



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, RAMANAGARA**

Dated This 29th day of February 2024

PRESENT:

Sri. Mahesh B.T.,
B.Com., LL.M.,
1st Addl., Senior Civil Judge and JMFC,
Ramanagara.

OS No.26/2023

Plaintiff :- Smt.Kavitha

V/s

Defendants :- Smt.Savithramma and Others

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I.A

Applicant :- Smt.Kavitha - - (Plaintiff)

V/s

Opponents :- Smt.Savithramma and Others - - (Defendants)

*** * * ***

**ORDER ON I.A FILED U/O XXXIX RULE 1 AND 2 R/w
Sec.151 OF CPC.,**

The Applicant/Plaintiff has filed IA for an order of



temporary injunction restraining the Opponents/Defendants from alienating the suit schedule properties in favour of others, till the disposal of the suit.

2. As per the affidavit of the applicant that, the plaintiff has filed the above suit against the defendants for the relief of declaration, permanent Injunction and other reliefs. Further it is stated that, the plaintiff is the absolute owner in possession and enjoyment of the land bearing Sy.No.93/1, measuring 0-12 yards and Sy. No.117/4, measuring 0-05 guntas both situated at Kodyalakarenahalli Village, Bidadi Ramanagara Taluk and District. Further it is stated that, her grand-father by name Hanumanthachar was the absolute owner in respect of schedule property and the same are his self-acquired property, acquired through registered sale deed dated:28.06.1976. Further during his life time he had executed a Registered Will dated:25.03.1987 and



registered on 07.5.1987 in favour of Narasimha Murthy, S/o. Hanumanthachar and thereafter the said Narasimha Murthy executed a Registered Gift Deed dated: 10.08.2015 in her favour. From the date of Registered Gift Deed she is in peaceful possession and enjoyment of the schedule property without any hindrance from anybody. Thereafter, she got obtained revenue records in her name in respect of schedule property and she is paying taxes to the concerned authority in respect of schedule property.

3. Further it is stated that, one Ramachar, husband of the defendant No.1 and father of the defendant No.2 had filed a suit in O.S.No. 39/2000 against the defendants No.3 to 7 and land acquisition officer before the I Addl.Civil Judge, Junior Division & JMFC at Ramanagara in respect of schedule property and in respect of land bearing Sy. No.219, measuring 4 acres, situated at



Kodiyalakarenahalli Village, Bidadi Hobli, Ramanagara Taluk and District for the relief of partition and separate possession of his legitimate share and after contest the said suit has been decreed by the Court on 26.9.2005 granting 1/6th share in item No.2 & 3 and dismissed the suit in respect of item No.1 i.e., land bearing Sy.No.219, measuring 4 acres, situated at KVillage, situated at Kodiyalakarenahalli Village, Bidadi Hobli, Ramanagara Taluk. Thereafter the said Ramachar filed FDP proceedings before the Court in FDP No.4/2006 and said FDP proceedings also disposed off. Based on the same his name has been entered in RTC and mutation in respect of schedule property.

4. Further it is stated that, the said Ramachar with an intention to grab the suit schedule property on an illegal manner behind her back, the said Ramachar by suppressing the above stated facts and without making



her as a party in the above suit in O.S.No.39/2000 and Final Decree Proceedings No.4/2006, got an order from the Court behind her back, as such the said suit O.S.No.39/2000 and FDP No.4/2006 proceedings are void and ab-initio and the said suit and FDP proceedings are sham, collusive and coluable document and not binding on her. Further it is stated that, taking advantage of the orders passed in O.S.No.39/2000 and FDP No.4/2006 the defendants may try to alienate and encumber the suit schedule properties in favour of third parties to create third party interest over the suit schedule property and if the Defendants were to successful in their futile and unlawful efforts she will be put to untold hardship, irreparable loss and injustice which cannot be compensated in terms of any means and curtile her rights over the suit schedule property. That the plaintiff has made out a prima-facie case and balance of convenience



lies in her favour and she will be put to irreparable loss, if the interim order is not granted. Hence, the application.

