

KAMS600007142023



O.S./254/2023

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT
PERIYAPATNA.**

Present
Sri.A.SAMIULLA
B.Sc., LL.B.,
Senior Civil Judge,
Periyapatna.

Dated: 6th Day of March 2024

OS.No.254 of 2023

Smt.Pooja Khanna & Anr.

..... Plaintiffs

Versus

Smt.Seethamma & Ors.

..... Defendants

IA.No.1

Smt.Pooja Khanna.

.... Applicant/P1

Versus

Smt.Seethamma & Ors.

.... Opponents/Defendants

Provision under which IA is filed	u/Order 39 Rules 1 & 2 r/w Section 151 of CPC
Relief sought for	Temporary Injunction
Date of filing of application	28.06.23
Application No.	1
Date of filing objection	-
Date of order	06.03.2024

:Order on IA-1; u/O 39 R 1 & 2 r/w Sec.151 of CPC:

Plaintiffs moved this application seeking to issue temporary injunction to restrain the defendants-1, 2, 4 to 19 & 22 from alienating the suit properties in any manner till disposal of suit.

2. Defendants have not filed statement of objections.
3. Heard arguments.
4. Following points arise for consideration:
 1. *Whether plaintiffs prove that they have got a prima facie case?*
 2. *In whose favour the balance of convenience lies?*
 3. *To whom the irreparable loss will be caused?*
 4. *What order?*
5. Findings to the above points are as under;

Point-1: Affirmative.

Point-2: In favour of plaintiffs.

Point-3: To the plaintiffs.

Point-4: As per below for the following;

REASONS

6. Point-1: At the outset; suit is filed for partition and separate possession of plaintiffs 1/9th share each in the suit properties by asserting that; the suit properties owned by Namgel Tsering, who died as bachelor and also intestate in the year-2003, as such his two sons i.e., Pemba Tsering (*who is missing from the year 2008 and his whereabouts are not known*), Namgel Lechcho (D3) and daughter Smt.Tsering Choedon (D2) of Late Teshi Thopgel (*elder brother of Namgel Tsering*) succeeded 1/3rd share each of the estate left behind by the deceased Namgel Tsering. Defendant-1 is not the heir of Teshi Thopgel.

i) Plaintiff-1 is wife of Pemba Tsering and Seethamma (D1 herein, who is paternal grand

mother of P1) are the heirs of Pemba Tsering. Thus, plaintiffs succeeded 1/9th share each & defendant-1 succeeded 1/9th share of Pemba Tsering being his class-I heirs.

ii) After death of monk in the year-2003 the defendant-1 dealt with the properties as if she is the absolute owner and she made a will in favour of three children including the husband of plaintiff-1. She has executed power of attorney dated 25.08.15 and release deed dated 15.10.15 in favour of defendant-3 giving him rights to sell the properties. Defendants-1 to 3 dealt with properties by selling directly and also indirectly to which the defendant-21 who is wife of defendant-3 also joined them. They have sold 6As 18Gs in Sy.No.8 under sale deed dated 04.09.15 in favour of defendant-4.

iii) They have sold 6As 23Gs in Sy.No.10/4

under sale deed dated 13.06.19 in favour of defendant-5. They sold 1A 35Gs in Sy.No.7/6 under sale deed dated 13.06.19. In Sy.No.7/11 (12Gs) under sale deed dated 13.06.19. In Sy.No.7/2 (1A 13½Gs) under sale deed dated 13.06.19.

iv) In Sy.No.7/2 (10Gs) under sale deed dated 13.06.19.

v) In Sy.No.10/3 (6As 20Gs) under sale deed dated 13.06.19 in favour of defendant-6.

vi) They have also sold 7As 24Gs in Sy.No.7/5 & 1A 37Gs in Sy.No.7/7 under sale deed dated 13.06.19 in favour of defendant-7, who transferred 7As 24Gs of Sy.No.7/5 to his mother & wife (D8 & D9) under release dated 08.10.22. He has also sold 1A 30Gs in Sy.No.7/7 to defendant-9 under sale deed dated 21.10.20, who sold the same in favour of

defendants-5 & 6 under sale deed dated 04.03.22. They have made number of transactions which are illegal and not binding on the plaintiffs. Plaintiffs demanded their legitimate share but to no use. Hence, suit is filed.

7. Defendant-4 filed written statement denying plaint averments in toto and inter alia contended that; he is bonafide purchaser of suit item-17 and suit is barred by limitation and also it is bad for non-joinder of necessary parties. Hence, he prayed to dismiss the suit. Defendant-4 has not filed objection statement to IA-1.

8. Defendants-3, 7, 13 & 21 mark their appearance through learned counsel Sri.SNG but they have not filed written statement and objection to IA-1.

9. Learned advocate Sri.MCH represents defendants-8 & 9 but failed to file written statement and objections to IA-1.

10. Learned advocate Sri.SMP represents defendant-20 but failed to file written statement and objections to IA-1.

11. Defendants-1, 2, 5, 6, 10, 12, 14, 15, 16 & 22 are placed ex parte.

12. Suit summons of defendants-11 & 17 to 19 are yet to be served. Plaintiffs filed memo stating that they are not pressing interim application against defendants-11 & 17 to 19; in lieu of said memo IA-1 was rejected against said defendants.

13. Along with plaint, plaintiffs filed the application at hand for the relief stated *supra* by stating the facts set out in the plaint, which are already stated above;

no need of repetition.

14. None of the defendants filed statement of objection to IA-1.

15. Settled position of law is that; to seek discretionary relief of temporary injunction plaintiffs must satisfy the Court with respect to the existence of a *prima facie* case, irreparable injury likely to be suffered by them and the balance of convenience lies in their favour.

