



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

Dated : This the 20th Day of April, 2023

Present:-

**Smt. SARASWATHI.K.N.,
B.A.L., LL.M.,
Prl. Senior Civil Judge & CJM.,
Ramanagara.**

O.S.No.201/2022

Plaintiff :- Sri. Siddagangaiah

V/s

Defendants :- Sri. Rakesh and Others.,

I.A.No.1

Applicant :- Sri. Siddagangaiah

- (Plaintiff)

-V/s-

Opponents : Sri. Rakesh and others

- (Defendants)

* * * * *

ORDER ON I.A No.1

The Plaintiff has filed this application to restrain the Defendants from alienating or creating third party rights by encumbering the suit schedule property till the disposal of the suit.



2. In the affidavit sworn in support of the present application, the Plaintiff has sworn that, he has filed the suit against the Defendants for the relief of partition and separate possession. That, his father purchased the suit schedule property from the joint family funds and he died leaving behind the Defendants and him as his successors to the suit schedule property. When he approached the Defendants for Partition and separate possession, they kept on postponing the same and thereafter upon verification of the revenue records, he came to know that, the names of the Defendants have been entered by playing fraud and by colluding with the revenue officials and the entries have been obtained behind his back. That, till date, there is no partition among his father, him and the Defendants and as such, the Defendants and he are continuing to be in joint possession and enjoyment of the suit schedule property. Hence, he has prima-facie case, balance of convenience and



comparative hardship are in his favour. Accordingly, he has prayed to allow the I.A.

3. Per contra, the Defendant No.1 to 3 have filed their written statement with memo adopting the same as objection to the I.A.
4. In the written statement, the Defendant No.1 to 3 have admitted the relationship as claimed by the Plaintiff. However, they have denied that, their father late Muniyappa was the karta of the Joint family and they have also denied the entire plaint averments.
5. According to the Defendant No.1 to 3, the porpositus late Muniyappa has 3 children i.e., the Plaintiff, Shivanna i.e., the 3rd Defendant and the Defendant No.1 & 2, being his children and 3rd Rajanna, who is dead and Defendant No.4 is his wife and Defendant No.5 and 6 are his children.



6. That, the father of the Defendant No.3 and the husband of the Defendant No.4, along with their father Muniyappa divided their ancestral and joint family properties by virtue of unregistered panchayat parikath dated 10.01.1989, the document which is in the custody of the Plaintiff. By virtue of the said Partition, the various items of the joint family and ancestral properties were divided among the propositus Muniyappa and his three children. The properties which fell to the share of the Plaintiff came to be entered to his name as per M.R No.18/1997-98 and by virtue of the same, the revenue records pertaining to the said properties have been mutated in his name. That, among the properties which fell to the share of the Plaintiff, he has already sold 1 acre 36 guntas of land in Sy.No.55/2 of Avaragere Village, Bidadi Hobli, Ramanagara Taluk in favour of Srinivasalu and others through registered sale deed dated 10.03.2022. There is reference to the panchayat



parikath the said sale deed. Inspite of it, the Plaintiff has filed this false suit by suppressing the material facts.

7. That, the Plaintiff has also sold 8 guntas of land in Sy.No..12/2 in favour of the 3rd Defendant, who in turn has sold the same in favour of Hombaiah and even in the said sale deed, there is reference to the panchayath parikath among the family members.

8. That the Plaintiff has also sold 3 house properties in favour of the purchasers and thereafter filed this false suit, by not including the properties which fell to his share. The Plaintiff has also failed to implead the purchasers of the properties from him and hence the suit is bad for non-joinder of properties and necessary parties. That, in the panchayat parikath, the Defendant No.3 and the husband of Defendant No.4 have also received their shares among the joint family and ancestral properties. By virtue of the same, the respective parties are in possession and enjoyment of



the properties which fell to their share by getting the revenue documents transferred to their names. Therefore, the Plaintiff has no right to file this suit.

9. It is also contended that, the suit schedule property is the self acquired property of the grand father of the Defendant No.1 and 2 viz., Muniyappa who purchased the same through registered sale deed dated 21.04.1967 from Thimmadasaiah. By having purchased the suit schedule property under the aforesaid sale deed, Sri.Muniyappa enjoyed the said property as it's absolute owner, being in its possession and enjoyment with the revenue documents transferred to his name.

