

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND
CJM AT RAMANAGARAM**

Dated : This the 03rd day of February 2020

Present

Sri. N.S.Kulkarni.,
B.Com., LL.B Spl.,
Prl. Senior Civil Judge & CJM.,
Ramanagara.

O.S 79/2016

Plaintiffs :- Sri. Nagarajappa and others
(By Sri. C.H.K., Advocate)

V/s

Defendants : Smt. Venkatamma and others
(D.1 to 4 Sri. K.M.M., Advocate)

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ORDERS ON I.A FILED BY THE PLAINTIFF No.1
U/O 39 RULE 1 and 2 R/W SECTION 151 OF CPC

The plaintiff No.1 has moved I.A dated 04.03.2016 U/o 39 Rule 1 and 2 of CPC to grant an ad-interim order of temporary injunction restraining the defendant No.2 from alienating or creating any encumbrance over the suit schedule properties, till the disposal of the suit.

2. In the affidavit anent to the application, he deposed that, the father of the 2nd defendant namely Narayanashetty represents the head of the family and he is the manager. After the demise of Narayanashetty, the 2nd defendant illegally changed the katha in his name on the basis of Pavathi varasu merege. Taking the undue advantage of the katha, the defendant No.2 appears to made a series of transaction without taking their interest in to consideration and he is trying to alienate the suit schedule property to third parties by depraving their right over the property. They being the sons of deceased Narayanappa is entitled to share in the family property. The defendant No.2 began to create documents in favour of third parties and attempted to exclude them from the family and the suit schedule property is the ancestral property. The defendant No.2 has not acted in good faith and one thus not trustworthy. In view of the act of the defendant No.2, he and other plaintiffs are not interested to continue as the joint family member and this desire was expressed and not headed by the defendant's inspite of several panchayath. Now, the defendant No.2 taking undue advantage of the entries in the name of defendant No.2 trying to alienate the suit schedule property to the third parties with an intention to

defraud their legitimate right over the suit schedule property. Wherefore, it is prayed to allow the application or otherwise the plaintiff will be put to great loss and hardship.

3. The advocate for defendants 1 and 2 have filed the objection denying the averments of plaint and the application and the affidavit and stated that suit property is joint and ancestral property and plaintiffs are not in possession. They also denied that, 1st defendant Narayanashetty was the head of the family and manager and after his death, 2nd defendant illegally changed the katha taking undue advantage of the katha. The defendant No.2 trying to alienate the suit property to the third party to deprive the rights of the sons of Narayanappa. Further denied that, the contents of the affidavit are false and 3rd parties attempted to exclude them from the family and the suit property is the ancestral property and defendant No.2 not acted in good faith and not trustworthy and further the plaintiffs are not interested to continue the joint family. There is no prima facie face, balance of convenience and irreparable loss, The 2nd defendant has stated that, one Thammashetappa was the propositus and his sons are dead leaving behind legal heir who are 1 to 7 to succeed to their property. The

sons of the Thammashetappa entered in to joint family partition and divided the joint family properties of their father as per oral partition and there is no joint family earlier to 1944. Therefore, all the children have got their respective share in the family partition and were put in possession. As per the said partition, the plaintiff and the ancestors of defendants 5 to 15 allotted with shares. Since the date of partition, the children of Thammashetappa never lived in joint family, which is more than 72 years. The grandfather Ramaiah sold property allotted to his share under family partition as per the registered sale deed dated 28.09.1944. One Venkataramanappa father-in-law of defendant No.5 and 8, Narayanna father of plaintiff, Lakshminarayanappa father of defendants 10 and 11, and Varadappa husband of defendant No.12 and Govindappa father of defendant No.15 were made as parties to the sale deed. Hence, there are many sale transaction by Ramaiah and his sons allotted to their family. Therefore, there was family partition. The plaintiffs grand father was allotted with one share and sold a portion of the property to him. Lakshmannashetty is the 3rd son of Thammashetappa who had only son by name late.Narayanashetty and defendant No.1 is the wife and defendants 2 to 4 are the sons of Narayannashetty. Therefore, they are in

