

IN THE COURT OF III ADDL. SR. CIVIL JUDGE,
RAICHUR

PRESENT: Sri. DAYANAND. M. BELURE,
B.A., LL.B.,(SPL)
II-Addl. Sr.Civil Judge, Raichur &
C/C of III Addl. Sr.Civil Judge, Raichur.

O.S.No.178/2018

DATED THIS THE 11th DAY OF APRIL 2022

PLAINTIFF:- Sri Nagesh Reddy S/o: Suganna,
Age: 60 years, Occ: Agriculture,
R/o: Heggasanahalli village,
Tq & Dist: Raichur.

(By Sri. I.M.P, Advocate for Plaintiff)

- VERSUS -

DEFENDANTS:-

- 1) Sri Sidramappa S/o: Suganna,
Since deceased by his L.Rs.
- 1) Smt.Kamalamma W/o: Late
Sidramappa,
Age about: 65 years,
Occ: Household work,
- 2) Sugareddy S/o: Sidramappa,
Age: 45 years,
- 3) Manjula D/o: Late Sidramappa,
Age: 43 years,
- 4) Maheshwari W/o: Shivaraj,
Age: 44 years,
- 5) Siddappa S/o: Suganna,
Age: 55 years, Deft Nos.1 to 5
are agriculturists, R/o:

Heggasanahalli village,
Tq & Dist: Raichur.

- 6) Sidramareddy S/o:
Hanumanthareddy, Major,
Occ: Agriculture,
R/o: Heggasanahalli village,
Tq & Dist: Raichur.
- 7) Shyamsunder S/o: Venkatashetty,
Major, Occ: Agriculture,
R/o: Heggasanahalli village,
Tq & Dist: Raichur.
- 8) Amaresh S/o: Basayya,
Major, Occ: Agriculture,
R/o: Heggasanahalli village,
Tq & Dist: 2Raichur.
- 9) Smt.Sugamma W/o: Sugappa
Madival, Age: Major, Occ: Nil,
R/o: Heggasanahalli village,
Tq & Dist: Raichur.
- 10) Hanumantha S/o: Hussainappa,
Major, Occ: Nil,
R/o: Raghavendra colony,
Shaktinagar, Tq & Dist: Raichur.
- 11) G. Vishwanath S/o: Channabasappa,
Age: Major, Occ: Agriculture,
R/o: Nijalingappa colony, Raichur.
- 12) P. Sambashiva Rao S/o: Raghavayya,
Major, Occ: Agriculture,
R/o: Ravindranath Farm, Havambavai,
Siruguppa road, Ballari.
- 13) Nagendra Prasad S/o: Govardhan,
Major, Occ: Agriculture,
R/o: Ravindranath Farm, Havambavai,
Siruguppa road, Ballari.

- 14) Haripurushottam S/o: Ranganna,
Age: Major, Occ: Agriculture,
R/o: Ravindranath Farm, Havambavai,
Siruguppa road, Ballari.
- 15) Channabasappa S/o: Nagabasappa,
Major, Occ: Agriculture,
R/o: Devasugur village,
Tq & Dist: Raichur.
- 16) Rajashekhar S/o: Basavarajappa,
Age Major, Occ: Agriculture,
R/o: Devasugur village,
Tq & Dist: Raichur.
- 17) Tayappa S/o: Ramanna,
Age: Major, Occ: Agriculture,
R/o: Devasugur village,
Tq & Dist: Raichur.
- 18) Smt.Nagamma W/o: Suganna Setty,
Age: Major, Occ: Agriculture,
R/o: Devasugur village,
Tq & Dist: Raichur.
- 19) B.J. Praveen Kumar S/o: Jayaprakash
Reddy, Age: Major, Occ: Agriculture,
R/o: Heggasanahalli village,
Tq & Dist: Raichur.
- 20) Special Land Acquisition Officer,
National Highways Authority of India,
T4/192, Main road, Shaktinagar,
Raichur.

(By Sri A.R.G, Advocate for Defendants No.1, 3, 4,
6, 19)

(By Sri Ramesh, Advocate for Defendant No.2)

(By Sri H.J, Advocate for Defendant No.5)

(By Sri M.N, Advocate for Defendant No.11)

(By Sri A.G.P, Advocate for Defendant No.20)

(By Sri S.G.K, Advocate for Defendant No.12 and 13)

(Defendants No.7 to 10, 15 to 18 and 21 are Ex-Parte)

(Defendant No.14 Dead)

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I.A.NO.16**APPLICANT/
PLAINTIFF**

Sri Nagesh Reddy S/o: Suganna,
Age: 60 years, Occ: Agriculture,
R/o: Heggasanahalli village,
Tq & Dist: Raichur.