16. Let us see whether plaintiffs have established a *prima facie* case or not. Plaintiffs placed reliance on the documents viz., **i)** Index of lands of Sy.No.7, 8 & 10, which are in the name of Mr.Nagel Tsering. **ii)** MR.No.3/93-94 where-under name of Seethamma w/o Tashi Thopgel was mutated in respect of lands in Sy.No.7, 8 & 10. **iii)** RTC extracts of lands in

Sy.No.7, 8 & 10 pertaining to the years 1995 to 2000 wherein the name of Seethamma finds a place at column No.9 & 12 (2). **iv)** Registered Will dated 20.06.08 executed by Seethamma in favour of her children Smt.Tsering Choedon, Sri.Pemba T Tsering and Sri.Namgyel Lechcho in respect of 18As of land in Sy.No.7, 15As 12Gs of land in Sy.No.10 and property bearing janjer No.38. **v)** Registered GPA dated 25.08.15 executed by Seethamma in favour of her second son Namgyel Lechcho in respect of lands in Sy.No.7, 8 & 10. **vi)** Sale deed dated 04.09.15 executed by Namgyel Lechcho the GPA holder of Seethamma in favour of Santhosh Kumar in respect of 6As 18Gs of land in Sy.No.8. **vii)** Release deed dated 14.10.15 executed by Seethamma and her daughter Tsering Choedon in favour of Namgyel Lechcho in respect of lands in Sy.No.7 and 10.

viii) Registered GPA dated 13.06.19 executed by Namgyel Lechcho, Zeenath Hussain, Seethamma and Tsering Choedon in favour of Salim in respect of land in Sy.No.7/2. **ix)** Registered sale deeds dated 13.06.19. **x)** MR.No.H4/21-22 and MR.No.H7/21-22. **xi)** Registered sale deeds dated 13.06.19. **xii)** Registered sale deeds dated 19.11.19, 12.09.19, 04.12.19 & 16.07.21. **xiii)** MR.No.T1/15-16 and MR.No.H2/21-22. **xiv)** Demand register extract of house bearing No.38/38 pertaining to the year 2022-2023 standing in the name of Tsering Choedon. **xv)** Registered sale deed dated 05.05.1972. **xvi)** Partition deed dated 24.01.2023.

17. Defendants have not produced any documents.

18. Careful scrutiny of rival pleadings put forth by the parties to lis and the contents of documents

produced by the plaintiffs, one can see that; except defendant-4 who is said to be the purchaser of suit item-17, the other defendants have not contested the suit.

19. Facts asserted and facts denied *supra* manifest that; at the moment plaintiffs have made out a *prima facie* case by demonstrating that they are having right over the suit properties and there are triable issues involved in the suit.

20. Facts in issue i.e., whether the above stated registered instruments are binding on the plaintiffs or not and whether plaintiffs are having 1/9th share each in the suit properties and whether defendant-4 is a bonafide purchaser of suit item-17 are to be adjudicated only after a well dressed trial. Said facts in issue cannot be decided at the threshold. Hence, point-1 is answered partly in affirmative.

21. Points-2 & 3: These points are taken together for common discussion to avoid repetition of facts.

22. Temporary injunction is a preventive relief and its purpose is to preserve status quo in respect of the subject matter of the suit.

23. In the instant case; plaintiffs sought preventive relief to restrain the defendants from alienating suit properties. Findings on above point show that at the moment plaintiffs demonstrated the existence of a *prima facie* case in their favour. Under these circumstances if the defendants are not restrained from alienating suit properties the plaintiffs will be subjected to hardship because it will result in the multiplicity of proceedings and same would adversely affect the right of the party seeking injunction on ultimately succeeding in the suit. In that event plaintiffs will be subjected to irreparable injury which

cannot be compensated by any means, as such Court interference is necessary to protect plaintiffs from injury, which is irreparable. Under these circumstances comparative mischief or inconvenience likely to be caused from withholding injunction will be greater than by granting it. Thus, the balance of convenience also tilts in favour of plaintiffs against the defendants. Accordingly, these points are answered.

24. Point-4: By virtue of above findings, Court proceeds to pass the following;

ORDER

IA-1; under Order 39 Rule 1 & 2 r/w Section 151 CPC filed by the plaintiffs is allowed.

Defendants-1, 2, 4 to 10, 12 to 16 & 22 are temporarily restrained from alienating suit properties i.e., lands bearing Sy.No.10 (1A), Sy.No.10/1 (1A), Sy.No.10/2

(1A 3Gs), Sy.No.10/3 (6As 20Gs), Sy.No.10/4 (6As 23Gs), Sy.No. 7/2 (13Gs), Sy.No.7/3 (10½ Gs), Sy.No.7/4 (2As), Sy.No.7/5 (7As 24Gs), Sy.No.7/6 (1A 35Gs), Sy.No.7/7 (1A 37Gs), Sy.No.7/8 (1A 13½Gs), Sy.No.7/10 (10Gs), Sy.No.7/11 (12Gs), Sy.No.7/12 (7Gs), Sy.No.7/13 (26Gs) and Sy.No.8 (6As 18Gs) of Lakshmipura village, Haranahalli Hobli, Periyapatna Taluk in any manner pending disposal of suit.

It is made clear that this order will not restrain the defendants from availing agricultural loans on the suit lands and also not in respect of possession of parties over the suit properties.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected and initialed by me & then pronounced in the open Court on 06.03.24).

sd/-
(A.Samiulla)
Senior Civil Judge,
Periyapatna.