

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,
AT RAMANAGARA

:PRESENT:

Smt.Anupama Lakshmi.B., B.A., LL.B.,
Addl. Senior Civil Judge & JMFC.,
Ramanagara.

O.S. No.96/2019

DATED : THIS THE 26th DAY OF JUNE 2020

Plaintiffs : Smt.Shushilamma and Another

-V/s-

Defendants : Smt.Mahadevamma and Others

* * * *

I.A .V

Applicants : Smt.Shushilamma and Another - - (Plaintiffs)

-V/s-

Opponents : Smt.Mahadevamma and Others

- - (Defendants No.1 to 3)

**Orders on I.A.IV filed under XXXIX Rules 1 and 2 R/w
Section 151 of C.P.C.,**

The applicants/plaintiffs have filed the present application for temporary injunction restraining the opponents/defendants, their agents, assignees, transferee of interest, men and anyone claiming under them from alienating or encumbering the suit schedule properties either by way of sale, gift, mortgage or otherwise till the disposal of the suit.

2. The applicant/plaintiff No.2 has sworn to an affidavit annexed to the application and submitted that, her father Late Puttaswamiah @ Puttappa during the subsistence of his marriage with the plaintiff No.1 contracted 2nd marriage with the 1st defendant and in the said wedlock the defendants No.2 and 3 were born.

That there was a division of the ancestral properties of the joint family in between Puttaswamaiah and his brothers.

In the said partition land bearing Sy.No.27/3 measuring 2 acres 8 guntas, land bearing Sy.No.22/2 measuring 0.03.08 guntas, land bearing Sy.No.18/5 measuring 0.03.08 guntas, land bearing Sy.No.19/7 measuring 3 guntas and land bearing Sy.No.19/8 measuring 0.01.04 guntas were allotted to the share of father of the plaintiff No.2. The said lands are situated at Madapura Village.

On the basis of the partition the said properties were mutated in the name of father of the plaintiff No.2 who died intestate on 03-08-2003 leaving behind the plaintiffs, the deceased brother of the plaintiff No.2 and the defendants No.2 and 3 as his LR's to succeed to his estate.

That after the death of Puttaswamiah, the plaintiffs demanded for partition of the properties of Puttaswamaiah. But, the defendants tried to change khatha of the suit schedule properties in their names and tried to create 3rd party right over the suit schedule properties. When the

plaintiffs came to know of vicious intention of the defendants submitted objection to the Tahasidar, Ramanagara not to change khatha of the suit schedule properties in the names of the defendants.

That the plaintiffs thereafter, got issued legal notice to the defendants calling upon them to partition the suit schedule properties. However, the defendants refused the legal notice and did not come forward to comply with legitimate demand made in the legal notice. Thereafter, the plaintiffs instituted O.S.No.15/2009 on the file of Prl Civil Judge, Ramanagara for partition of the suit schedule properties.

That during the pendency of the suit the Court passed an order to temporary injunction restraining the defendants from alienating or encumbering the suit schedule properties. But, the 1st defendant in violation of interim order, moved an application to get revenue entries of item No.1 of the suit

schedule properties in her name without notice to the plaintiffs. The Tahsidar ignoring the earlier objections submitted by the applicants herein and in defiance of the interim order passed by the Court transferred revenue entires in the name of the 1st defendant.

The 1st defendant on the basis of revenue entries standing in her name sold portion of item No.1 of the suit schedule properties to various persons in violation of interim order passed by the Court in O.S.No.15/2009. When the case was set down for evidence of the defendants, the defendants moved an application for rejection of plaint on the ground that, there is no pecuniary jurisdiction for the Court to try the suit. The said application was rejected with a direction to file fresh valuation slip within a time frame, failing which the suit was to dismissed.

The present applicants made an application to recall the said conditional order and that if the Court were to come

to the conclusion that, the Court has no pecuniary jurisdiction to try the suit then to return the plaint with liberty to present the same before the Appropriate Court. The application was allowed and the plaint ordered to be returned. As such the plaint is presented before this Court.

That the applicants have a legitimate share in the suit schedule properties. But, the defendant No.1 violated the interim orders and sold portion of item No.1 property to 3rd parties. Hence, it is just and proper to restrain the defendants from alienating or encumbering the suit schedule properties till the disposal of the suit. Otherwise, the applicants will suffer irreparable hardship. That the applicants have made out a prima-facie case and balance of convenience lies in their favour. Hence, the application.

