

KAMS710020222021



IN THE COURT OF CIVIL JUDGE AND JMFC,
AT T.NARASIPURA, MYSURU

PRESENT

SRI. CHETHAN ANNADANI MANJUNATHA, B.A., LL.M.,
Civil Judge & J.M.F.C.,
T.Narasipura

DATED THIS THE 7th DAY OF JUNE 2023

O.S./207/2021

PLAINTIFFS :: Vasanthamma and another
[By : Sri. A.P.S., Advocate]

V/s

DEFENDANTS :: Nagarajamurthy and others
[By : Sri. T.M.S., Advocate]

PARTIES TO I.A.No.II

APPLICANT/1ST PLAINTIFF :: Vasanthamma

V/s

OPPONENT/DEFENDANTS :: Nagarajamurthy and others

: ORDERS ON I.A. No.II :

The plaintiffs have filed IA.No.II under Order 39 Rule 1 and 2 of C.P.C seeking an order of Temporary Injunction restraining the defendants No.1 and 3, their LR's, agents,

or any persons claiming through them from alienating the suit schedule property.

2. In the affidavit accompanying the said application sworn in by the plaintiff No.1, it is submitted that, she has filed a suit against the defendants for the relief of partition and separate possession wherein the suit schedule property originally belonged to late Shivarudrappa, S/o. late Veerabadrappa, who is none other than her father and it is the ancestral property of said Shivarudrappa, wherein the plaintiff and defendants enjoyed them jointly as joint family members. It is submitted that, the defendant No.1 and 4 in active collusion with each other after the death of Shivarudrappa who is none other than the father of plaintiff, defendant No.1 and 3 got changed the khata in their name vide MR No.H-29 without lawful consent of the plaintiffs as if an oral partition had taken place between them. It is submitted that, the defendant No.4 who is none other than the wife of late Shivarudrappa has also executed a Registered Relinquishment Deed in the year 2019 in favor of the defendant No.3 in respect of the $\frac{1}{2}$ share in the suit schedule property. Further, the defendant No.1, 3 and 4 have prima-facie without consent, authority and to knock of the legitimate rights of plaintiffs and defendant No.2 have committed fraudulent acts. Further, by creating mutation proceedings in their favor to knock of the property and are attempting to alienate the said property

to defeat their rights. As such, it is necessary to allow the present application. As such, prayed to allow the application.

3. Per contra, the defendant No.1 filed his objection resisting the said application and the same was adopted by the defendant No.2 and 3. In their objections, the defendant No.1 and 3 have contended that the plaintiff has sworn false affidavit before the court. The defendants have admitted the relationship, as well as the nature of the suit schedule property. Further it is contended that, the suit schedule property was a subject matter of oral partition between the defendant No.1 and 4, wherein they have divided the same and have got khata in respect of their shares in the suit schedule property. It is further contended and admitted that the defendant No.4 has also executed a Relinquishment Deed in favor of the defendant No.3 relinquishing her rights over the suit schedule property in favor of defendant No.3. It is further contended that the plaintiff has not included other properties of late Shivarudrappa which are also ancestral properties such as land in Sy.No.176/3B measuring 02 guntas situated in Sosalee Hobli and land in Sy.No.204/2 measuring 6 acres 16 guntas. As such, the very suit of filed by the plaintiff for the relief of partial partition cannot be sustained and the said properties also ought to have been included in the present suit. As such, it is necessary to include the said property in the present suit for partition and proper

adjudication of the case in order to avoid multiplicity of proceedings. However, the said suit has been filed by the plaintiff only in respect of suit schedule property. As such, prayed to dismiss the present application.

4. Heard both counsels on IA.No.2. I have perused the records of the case on hand, carefully and meticulously.

5. The points that arise for my consideration are as under : -

1. ***Whether the Plaintiffs have made out prima-facie case as established under law ?***
2. ***Whether the balance of convenience lies in favor of the plaintiffs ?***
3. ***Whether the plaintiffs would be put to irreparable loss and injury, if temporary injunction is refused?***
4. ***What order ?***

6. My findings on 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 ;

:: R E A S O N S ::

7. **POINT NO.1 TO 3:** These points are taken up together for discussion as the facts are interlinked, for brevity and to avoid repetition of facts and discussion.

