

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

Dated : This the 25th day of June 2020

Present

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

O S 271/2013

Plaintiffs: Gurusiddamma and others

(By Sri. S.N., Advocate)

V/s

Defendants: Kallamma and others

(By Sri. M.K., Advocate)

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ORDERS ON I.A No.3 FILED BY THE DEFENDANTS
U/O 39 RULES 1 AND 2 OF CPC

The defendants have moved this application seeking interim relief of temporary injunction so as to restrain the plaintiffs or anybody on their behalf from interfering with their peaceful possession and enjoyment of the suit schedule properties, pending disposal of the suit.

2. In the affidavit sub-joined with the application, the 4th defendant deposed that, late.Gurusidaiah is his father and his father was educated and was doing civil contract work and died on 16.06.2006. During the life time of his father, investing the own hard earned money purchased the item No.1 of the suit schedule property from one Sanjeevaiah @ Chikkaputtaiah under registered sale deed dated 15.07.1963 then it was having Sy.No.53/7 and then renumbered under Durasth as Sy.No.322 measuring acre 1 guntas and second item of the property purchased from one Dasaiah under registered sale deed dated 21.03.1969. The 4th defendant has stated that, propositus Doddaputtaiah had not at all having any piece of land and he did not acquire any land from the government as pleaded by the plaintiffs. Hence, inheritance of property from their father does not arise. The plaintiffs 1 and 3 after their marriage had settled in their matrimonial home and till today they are living their life with respective family members and 2nd plaintiff at his tinnege went to Bengaluru and settled. The 4th plaintiff has also had the tinnege went to Bengaluru and came to Channapatna since last two years living with his family. Accordingly,

they are independently living. His father has purchased the item No.1 and developed the same putting one from house in the said land and led his life about 25 years with them and constructed the house in the year 1998. He was residing till his death. His father Gurusidaiah on the strength of the sale deed got the katha and pledging the same got agricultural loan. Hence, it was mutated in the name of mother i.e., 1st defendant and all of them are enjoying the same having absolute title, interest and possession and also obtained agricultural loan. The plaintiffs without having any right, title and interest and possession are making disturbance and particularly the 4th defendant tried to man handle us. Hence, they have filed police complaint as there was no result filed this application. They have got prima-facie case, balance of convenience and irreparable loss. If the application is allowed, no hardship will be caused to the plaintiff. Hence, it is prayed to allow the application.

3. The plaintiffs have filed the objection dated 14.08.2019 contending that, the defendants have no right in the suit property. The suit property is the joint and ancestral properties. The plaintiffs and defendants are in joint possession and jointly

cultivating the land and there is no division till today. The suit property were in the name of late.Doddaputtaiah and his sons and on 30.05.1981 they have voluntarily agreed and made pallupatti of Sy.No.53/7 measuring 4 acres 25 guntas and Sy.No.44/8 measuring 6 guntas and Kanesumari No.286 and the lands were divided between Gurusiddaiah, Lingaiah and Vishakantaiah equally the sons of Doddaputtaiah. As per the parikath, they are in possession. Now, Gurusiddaiah died taking undue advantage, his wife i.e., 1st defendant has made katha of item No.1 without the knowledge of the plaintiff and now trying to alienate the suit property. The plaintiff approached the Assistant Commissioner Court, which directed him to approach the Civil Court. Hence, the plaintiffs have filed suit for partition and separate possession. Wherefore, it is prayed to reject the above said application.

4. In the premise of rival contentions of the parties, the following points emerge for consideration:-

1. *Whether the prima-facie case and balance of convenience lies in favour of the defendants?*

2. *Whether the defendants will be put to irreparable loss and injury in the event, if an order of temporary injunction is denied?*

3. *What Order?.*

5. Heard the arguments of both the sides. Coupled with it, the court scrutinized the application in the background of materials supplied by both the parties. Now, answer of the court on the points is as under for the reasons herein after assigned.

