KAMS410020522023

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

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

DATED 01ST DAY OF APRIL 2025

O.S./555/2023

Plaintiff : **Kusuma**

-V/s-

Defendants : **Bhagya @ Bhagyamma and others**

I.A. No.I

Applicant : **Kusuma**

--- Plaintiff

-V/s-

Opponents : **Bhagya @ Bhagyamma and others**

--- Defendants

ORDER ON IA NO.1 FILED U/O 39 R-1 AND 2 R/W SEC. 151 OF C.P.C

This application has been came to be registered and filed by the applicant/plaintiff as against the opponent the defendant No.5 and 6, wherein the applicant/plaintiff herein has sought for an order of injunction by this court to restrict, abstain and prohibit the defendant No.5 and 6 or anybody acting on their behalf from causing any alienation in respect of the application schedule property either of the way till the disposal of the suit.

2. Further in an affidavit which is filed in support of the application, the applicant has stated that, she himself along with the defendant No.1 to 5 constituted resemble and they are the members of the undivided constructive joint owners of the suit schedule properties. Further it has also been informed in the affidavit that, the suit schedule properties are the undivided and also the joint interested family properties of the plaintiff and defendants which are the ancestral properties originally belongs to one Kalegowda. After the death of the Kalegowda and his wife Shivamma, the plaintiff and defendants continued to enjoy the possession and occupation the said properties, no division, allocation and partition has been held or taken place till date.

3. Further according to the applicant/plaintiff herein when the plaintiff approached the defendants so to seek and appeal to the defendants to effectuate the partition and to release the share of the plaintiff in all the suit schedule properties. The defendants initially agreed to return the share of the plaintiff by way of partition. However in the subsequent period of time, they refused and dishonored their words eventually they declined and negated to effect partition and to hand over the share of the plaintiff in her favour. Further it has been submitted and revealed in the affidavit of the plaintiff that, when the khata in the RTC has been recently perused and observed, it has came to the notice and knowledge of the plaintiff that, the land bearing Sy.No. 167 measuring to an extent of 2 acres 13 guntas of land

has been entered in the name and favour of one Lakshmi in the RTC. Further it has been canvased, urged and enumerated in the pleadings of the affidavit that, as per the sale deed dated 20.04.2023, item No.2 of the schedule property has been concocted and created sale deed it was executed in favour of the 6th defendant. Therefore, based upon the said entries unlawfully created and concocted, the defendants in order to snitch and to snatch the property if the plaintiff herein they are looking to alienate the schedule property behind the plaintiff without her knowledge and consent. Hence, prays for allowing the application and to retain the property without there being any alienation till the disposal of the suit.

4. On the other side contrary and adverse to the application and as against the applications of the applicant herein, the defendants through their advocate preferred their statement repudiating declining and dissenting the views expressed by the plaintiff herein. The statement of the defendant No.1 would indicate and reveals that, the item No.2 of the schedule annexed along with the plaint has been purchased by the defendant No.6 out of the funds provided and derived from the matrimonial home of the 6th defendant. Accordingly, from the financial assistance and the money which was lent by the matrimonial home of the defendant No.6, she has purchased the said item No.2 of the schedule property through the deed of sale from its erstwhile previous vendor Kalegowda as per the deed of sale dated 20.04.2023. Therefore, according to the 6th defendant, the item

No.2 schedule property is absolutely independent separate and self acquired property of the defendant No.6. Upon which the plaintiff and the other defendants who are not having any kind of right, title, share or interest over the said property and the said property is not the family property of the plaintiff and defendants. Hence, prays for dismissal of the application.

5. Further the defendant No.1, 3 and 4 herein while appearing before this court representing through their advocate, they have also filed their objections adverse contrary and challenging the application and suit, wherein the statement would suggests and it is explores before this court that, the plaintiff herein had already registered and instituted the suit in O.S. No. 405/2014 against the defendant No.1 to 5 for the relief claiming and seeking for the partition. The said suit for partition had been already decreed by the Hon'ble Civil Judge & J.M.F.C., Court, Hunsur, in O.S. No. 405/2014 and the decree has also been followed. Further as per the said judgment and decree passed in O.S. No. 405/2014, final decree proceedings were also been initiated and came to be registered which is numbered as FDP No. 03/2020 and the same is pending adjudication before the said court. Further according to these defendants, there is already division and partition among the parties has already been carried out and taken place against the suit which has been preferred only to snitch, clinch and to defraud these defendants.

