

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 NOVEMBER, 2017

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,Since Dead by L.Rs

1-a) Smt.D.Lakshmi Bai W/o late D. Gopal Rao & D/o late G. Earanna Rao @ Chota Veerana, aged about: 66 years, occ: Household, R/o C/o D. Muralidhar Rao, D.No.7/24A 1st floor,Kavadigeri street, Kurnool,518002 A.P.

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.
- 7) Rakesh @ Rickey S/o C.H. Venkatesh, aged about: 25 years, occ: proprietor of Fashion Park, opp: Janatha Darshini Hotel, Harihar road, Raichur.

(Sri. Noor Mohammed, Advocate for D-3 & 4)
 (Sri. Rajiv J.S. Advocate for D-2, 5 & 6)
 (D-1(a) & D-7 Exparte)

ORDER ON IA. NO-X

Applicant/: G. Suresh Babu
 Plaintiff:

//Versus//

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

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Orders on IA-X 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 & 7 to deposit the remaining 50% of 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 & 7 for monthly rent of ₹ 36,000/- and ₹ 35,000/- respectively. He has already filed IA No-II for grant of injunction order directing defendants No.5 & 6 to deposit the rent amount in the court wherein this court has pleased to allow IA No-II and directed to deposit 50% of the rent amount to defendants No.5 & 6 before the court and remaining balance 50% is ordered to be paid to his mother defendant No.1. Now defendant No.1 is no more and defendants No.5 & 6 have also not deposited the said amount. Defendants No- 2 to 4 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-2 to 4, otherwise plaintiff will be deprived of receiving his share in the said

rent amount. Hence he prayed to allow the application and direct defendants No.5 & 7 to deposit entire rent amount to the court.

3. Though the defendant No.5 appeared but not filed any objections to the present application, the defendant No.7 remained exparte. However, the defendants No.3 & 4 have filed their objections contending that the defendant No.1 has bequeathed the suit property in the name of Vikram who is son of defendant No.2 and he is necessary party to the present suit and they have already preferred an appeal against the order passed on IA No-II in MA.No.10/2016 before the Hon'ble District Court which is pending and the rent of suit property is not ₹ 71,000/- but it is only ₹ 65,000/-, since this suit is for partition and it is not for accounts or mesne profits as such the present application is not maintainable.

4. Heard advocate for plaintiff and advocate for defendants No-3 to 5, perused the material 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 the 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: In the affirmative

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

REASONS

7. Point Nos-1 to 3: In order to avoid repetition of facts, all three 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 & 7 through which in all rent of ₹ 71,000/- per month is receiving by the defendants No-2 to 4. 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-2 to 4. Already he has filed IA No-II before this court wherein 50% of the rent amount was ordered to be deposited before the court by defendants No.5 & 6 and remaining 50% has to be paid to the defendant No.1, but in view of death of defendant No.1 and induction of defendant No.7 in place of defendant No.6 he has filed the present application seeking entire rent amount to be deposited before this court till disposal of this case. Though the defendant No-2 to 4 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-2 to 4 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 No-1 & during her life time she has bequeathed the entire suit property to the son of defendant No.2 and others and who is necessary party and without impleading him the present application is not tenable, 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. Having heard the arguments from both the sides, relationship between the parties has not been denied. Of-course the defendant No-5 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. 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.

10. 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-2 to 4 contended that they have preferred M.A.10/2016 against the order passed by this court on IA No-II but there is no stay order from the appellate court. Moreover, under the changed circumstances the plaintiff is having every right to file the present application, therefore it cannot be misunderstood by the defendants that the plaintiff ought to have taken steps U/s 36 of C.P.C by filing execution petition.

11. In view of death of defendant No.1 and the defendants giving the suit property for defendant No.7 on rent in place of defendant No.6 it is necessary to give the direction to the defendant No.5 & 7 to deposit the entire rent amount before the court because there is no necessity for both the parties in respect of the said rent at this juncture. It is needless to say that whoever succeeds will entitle the said rent which was deposited before the court. Since the plaintiff contended that there is monthly rent of ₹ 71,000/- whereas defendants No.2 to4 contended that it is only ₹ 65,000/- at this juncture, both parties have not produced any document to show the

exact rent amount. Therefore, even assuming without admitting that the rent is ₹ 65,000/- per month from the defendants No.5 & 7 which is necessary to be deposited before this court. 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.

12. The successive party in the suit will definitely entitled to receive the said amount after disposal of the case. So far as contention of defendants No.2 to 4 that impleading of legatee under the alleged will executed by defendant No.1 is concerned, it will be heard separately and to decide the present application I am of the opinion that he is not a necessary party, because here the application is only against the defendants No.5 & 7. Therefore, the contention of the defendants No.2 to 4 in this regard holds no water. 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 and if T.I. is not granted the plaintiff will be put to irreparable loss. Even though the IA No-II was allowed by this court, in view of the changed circumstances, this IA is also deserves to be allowed. This order is the continuation of the

order passed on IA No-II in view of the changed circumstances.

Hence, I answer all the above points in the affirmative.

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

ORDER

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

The defendants No-5 & 7 are hereby
directed to deposit entire rent amount in respect of
the suit properties before this court till disposal of
the suit.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and pronounced by me in the open court on this the 10th day of November, 2017).

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