point of time when plaintiffs themselves specifically admitted relationship and nature of the schedule property, they cannot ask to restrain the defendants who are equally entitled for share and having common interest along with the plaintiffs.

13. As such being the fact, the application to restrain the defendants from anyway to enter into the schedule property cannot be said to be illegal or it will be called as trespass. Accordingly since the defendants are co-sharer according to the plaintiffs and though it is a matter of trial, at this very movement, this court cannot restrain the defendants from the schedule property inferring they are encroacher's or it cannot be

construed and said to be trespass when they are co-sharers as according to the very plaintiffs.

14. Further, when a person who had kept quit for a long time and allowed another to deal with the properties exclusively ordinarily would not be entitled to an order of injunction. Accordingly in all the prospects of the case, considering the factual matrices and the pleadings placed before this court, in the considered opinion of this court, the plaintiffs have not made out the prima-facie case so as to suffice and to prove their claim of equitable relief of injunction at this very juncture.

15. Certainly, if the defendants in whose favour the revenue documents are admittedly standing if they are restrained from the schedule property, it will leads to heavy impact and huge irreparable loss which cannot be compensated in any manner. Accordingly, reserving the liberty to plaintiffs to produce all sort of evidence during trial, at this very stage itself, the said relief of injunction order to restrain the defendants from entering into the property or to carryout the agricultural operations cannot be permitted. Hence, this court without further discussion proceeds to answer **point No.1 to 3 in the Negative.**

16. POINT NO.4:

In view of the above discussions and the reasons mentioned therein this court proceeds to pass the following:-

ORDER

Application No.1 filed by the applicant/plaintiff U/o 39 Rule 1 and 2 of C.P.C is dismissed.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 02nd day of September 2024]

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.

Order pronounced in open court
(Vide separate Order)

ORDER

Application No.1 filed by the applicant/plaintiff U/o 39 Rule 1 and 2 of C.P.C is hereby dismissed.

(Chandan.S)
Prl. Civil Judge & JMFC.,
K.R.Nagar.