actual possession as per the oral partition. As the grandfather of defendants 2 to 4 was having no knowledge, he did not approach the revenue authority for change of katha allotted to him. Hence, the katha continued in the name of his brother Ramaiah. After the death of Ramaiah, the defendants 2 to 4 came to know about the change of katha allotted to their grandfather and they approached the children of Ramaiah and admitted that, property was allotted to share of Lakshmanashetty and expressed their no objection for katha in the name of 2nd defendant. Hence, it is changed in respect of 29 guntas in Sy.No.28/6 under M.R 1029/1997-98. The other portion of the suit property measuring 30 guntas is the self acquired property of Laksmanashetty who has purchased the same under sale deed for consideration. Hence, Lakshmanashetty enjoyed the same during his life time by cultivating the same and after his death his son Narayanashetty inherited the same and the sons of Narayanashetty have inherited the said property and are enjoying. Hence, the grandfather of defendants 2 to 4 Lakshmanashetty became the absolute owner of property measuring 1 acre 19 guntas in Sy.No.28/6 and after his death, Narayanashetty and then defendants 2 to 4 are having revenue entries. Therefore, the plaintiffs have no

right, title and interest and they are not in possession. The suit is not maintainable as there is no joint family. Hence, it is prayed to dismiss the application.

4. The defendants 18 and 19 have filed objection denying the application filed by the plaintiff and the contents of the affidavit as false and not true. The present defendants have to become the owners of the suit schedule property and they are not in physical possession, question of putting up permanent structure does not arise and injunction is equitable relief, which can be granted against the persons, who are in possession. But, these defendants are not in possession. Hence, injunction cannot be granted. The plaintiffs have not come with clean hands, the question of causing hardship does not arise. Hence, prayed to dismiss the I.A.

5. The following point emerge for consideration:-

1. *Whether the prima-facie case and balance of convenience lies in favour of the plaintiffs ?*
2. *Whether the plaintiffs will be put to irreparable loss and injury in the event, if an order of temporary injunction is denied?*
3. *What Order?.*

6. Heard the arguments of both the sides, I have scrutinized the application in the background of necessary materials. Now, my answer on the points is as under for the reasons herein after assigned:-

Point No.1:- In the Affirmative

Point No.2:- In the Affirmative

Point No.3:- As per final order

for the following:-

REASONS

7. **Points 1 and 2:-** As these two points are interconnected, I wish to treat them collectively and that would avoid repeated discussion.
8. Though the plaintiff has asked for grant of temporary injunction by way of restraining the defendants from alienating the suit property, till disposal of the case. It is the case of the plaintiffs that, the suit properties are the joint family properties and they are in joint possession and the defendants have illegally changed the katha and trying to alienate the suit properties. On the other hand, it is the case of the defendants that, there was a oral partition about 72 years back. As per the oral partition, they are in respective possession

and there is no joint family. But, the defendants 18 and 19 clearly admitted that, they are not in possession and they are not owners. Hence, under these circumstances, it is the case of the defendants that, there was a oral partition it was acted upon and they have been allotted share and they are in separate possession and there are entries and the plaintiffs will aware of the said entries. But, they have to prove this case at Trail by leading Evidence and Documents. It is the self acquired property and there was oral partition. The plaintiff has to prove the case that, it was the joint family property and the defendants illegally created the entries without his knowledge. So under these circumstances, if the application is not allowed, the plaintiff will be put hardship and loss as the defendants alienate the suit property, No hardship will be caused to defendants, as they are already in possession as per oral partition. Hence, as it is a joint family property and the relationship is admitted and the parties have to prove the case of joint family and oral partition and self acquired property. So, if the I.A is allowed, no hardship will be caused to both the

sides. Accordingly, I answer the Point No.1 and 2 is in the “**Affirmative**”.

9. **Point No.3:-** As per final order :-

ORDER

I.A filed by the plaintiff No.1 U/o 39 Rule 1 and 2 r/w Section 151 of CPC is hereby allowed.

The defendant No.2 is hereby restrained by way of temporary injunction from alienating or creating any encumbrance over the suit schedule properties, pending disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the open Court on this the 03rd day of February 2020)

**Prl., Senior Civil Judge & CJM,
Ramanagara.**