

IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE RAICHUR.

PRESENT:

Sri. Patil Veeranagouda.S.

B.Com. LL.M

Addl. Sr. Civil Judge & JMFC-I.

DATED THIS THE 10TH DAY OF FEBRUARY, 2015

O.S.No-222/2013

PLAINTIFF: Sri. G. Suresh Babu S/o late. G. Earanna Rao @ Chota Veeranna, aged about: 65 years, occ: Retired employee of State Bank of Hyderabad, permanent resident of Raichur, now residing at Flat No.804, 7th floor, Ram Sridhar Apartments, 16th main, BTM IIInd stage, Bangalore.

(Sri. G.N. Raghunath Reddy, Advocate)

//Versus//

DEFENDANTS: 1) Smt. G. Ratna Bai W/o late. G. Earanna Rao @ Chota Veeranna, aged about: 83 years, occ: Household, R/o H.No:7-6-225, MIG-6, KHB colony, Vasavi nagar, Raichur.

2) G. Ramesh S/o late. G. Earanna Rao @ Chota Veeranna, aged about: 83 years, occ: business, R/o H.No:7-6-225, MIG-6, KHB colony, Vasavi nagar, Raichur.

3) Arathi G. D/o Ramesh Gaddale, aged about: 27 years, occ: Software Engineer, R/o H.No:7-6-225, MIG-6, KHB colony, Vasavi nagar, Raichur.

- 4) Uma Gaddale D/o Ramesh Gaddale, aged about: 26 years, occ: Software Engineer, R/o H.No:7-6-225, MIG-6, KHB colony, Vasavi nagar, Raichur.
 - 5) Mohammed Jameel Ahmed son of Mohammed Basheer Ahmed, aged about: 25 years, occ: business, R/o H.No:2-2-158 & 159, Zain Apartments, Androon quilla, Raichur.
 - 6) Pramod Nahar S/o late. Madan Lal Nahar, aged about: 40 years, occ: business, R/o Thakur Nivas, 1st floor, near: jain temple road, Raichur.
- (Sri. Noor Mohammed, Advocate for D-1, 3 & 4)
(Sri. Rajiv J.S. Advocate for D-2, 5 & 6)

ORDER ON IA. NO-II

Applicant/: G. Suresh Babu
Plaintiff:

//Versus//

Opponents: Mohammed Jameel Ahmed & Pramod Nahar.
D-5 & 6:

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Orders on IA-II filed U/o XXXIX Rule 1 & 2 of CPC:

The plaintiff has filed this application U/o 39 Rule 1 & 2 of CPC seeking direction to the defendants No-5 & 6 to deposit rent amount in respect of suit schedule properties in the court till disposal of the suit.

2. In support of the application, the plaintiff has sworn to his affidavit stating that the suit property item No-1 & 2 have been let out to defendants No-5 & 6 for monthly rent of Rs.20,000/- and Rs.15,000/- respectively. He has settled at Bangalore and defendants No-1 & 2 are not giving proper account of the same and he is entitled 4/9th share in the said rent amount, therefore, if the application is allowed, no harm or prejudice will be caused to the defendants No-1 & 2, otherwise plaintiff will be deprived of receiving his share in the said rent amount. Hence he prayed to allow the application.

3. Though defendants were appeared but not filed any objections to the present application.

4. Heard advocate for plaintiff and advocate for defendants No-1, perused the materials available on record.

5. Now, the points that would arise for the consideration of this court are as follows:-

- 1) Whether the plaintiff has made out prima facie case?
- 2) Whether balance of convenience lies in favour of plaintiff?

3) Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted as prayed for?

4) What order?

6. My findings to the above points are as under:

Point No-1: In the affirmative

Point No-2: In the affirmative

Point No-3: Partly in the affirmative

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

REASONS

7. Point Nos-1 & 2: In order to avoid repetition of facts, both points are taken up together for consideration at one stretch. The advocate for plaintiff contended that the defendant No-1 is the mother, plaintiff and defendants No-2 to 4 are her sons and daughters. The suit properties are joint family properties, the item No-1 & 2 were let out to defendants No-5 & 6 through which in all rent of Rs.35,000/- per month is receiving by the defendant No-1. This suit is filed by the plaintiff for partition and separate possession in respect of joint family properties. He being retired employee settled at Bangalore and he has legitimate share in the said rent amount collecting by defendant No-1. Though the defendant No-1 contended that the suit properties

are their own properties but at this juncture we cannot jump to a conclusion that the suit schedule properties are either self acquired or joint family properties. It is to be decided only after trial, therefore till conclusion of the trial it is better to direct to deposit the said rent amount in the court, thereafter whoever succeeds in the case will be entitled to receive the same. Therefore, plaintiff has made out prima facie case, balance of convenience also lies in favour of the plaintiff. Hence he prayed to allow the application.

