



IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
DEVADURGA

Present:
Sri.Hanumanth Satwik.,LL.M,
Senior Civil Judge & JMFC, Devadurga.

O.S.No.176/2022

DATED : THIS THE 12th DAY OF OCTOBER 2023

Plaintiffs: Noor Sab S/o. Aayin Sab @ Aayinappa
and others

(By Sri.R.K., Advocate)

--V/s--

Defendants: Haji Sab S/o. Late Yamanur Sab @
Yamanappa and another.

(D.1 by Sri. M.M. Advocate)
(D.2 by Sri. V.M.M. Advocate)

Provision under which the application is filed	U/o.XXXIX rule 1and 2 C.P.C.
Relief sought for	Temporary injunction.
The date on which the application is filed	10.07.2023
Number of the application	IA.No.IV
The date on which the objections are filed by different opponent	28.07.2022



The date on which the orders were passed on the said application	12.10.2023
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**Senior Civil Judge & JMFC.,
Devadurga.**

ORDER ON IA NO.IV

The present suit is for partition and separate possession. Defendant no.1 in his counter claim sought for declaration of ownership and permanent injunction with respect to the suit property. In the alternative defendant no.1 sought for partition with respect to land bearing Sy.No.116/*/* measuring 05 acres 18 guntas, in the land bearing Sy.No.119/*/1, 119/*/2, 119/*/3 and 119/*/4 .

2. The present application is filed by defendant no.1 praying this court to restrain plaintiff no.1 from alienating or in any manner diminishing the value of the non-suit lands bearing Sy.No.119/*/1 measuring 05 acres 16 guntas and Sy.No.119/*/3 measuring 02 acres 20 guntas. It is the case of defendant no.1 that partition took place among the father of plaintiff no.1 and 2 and defendant no.1 and 2. In the said partition the suit property was allotted to his share and the non-suit lands bearing Sy.No.119 and 116 were allotted to the share of the father of plaintiff no.1 and 2 and defendant no.2. The land bearing Sy.No.119/*/1 and 119/*/3 are standing in the name of plaintiff no.1. Plaintiff no.1 in collusion with plaintiff no.2 and 3



is trying to alienate the non-suit lands standing in his name. In this regard, defendant no.1 prays as above.

3. The plaintiffs in their objections contended that the present application is not maintainable. The land bearing Sy.No.119/*/1 measuring 05 acres 16 guntas and Sy.No.119/*/3 measuring 02 acres 20 guntas are not the suit properties. From the plaint averments it is clear that the above said properties are the self acquired properties of father of plaintiff no.1 and 2. Plaintiff no.1 sold one of the counter claim property bearing Sy.No.119/*/3 measuring 02 acres 20 guntas in favour of Shivakumar vide sale deed dated 05.04.2023. In this regard, plaintiffs prayed to reject the application.

4. Heard arguments of the learned counsel for the plaintiffs and defendant no.1.

5. Considering the contentions of the parties, following points arise for my consideration.

1. Whether defendant no.1 show that there is a prima-facie case ?
2. Whether balance of convenience is in favour of the defendant no.1 ?
3. Whether defendant no.1 will suffer irreparable injury if temporary injunction is not granted?
4. What order?



6. My findings for the above points are as follows.

Point No.1 : In the partly affirmative

Point No.2 : In the partly affirmative

Point No.3 : In the partly affirmative

Point No.4 : As per final order

For the following;

REASONS

7. **Point No.1**:- It is the case of defendant no.1 that the non suit properties bearing Sy.No.119/1 and 119/3 were purchased from the profits arising from the suit property. The said properties were purchased in the name of the father of plaintiff no.1 and 2. In this background, firstly with respect to land bearing Sy.No.119/3 measuring 02 acres 20 guntas is concerned I have perused documents on record. The sale deed dated 27.10.2021 prima-facie shows that the land bearing Sy.No.119/*3 was sold in favour of one Shivakumar S/o. Basavaraj. Thus, Sy.No.119/*3 having been sold in favour of Shivakumar, I am of the view that the present application with respect to land bearing Sy.No.119/*3 measuring 02 acres 20 guntas has become infructuous.