- VERSUS -**OPPONENTS/
DEFENDANTS**

- 1) Sri Sidramappa S/o: Suganna,
Since deceased by his L.Rs.
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Sidramappa,
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Tq & Dist: Raichur.

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Major, Occ: Agriculture,
R/o: Heggasanahalli village,
Tq & Dist: Raichur.
- 9) Smt.Sugamma W/o: Sugappa
Madival, Age: Major, Occ: Nil,
R/o: Heggasanahalli village,
Tq & Dist: Raichur.
- 10) Hanumantha S/o: Hussainappa,
Major, Occ: Nil,
R/o: Raghavendra colony,
Shaktinagar, Tq & Dist: Raichur.
- 11) G. Vishwanath S/o: Channabasappa,
Age: Major, Occ: Agriculture,
R/o: Nijalingappa colony, Raichur.
- 12) P. Sambashiva Rao S/o: Raghavayya,
Major, Occ: Agriculture,
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Siruguppa road, Ballari.
- 13) Nagendra Prasad S/o: Govardhan,
Major, Occ: Agriculture,
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Siruguppa road, Ballari.
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Age: Major, Occ: Agriculture,
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Reddy, Age: Major, Occ: Agriculture,
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- 20) Special Land Acquisition Officer,
National Highways Authority of India,
T4/192, Main road, Shaktinagar,
Raichur.

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:: ORDERS ON I.A.NO.16 ::

Plaintiff has filed this application under Order XXXIX Rule 1 & 2 r/w.sec.151 of CPC requesting to restrain the defendants No.1 to 5 from receiving compensation amount from the Special Land Acquisition Officer, National Highways Authority of India, Raichur, who is acquiring authority for the lands bearing Sy.No.40/2 measuring 07 Acres 26 Guntas standing in the name of Sugareddy, now standing in the name of Pushpavathi W/o: Sugareddy, Sy.No.40/3 measuring 06 Acres standing in the name of Manjula D/o: Sidramappa & Sy.No.40/1 measuring 05 Acres 25 Guntas standing in the name of

defendant No.5 Siddappa or any suitable order facilitating the stop of payment to defendants No.1 to 5 in the interest of justice.

2. It is submitted in the annexed affidavit that, he has filed above suit for partition & separate possession in respect of suit schedule properties. Along with suit filed an application for injunction against the defendants No.1 to 5 in I.A.No.2, same was allowed by this court, restraining them from alienating the suit lands including above mentioned lands in the application. During pendency of suit, defendant No.2 executed registered gift deed in favour of one Pushpavathi and an application for impleading said Pushpavathi is pending before this court. Defendants No.2 & 3 are deaf & dumb and an application was filed by plaintiff to appoint defendant No.1 as their guardian who refused to receive the notice. The plaintiff got appointed a Court Commissioner to represent defendants No.2 & 3, the said gift deed executed by defendant No.2 is without the knowledge of Commissioner.

The lands mentioned in the application are being acquired by N.H.A.I, to whom the fact that there is an injunction order against the defendants No.1 to 5 was brought to the notice of acquiring authority. He has also filed notifications of acquisition

of the land during the course of hearing on I.A.No.2. He approached the acquiring authority & submitted order passed by this court on I.A.No.2 & requested the authority to delay the payment or deposit amount of compensation before this court for which there was no proper response. Hence, he has no alternate except to seek help of this court. Hence, it is just & proper to exercise the discretionary powers in his favour to avoid multiplicity of proceedings, by allowing the application.

3. On the other hand, the defendants No.1 to 4 have filed objections contending that application filed by the plaintiff to restrain the defendants No.1 to 4 from receiving the compensation amount is not maintainable. The land Sy.No.40/2 measuring 07 Acres 26 Guntas which is standing in the name of Sugareddy/Pushpavathi & land Sy.No.40/3 measuring 06 Acres standing in the name of Manjula D/o: Sidramappa. Already these lands are fallen to the share of defendants No.1 to 3. Between plaintiff & defendants No.1 to 3 a partition has taken place in the year 1990 dated: 04.05.1990 during the lifetime of Sidramappa husband of defendant No.1. On this ground application deserves to be dismissed.

