

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC,
PERIYAPATNA**

Dated: this the 29th day of July, 2016

Present

Sri Arjun S.Mallur, B.A.L, LL.B.,
Senior Civil Judge and JMFC

OS.10/2016

PLAINTIFF : Sri. T.Vasantharaje Urs

V/s

DEFENDANTS : Sri. T.Gopalaraje Urs & others

IA.No.I

APPELLANT : Sri. T.Vasantharaje Urs
(By Sri C.K.Manjunath, Adv.,)

V/s

RESPONDENTS : Sri. T.Gopalaraje Urs & others
(By Sri S.Shivannegowda, Adv.,)

ORDERS ON IA.NO.I

I.A.No.I is filed by the plaintiff under Order 39 Rule 1 & 2 R/W 151 of CPC seeking order of temporary injunction restraining the defendant No.1 to 5 from alienating the suit schedule item No.1 to 26 properties till disposal of the suit.

2. It is contended that the suit schedule item No.1 to 26 properties are the joint family ancestral properties which are in joint possession and enjoyment of the plaintiff as well as the defendants and the defendants

with a view to deprive the plaintiff's share in the suit schedule properties are making attempts to alienate the suit schedule properties and if the defendants succeed purpose of the suit would be defeated and also would lead to multiplicity of proceedings causing irreparable hardship and injury to the plaintiff and that the plaintiff has made out a prima facie case for grant of temporary injunction and the balance of convenience lies in favour of the plaintiff and sought for grant of temporary injunction.

3. The defendants have filed objections to the application denying the application averments inter-alia contending that after the death of Devaraje Urs, father of the plaintiff and the defendants, a oral partition took place in the family among the children in the year 1970 and as per the oral partition each of children have divided the joint family properties holding their separate shares in exclusive possession and enjoyment over the suit schedule properties and that the plaintiff and his son have jointly sold one of the suit schedule property which fell to their share to one Kallegowda under the registered Sale Deed dated 20-05-1996. It is contended by the defendants that in the said Sale Deed the plaintiff has admitted the oral partition which had taken place in the family in the year 1970 and therefore there is no existence of joint family property as on the date of filing of the suit and as the very suit itself is not maintainable the question of granting temporary injunction does not arise and hence sought for rejecting the application with cost.

4. Heard the learned counsels appearing for the plaintiff and the defendants and perused the material on record.

5. The points which arises for my consideration are as under:

1. Whether the plaintiff has made out a prima facie case for grant of temporary injunction?

2. Whether the balance of convenience lies in favour of plaintiff for grant of temporary injunction?
3. Whether the plaintiff would suffers irreparable loss or injury if injunction is not granted?
4. What order?

6. My answer on the above point is as under:

Point No.1 to 3 : “AFFIRMATIVE”

Point No.4 : As per final order for the following-

REASONS

7. **Point No.1 to 3**: It is the specific contention of the plaintiff that the suit schedule item No.1 to 26 properties are the joint family ancestral properties comprising of plaintiff and the defendants and all of them are in joint possession and enjoyment of all the suit schedule properties. It is submitted that after death of the propositus Devaraje Urs i.e., father of plaintiff and defendant No.1 & 2, the khata of the suit schedule properties has been transferred to the name of plaintiff and defendant No.1 & 2 and also in favour of father of defendant No.3 to 5 only with an intention to raise the agricultural loans. But possession continues to be joint till today. It is alleged that the 1st defendant is obstructing the plaintiff in possession and enjoyment of the suit schedule properties and is also misusing the joint family funds and the income derived from the suit schedule properties and therefore on 01-01-2016 the plaintiff demanded partition and separate possession of his share in all the suit schedule properties which was refused by the defendants and therefore the plaintiff was constrained to file the suit. Per contra it is the contention of the

defendants that after death of Devaraje Urs the suit schedule properties came to be orally partitioned in the year 1970 and all the children have taken possession of their respective shares in the suit schedule properties allotted under the said oral partition and since then all of them are in separate possession and enjoyment of the suit schedule properties fallen to their respective shares. It is the contention of the defendants that as on the date of filing of the suit none of the suit schedule properties are in joint possession and enjoyment and in fact no joint family exists and therefore no injunction can be granted. The plaintiff in support of his contention has produced R.T.C. Extracts of all the suit schedule properties. On perusal of those documents no doubt they disclose name of the plaintiff as well as defendant No.1 & 2 in respect of some of the suit schedule properties and it also discloses that those names have been mutated under the relevant mutation entry effected on the basis of certain partition and division said to have been held in various years. It is not the contention of the defendants that partition in the joint family properties is taken place in various years, but the specific defence is that oral partition took place in the year 1970. None of the R.T.C. Extracts carry any mutation effected on the basis of oral partition of the year 1970. Some of the R.T.C. Extracts disclose mutation effected in the year 1980-81, some in the year 1998-99, some of the R.T.C. Extracts disclose mutation on the basis of sale dated 9-10-2015. Therefore the entries in the R.T.C. Extracts do not in any manner substantiate partition having already taken place in the year 1970. Even otherwise the entries found in the R.T.C. Extracts cannot form the basis to conclude that the prior partition has already taken place. Whether all the suit schedule properties continue to be held in joint possession and enjoyment even as on today or whether all the suit schedule properties have been divided under the oral partition way back the year 1970 is a matter to be decided on completion of trial. At this stage

prima facie the available material on record it disclose that the suit schedule properties are in joint possession and enjoyment of the plaintiff as well as the defendants. Under the present application the plaintiff. has sought for temporary injunction to prevent the defendants from alienating the suit schedule properties till disposal of the suit and in the existing circumstances the plaintiff has made out a prima facie case for grant of such temporary injunction.

8. It has been answered in the above para that the plaintiff has made out a prima facie. The plea of oral partition is to be adjudicated only when evidence is adduced before the court. Till such evidence is adduced before the court it is necessary to protect the subject matter of the suit and as prima facie joint possession over the suit schedule properties is made out the balance of convenience lies in favour of the plaintiff for grant of temporary injunction. If the injunction is not granted and the suit schedule properties are alienated in any manner it is the plaintiff who would suffers irreparable loss or injury and it would also lead the multiplicity of proceedings. In this regard the learned counsel for the plaintiff relied upon the judgement of out Hon'ble Supreme Court reported in **2009 (5) SCC 182 N. Srinivasa V/s M/s Kattukaran Machine Tools Limited.** The principles laid down in the said decision applies in full force to the facts and circumstances of the case on hand. Hence I answer **Point No.1 to 3** in the "**AFFIRMATIVE**".

9. **Point No.4:** For the aforesaid reasons I pass the following-

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 & 2 R/W 151 of CPC is hereby allowed.

The defendants No.1 to 5 are hereby restrained by an order of temporary injunction from alienating the suit schedule properties described at item No.1 to 26 in any manner till disposal of the suit.

No order as to costs.

(Dictated to the stenographer, transcript revised, corrected and then pronounced by me in the open court on this the 29th day of July, 2016)

(Arjun S.Mallur)
Senior Civil Judge and JMFC.,
Periyapatna.

Order pronounced in the open court
(Vide separate order)

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 & 2 R/W 151 of CPC is hereby allowed.

The defendants No.1 to 5 are hereby restrained by order of temporary injunction from alienating the suit schedule properties described item No.1 to 26 in any manner till disposal of the suit.

No order as to costs.

(Arjun S.Mallur)
Senior Civil Judge and JMFC.,
Periyapatna.