10. That, during the life time of late.Muniyappa, the Defendant No.1 and 2, being his grand sons were looking after him well and they were also taking care of his health and hence, the said Muniyappa, out of his own will and consent, while having the capacity voluntarily executed a



registered Will in respect of the suit schedule property and another property in Sy.No.65/1B measuring 2 acres 10 guntas situated at Avaragere village in favour of the Defendant No.1 and 2 on 05.12.2014. Thus by virtue of the said Will, the Defendant No.1 and 2 are the absolute owners of the suit schedule property with revenue documents in their names and they are in peaceful possession and enjoyment of the suit schedule property.

11. That there is no existence of the joint family status among them and the Plaintiff and that the suit schedule property is also not the ancestral and joint family property and does not the property purchased out of the joint family income as claimed by the Plaintiff. Therefore, the suit of the Plaintiff is not maintainable and the same is liable to be dismissed. Accordingly, they have prayed for the dismissal of the suit.



12. Heard the arguments of the learned counsel for the Plaintiff and the Defendant No.1 to 3 and perused the materials on record.

13. The following points arise for my consideration:-

(1) Whether the Plaintiff has made out a prima-facie case in respect of I.A.No.1 in his favor for the grant of TI?

(2) Whether the balance of convenience lie in favour of the Plaintiff?

(3) Whether the Plaintiff would suffer irreparable loss and injury, if the temporary injunction is not granted in his favour?

(4) What order?

14. My answers to the above points are as under:-

Point No.1 to 3 :- In the Affirmative;

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

REASONS

15. **Point No.1:-** There is no dispute among the parties with regard to their relationship with each other



and there is also no dispute regarding the fact that, late Muniyappa was the propositus of the family. There is also no dispute regarding the fact that, apart from the suit schedule property, the family of the Defendants and the Plaintiff consisted of various other properties. But the Plaintiff has sought the relief of Partition only in respect of the suit schedule property.

16. According to the Plaintiff, the suit schedule property was purchased by his father Muniyappa from out of the joint family funds vide registered sale deed dated:- 25.04.1967 and though, he demanded the Defendants to effect partition pertaining to the same, they denied to do so.

17. On the contrary, the defence of the Defendant No.1 to 3 is that, the Plaintiff is guilty of suppression of material facts, since during the life time of late Muniyappa, he along with his 3 sons viz., the Plaintiff, the 3rd of them



and the husband of the 4th Defendant Shivanna entered into an unregistered panchayat parikath dated:- 10.01.1989, by virtue of which, all the joint family and ancestral properties were divided among them. The Defendants have also given the details of various items of the properties, which according to them, fell to the share of the Plaintiff, the 3rd of them and the husband of the 4th Defendant Shivanna.

18. Thus, according to the Defendants, there was a panchayath parikath among the joint family members long back in the year 1989 and as such, there is severance of joint family status in their family and the very claim of the Plaintiff that, he, along with the Defendants constitute a Hindu Joint Family is not tenable. The Defendants further contended that, the grand father of the Defendant No.1 & 2 viz., Muniyappa has bequeathed the suit schedule property along with another item in their favour under the



registered Will dated:- 05.12.2014. According to them, the suit schedule property and another item of the property, which is also alleged to have been bequeathed under the Will were the self acquired properties of the propositus Muniyappa and therefore the said properties were not included in the panchayath parikath and subsequently the propositus bequeathed the said two properties in their favour.

19. In this regard, during the course of his arguments, the learned counsel for the Defendants argued before this court that, till date, the Plaintiff has not challenged the registered Will which is in favour of the Defendant No.1 and 2 and the Plaintiff has filed this suit only in respect of one item of the property, though there are two properties involved in the registered Will.

20. Further, it is argued that, the copy of the M.R No.18/1997-98 would reflect about the panchayath



parikath dated:- 10.01.1989, which is acted upon by all the parties. Moreover, the suit is bad for partial partition, since the Plaintiff has failed to include the properties which have fallen to his share in the panchayath parikath. Further, the recitals of the sale deed dated:- 10.03.2022 executed by the Plaintiff in favour of the purchaser under him would also proved the factum of partition among the family members and that Plaintiff has already sold his share of properties in Sy.No.12/2 in favour of the Defendant No.3, who in turn has already sold to Hombaiah. Therefore, it is argued that, already the partition among the Plaintiff and the Defendants is acted upon and as such the suit itself is not maintainable. Therefore, the present application is also not maintainable.