3. The opponents/defendants did not file the statement of objections to the present application but they filed written

statement. However, the same is not adopted as the statement of objections to the present application.

4. Heard. The defendants submitted written arguments and submitted the decision reported in 2020(1) Scale 527 rendered by the Hon'ble Supreme Court in Ambalala Sarabhai Enterprise Ltd., V/s KS Infraspace LLP Ltd., and Another.

5. The following points arise for my determination:

- (1) *Whether the plaintiffs have made out a prima-facie case?*
- (2) *Whether the balance of convenience lies in favour of the plaintiffs?*
- (3) *Whether the plaintiffs would suffer irreparable loss and injury if temporary injunction is not granted in their favour?*
- (4) *What order ?*

6. My findings on 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. **Points No.1 to 3:** These points are inter connected with one another, therefore to avoid repetition and for the sake of convenience they are taken up together for consideration.

The present suit is for partition and separate possession of the suit schedule properties. The case of the applicants is that, the plaintiff No.1 is the wife and the plaintiff No.2 is the daughter of Puttaswamaiah @ Puttappa. The said Puttaswamiah during the subsistence of his marriage, married the defendant No.1 and the defendants No.2 and 3 were born in the said wedlock.

That the suit schedule properties had fallen to the share of Puttaswamaiah during the family partition. Therefore, the applicants have right in the suit schedule properties. But, the defendant No.1 clandestinely got the revenue entries pertaining to item No.1 of the suit schedule

properties in her name and sold some portion of item No.1 of the suit schedule properties in favour of 3rd parties in violation of the interim orders passed by the Court in O.S.No.15/2009.

That the plaint presented in O.S.No.15/2009, was ordered to be returned by the Prl.Civil Judge Ramanagara on the ground of want of pecuniary jurisdiction to try the suit. After presenting the plaint before this Court the applicants again have sought for an order of temporary injunction restraining the defendants from alienating the suit schedule properties.

In support of their case the plaintiffs have produced certified copy of genealogy tree, study certificates, mark card, mutation register extracts, RTC Extracts.

As per the RTCs, the suit schedule properties stand in the name of Puttappa. As per the xerox copy of sale deed dated:09-01-2020 produced by the plaintiffs, the defendants

No.1 to 3 have sold 0.02.08 guntas of land in Sy.No.27/3 of Madapura Village out of 2.06.08 acres in favour Smt.Rekha.

As per the case of the applicants and as per the genealogy tree, the plaintiffs are the LR's of the deceased Puttappa. In this case, the defendants/opponents have not resisted the application. However, as per the written arguments submitted by the opponents, the applicants are total strangers to the opponents and the suit schedule properties. As per the written arguments, the 1st defendant is the only legally wedded wife of Late Puttaswamaiah @ Puttappa. After the death of Puttaswamaiah @ Puttappa the defendants have become the absolute owners in possession of the suit schedule properties. Therefore, the applicants have no locus-standi to claim the relief.

As stated above, there is no resistance to the application. However, as per the written arguments the applicants are strangers to the opponents and the suit

schedule properties. But, at this stage, the said aspect cannot be considered without the full dressed trial. When as per the documents, the applicants are the LR's of Late Puttappa @ Puttaswamaiah and when the suit schedule properties stand in the name of Puttaswamaiah @ Puttappa, at this juncture this Court is of the view that, the plaintiffs have made out a prima-facie case in their favour and balance of convenience lies in their favour and they will suffer hardship if temporary injunction is refused. Because, in case the properties are sold as already sold by the defendants, there will be multiplicity of proceedings. Hence, to avoid the inconvenience, it is necessary to restrain the opponents from alienating or encumbering the suit schedule properties till the disposal of the suit. Therefore, I answer

Points No.1 to 3 in the Affirmative.

8. **Point No.4** : Based on findings in Points No.1 to 3, this Court proceeds to pass the following:

ORDER

IA-II filed by the applicants/plaintiffs under Order XXXIX Rules 1 and 2 R/w Section 151 of CPC is allowed.

The opponents/defendants No.1 to 3 are is restrained by an order of temporary injunction from alienating or encumbering the suit schedule properties till the disposal of the suit.

(Dictated to the Stenographer directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 26nd day of June 2020.)

(Smt.Anupama Lakshmi.B)
Addl. Senior Civil Judge & JMFC.,
Ramanagara.