

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

Dated : This the 23rd day of March 2019

Present

Smt. M.ANITHA.,
B.Sc., LL.B.,
Prl. Senior Civil Judge & CJM.,
Ramanagara.

O.S 209/2016

Plaintiffs :- Smt.Mala and others

(By Sri. B.V.K., Advocate)

V/s

Defendants: Smt. Gangamma and others

(D.1 to 9 Sri. C.S.K., Advocate)
(Defendant No.10 – Exparte)

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ORDERS ON I.A-1 FILED BY THE PLAINTIFF
U/O 39 RULE 1 and 2 R/W SECTION 151 OF CPC

The plaintiffs have moved this application for the relief of temporary injunction restraining the defendants 1 to 9 or anybody on their behalf from alienating the suit schedule properties or creating charge or encumbrance over the same in any manner, pending disposal of the suit.

2. In the affidavit appended to the application, the plaintiff No.1 prayed to read the plaint averments as part and parcel of her affidavit. Besides, she deposed that,

application schedule properties are ancestral and joint family properties, originally belonged to her father-in-law by name Hanumanthaiah @ Kenchappa and he being the kartha of the Undivided Hindu Joint Family, he constituted the Joint Family among himself and his children. Out of his children, her husband is eldest son. The said Hanumanthaiah @ Kenchappa died leaving behind him the plaintiffs and defendants and after his demise the entire Revenue records of suit schedule properties have been mutated in the name of 1st defendant as she is the elder member of the Joint Family.

3. Besides, the 1st plaintiff deposed in her affidavit that, during the life time of her husband, they have started to reside separately as there was lack of understanding between the members of Joint Family. But all the properties are in the Joint Family as there is no severance of the properties. They are being members of undivided Joint Family and they are also having equal rights and interest in the Joint family properties. In spite of several requests and demands made by them to effect partition, the defendants are acting in the manner that, the properties are exclusively belonged to them. The defendants 1 to 9 are trying to create charge on the application schedule properties on the strength of Revenue records, which are entered in the name of 1st defendant. The panchayath has been conveyed and it yields no fruits. If the defendants are succeeded in their

attempt and alienate the application schedule properties in favour of third parties, they will be put to great hardship and suffers irreparably. The balance of convenience lies in their favour. No hardship or injustice will be caused to the defendants on allowing the application. Wherefore, it is prayed to allow the application.

4. The defendants 1 to 9 filed memo to treat the written statement as Objection statement to the present application and therefore the court constrained to extract the written statement filed by the defendants.

The defendants 1 to 9 admitted the relationship as narrated at paragraph No.3 of the plaint. They also admitted that, suit schedule item No.5 and 6 are acquired by the defendant No.10 under Land Acquisition Act. However, these defendants denied rest of the plaint averments contending interalia that, the husband of the 1st plaintiff namely Hombaiah, when he was living with the defendants in the Joint Family, for the purpose of development of Joint Family, 3 acres of land in Sy.No.26/P3, New No.89 of Vajarahalli village, Bidadi Hobli has been granted by the Government. The said Hombaiah and the defendants 1 to 9 were jointly cultivating the said land. Later, as there was no understanding between the said Hombaiah and the defendants, is said Hombaiah on taking away the said 3

acres of land as his share in the Joint family properties has separated from the family, since then there is no nexus between the Hombaiah and the suit schedule properties. The katha of said 3 acres of land has been mutated to the name of Hombaiah and he was enjoying the property during his life time. The plaintiffs have purposefully not included the said property in the present suit for partition and therefore the suit is not maintainable. The husband of the 1st plaintiff by name Hombaiah during his life time and along with the plaintiffs has alienated 3 acres of land in Sy.No.26/P3 of Vajarahalli village, which was allotted to his share in favour of one Smt.Yamini @ Usha under registered sale deed dated 28.01.2006. Later, the said Yamini @ Usha alienated the property in favour of Niranjan.G.S. The plaintiffs have not made the said purchasers as parties to the suit. Out of sale proceeds of said 3 acres of land, the 1st plaintiff husband had purchased site property measuring 30x40 in Bidadi Town. Likewise, he had purchased two site properties respectively bearing K. No.147/9 and 147/10 in Kethaganahalli road, Bidadi, Ramanagara Taluk. The katha of the said properties, earlier stood in the name of Hombaiah and now it is transferred to the names of plaintiffs. The plaintiffs have purposefully not included the said site properties. Likewise, the plaintiffs have not included the house property bearing K. No.76, situated at Vajarahalli village, which belongs to the husband of 1st plaintiff by name Hombaiah. After giving the share in the