8. Nextly, with respect to land bearing Sy.No.119/*1 measuring 05 acres 16 guntas is concerned, it is the case of defendant no.1 that the said property was purchased in name of father of plaintiff no.1 and 2 from the profits arising from the suit property. In this regard, I have perused the documents on



record. Be it noted, the said property is standing in the name of plaintiff no.1. The plaint reflect that the land bearing Sy.No.119 is claimed to be purchased by the father of plaintiff no.1 and 2 and it is the his self acquired property. Thus seen, from the pleadings it transpires that the land bearing Sy.No.119/*/1 was owned by the father of plaintiff no.1 and 2 at an undisputed point of time. This being the case, the source of income utilized to purchase the said property is a triable issue.

9. In the case at hand, defendant no.1 sought for partition as an alternative relief with respect to land bearing Sy.No.119/*/1 and other properties. Further, for the above said reasons it is prima-facie clear that the land bearing Sy.No.119/*/1 measuring 05 acres 16 guntas was purchased by the father of plaintiff no.1 and 2 at an undisputed point of time. This being the case, it is held that the question as to whether the said property was purchased from the self earnings of father of plaintiff no.1 and 2 or it was purchased from the income arising from suit property, is a subject matter of trial, which can be decided by taking evidences and in a full-fledged trial. This being the case, considering the issues that are required to be answered in the counter claim, I am of the view that, there is a prima-facie case for trial with respect to the land bearing Sy.No.119/*/1. In this view of the matter, considering the application, pleadings and materials on record, I am of the view that defendant no.1 has made out a prima-facie case with respect to land bearing Sy.No.119/*/1



measuring 05 acres 16 guntas. Accordingly, I answer issue no.1 in the partly affirmative.

10. **Point No.2:-** In the case at hand, it is already held that the present application with respect to the land bearing Sy.No.119/*/3 measuring 02 acres 20 guntas has become infructuous. Therefore, considering the question of balance of convenience with respect to the said property does not arise.

11. Further, with respect to land bearing Sy.No.119/*/1, it is held that there is a prima-facie case for trial. This being the case, if temporary injunction not granted and if plaintiff no.1 alienates the property bearing Sy.No.119/*/3 measuring 05 acres 16 gutnas as alleged, defendant no.1 will suffer inconvenience, as defendant no.1 will be put into multiplicity of litigation. Such being the case, if temporary injunction is not granted the inconvenience which will be suffered by defendant no.1 is more then the inconvenience which may be caused to plaintiff no.1. Further, during the pendency of the suit, if plaintiff no.1 alienates the land bearing Sy.No.119/*/1 measuring 05 acres 16 guntas as alleged by defendant no.1, the very purpose of the suit will be frustrated. Thus, as plaintiff no.1 has an opportunity to contest the matter and get the matter decided on merits, I am of the view that the balance of convenience with respect to Sy.No.119/*/1 measuring 05 acres 16 guntas is in favour of defendant no.1. Resultantly, point no.2 is answered in the partly affirmative.



12. **Point No.3:-** In the case at hand, it is already held that the present application with respect to land bearing Sy.No.119/*/3 has become infructuous. Therefore, considering the question of irreparable injury with respect to the said property does not arise for consideration.

13. Further, with respect to land bearing Sy.No.119/*/1 measuring 05 acres 16 guntas if temporary injunction is not granted and if plaintiff no.1 alienates the said property as alleged, defendant no.1 will suffer irreparable injury and such injury cannot be compensated in terms of money. As defendant no.1 will be put into multiplicity of litigation. Further, during the pendency of the suit if plaintiff no.1 alienates Sy.No.119/*/1 as alleged by defendant no.1, the very purpose of the suit will be frustrated. In these circumstances, defendant no.1 showed that he will suffer irreparable injury if temporary injunction is not granted with respect to land bearing Sy.No.119/*/1 measuring 05 acres 16 guntas. Resultantly, point no.3 is answered in the partly affirmative.

14. **Point No.4:** - In view of reasons on point No.1 to 3 and in the interest of justice and equity, I proceed to pass the following,

ORDER

IA No.IV filed by defendant no.1
U/o.XXXIX Rule 1 & 2 R/w. Sec.151 of CPC is
hereby allowed in part.



Plaintiff no.1, his agents, servants or anybody claiming on his behalf are hereby temporarily restrained from alienating the land bearing Sy.No.119/*/1 measuring 05 acres 16 guntas till the disposal of the suit.

Parties to bear their own cost.

(Dictated to the stenographer directly on the computer, typed by him, corrected by me and then pronounced in the open court on this the 12th day of October 2023.)

(Hanumanth Satwik)
Senior Civil Judge & JMFC.,
Devadurga.