It is the case of the plaintiffs that, the suit schedule property is the ancestral joint family property of plaintiffs, defendant No.1 and 2 which stood in the name of their father late Shivarudrappa. However, their father Shivarudrappa died in the year 1998 leaving behind the plaintiffs and defendants who were in joint family possession and enjoyment of the said properties. It is submitted that, the defendant No.1 and 4 have mutated khatas of the suit schedule property, as if oral partition taken place between them dividing the suit schedule property to the extent 1.31.08.00 guntas each vide MR No.H-29 even though no oral partition has been taken between them as plaintiffs were not at all parties to it. The said oral partition has been made only to knock of the valuable property and to deny the legitimate share of the plaintiffs and defendant No.2. Further, the defendant No.4 has executed a Registered Relinquishment Deed in the year 2019 in favor of the defendant No.3. As such, there is every possibility that the defendant No.1 and 3 in order to knock of the legitimate share of the plaintiffs and defendant No.2 are making hectic efforts to alienate the

suit schedule property, leading to the institution of suit for partition and the present application.

8. The careful perusal of the pleadings clearly goes to show that the defendants in their written statement has categorically admitted the relationship and nature of the property i.e., the suit schedule property is the ancestral property of Shivarudrappa, who is none other than the father of plaintiffs and defendant No.1 and 2. It is also admitted in para No.3 of the written statement that the defendant No.1 and 2 have orally partitioned the suit schedule property and they have effected khata in their names. Further also admitted that the defendant No.4 has executed a Relinquishment Deed in favor of the defendant No.3 in the year 2019. Nowhere in the pleadings, have the defendants contended that the plaintiffs and defendant No.2 were either parties to the oral partition or they have relinquished their rights in favor of the defendant No.1 and 4. The only contention raised by the defendants is that the plaintiffs have not included other properties as discussed in para No.3 of the written statement for the purpose of partition which are also the ancestral properties of late Shivarudrappa. Whether all the ancestral properties of late Shivarudrappa has been included in the present suit or not is the matter of trial and the same can be decided after recording of evidence. Moreover, admittedly, the plaintiff is the dominus litis and is at

liberty to institute the suit in respect of particular subject matter and reliefs as prayed by the plaintiffs. Even though assuming that the present suit is for partial partition, the same has to be proved by the defendants which can be determined only after trial. At this juncture, admittedly, the contentions of the defendants that Defendant No.1 and 4 only have orally partitioned the suit schedule property and the plaintiffs and Defendant No.2 were not parties to the said oral partition and also execution of Relinquishment Deed by the defendant No.4 in favor of defendant No.3 prima-facie goes to show that the malafide intention of the defendants to knock of the valuable and legitimate share of the plaintiffs and defendant No.2 as the plaintiffs have not consented for the same. The perusal of the documents marked at Ex.P.1 to 8 which are RTCs, Mutation and Encumbrance Certificate pertaining to the suit schedule property substantiate the case of the plaintiffs. In the present suit, the plaintiffs have made prima-facie case for grant of relief restraining the defendant No.1 and 3 from alienating the suit schedule property. If the Injunction order as prayed by the plaintiffs is not granted then there is every possibility that the defendant No.1 and 3 might alienate the property leading to multiplicity of proceedings which also creates third party encumbrance in respect of the suit schedule property causing irreparable loss and injury which cannot be compensated in terms of money. Considering the facts

and circumstances of the case on hand together with the pleadings, this court is of the view that the plaintiffs have prima-facie made out their case for grant of relief as prayed. In view of the same, I have answered **Point No.1 to 3 in the Affirmative.**

9. **POINT NO.4** : For the aforesaid reasons, I proceed to pass the following;

:: ORDER ::

The IA.No.2 filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

The defendant No.1 and 3, their legal representatives, agents or any other persons claiming through them are hereby restrained by an order of Temporary Injunction from alienating the suit schedule property until disposal of the suit.

(Dictated to stenographer directly on computer and computerized by her, corrected, signed and then pronounced by me in the open Court on this the **7th day of June, 2023**).

(SRI.CHETHAN ANNADANI MANJUNATHA)
CIVIL JUDGE & JMFC.,
T.NARASIPURA.