6. Further the defendant No.2 and 5 cum up before this court through their respective advocate, where upon the said defendants have also filed their statement of objections and wherein they have opposing the pleadings of the plaint, they have presented their statement separately. Further from the statement of the defendant No.2 and 5 it could be seen noticed and disclosed from the statement of defendant No.2 and 5 that, the suit is hit U/s 11 of C.P.C. i.e., under res-judicata.

7. Further it has been propagated and postulated in the said statement that, since the suit in O.S. No. 405/2014 has been already initiated and decreed which was registered by the very same plaintiff herein as against the defendants and on account of its attaining finality by virtue of the judgment and decree passed therein as per the order of Principal Civil Judge, Hunsuru, in O.S. No. 405/2014 dated 13.12.2019. Therefore, according to these defendants, who are present before this court, the 5th defendant has purchased the item No.1 of the schedule property from its original erstwhile owner Kalegowda through the deed of sale dated 20.04.2023. Therefore, he himself is having the independent, separate and inherent right, interest and possession over the said item No.1 of the property. No other persons could seek or having any shares or right against the item No.1 of the property which is belongs to the defendant No.5 and it is the separate independent property of the defendant No.5. Therefore, prays for dismissal of the said application imposing cost.

8. Heard, the counsel appearing for the plaintiff and also the opponents/defendants herein. Upon considering the pleadings and also verifying the pleadings, materials available on records.

9. The following points which would arise before this court for its kind consideration are as fallows:

1) Whether the applicant/plaintiff has made out that, she has got a prima-facie case on hand?

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

3) Whether the applicant further made out that, it will cause untold hardship and irreparable damages to her, if the present application is not allowed?

4) What order?

10. This court findings on the above points for consideration are as under:

Point No.1 : In the Affirmative
Point No.2 : In the Affirmative
Point No.3 : In the Affirmative
Point No.4 : As per final order
for the following:

REASONS

11. 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.

12. Upon appreciating the pleadings along with the materials placed before this court, while adjudicating and deciding the application which is filed U/o 39 R-1 and 2 of C.P.C., the relevant factors to be considered by the court is regarding existence of prima-facie factors and case which involves finding of facts as to whether a case for trial is made out and also whether other factors requisite for grant of injunction exists. Further, the court has to consider the balance of convenience in respect of the parties and irreparable injuries or loss if any, that may be suffered by the plaintiff in the case of refusal to grant injunction.

13. Further, admittedly there is no evidence on record to consider the applications on the basis of the evidence. Further, the parties to the suit are yet to lead their evidence. Accordingly, in the absence of any evidence to discuss the application, this court has to consider only the available materials which are presented before this court by the respective parties to the suit.

14. Upon verifying the pleadings contrary and also vetting out the materials available before this court. The plaintiff is having the undivided separate share which could be divided and allotted in favour of the plaintiff which was denied upon seeking for partition would warrant and it leads to filing the suit. However according to the defendants as per their statement which would

indicate, suggests and expressed before this court that, the suit has been filed by the plaintiff against the defendants unlawfully and despite the suit which is already filed by the plaintiff in O.S. No. 405/2014 which has already been decreed, in spite of the same, the suit has been again filed before this court. Further according to the defendant No.5 and 6, the item No.1 and 2 properties are their separate absolute independent properties on account of which they were purchased and bought from their own money, from one Kalegowda as per the sale deed dated 20.04.2023. Therefore, the plaintiff and the other defendants could do nothing to claim or seek any share in the property suit item No.1 and 2 which is absolute independent and inherent belongs to the defendant no.5 and 6. Therefore, they seeks to dismissal of the suit along with the applications which has been filed by the very applicant/plaintiff.

