

**IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC
NANJANGUD AT NANJANGUD**

Present : **Smt.Vinutha.D.S. B.Sc.(Seri), LLB.**
II Addl.,Civil Judge & JMFC., Nanjangud

Dated 29th day of September, 2020

O.S. No.580/2018

Plaintiff : Mudappa,
S/o Late Mallaiah,
Aged about 65 years,
R/at Kathvadipura Village,
Kasaba Hobli,
Nanjangud Taluk,
Mysore District.
[By Sri.GMS. Adv]

V/s

Defendant : 1 Kalappa,
S/o Late Mallaiah dead by Lr's
1a Nagamma,
W/o Late Kalappa,
Aged about 50 years,
1b Naganna,
S/o Late Kalappa,
Aged about 50 years,
1c Mahadeva,
S/o Late Kalappa,
Aged about 47 years,
1d Mahesha,
S/o Late Kalappa,
Aged about 43 years,
All are r/at Kathvadipura Village,
Kasaba Hobli,
Nanjangud Taluk,
Mysore District.
2 Special Land Acquisition officer,
KIADB, Mysore Zone,
Metagalli, Mysore-16.

**[By defendants No.1, 1(a) to 1(d) Sri. KLS
Adv]
[By Defendants No.2 Sri.S.Swamy]**

ORDERS ON I.A.No. 6 & 7

Defendant No.1(B) one of the LR's of deceased defendant No.1 has filed I.A. No.6 & Plaintiff has filed I.A.No.7 U/O 39 R 1 & 2 r/w 151 of C.P.C., both praying to grant temporary injunction against the defendant No.2 restraining defendant No.2 from disbursing the compensation amount awarded in respect of the suit schedule property to any persons till disposal of suit.

2. All these interim applications are supported by separate affidavits where in the contentions raised are same. In the affidavits it is stated that this case is filed by plaintiff for partition and separate possession of the plaint schedule property that is praying for $\frac{1}{2}$ share in suit schedule property and also that he is entitled to receive half of compensation amount awarded by defendant No.2. The suit property described in plaint is an agricultural land bearing Sy.No.67/1, measuring 01 acre 07 guntas which is situated at Kathvadipura Village, Kasaba Hobli, Nanjangud Taluk, Mysore District which is bounded on East by land bearing Sy.No.72/1A2, West by land bearing Sy.No.68/1-2, North by land bearing Sy.No.71 and south by land bearing Sy.No.55.

Further, it is also stated that during pendency of suit, plaintiff and LR's of defendant no.1 have entered into compromise, accordingly compromise petition is also filed which is pending for disposal. Such being the case, on 19.09.2020 it is learnt by both parties that their younger grand father's daughter – in -law had filed a suit before the court of Hon'ble Senior Civil Judge, Nanjangud in O.S. 127/2019 for partition and separate possession with respect of suit schedule property in this case. In the said O.S.127/2019 plaintiff and defendants there in have filed

compromise petition on 18.09.2020 and the same has been accepted, ordered on 19.09.2020 before Lok-Adalath. It is further stated that if they succeed in claiming compensation amount from defendant No.2 then the plaintiff and LRs of defendant No.1 in this case will be put to great hardship. Hence prays to grant temporary injunction against defendant No.2 not to disburse the compensation amount to any body till disposal of suit.

3. Notice on I.A. No. 6 was duly served on defendant No.2. But no representation on defendant No.2 side. Again now plaintiff has filed application for same prayer. Therefore, no other notice to defendant No.2 on this application of plaintiff is required. Defendant no.2 neither appeared nor filed any objections. Hence objections to these applications taken as nil.

4. Heard. Perused the materials on record.

5. Now the following points arise for my consideration ;

1. Whether there is a prima-facie case in favour of the plaintiff and defendant No.1(B)?
2. Whether the balance of convenience lies more in favour of the plaintiff than the defendants ?
3. Whether there is a likelihood of irreparable loss or injury to the plaintiff, if temporary injunction is denied as sought by him ?
4. What order ?

