

KAMS500005082020



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : Sri. Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge, Nanjangud.

Dated : This the 9th day of December 2021

O.S.No. 102/2020

Plaintiff/s : Smt. Shivamma

-V/s-

Defendant/s : Smt. Puttamma & others

I.A. No.1

Applicant/s : Shivamma
.... plaintiff

-V/s-

Opponent/s : Puttamma and others
... defendants

ORDERS ON I.A. No.1 DATED 13.10.2020 UNDER
ORDER 39 RULE 1 & 2 OF CPC

The plaintiff has filed I.A. No.1 dated 13.10.2020 U/o 39 Rule 1 and 2 of CPC seeking to grant ad-interim order of temporary injunction against the defendants restraining them from alienating the suit properties pending disposal of the suit.

2. The averments in brief in the affidavit filed in support of the present application is as follows: The suit is for partition and separate possession of ancestral and joint family properties which originally belonged to Veerappa and after his death his son Veerabhadraiah was managing the said properties on behalf of joint family. The demand for partition was refused and defendant No.1 fraudulently gifted the suit item No.5 to the defendant No.7 on 29.09.2020 and hence, prayed to allow the I.A.

3. The defence of the defendant No.2 is that there is no intention to alienate the property and plaintiff is not

entitled for any right over the suit property and the I.A. is filed to trouble the defendants and the case of the plaintiff is false and I.A. is liable to be dismissed.

4. The defendant No.1 and 11 have adopted the written statement as objections to the present application. According to them the plaintiff is stranger to the family of deceased Veerappa and after the death of Veerappa his son Veerabhadraiah managed the property and there was oral partition among the children of Veerappa and the children of defendant No.1 and Lingappa. The item No.3 jointly stand in the name of defendant No.3 and Lingappa. The item No.4 stands in the name of defendant No.1 and defendant No.2 to 7, item No.5 stands in the name of defendant No.11 as per the gift executed by defendant No.1. The suit is bad for non joinder of necessary parties and have not challenged the execution of the gift deed and prayed to dismiss the I.A.

5. Heard. Perused the pleadings and materials placed on record.

6. The points that arise for consideration are as follows:-

1. Whether the plaintiff has made out prima facie case ?
2. Whether the balance of convenience lies in favour of plaintiff ?
3. Whether the plaintiff will be put irreparable injury if the temporary injunction is not granted ?
4. What order ?

7. The above points are answered as follows :-

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

R E A S O N 17.02.2020 S

8. **Point No.1**:- It is relevant to note that the defendant No.2 to 10 have admitted the relationship of the plaintiff and defendants, but denied the nature of the suit property. According to them after the death of Veerabhadraiah khata stands in the name of defendant

No.1 and husband of defendant No.2 and there is no partition till date. They have prayed to grant their share per contra, the defendant No.1 and 11 have denied the relationship of the plaintiff and pleaded about the prior partition in the family. According to the defendant the plaintiff is born in the year 1956 as per the age mentioned in the cause title and hence the plaintiff is not a daughter of late. Veerappa.

9. The plaintiff is claiming right as a daughter of the propositus, as per the amended provisions of the Hindu Succession Act. There is no registered partition in the family nor any defenses enumerated under proviso to Sec.6(1) of the Hindu Succession Act are raised by the defendants. From the above pleadings it is relevant to note that earlier the property stood in the name of Veerappa and Veerabhadraiah etc, is not disputed. The said property are the ancestral and joint family properties are not in dispute. The relationship of the plaintiffs with the propositus being

the dispute involved herein, it requires recording of evidence and decision on merits. Succinctly stated there exists a triable issue involved in the suit.

10. In the decision reported in 1992(1) SCC 719 (*Dalpath Kumar Vs. Prahlad Singh*), the Hon'ble Apex Court has observed as follows:

“The prima facie case is not to be confused with prima facie title, which has to be established, on evidence at the trial. Only prima facie case is a substantial question rise, bonafide, which needs investigation and a decision on merits.”

11. Hence, as there exists a disputed question of facts which requires recording of evidence and decision on merits in this suit, there is a prima facie case involved in the suit. Hence, Point No.1 is answered in the Affirmative.

12. **Point No.2 and 3** :- When the plaintiff has made out prima facie case, if the order of temporary injunction is not granted, the right claimed by the plaintiff may get jeopardised and become infructuous. Her legal

rights if infringed, cannot be measured in terms of money. Hence, she would be put be irreparable injury if the temporary injunction is not granted. Similarly, the balance of convenience lies in her favour as she prima facie appears to have exclusive possession of the properties. Hence, Point No.2 and 3 are answered in the **Affirmative**.

13. **Point No.4:-** In view of the findings on the points supra, this Court proceeds to pass the following:

ORDER

I.A. dated 13.10.2020 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrained from alienating the suit schedule properties in any manner, pending disposal of the suit, by way of temporary injunction.

(Dictated to the Stenographer, transcribed by her, corrected, initialed and then pronounced by me in open Court on this the 9th day of December 2021).

(Ganapathi Prashanth.M)
Senior Civil Judge, Nanjangud.

Order pronounced in the open court, vide separate order

ORDER

I.A. dated 13.10.2020 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrained from alienating the suit schedule properties in any manner, pending disposal of the suit, by way of temporary injunction.

Senior Civil Judge, Nanjangud.