Joint family property to the husband of 1st plaintiff, these defendants are cultivating the remaining landed properties. The plaintiffs have intentionally filed this suit to engulf the properties of these defendants. Item No.3 the land bearing Sy.No.34/4, measuring 28 guntas and item No.4 is the land bearing Sy.No.58/3, measuring 27 guntas are already acquired by the Government and the revenue entries are effected in the name of Government of Karnataka. The 1st defendant has questioned the acquisition proceedings before the court of Deputy Commissioner in Appeal No. R.A(LND)No.07/2015-16. Another appeal is pending on the file of Assistant Commissioner Court. One Muthappa has filed a case before the court of Assistant Commissioner against these defendants and it was dismissed. The plaintiffs have not parties and have not represented the case before Revenue Court. The plaintiffs have no right in the suit schedule properties. The husband of the 1st plaintiff separated from the Joint Family the long back and he has already alienated his share of property. It is after 10 days of time, the present suit is filed and therefore the suit is barred by limitation. The husband of the 1st plaintiff Hombaiah died on 06.10.2008 and the present suit is filed in the year 2016 i.e., after the death of Hombaiah with deliberate intention. The plaintiffs are not Joint Family members. Wherefore, it is prayed to reject the prayer of the plaintiffs.

5. In view of rival contentions of the parties, the following points emerge for consideration:-

1. *Whether the plaintiffs prove that, the Prima-facie case and balance of convenience lies in their favour ?*
2. *Whether the plaintiffs proves that they will be put to irreparable loss and hardship, if an order of temporary injunction is denied ?*
3. *What order ?*

6. Having heard the arguments of both the counsels. I have scrutinized the application in the background of necessary materials. Now, answer of the court on the Points is as under for the reasons herein after assigned:-

Points 1 and 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. The relationship between the parties is an admitted fact. Indeed, as borne out from the respective statement of plaintiffs and defendants 1 to 9, it is clear that, the suit schedule properties are ancestral and Joint family properties. In other words, there is no serious dispute

between the parties with regard to the point that, suit schedule properties are ancestral and Joint family properties. It is also an admitted fact that, item No.3 and 4 are acquired by the Government of Karnataka.

9. However, the defense theory is that, the husband of the 1st plaintiff namely Hombaiah on receiving 3 acres of land in Sy.No.26/P3 of Vajarahalli village has separated from the Joint Family of defendants 1 to 9 and he has already alienated that land along with the plaintiffs. Further, out of sale proceeds of the said land, Sri.Hombaiah purchased site properties at Bidadi and one house property is also available in the name of Hombaiah and that properties are not included in the present suit for partition.

10. The defendants have not produced an iota of documents to show that, the husband of the 1st plaintiff and father of other two plaintiffs namely Hombanna taken away as his share in the Joint family properties the land bearing Sy.No. 26/P3, New No.89, measuring 3 acres. Further, the defendants have not produced any material to show that, the said Hombaiah already alienated his share of property and out of sale proceeds, he acquired new assets. More so, it is not the case of defendants that, already a registered partition deed has been effected between said Hombaiah and the defendants. Wherefore, in the absence of documents about partition, the presumption is always that, the family is Joint Family. As

pointed out earlier, the relationship between the parties is admitted and there is no serious dispute between the parties as to the fact that, the suit schedule properties are ancestral properties.

11. Wherefore, when the husband of 1st plaintiff late.Hombaiah is one of the children of 1st defendant Gangamma, naturally the plaintiffs are also entitled for share in the suit schedule properties, which are ancestral properties.

12. The defense that, already late.Hombaiah has been allotted with his share in the Joint family properties is yet to be established at the time of Trial. At this premature stage of the suit, the court could not rely upon the mere defense of defendants and that too in the absence of any documents towards the defense.

13. The prayer made under the present application is to restrain the defendants from alienating the application schedule properties or creating charge or encumbrance over the same. If the said prayer is granted, no prejudice will be caused to the defendants and on the other hand, it would avoid multiplicity of proceedings.

14. It is a well settled law that, while considering the application for grant of injunction U/o 39 Rule 1 and 2 of CPC, the court will be considered the case at the earliest point of time and a Detailed Enquiry or Mini Trial is not expected to be undergone while considering the said

application and the application will be decided on the basis of prima-facie case and broad probabilities that would restrain from making any observations on the merits of the case, which would prejudice the case of parties.

15. In the present case, when the material on record is considered in the light of the above said observations, it is clear that, the plaintiffs have a prima-facie case for Trial and therefore if an order of temporary injunction is denied, they would suffer hardship. As such I am inclined to hold **Points 1 and 2 in the “Affirmative”.**

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

ORDER

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

The defendants 1 to 9 or anybody on their behalf are hereby restrained by way of temporary injunction from alienating the suit schedule properties to third parties, pending disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, transcribed by him, the transcript corrected and then pronounced by me in the open Court on this the 23rd day of March 2019)

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