21. In this regard, it is pertinent to note that, subsequent to the filing of the written statement by the Defendant No.1 to 3, the counsel for the Plaintiff has also



filed a counter statement to the written statement, in which, the Plaintiff has denied the alleged execution of the Will dated 05.12.2014 by Muniyappa and it is also contended that, the alleged Will is a fabricated and forged one, since Muniyappa had no exclusive right to bequeathe the joint family properties in favour of the Defendant No.1 and 2. Therefore, it is clear that, there is a serious dispute with regard to the nature of the suit schedule property between the Plaintiff and the Defendant No.1 to 3.

22. In support of her arguments, the learned counsel for the Plaintiff has relied upon *the decision of the Hon'ble Apex Court in the case of Kavita Kanwar V/s Pamela Mehta and others in Civil Appeal No.3688/2017* with regard to the proof of Will.

23. By relying upon the said decision, she has argued that, since the alleged execution of the Will is denied by the Plaintiff, it is necessary to restrain the Defendants from



alienating or encumbering the suit schedule property, till the disposal of the suit.

24. The counsel for the Plaintiff has also produced the photocopy of the panchayath parikath dated:- 10.01.1989 and by relying upon this document, she has argued that, under the said Will, the propositus Muniyappa was given only life interest pertaining to 3 guntas of land in Sy.No.55/4 and 2 and $\frac{1}{4}$ guntas in Sy.No.49 and 8 guntas of land in Sy.No.12/2 and a house property.

25. It is pertinent to note that, though there is a serious dispute among the parties with regard to the nature of the suit schedule property, when the Defendants contend that, the suit schedule property is the self acquired property of the propositus Muniyappa, the onus of proving the same will be upon them.



26. In support of his arguments, the learned counsel for the Defendant No.1 to 3 has relied upon the following decisions :-

1. In the case of Sri.B.S.Sridhar V/s Sri.A.K.Krishna and another in RFA No.918/2006;

2. In the case of Sri.Govindrao V/s Dadarao @ Shrawan (Dead) in Second Appeal No.220/1990 reported in 2004(3) ALL MR 660;

3. In the case of Smt.G.Basamma V/s Sri.Channaveerappa and another in RFA No.627/2007; and

4. In the case of Smt. R.Mahalakshmi V/s Smt.A.Kanchana and others in Civil Appeal Nos. 9153-9156/2016.

27. I have given through the aforesaid decisions carefully. In the present case, the question whether the suit schedule property is the ancestral property as claimed by the Plaintiff or is it a self acquired property as claimed by the Defendant No.1 to 3? can be decided by this court only after a full fledged trial.



28. However, considering the fact that, there is no dispute among the parties with regard to their relationship with each other and also considering the nature of the relief sought by the Plaintiff in the suit, at this stage, the Plaintiff has made out a prima-facie case in his favour. Accordingly, this Point is answered in the “Affirmative”.

29. **Point No.2 and 3:-** It can be seen that, as the Plaintiff has denied the alleged Will in favour of Defendant No.1 and 2 said to have been executed by the propositus Muniyappa, the onus proving the Will as required under law is upon the Defendant No.1 & 2. In such circumstance, when admittedly the khatha pertaining to the suit schedule property is in the joint names of the Defendant No.1 and 2, who claim the suit schedule property to be the ancestral property of their grand father Muniyappa and the fact which is denied by the Plaintiff, it is necessary to restrain the Defendants from alienating or encumbering the suit



schedule property in any manner. Otherwise, it may lead to creation of third party rights, which in turn leads to multiplicity of proceedings. Therefore, it is necessary to conclude that, the balance of convenience and comparative hardship are also made out in favour of the Plaintiff. Accordingly, these Points are also answered in the “Affirmative”.

30. **Point No.4:-** In view of my answers to Point No.1 to 3, I proceed to pass the following :-

ORDER

I.A.No.1 filed by the Plaintiff under Order XXXIX Rule 1 and 2 R/w Sec.151 of the CPC., is hereby allowed.

The Defendants are restrained from alienating the suit schedule property, pending disposal of the suit.



In the circumstances, no order as to costs.

(Dictated to the Stenographer, transcribed by him, the transcript thereof is corrected and then pronounced by me in the open Court on this the 20th day of April, 2023).

Prl.Senior Civil Judge & CJM,
Ramanagara.