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**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
AT T.N.PURA, MYSORE**

O.S./23/2022

:: PRESENT ::

SRI MAHAVIR M.KARENNAVAR, B.COM, LL.B., (SPL.)
SENIOR CIVIL JUDGE & JMFC, T.NARASIPURA

Dated this the 02nd day of February, 2023

PLAINTIFFS : Smt.Lepakshi @ Savitha G.
& Another

-Vs-

DEFENDANTS : Sri. Chandrashekhar
& Others

I.A.No.I

APPLICANTS : 1. Smt.Lepakshi @ Savitha G.
W/o Gopala P.
Aged about 48 years,
R/at: Door No.91,
1st Main, 4th Cross,
Reddappa building
Gottigere Bengaluru South.

2. Smt. Geetha,
W/o G.V.Rangaswamy,
Aged about 41 years,

R/at: Gadijogihundi village,
Madigahalli, Mysuru.

(By **Sri. M.H.S., Adv.**)

-Vs-

- OPPONENTS** : 1. Sri. Chandrashekhar,
S/o Late Puttegowda,
Aged about 39 years.
2. Smt. Manchamma,
D/o Late Puttegowda,
Aged about 44 years.

Opponent Nos.1 and 2 are
R/at: Kagalipura Village,
Sosale Hobli,
T.Narasipura Taluk,
Mysuru District.

3. Sri. Chikkalingegowda,
S/o Chikkalingegowda,
Aged about 57 years.
4. Sri. Manjunatha C.,
S/o Chikkalingegowda,
Aged about 40 years.

Opponent Nos.3 and 4 are
R/at: Bandipalya Village,
Kasaba Hobli,
Mysuru Taluk & District.

(D1 & D2 by Sri. M.U.K., Adv.)
(D3 & 4 by Sri. K.K.N., Adv.)

ORDER ON IA No.I

The plaintiffs have filed IA No.I under Order 39 Rule 1 and 2 seeking the relief of injunction restraining the defendants, their legal representatives, agents, G.P.A. holder or anybody acting on behalf of the defendants from alienating the suit schedule properties in any manner till disposal of the suit.

2. The application is accompanied with the affidavit. It is stated that, parents of plaintiffs died leaving behind plaintiffs and defendant Nos.1 and 2. Suit schedule properties are ancestral and joint family properties of Late Puttegowda. Plaintiffs and defendants are in joint possession of same. There is no partition by metes and bounds, plaintiffs and defendants are in joint possession of the same. It is stated that, the defendants are unnecessarily intending to sell the property to the 3rd persons. There is *prima-facie* case in favour of the plaintiffs. It is stated that, if the defendants are allowed to sell the property, the plaintiffs will be put to loss and hardship. Therefore, it is prayed to allow the application.

3. The advocates for defendant Nos.3 and 4 filed the objection denying the right, title and also the interest of plaintiffs over the suit properties. It is stated that,

Puttegowda being the head and kartha of the family was managing the family. For family and legal necessities Puttegowda and 1st defendant have sold item No.1 of the plaint schedule in favour of 3rd defendant on 04.06.2017. 3rd defendant is a bona-fide purchaser. He is in possession of the property. Thereafter, the said property had fallen to the share of 4th defendant in a family partition. Plaintiffs having knowledge of the said transaction have filed false suit after lapse of 15 years of the sale. Therefore, it is prayed to reject the application.

4. Heard the learned advocates for both the parties. Perused the pleadings and evidence available.

5. Both the parties have produced the copies of record of rights, assessment register extract, sale deed, legal notice, postal receipts and acknowledgment and reply notice etc for the perusal of this Court.

6. Upon careful perusal of materials available on record, following points that arise for my consideration:

POINTS

1. Whether the plaintiffs have made out a *prima-facie* case to allow the I.A. ?
2. Whether the plaintiffs have got balance of convenience in their favour ?

