

**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)**

* * * * *

ORDERS ON I.A-7 DATED 18.03.2019

FILED BY THE PLAINTIFFS

U/O 39 RULE 1 and 2 R/W SECTION 151 OF CPC

The plaintiffs have moved this application for an order of mandatory injunction directing the 1st defendant not to withdraw the compensation amount deposited by the 10th defendant on 16.03.2009 in the account of 1st defendant at Karnataka Bank, Bidadi Branch, Ramanagara Taluk. In the event, the 1st defendant is already withdraw the compensation amount may be pleased to direct the 1st defendant to deposit the same in

Judicial custody, till the 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, during the time of filing of the suit, she filed two applications for interim relief, one is to restrain the defendants 1 to 9 from alienating the suit schedule properties and another application is to restrain the 10th defendant from disbursing the compensation amount in respect of item No.5 and 6 of suit schedule properties. They are under the belief that, during the pendency of the suit, 10th defendant being the responsible authority would not have disburse the compensation amount related to the acquisition of the portion of item No.5 and 6 properties and as such they have not proceed the interim application. Taking their generosity and innocence as advantage and despite their personal requisition made to the 10th defendant, the defendants colluding each other and hand-in-glow with 10th defendant, without notice to them have got withdraw the compensation amount. The defendants 1 to 9 being the rapacious persons are there to cheat and deprive the plaintiffs legitimate right over the suit schedule property. But the 10th defendant being the public authority have to confine its limit in exercising its power, while the matter is pending before the court. But basic rule has not been followed by the 10th defendant. The 10th defendant is to deposit the compensation amount

before court and the 10th defendant has not followed the same, for which the concerned officers should be punished. The compensation amount has been awarded and disbursed by the 10th defendant and the amount has been credited to the A/c No.9052500100562201, Karnataka Bank, Bidadi Branch for a sum of Rs.91,57,328/-. The plaintiffs being the coparceners are also having equal share in the said compensation amount. The rights of the parties is to be determined by this court and wherefore if the amount is disbursed it is seriously affect the right of the parties and right will be put in jeopardize. Therefore, it is necessary to direct the Karnataka Bank, Bidadi Branch to countermand the amount disbursed by the 10th defendant to the account of 1st defendant. In the event, the 1st defendant is succeeded in withdrawing the compensation amount be pleased to direct the 1st defendant to deposit the entire compensation amount before this court in judicial deposit till finalization of rights of the parties. If the defendants are succeeded in utilizing the entire amount disbursed by the 10th defendant, the plaintiffs may unable to recover the same from the defendants 1 to 9. In that event, the plaintiffs will be put to great hardship. Therefore, it is prayed to allow the application.

3. The defendants 1 to 9 resist the application on filing their Objection statement, it is objected that, since two prayers are made under one application, the application is

not maintainable. Further, the defendants have received the compensation amount prior to the filing of the present application and therefore the application is not maintainable.

4. 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, the 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 Niranjana.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 are 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 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.

5. The plaintiffs already alienated their share of properties and are leading luxury life. The defendants are formers and they are eking their livelihood by cultivation of lands. The plaintiffs in order to cause obstruction to the defendants from receiving the compensation amount and to illegally take share in the same have filed the application. The defendant No.1 is aged about 80 years and being senior citizen. The plaintiffs are trying to engulf the said amount. Wherefore, it is prayed to dismiss the application.

6. 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 mandatory injunction is denied ?*
3. *What order ?*

7. 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

8. **Points 1 and 2:-** As these two points are interconnected, I wish to treat them collectively and that would avoid repeated discussion.

9. Admittedly, item No.4 and 5 of plaint schedule properties are acquired by the Government. It is not in

dispute that, the said properties are ancestral and Joint family properties. The grievance of the plaintiffs is that, they have moved an application to the concerned Land Acquisition Authority not to disburse the compensation amount but does not yield any fruit. Towards this end, the plaintiffs placed before court the letter dated 14.03.2016 submitted to the National Highway Authority, Ramanagara Taluk and the notice issued to the plaintiffs by the Special Land Acquisition Officer, National Highway. The contents of the said two documents reveals that, the plaintiffs already urged their grievance before the Acquisition Authority not to disburse the compensation amount in favour of defendants 1 to 9 and to deposit the same before the court.

10. At this point, it is pertinent to mention that, the defendants 1 to 9 counsel along with Objection statement have produced the photocopy of the pass book of 1st defendant pertains to Karnataka Bank Limited, Bidadi Branch. As it could be seen from the contents of said Pass Book, already an amount of Rs.91,57,328/- has been credited to the account of 1st defendant Smt.Gangamma. Thus it is clear that, the 10th defendant who is the Special Land Acquisition Officer, National Highway already disbursed the compensation amount and credited the same to the account of 1st defendant. The prayer made in the present application is to direct the 1st defendant not to withdraw the compensation amount deposited by the 10th

defendant and in the event, if the 1st defendant already withdraw the compensation amount, may be pleased to direct to deposit the same in Judicial Deposit. The said prayers of the plaintiffs cannot be construed as two distinct prayers to dismiss the application. On the other hand, the 2nd prayer is consequential to the 1st prayer and therefore, the prayers cannot be considered as two distinct prayers. As such, the application is maintainable. Admittedly, the compensation amount awarded in respect of item No.4 and 5 of suit schedule property is currently available in the Bank Account of 1st defendant. Therefore, the 1st defendant may withdraw the said amount at any moment. It is the grievance of the plaintiffs that, they being the coparceners are entitled for share in the compensation amount. The defence theory is that, the 1st plaintiff husband late.Hombaiah already separated from the Joint Family by taking to his share 3 acres of land in New Sy.No.89 and old Sy.No.26/P3. But, towards this end, no iota of documents is placed before court at present.

11. Therefore, under the said circumstances, if the 1st defendant is not restrained by way of mandatory injunction from withdrawing the amount, it would definitely cause hardship to the plaintiffs. The suit is instituted for the relief of partition. The plaintiffs are claiming 1/10th share in the suit schedule properties. Wherefore, 1/10th share of plaintiffs in the compensation

amount of Rs.91,57,328/- is Rs.9,15,732.80 Hence, to meet the situation, it is appropriate to direct the 1st defendant to deposit the said amount of Rs.9,15,732.80 before this court in the present suit. As such, I am inclined to hold Point No.1 and 2 in the “Affirmative”.

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

ORDER

I.A No.7 filed by the plaintiffs U/o 39 Rule 1 and 2 r/w Section 151 of CPC is partly allowed.

In the result, the 1st defendant is hereby restrained by way of mandatory injunction from withdrawing Rs.9,15,732.80 from her account and if she already with draw the entire amount, she is hereby directed to deposit of Rs.9,15,732.80 before this court.

Deliver information about the said order to the Manager of Karnataka Bank, Bidadi Branch for Lawful Implementation of the order.

(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.**