

KAMS410023402019



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 SEPTEMBER 2025

O.S./239/2019

Plaintiffs : Parvathamma and others

-V/s-

Defendants : Kanthegowda and others

I.A. No.1

Applicants : Smt. Parvathamma and others

--- Plaintiffs

-V/s-

Opponents : Kanthegowda 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 is presented and the same has been preferred before this court by the applicant/plaintiffs herein and it was solicited, requested and craved for order of injunction so as to restrict, prohibit and to direct the defendants or anybody claiming on their behalf from causing any kind of transfers, alienation in respect of the suit schedule properties in any manner till the disposal of the suit.

2. Further in order to exacerbate, augment, enhance and to support the application, an affidavit is also laid and presented before this court. Where the applicant/plaintiff has submitted, asserted, coated and presented in the said affidavit that, the mother of the plaintiff late. Sannamallamma had 4 sons, late. Boregowda, Kanthegowda the defendant No.1 herein, Swamy the 4th defendant and late.Ramesha and she had also got 3 daughters namely Smt.Parvathamma, Smt.Manjula and Smt. Rathnamma are the daughters who are the plaintiffs herein in the instant suit. The defendant No.2 Thayamma is the wife and the 3rd defendant Muddukrishna is the son of late. Boregowda. The 5th defendant Gowramma is the wife and defendant No.6 Dhanaraju is the son of late.Ramesha. Further the statements asserted and disclosed in the affidavit would reveal and enunciated that, the mother of the plaintiffs Sannamallamma during her lifetime, she was maintaining and looking after the suit schedule properties and she died, passed away, demised, necrotic and exanimate without executing any documents and intestate.

3. According to the plaintiffs, the schedule properties annexed, disclosed, shown, expressed and furnished along with the plaint are the joint, undivided, gritty, huddle, cumulative, constructive and subtle properties of the entire family and the plaintiffs along with the defendant No.1 to 6 are in joint, undivided, conjoint, combined, collected, cumulative, constructive possession and enjoyment over the said schedule

properties. After the death of their mother, the sons of the deceased Sannamallamma got transferred the revenue records into their names.

4. Further the plaintiffs being the successors, children and daughters of the Sannamallamma, they are also owes, eligible, entitled and deserved to get obtain and succeed their lawful, bonafide, just, chaste, legal and legitimate poise, iso and the equal share and rights over the properties along with the defendants. When the plaintiffs approached, gad, gallivant and went to the defendants and presented their legal and lawful appeal and request to effect partition and bifurcation the schedule properties and allot their legitimate and lawful share, the defendants have given evasive, swank, slunk, humbug, barrat, flub and replied breeziness and unprovable. Further they have submitted and replied that, the suit schedule properties are belongs to the defendants and the plaintiffs have no right claim, title and share over the suit schedule properties.

5. Further according to the averments, conversation, remise, information, transmission and submission, rendered in the affidavit, the defendants have conveyed, disposed, sold and parted the item No.1 of the schedule property towards and in favour of one K.B.Vijaykumar, the defendant No.7 who inturn has disposed of the same towards the 8th defendant K.N.Basanth who further disposed of the property in favour of 9th defendant K.B.Prabhushankar. According to the narrations and the

contention of the plaintiffs that, the said illegal, unjust, unlawful, unethical, lawless and bogus sale transaction have been taken place, behind the notice, witting, consent, knowledge and fathom of the plaintiffs herein.

6. Further as per the apprehension, speculations and inference of the plaintiffs that, in order to hoodwink, larceny, plunder, depredate and bamboozle the share of the plaintiffs, the defendants are presently making their endures, attempts and efforts to convey, sale and dispose of the schedule properties in a manner and way which is not known to the law unlawfully, illegally, lawlessly, illegitimately and unjustly. Therefore, the application being introduced, instated, submitted and instilled before this court so as to prevent the defendants from alienating, conveying, disposing and selling the property until disposal of the suit.

7. Wherein the defendants declining, negating, refusing disdaining, dissented and disobeying the entire pleadings of the plaint, the written statement has been submitted, produced and the same is preferred before this court. Wherein the relationship nexus, propinquity, liaison, accomplice and connection between the plaintiffs and the defendants is not under dispute, the same being accepted, endorsed, consented and admitted by the defendants. However, while disputing and without agreeing the other pleadings of the plaint, the defendants in their statements, they have submitted that, the suit item No.1 has been subsequently changed phoded and bifurcated into Sy.No.9/1

8. On the other side contrary, emulating, striving, contradicting, swirling and repudiating the pleadings of the plaint, defendants have filed their objections towards apposition, resilience and contrasting the views expressed in the application. Further the entries and the statement of the objections of the defendants succinctly, laconically and briefly it would emerge and it reflects that, the suit item No.1 subsequently, it has been transferred, changed and altered as Sy.No.9/1 contain totally 2 acres 5 guntas of land. Out of said total extent of 2 acres 5 guntas of land, 23 guntas has been purchased, acquired and got over by the Ramesha the father of the 6th defendant 30 years ago and the remaining 1 acre 22 guntas of land has been the property of the entire joint undivided family. Accordingly, all the revenue records were transferred, entered and recorded in the name of the 1st defendant Kanthegowda in respect of 2 acres 5 guntas of land in Sy.No.9/1 and the said item No.1 property being already conveyed, disposed and it was transferred to 7th defendant on account of the partition deed for the purpose of family legal necessities, obligation and requirements.

9. Further the said fact and the entire proceedings which were taken place in the family has been within the knowledge, notice, cognizant, witting, fathom and ideology of the plaintiffs. Further, they are also aware and conversant regarding the said transaction. All the family members are properly, equally, poise, iso and adequately distributed entire sale consideration amount.