6. My answer to the above points are as follows:

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

7. **Point No.1 to 3 :-** Admittedly, this is a suit for partition. According to plaint averments, the suit schedule property originally belong to his father Late Mallaiah. Defendant no.1 is brother of plaintiff. The said Mallaiah had four children; two sons plaintiff and defendant No.1 and two daughters by name Jayamma and Mahadevamma. During his life time, he equally partitioned his joint family properties and accordingly few properties were given to his sisters by way of settlement deed dated 15.07.1976. Therefore his sisters do not have any right or title over suit schedule property & so they are not made as to parties to this suit. Further that the suit schedule property was jointly allotted to share of the plaintiff and the defendant No.1. Since then the plaintiff and the defendant No.1 are in joint possession and enjoyment of the suit schedule property. Till day they could not get it divided between themselves. In the mean time the defendant No.2 has acquired the suit schedule property, acquisition proceedings Gazette notification dated 14.06.2011 in CI84-SPQ-2011 Bangalore, which is recently known by plaintiff. Thereafter, plaintiff immediately approached the defendant No.1 and informed him the same. However, the defendant No.1 replied that he is very much aware of the said facts and asked plaintiff not to pursue the proceedings in future as plaintiff do not have any right over the suit property. It is also learnt by plaintiff that the defendant No.1 colluding the defendant No.2 is making hectic efforts to grab the legal share of the plaintiff over suit schedule property by creating false documents and also that defendant No.1 is trying to receive the entire compensation amount

awarded. Hence this suit seeking relief of ½ share in suit schedule property and ½ of the compensation amount awarded.

8. Now, the plaintiff and the Defendant No.1(B) have come up with these applications seeking to restrain defendant NO.2 from disbursing entire compensation amount to any other persons. It is vehemently argued by learned counsel for both sides that the daughter-in-law of their younger grand-father at the back of these parties, filed a suit for partition before Senior Civil Judge, Nanjangud in O.S.NO.127/2019. in respect of suit schedule property of this case. And the parties therein have also entered into compromise & have filed a compromise petition before the said court, same is ordered to disposed off according before Lok-Adalath held on 19.09.2020. In the said compromise petition both the parties have sought to receive the compensation amount awarded by KIADB in respect of suit schedule property equally among themselves. It is further argued that these parties do not have any right over suit schedule property. If the parties therein are allowed to receive the compensation amount from defendant No.2 then certainly these defendants & plaintiff herein will be put to irreparable loss and injury and very purpose of this suit also suffer. Further argues that they have prima facie in their favour and balance of convenience also leans towards them & prays to allow the applications. During the course of arguments, the learned counsel for the defendant no.1 relied upon the decision of *Hon'ble Supreme Court of India in Kenchegowda (Since Deceased) By ---- V/s Siddegowda Alias Motegowda on 11 May, 1994.*

9. He also draws my attention to the documents :RTC for the year 2018-19 in respect of suit schedule property, Original Settlement deed dated 15.07.2016, Death certificate of Mallaiah @ Mallappa, letter issued Spl.LAO KIDB, Karnataka Gazette 14.06.2011 in CI84-SPQ-2011 Bangalore, Family tree, Certified Copies of

plaint, verifying affidavit, application U/S 151 of CPC, affidavit, Vakalaths, order sheet, compromise petition in O.S. 127/2019 filed in the Court of Sr.CJ.,Nanjnagud, Certified Copy of endorsement issued by the KIADB dated 17.03.2020.

10. I have carefully perused the materials placed on records and also the documents placed along with these application. Admittedly, the suit schedule property has been acquired by defendant No.2. From the materials placed on record, it also been seen that some persons stated by Plaintiff & defendants herein as daughter-in-law of their younger grand-father have filed the suit against others before Senior Civil Judge, Nanjangud wherein the reliefs sought is also for partition and separate possession. Defendant no. 2 in this case is also party in that suit as defendant no.7. It is to be noted here that the suit schedule property involved in this case and also in O.S.127/2019 is same. Further, the parties therein have entered into compromise & in the compromise petition it is agreed and settled to receive the compensation amount awarded in respect of suit property. The plaintiff and the defendant No.1 contended that suit schedule property is their absolute joint family property and the parties to suit in O.S.127/2019 are entirely strangers to this suit schedule property & have no any right. This has to be dealt only after holding full fledged trail. However, at this stage, on perusal of the materials placed on record, it supports the contentions of parties in this suit. There is prima facie case made out by the plaintiff and defendant No.1(B). If the other persons are allowed to take the compensation amount awarded by defendant no.2 certainly the contesting parties in this suit that is the plaintiff and the LR's of defendant no.1 will be put to great hardship and irreparable loss. Further more, defendant no.2 is only a formal party and no hardship will be caused to defendant No.2 if the applications are allowed. Therefore, this court feels it appropriate to allow the applications. Therefore, I answer Points No.1 to 3 in the Affirmative.

11. **POINT No.4:-** In view of my discussion, I proceed to pass the following:

ORDER

The interim applications No.6 & 7 filed Under Order 39 Rule 1 and 2 r/w 151 of CPC by the Defendant No.1(B) and plaintiff are hereby allowed.

The defendant No.2 is hereby restrained from disbursing the compensation amount awarded in respect of suit schedule property to any persons till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on the computer, typed , corrected and then pronounced by me in the Open Court on this 29th day of September 2020).

(Vinutha.D.S)
II Addl., Civil Judge & JMFC
Nanjangud