15. Therefore, the matter that would be required for adjudication before this court is very nature of the suit, whether the suit schedule property is still prevailing in the joint status and constructive possession and existence or whether the said properties are still in the joint interested properties where the plaintiff who could claim along with the other defendants is a main factor, serenity and which is absolutely need of the hour which could be dealt determined on account of the conflicts and difference regarding the very nature and existence of the property in dispute. Therefore, this court has to decide adjudicate, determine whether the plaintiff herein is having any share to

claim in the properties furnished along with the plaint or whether the item No.1 and 2 properties being purchased and standing in the names of the defendant No.5 and 6, whether those properties are separate self acquired independent properties of the defendant No.5 and 6 is to be looked into.

16. Further notably as could be seen from the divergent contrary pleadings that have been presented before this court, the relationship among the parties is no were disputed and there is no constrain ambiguities or rift between the parties regarding their nexus, relationship and connections with the parties. Further the suit item No.1 and 2 of the properties are presently reflecting executing entered and the same have been standing in the name of the defendant No.5 and 6 is also clear specific and also apparent from the documents that have been presented before this court. Hence, whether these properties are the self acquired independent properties of the defendant No.5 and 6 or whether the plaintiff and the other defendants are also having any kind of interest, right or share over the item No.1 and 2 of the properties has also to be ascertained, dealt, clarified and adjudicated during the pending disposal of the suit.

17. Further in respect of the contentions and the averments made in the statement that, the suit is hit U/s 11 of the C.P.C. on the ground of res-judicata since the previous suit in O.S. No. 405/2014 which was already registered by the plaintiff was decreed by the Hon'ble Principal Civil Judge, Hunsuru, is

concern, there are no such documents which are produced before this court that, the application schedule properties are also the subject matter of the suit in which the decree in O.S. No. 405/2014 has also been passed pertaining to the schedule property. Therefore, if the defendants are under the view opinion and expression that, these properties are already dealt and allotted in favour of the plaintiff and defendants, it could be separately dealt during the further proceedings of the suit.

18. However at this stage this court cannot go in to the matter regarding merit of the suit and decide the case on its merit. Further since we are adjudicating in respect of the application filed U/o 39 rule 1 and 2 C.P.C., till the parties to the suit establish their pleadings of plaint, the subject mater of the suit has to be maintained intact. The plaintiff has made out prima-facie case, if the defendants alienate the schedule properties during the pendency of the suit, then it may cause untold hardship and irreparable loss and damages. Hence the said application requires to be allowed at this juncture.

19. Hence the considering all these factors, in order to avoid the multiplicity of the proceedings and to retain the property free from all encumbrances and to maintain the same intact, this court is of the opinion that, the disputed property has to be maintained and retained as it is and intact without any alienation. Further, restraining the defendants from causing any alienation can no way prejudice the case in favour of the plaintiff

and it will certainly not effect adversely to the interest of the defendants in proving and establishing their pleadings of written statement. Admittedly, the schedule properties are now standing the name of the defendant No.5 and 6. Further, it is the liability and obligation on the part of the applicant/plaintiff to prove the issue regarding the nature of the schedule properties and she is also need and required to prove before this court leading evidence that, the properties are the ancestral properties belongs to all the family members of the plaintiff and defendants together which was opposed and negated by the defendants in spite of their request for effecting partition and to allot her share. Hence, the plaintiff has made out prima-facie case so as to protect her interest till the disposal of the suit and the balance of convenience lies in her favour. Hence, with the above observations, this court inclined to answer the **points No.1 to 3** are in the **affirmative**.

20. 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 under Order 39 Rule 1 and 2 R/w Sec. 151 of C.P.C is hereby allowed.

The defendant No.5 and 6 or anybody acting on their behalf are

hereby restrained from causing any alienation in respect of the application schedule property till the disposal of suit.

No orders as to cost.

[Dictated to the Steno, transcribed by her. Corrected and then pronounced by me in the Open Court on this the 01st day of April 2025]

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