5. After service of suit summons, Opponent/Defendants No.3, 4 and 6 did not appeared before the court and hence they were placed exparte. The Defendants No.1, 2, 5, 7 to 12 have appeared before the Court through their counsel and filed written statements which was adopted as counter statement of objections to the IA No.I.

6. The Opponents/Defendants No.1 and 2 have denied the plaint averments. According to them, the plaintiff not made proper parties and made some unnecessary parties in this suit. Hence the suit is bad for non-joinder of necessary parties and mis-joinder of parties. Further conteded that, the plaintiff is not inclusion the property bearing Sy.No.219 measuring to an extent of 4-00 acres of land which needs to be partition afresh. Further



contended that, the defendants No.1 and 2 are the joint owners with possession and enjoyment of the property bearing Sy.No.93/1 to an extent of 0-02 guntas of land out of 0-12 guntas and an another property bearing Sy.No.117/4 measuring to an extent of 0-12 guntas of land out of 0-05 guntas which are all part of suit schedule properties herein situated Kodiyalakarenahalli Ramanagara Taluk. Village, Bidadi at Hobli, Ramanagara Taluk. Further the suit schedule property including property bearing Sy.No.219 to an extent of 4-00 acres of land which is also situated at Kodiyalakarenahalli Village, Bidadi Hobli, Ramanagara Taluk, which are all earlier joint ancestral properties of Ramachar and his brothers. One Hanumanthachar was the propositor and he was having 7 sons namely Ramachar, Narasimhamurthy, Bhaskarachar, Shamchar, Chandrashekarachar, Narsimhamurthy and Krishnachar. Out of 7 sons, one son



namely Krishnachar was went out as a adopted son and hence the said Krishanachar was getting the properties from his adopted father. The propositor Hanumanthachar was having properties which are all mentioned supra and passed away leaving behind his 6 sons who are the successors to his estate. The properties are all joint family properties.

7. Further contended that, the husband of defendant No.1 and father of defendant No.2 namely Ramachar was filed a suit against the defendants No.3 to 7 herein including Special Land Acquisition Officer over the suit properties including the property bearing Sy.No.219 of Kodiyalakarenahalli Village, Bidadi Hobli, Ramanagara Taluk, for the relief of partition and separate possession of his $1/6$ 2th share in all over the properties. The 3rd defendant herein who is none other than the father of plaintiff namely Narasimhamurthy was served the notice



in O.S.No.39/2000 and after gave several opportunities, he was not filed his written statement and hence the Hon'ble Civil Judge (Jr.Dvn) and Additional JMFC at Ramanagara was passed the judgment by decreeing the suit filed by Ramachar in part and rejecting the claim on property bearing Sy.No.219 of Kodiyala Karenahalli Village for the reasons that, the 6th defendant in O.S.No.39/2000 was filed his written statement contending that, the property bearing Sy.No.219 is acquired and hence it is not available for partition. But at time of proceedings was pending in O.S.No.39/2000, the land acquisition proceedings also was pending. Hence, the Court was pleased to decreed the suit in part. But after the decree, the defendants No.1 and 2 recently got the knowledge that, the land acquisition proceedings was dropped.

8. Further contended that, at the instigation of



defendant No.3 herein, the plaintiff filed the present suit and the defendant No.3 is also filed an appeal in R.A.No.3/2023 before the Principal Senior Civil Judge at Ramanagara questioning the judgment and decree passed in O.S.No.39/2000 and FDP No.4/2006 after enormous delay. The said appeal is still pending for adjudication. The plaintiff and her father who is defendant No.3 herein colluded with each other both are filed separate appeal and original suit questioning the legality of the O.S.No.39/2000 and FDP.No.4/2006 in the same year after lapse of several years in order to harass these defendants and nothing else. Therefore, the Opponents/Defendants No.1 and 2 prayed for dismissal of the suit with exemplary costs and also the Opponents/Defendants No.5 and 7 to 2 have contended same in the same line of the defendants No.1 and 2. Therefore, the Opponents/Defendants No.5 and 7 to 2



prayed for dismissal of the suit with exemplary costs.