Defendants No.1 to 3 are old aged women & defendants No.2 & 3 are deaf & dumb. No other persons are looking the family of this defendant. By taking disadvantage plaintiff filed this application. As per the partition, plaintiff has got his share in land Sy.No.91/2 measuring 04 Acres 28 Guntas & land Sy.No.82 measuring 21 Acres 23 Guntas. On this ground application is to be dismissed. It is further submitted that, plaintiff has to prove his right in the suit schedule properties, then only he can seek the relief, before leading of the evidence on both the sides application is not maintainable. On these grounds defendants No.1 to 4 requested to reject the application.

4. The defendant No.5 filed his separate objections contending that, suit item No.4 land bearing Sy.No.40/1 to the extent of measuring 05 Acres 25 Guntas was fallen to the share of present defendant No.4 in family partition & accordingly as per M.R.No.357/23-5 1990 mutation was effected in the name of defendant No.4, accordingly his name is reflected in ROR & remaining portion to the extent of measuring 04 Acres 09 Guntas fallen to the share of Sugareddy S/o: Sidramappa & remaining portion 05 Acres 35 Guntas, fallen to the share of Manjula D/o: Sidramappa, later said land was demarcated & Fodi was prepared

accordingly renumbered as 40/1 to the extent of measuring 05 Acres 25 Guntas standing in the name of defendant No.4 & present defendant has taken loan of Rs.17 Lakhs from the bank.

The schedule item No.4 suit land which was standing in the name of defendant No.4 has been acquired for the purpose of High way road, in the said land to the extent of 03 Acres & odd Gunta has been acquired and 4 (1), 6 (1) notifications have been published by the Government as such plaintiff has come up with present application in order to harass present defendant No.4 in getting the compensation amount of his land, hence prayed to reject the application. The defendants No.6 & 19 also filed objections to above application though there was no relief claimed against them & they have requested to reject the application.

5. Based on the rival contentions, following points would arise for my consideration are as under:

1. Whether plaintiff has made out prima-facie case to grant an order of temporary injunction ?
2. Whether the balance of convenience lies in his favour?
3. If an order of temporary injunction is granted, who will put into irreparable loss?
4. What order ?

6. Based on the written arguments filed by both the parties, having heard the arguments on above application, my answer to the above said points are as under:

Point No.1 : In the negative.

Point No.2 : In the negative.

Point No.3 : To Defendants No.1 to 5.

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

:: R E A S O N S ::

7. **Points No.1 to 3:-** These points are inter connected to each other, hence they are taken up together for common discussion in order to avoid repetition of facts.

8. Plaintiff has filed this suit for the relief of partition & separate possession and also declaration to declare that sale deeds executed by the elder brother of plaintiff & defendants No.1 & 5 in favour of defendants No.6 to 19 are null & void not binding upon him. When the matter was posted for compliance u/sec.89 of CPC present plaintiff has filed instant application seeking the relief to restrain the defendants No.1 to 5 from receiving compensation amount from the Land Acquisition Officer in respect of suit schedule properties. Per contra, defendants No.1 to 5 have resisted instant application on the ground that there was a family partition on 04.05.1990. In the

said partition, the defendants No.1 to 4 have been allotted the lands which have been acquired by the Land Acquisition Officer. Though plaintiff has received his share in the family partition, has filed instant suit by over-riding earlier partition &also filed instant application to grab the compensation amount granted by Government in favour of defendants No.1 to 5 for acquiring their land.

9. During the course of argument counsel for plaintiff has relied upon news paper "Vijayavani" wherein acquisition proceedings have been notified on 10.02.2021 & also produced notice issued by Special Land Acquisition Officer, Raichur dated: 15.03.2021. Per contra, the defendants have relied upon copy of Partition Deed dated: 05.04.1990 & copy of sale deed dated: 15.07.1982. On perusal of these documents it is crystal clear that, the Land Acquisition Officer of Raichur has acquired some part of the lands in Sy.No.40/2, 40/3, 40/1. It is pertinent to note here that, partition deed dated: 04.05.1990 depicts that, family partition has been taken place between plaintiff & defendants No.1 to 5 wherein land bearing Sy.No.37, 40, 43/1 have been allotted to the share of defendants No.1 to 5. At the same time, land bearing Sy.No.91/2, Sy.No.82 have

been allotted to the share of plaintiff Nageshreddy in the family partition. The sale deed dated: 15.07.1982 which is prior to partition deed discloses that plaintiff Nageshreddy has sold the land bearing Sy.No.37 measuring 18 Acres 27 Guntas in favour of Neelamma W/o: Hanumanthareddy. At the same time, record of rights produced by plaintiff discloses that, after the family partition in the year 1990 the mutation has been sanctioned and names of the plaintiff and defendants No.1 to 5 have been entered in the revenue records as per M.R.No.357/23-5 1990. Therefore, the plaintiff, without having any exclusive right over the land bearing Sy.No.40/1, 40/2 & 40/3 seeking injunction order against the defendants No.1 to 5 to restrain them from receiving the compensation amount.