3. Whether the plaintiffs would be put to loss and injury if the IA is not allowed ?

4. What Order?

7. After careful scrutiny of material available on the file, my findings to the above Points are as follows:

Point Nos.1 to 3 : In the “**Affirmative**”

Point No.4 : As per order

for the following :

REASONS

8. **Point No.1**:- The present suit is filed seeking the relief of Partition and Separate possession in respect of land bearing Sy.No.111/7 measuring 17.08 guntas situated at Thammadipura village, Sosale Hobli, T.Narasipura Taluk, land bearing Sy.No.260/1 measuring 1 acre 25 guntas situated Somanathapura village, Sosale Hobli, T.Narasipura Taluk and house properties in Janjar and assessment No.79, property No.4 situated at Kagalipura village, Sosale Hobli, T.Narasipura Taluk. It is stated that, suit properties are the joint family properties of plaintiffs and defendants, they are in joint possession of the same. It is alleged that, defendants are in a hurry to sell the property.

9. The defendant Nos.3 and 4 contend that, they are the bona-fide purchasers of suit item No.1 for valuable consideration from the father and brother of plaintiffs. The plaintiffs after lapse of 15 years have brought the false suit.

10. After careful reading of the pleadings and also the contents of documents, it is clear that, there is no specific denial with respect to the relationship between the parties. The plaintiffs are daughters of deceased Puttegowda. The record of right with respect to suit schedule properties appear in the name of defendant No.2 i.e., the mother of plaintiffs, defendant No.1 i.e., brother of plaintiffs and defendant Nos.3 and 4 who are the subsequent purchasers. Whether there was partition between the plaintiffs and family members is the matter yet to be decided. Similarly, whether there was family or legal necessity to the father is yet to be decided. So also the aspect regarding bona-fides of defendants in purchasing the property is also yet to be decided.

11. The record of right with respect to suit schedule properties appear in the name of defendant No.2 i.e., the mother of plaintiffs, defendant No.1 i.e., brother of plaintiffs and defendant Nos.3 and 4 who are the subsequent purchasers.

12. Looking to the contents of documents and pleadings of the parties it appear that, there is a *prima-facie* case to believe the case of plaintiffs. Admittedly, the father of plaintiffs and the defendant executed sale deed in favour of defendant No.3. The legal necessity and other aspects with respect to the sale transaction are yet to be decided in the trial.

13. The contention of defendant Nos.3 and 4 is required to be considered only in full dressed trial. Therefore, looking to the pleadings and documents available on this date, I am of the considered opinion that, there is *prima-facie* case in favour of the plaintiffs. Therefore, point under consideration is answered in the **Affirmative**.

14. **Points No.2 and 3**: These points are taken up for common discussion in order to avoid repetition of facts.

15. For granting equitable remedy of temporary injunction, existence of *prima-facie* case is a must. Existence of *prima-facie* case is the harbinger to investigate in to other points. As discussed in the above paras, the plaintiffs have shown the *prima-facie* case regarding existence of jointness.

16. Apart from *prima-facie* case, the plaintiffs have produced the necessary documents in support of their

case. The pleadings are corroborated with the contents of documents. Therefore, it appear that, plaintiffs have got balance of convenience in their favour.

17. If the IA is not allowed and the defendants are permitted to sell the suit property, the plaintiffs will be dragged to multiplicity of proceedings and thereby they will be put to mental and financial losses. On the other hand, if the IA is allowed, no loss or hardship is going to be caused to the defendants. Therefore, I am of the considered opinion that, comparative loss and hardship will be caused to the plaintiffs. Therefore, the points under consideration are answered in the **Affirmative**.

18. **Point No.4:** - In view of the 'Affirmative' findings on Point Nos.1 to 3, the application deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiffs Under Order XXXIX Rule 1 and 2 R/w 151 of C.P.C. is allowed.

The defendants, their legal representatives, agents, G.P.A. holder or anybody acting on behalf of the defendants

are restrained from alienating the suit
schedule properties till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer online and typed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 02nd day of February, 2023).

(MAHAVIR M.KARENNAVAR)
SENIOR CIVIL JUDGE & JMFC,
T.NARASIPURA.