8. Per contra, learned advocate for defendant No-1 vehemently argued that this suit is only for partition and separate possession filed by the plaintiff, there is no relief of rendition of account and mesne profits, therefore when there is no main relief for rendition of accounts or mesne profits, relief sought for in the present application is not tenable. Item No-2 property has been purchased by the defendant No1, which is standing in her name, she is not a coparcener, therefore the suit itself is not maintainable and plaintiff has not made out prima facie case and balance of convenience is also not in his favour.

9. He further contended that as per Sec.4 of Benami Transaction Act, the property which is standing in the name of person will become absolute owner. Accordingly, defendant No-1 is absolute owner and she has lost her two legs and requires medical check up regularly for which she needs huge money for her treatment. Nobody is there to look after her at the fag end of her life, therefore, the present application is not maintainable and prayed to reject the application.

10. Having heard the arguments from both the sides, relationship between the parties has not been denied. Of-course the defendant No-1 has not filed any objections to the present application even then he has argued at length. The contention of the plaintiff that at this juncture deciding of nature of property i.e. whether the suit property is self acquired property of defendant No-1 or the joint family property is not possible without holding a full pledged trial is appears to be proper. In order to decide the same it requires full dressed trial and now we are at the initial stage of the proceedings. Therefore, we cannot jump to any conclusion with regard to nature of the suit properties.

11. When relationship has not been denied it is a settled principle of law that the legal heirs of a person would definitely get their legitimate share, if a person has possessed the ancestral or joint family property. Therefore, here though the defendant No-1 has taken up several contentions that the suit property was self acquired property and she has perfected the title by way of adverse possession etc., but she is not denied relationship between the plaintiff and other defendants. Under such circumstances, contention of the plaintiff holds good that if the said amount is deposited in the court no harm or prejudice would be caused to either of the parties. The successive party in the suit will definitely entitled to receive the said amount after disposal of the case. Therefore, looking to the facts and circumstances and material placed by the plaintiff, at this juncture the plaintiff has made out prima facie case and balance of convenience is also lies in his favour. Accordingly, I answer both points in the affirmative.

12. Point No-3: Admittedly plaintiff is the retired employee and settled at Bangalore and getting pension whereas defendant No-1 is age old woman suffering from several ailments and she is wholly depends upon the rent amount for her livelihood. The advocate for

the defendant No-1 contended that the defendant No-1 is age old woman and she has lost her two legs and suffering from several diseases and requires regular medical check up as such she required minimum Rs.20,000/- per month for her day today expenses. If the rent is ordered to be deposited in the court then the defendant No-1 will be put to irreparable loss and much hardship will be caused to her. Therefore, he contended that if the application is allowed it will cause much irreparable loss to the defendant No-1 and if it is not allowed no irreparable loss caused to the plaintiff, because he is well settled at Bangalore.

13. Though the defendants have taken up several contentions but he has not filed objections to the present application nor produced any documents in support of his contention. Even then as per plaint, age of the defendant No-1 in the year 2013 is 83 years and it appears that the defendant No-1 has become an age old woman and she might have suffering from several diseases and certainly she requires certain amount of money for her livelihood and for her treatment. Under such circumstances, I am of the considered opinion that if the entire rent amount is ordered to be deposited in the court, the defendant No-1 will be put too much hardship. Situation of the plaintiff

is not worst than the defendant No-1, because he is getting pension for every month. It is also responsibility of the plaintiff to look after his mother at fag end of her life. Therefore, these are all circumstances warrants that the defendant No-1 will be given a minimum rent amount for her livelihood. Therefore, I am of the considered opinion that giving direction to deposit 50% of rent amount before the court would meet the ends of justice. Hence, I answer point No-3 partly in the affirmative.

14. Point No-4: For the foregoing reasons, I proceed to pass the following:

ORDER

I.A. No-II filed by the plaintiff U/o XXXIX Rule 1 & 2 of CPC is hereby partly allowed.

The defendants No-5 & 6 are hereby directed to deposit 50% of rent amount in respect of the suit properties before this court and another 50% of the rent shall be paid to the defendant No-1 henceforth.

(Dictated to the Stenographer, transcribed by him, corrected and pronounced by me in the open court on this the 10th day of February, 2016).

(Patil Veeranagouda.S)
Addl. Senior Civil Judge Raichur.