10. During the course of argument, counsel for plaintiff has relied upon the judgment reported in **ILR 2016 Karnataka 4162** between **Sri Surendra Nayak Vs. A.M. Mohammed Shafi** wherein it was held as under:

“B” - DOCTRINE OF ESTOPPEL – Judicial

Estoppel – Meaning of – Conditions to be satisfied to

apply the doctrine of Judicial Estoppel – Judicial

Estoppel binds a party to his previous judicial statements or declarations.”

Another case reported in **ILR 2018 Karnataka 1887** between **University of Mysore represented by its Registrar Vs Dr.H.T. Krishnegowda & others** wherein it was held as under:

“Though the earlier Statute was sought to be withdrawn, the said action could not prejudice the rights that had accrued to the respondents during the subsistence of the Statute as has been clarified by the University. – The contention of the University that the University Statute applied only to teaching staff and cannot be extended to non teaching staff is also not tenable, as consciously the University statute extended the benefits of pension as per U.G.C. norms specifically to non teaching staff as well, which is apparent from a plain reading of the Statute.”

11. On the other hand, counsel for defendants No.1 to 5 has relied upon the judgment reported in **2017 (5) KCCR 225**

between **Syed Yusuf & another Vs Syed Noorulla & others**

wherein it was held as follows:

“A – CIVIL PROCEDURE CODE, 1908 – Order 39

Rule 1 – Temporary Injunction – Relief – Partition suit

– Plaintiff claiming properties as a member of Joint

family – Once a partition had occurred the said fact

suppressed – Whether the plaintiff is entitled to the

relief – No.”

Another decision reported in **2019 (2) KCCR 1437** between **V.**

Krishna Char & others Vs Sundara Murthy & another

wherein it was held as follows:-

“CIVIL PROCEDURE CODE 1908 – Order 39

Rule 1 & 2 – Temporary Injunction – Suit for partition

– Plaintiffs seeking temporary injunction restraining

defendants from alienating properties in question as

they were ancestral – But not supporting their claim

by producing any documents – Trial court declining to

grant relief – Justified – More so when protection

u/sec.52 of Transfer of Property Act is available to

plaintiffs.”

12. I have carefully gone through the decisions relied by both the counsels wherein the decisions relied by plaintiff counsel discloses that, in first decision, the matter is discussed & held with respect to Karnataka Rent Act, 1999. In 2nd decision the matter is discussed with regard to Evidence Act on the rule of estoppel matter relating to University & teaching staff. Both the decisions are not helpful to the plaintiff and case on hand. At the same time, decisions relied upon by the counsel for defendants No.1 to 5 reveal that an application filed by the applicant for grant of temporary injunction has been rejected on the ground of suppression of material fact & also non production of material documents. The above both the decisions are helpful to defendants No.1 to 5 & case on hand. As because, plaintiff by suppressing earlier partition taken place in the year 1990 between him & defendants No.1 to 5 has been filed instant suit & seeking the relief of injunction order to restrain the defendants No.1 to 5 from receiving compensation amount for acquisition of their lands by the Government. At this stage, plaintiff has not made out prima-facie case & no balance of convenience lies in his favour. If an order of temporary injunction is granted, the defendants No.1 to 5 who are claimants & beneficiary to receive the compensation amount for

acquiring their lands are going to be put into irreparable loss. Therefore, I answer points No.1 & 2 in the “Negative”, point No.3 “defendants No.1 to 5 will put into irreparable loss”.

13. **Point No.4:** For the foregoing reasons and discussion made herein-above on points No.1 to 3, I proceed to pass the following:

:: O R D E R ::

I.A.No.16 filed by the plaintiff under Order XXXIX Rule 1 & 2 r/w.sec.151 of CPC is hereby dismissed.

Looking to the relationship of parties, no order as to costs.

(Dictated to the Judgment Writer, Script corrected, signed and then pronounced in the open court by me on this the 11th day of April- 2022).

(Dayanand M.Belure)
C/c. III-Addl.Sr.Civil Judge,
Raichur

MRJ*