9. Heard and perused materials on record.

10. The following points arise for my determination:

(1) *Whether the plaintiff has made out a prima-facie case?*

(2) *Whether the balance of convenience lies in favour of the plaintiff?*

(3) *Whether the plaintiffs would suffer irreparable loss and injury if temporary injunction is not granted in her favour?*

(4) *What order ?*

11. My findings on the above points are as under:

Point No.1 : *In the Negative;*

Point No.2 : *In the Negative;*

Point No.3 : *In the Negative;*

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

REASONS

12. **Points No.1:** have already set out in brief as to what



the case of the plaintiffs and as to what the stand taken by the defendants. It is well settled principles of law that the following propositions are to be established in order to invoke the jurisdiction of the court to get an interlocutory order of injunction U/o.39 Rule 1 and 2 of CPC. (1) Plaintiff has to establish a prima-facie case, (2) the balance of convenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable injury if an injunction is refused. The ingredients are to be established by the party, who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the court so that the court will be satisfied about the prima-facie case in favour of the party seeking the order. It is no part of courts function at this stage of the litigation to try to resolve difficult question of facts and law, which require elaborate evaluation of evidence to be recorded at the trial. The



conduct of the parties is also plays an important and vital role in considering the application of this nature.

13. The plaintiff has has filed the above suit against the defendants for the relief of declaration, permanent Injunction and other reliefs. It is to be noted here that, the father of the defendant No.1 Ramachar filed suit for partition and separate possession in OS.No.39/2000 against his family wherein father of the plaintiff was also a party in that suit thereafter he remains absent finally suit was decreed partly in favour of the Ramachar allotting 1/6th share in the item No.2 and 3 of the suit schedule properties in that suit, which are the suit schedule property in the instant suit. The father of the plaintiff remains absent and placed exparte in that suit. Thereafter, the father of the plaintiff also filed a suit for the permanent injunction against the children of the Ramachar i.e., the defendants No.1 and 2 herein with respect to the suit schedule



property. Thereafter, the suit came to be dismissed and same was challenged in RA.No.3/2022 which is pending before the court meantime the daughter of the said Narashimamurthy filed the instant suit in spite of knowing very well that his father has no right to execute the gift deed in her favour. Now, plaintiff has filed the instant suit for declaration in spite of having all the knowledge that her father has filed appeal before the appellate court in RA.No.3/2023. Hence, for the above said reasons plaintiff has not made out prima-facie case in her favour to grant the temporary injunction as prayed. **Accordingly, the Point No.1 is answered in the “Negative”.**

14. **Points No.2 and 3:-** These points are taken up for common discussion in order to avoid repetition of facts. For granting equitable remedy of temporary injunction existence of prima-facie case is a must. Existence of prima-facie case



is the harbinger to investigate in to other points. This proposition of law is laid down in the decision reported in **ILR 1989 KAR 1701 in the case of GOWRISHANKARA SWAMIGALU VS. SIDDHAGANA MUTT** wherein it is held that;

“ If there was no prima-facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stage itself. But, if there was a *prima-facie* case then other considerations governing the grant of injunction would come in to fully and will also have to be evaluated before granting or refusing the injunction”.

15. Hon’ble Supreme Court in case a reported in **2009-AIR (SCW) 7581 KASHI MATH SAMSTHAN VS. SRIMAD SUDHINDRA THIRTHA SWAMY** has held that if a party fails to prove prima-facie case to go for trial, it is not open to



the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

16. The plaintiff has failed to make out prima-facie case. Therefore, in view of the ratio laid down in the case cited supra, the plaintiff is not entitled to reliefs claimed. Under the circumstances balance of convenience does not lie in favour of plaintiff. In other words, irreparable injury or damage would ensue before the legal right would be established a trial and that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. Accordingly, I answer **Points No.2 and 3 in the “Negative”**.

17. **Point No.4:-** In view of the ‘Negative’ findings on Point



No.1 to 3, the application deserves to be dismissed.

Accordingly, I proceed to pass the following:

ORDER

I.A filed by the Applicant/Plaintiff
under Order XXXIX Rules 1 and 2 R/w
Sec.151 of CPC., is here by rejected.

No order as to costs.

(Dictated to the Stenographer in-part and dictated directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 29th day of February 2023.)

(Sri.Mahesh.B.T)
1st Addl., Senior Civil Judge and JMFC,
Ramanagara.