Point No.1 & 2:- In the Negative
Point No.3 :- As per final order
for the following:-

REASONS

6. **Points 1 and 2:-** As these two points are interconnected, I wish to treat them collectively to avoid repetition of discussion.

7. The learned advocate for the defendants 1 to 6 have argued that, the defendants have filed the written statement denying the case of the plaintiffs for partition and separate possession. They have denied that, Doddaputtaiah had not at all acquired any piece of land and he has no land from the government. Hence, the suit is not maintainable. The plaintiffs 1 and 2 already married and settled in

their husband's house. It is the clearcut case of the defendants that, in para No.11 of the written statement it is stated that, the husband of 1st defendant purchasing the item No.1 developed the same putting up one house and led life about 25 years and he was living till his death in that house. He died in the year 2006 leaving behind the defendants as legal heirs. The Gurusiddaiah on the strength of the sale deed got katha and got agricultural loan and later on, after his death entries were made in the name of 1st defendant and they are enjoying the suit schedule properties by obtaining agricultural loan. It is the case of the defendants that, the suit property is the self acquired property of Gurusiddaiah and he has produced the sale deed i.e., document No.4. They have also denied the panchayath parikath and pallupati has false and concocted. The plaintiffs are not in possession and they are not having any right. The suit is not maintainable. The plaintiff No.3 is also not known the plaint averments and she stated before the defendants that, she is not filed any suit against defendants and the plaintiffs forged the signature of plaintiff No.3 without her knowledge.

8. On perusal of the plaint, written statement and application by the defendant and objection of the plaintiff and on arguments of both the sides, it is fact that, the plaintiffs have filed the suit for partition claiming that, the suit properties are the joint and ancestral properties and they are in joint possession and there is no division and also there was a panchayath parikath voluntarily made between the sons of propositus Doddaputtaiah. Hence, he has filed the suit for partition and also application not to alienate the suit properties, till disposal of the case.

9. Though the defendants have claimed that, it is the self acquired property and Doddaputtaiah had no piece of land and no government land. But, he denies that, there was a parikath and division of land and house between three sons. These facts are to be tried at the Trial only. The defendants have admitted the relationship and denies panchayath parikath and share of Doddaputtaiah as he has no land. It is the specific case that, the plaintiffs after their marriage are living in their husband's house and other two plaintiffs are residing at Bengaluru and Channapatna separately. But, the documents goes to show that, there was a difference of opinion

regarding entries and the lands. Hence, the Assistant commissioner has directed to approached the court as it is a civil matter in respect of partition suit. It is the case of the defendants that, the wife of Gurusiddaiah is the absolute owner on the basis of the sale deed. Hence, it is the self acquired property and the plaintiffs have no knowledge and no right in the suit property. These points are to be proved at the Trial by the defendants. Because the defendants admitted the relationship but denies the land to the Doddaputtaiah and also denies the panchayath parikath as it is concocted. On the other hand, pleading that, Gurusidaiah has purchased the property hence it is the self acquired property. These points are to be proved only at the Trial by leading evidence and documents. These points are specific points raised by the defendants and the burden is on the defendants to prove the self acquired property.

10. It is an application filed U/o 39 Rule 1 and 2 of CPC praying to restrain the plaintiffs from interfering in the suit property. Hence, the plaintiffs have filed the suit for partition and separate possession and prayed not to alienate the suit property as there is no partition. But, all are co-

owners at this juncture. Until and Unless the Trial is concluded and decided by Court. Hence, question of granting interfering the suit property by the plaintiff is not proper as they become co-owners until the case is proved by the defendants. Accordingly, the defendants have not made out any case to grant injunction against the plaintiffs. Wherefore, I am inclined to hold the Points No.1 & 2 is in the **“Negative”**.

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

ORDER

I.A No.3 filed by the defendants
U/o 39 Rule 1 and 2 of CPC is
dismissed.

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 25th day of June 2020)

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