10. Further other than the item No.1 property, other several properties under multiple survey numbers was belongs to one Kuntegowda and in a partition which has been orally donned, mutated, processed, held, occurred, taken place and solemnized between the family members, all are equally, separately, adequately and legibly imported, conceded, allotted, apportioned with their respective shares and thereafter, the respective parties and allottees of their respective portions and share, transferring the khata to an extent, area, amplitude and portion which was fallen, apportioned and conceded towards their share, they have got entered, mutated, transferred and changed the revenue and other relevant documents in their respective names and all the respective persons had disposed, dispersed, conceded, conveyed, sold and alienated certain properties which were left, allotted, conceded and delivered towards their respective shares. The plaintiffs being the members of the family and having the propinquity, nexus, connections, liaison and relationship with the defendants, they are also being the children Sannamallamma, they are very much aware, cognizant, notice, knowledge and fathom regarding the entire transaction, activities, process and the initiation which are dealt pertaining to the schedule properties.

11. However, although having wide, gallant, cimmerician, whopping and oodles knowledge and awareness regarding all these material facts, facet, facade and ambit of all the process and transaction, the suit has been launched, instituted, brought

and laid before this court, concealing, quelling, hiding, subjugating, obfuscating and occluding the real facts and facet and proceedings in order to defraud, deceive, chouse, bilk, larceny, plunder, plash, souvenir and hoodwink the defendants property in an unlawful, illegal, unjust, unprovable, foul, dishonest and bogus pleadings. Hence, prays for dismissal of the application.

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

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

1) Whether the applicants/plaintiffs have 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 applicants further made out that, it will cause untold hardship and irreparable damages to them, if the present application is not allowed?

4) What order?

14. 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

15. 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.

16. 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.

17. 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 applications, this court has to consider only the available materials which are presented before this court by the respective parties to the suit.

18. Upon noting out referring and perusing the contents, pleadings, repatriation, predication, propositions, grounds reasons, patronized, assigned and deployed in the pleadings of the plaint application and the objections, it is the very statements, stature, contention, submissions and advertence which has been patronage, portrayed, auspice, postulated, proposed and depicted in the plaint and affidavit is that, they are the children of Sannamallamma, they are also owes, entitled, eligible and deserved to get succeed own and to obtain their equal separate poise and iso legitimate share over the suit schedule properties. However, without their knowledge, notice, consent and permission of the plaintiffs herein, the suit item No.1 being sold, disposed, conveyed and it has been disposed of in favour of one 7th defendants.

19. Therefore, the said sale deed which was executed towards the 7th defendant dated 09.04.2007 is not having any bindings, effect, repercussion and impact on the share of the plaintiffs. When the plaintiffs taken to urge, crave and requested the defendants in order to bifurcate, divide, partition, segregate and allot the plaintiffs lawful, legal, licit, legitimate and bona-fide share over the suit schedule properties, the defendants replied, evasively, slunk, flunk, shadily, unprovable, breeziness. Further the defendants replied and stated that, the property belongs to the defendants alone and they refused, disdain, declined and they ave disavowed the bonafide, legitimate, chaste and legal plea, invocation and representation of the plaintiffs.

20. Further on the contrary, repelling, retreating, foiling, anguishing, immune, striving and disputing the said view, proposition, expression, predication, contents and statement of the plaint, the defendants contrarily, combat, repugnant and contorting the said propositions, expressions and noting of the plaint, they have stated, adverted and proposed that, all the suit schedule properties being already segregated, septate, divided, apportioned, bifurcated, segmentalise and apportioned among the family of the plaintiffs. Wherein all the plaintiffs and defendant No.1 to 6 got divided, bifurcated, apportioned in an oral partition which was followed, held, solemnized, taken place, nurtured in the family of the plaintiffs and defendants.

21. Further on account of such partition and in the light of the said division their respective portions have been transferred, changed, mutated and got entered to their respective names in the revenue records pertaining to the quantity and portion of the share allotted, bifurcated and distributed to their names. Further, out of the said properties, the plaintiffs and the defendants are already sold, disposed and conceded some properties which were left, allocated and issued towards their shares. But the plaintiffs having all these notice, knowledge, awareness, conversing, cognizant, witting and fathoming all the family transaction. The suit has been launched, inducted, brought and enrolled before this court with unlawful, lawless, illegitimate, dishonest, illegal and inappropriate intention in order to obtain, bilk, clinch, grab, swindle, plunder and larcinate

the property of the defendants unlawfully and in a manner which is not known to the law established.

22. 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, same and embalmed. The plaintiffs have 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.

23. Hence 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 properties have to be maintained intact without there being any alienation. Further, restraining the defendants from causing any alienation can no way prejudice, impair, flub, disdain, extinguish, vandalize, annihilate, fordo and fling away the case in favour of the plaintiffs and it will not effect adversely to the interest of the defendants in proving and establishing their pleadings of written statement. Admittedly, the schedule properties is now standing in the name of the defendants. Further, it is the liability and obligation on the part of the applicant/plaintiffs to prove the

issue of their title and ownership in respect of the schedule properties during the course of trial. Hence, the plaintiffs have made out prima-facie case so as to protect their interest till the disposal of the suit and the balance of convenience lies in their favour. Hence, with the above observations, this court inclined to answer the **points No.1 to 3** are in the **affirmative**.

24. 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 of C.P.C is hereby allowed.

The defendants or anybody acting on their behalf are hereby restrained from alienating application schedule properties 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 September 2025]

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