



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

Dated : This the 31st day of July, 2023

Present:-

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

O.S.No.325/2022

Plaintiffs :- Sri. Gurunanjaiah and others

V/s

Defendants :- Sri. Mallappa and others

I.A.No.1

Applicants :- Sri. Gurunanjaiah and others
- (Plaintiffs)

-V/s-

Opponents :- Sri. Mallappa and others
- (Defendants)

ORDER ON I.A.No.1

The Plaintiff has filed this application seeking to restrain the Defendants from causing interference to their



peaceful possession and enjoyment of the suit schedule properties.

2. In the affidavit sworn in support of the present application, the Plaintiff No.1 has sworn that, they have filed this suit against the Defendants seeking the relief of partition and separate possession. That the Defendants and they are the members of the Hindu joint family. That they are the legal heirs of the deceased Bachegowda. The said Bachegowda had three sons viz., Nanjaiah @ Karigowds, Girmallaiah and Peechamallaiah. The Defendants No.3 to 5 are the legal heirs of the 1st son of Nanjaiah @ Karigwoda and the Defendant No.2 and the Defendant No.1 is the wife of 2nd son of Nanjaiah @ Karigowda and the Defendant No.2 is the wife of the 3rd son of Nanjaiah @ Karigowda.

3. That the second son of Peechamallaiah viz., Mallaiah has three children, among whom, the 1st son Nanjaiah died unmarried. He is the 1st son of Gurunanjaiah, the 2nd son of



Girimallaiah. The 3rd son of Bchegowda viz., Peechamallaiah 1st son is the 7th Plaintiff and the 2nd son Peechamallaiah viz., Ramakrishnappa executed the registered Relinquishment Deed in favour of the Plaintiff on 09.05.2022. Therefore, they are not made as party to the suit. The legal heirs of the 3rd son of Peechamallaiah viz., Revanna are the Plaintiff No.8 to 9 in the suit and the legal heirs of his 4th son Shivaraju are the Plaintiff No.12 to 15. That the suit schedule properties are the ancestral and joint family properties of the Defendants No.1 to 5 and them, till today they are in joint possession and enjoyment of the same without partition among them. That after the death of propositus Bachegowda, they have succeeded to the suit schedule properties by way of inheritance along with the Defendants No.1 to 5.

4. That, despite there being any partition among the Defendants No.1 to 5 and them, the khatha has been illegally entered in the name of Nanjaiah @ Karigowda and Girimallaiah as per IHC 16/1981-82 and thereafter, in the



name of the Defendant No.2 pertaining to the suit schedule Item No.5 property. That, when they submitted request to the Tahsildar to furnish the documents relating to transfer of khata as per IHC No.16/1981-82 as well as the khatha pertaining to the suit schedule properties, they have been issued with an endorsement that there are no documents in respect of the khatha registered in the name of the Defendant No.2 registered in respect of 8 guntas out of 16 guntas of the suit schedule item No.5 property, on the basis of the registered sale deed dated:- 11.01.2001 executed by the Defendant No.2 in favour of Defendant No.1 and as such, the said sale deed is not binding upon them.

5. Likewise, RRTS(DS)93/2022-23 in respect the application submitted by the Defendants to register the pouthi khatha in respect of the suit schedule item No.2, 3, 7 and 9 properties is pending. Thus the Defendants, by colluding with the revenue officials have got entered the khatha in their names illegally without their knowledge and



they are also trying to alienate the suit schedule properties by taking undue advantage of the khatha entered in their names and are also trying to get transferred the khatha from the name of the propositus. Therefore, they approached the Defendants and requested them not to do so. However, despite the advice of the panchayatdars, the Defendants have not yielded to the same. Hence they have prima-facie case and balance of convenience and comparative hardship are in their favour. Accordingly, they have prayed to allow the I.A.

6. Per contra, the Defendants No.2 to 4 have appeared through their counsel and filed their written statement, with an adoption memo to treat the same as their objection to I.A No.1.

7. In the written statement, the Defendants No.2 to 4 have admitted the relationship among the parties. However, according to them, the suit is bad for non-joinder of



necessary parties i.e., the Lrs of the deceased Nanjaiah @ Karigowda, Girimallaiah and Peechamallaiah. It is also denied that the suit schedule properties are the ancestral and joint family properties and that till date, there is no partition in respect of the same. The alleged joint possession and enjoyment of the suit schedule properties is also denied by them.

8. That Nanjaiah @ Karigowda got the revenue documents in his name as per the share that was allotted to him legally and it is denied that, while getting the revenue documents transferred in the name of Nanjaiah @ Karigowda and Girimallaiah have fraud to the Plaintiffs. That as per IHC 16/1981-82, the khatha has also been entered in the name of the father of the Plaintiffs Girimallaiah. Then they failed to question the revenue documents in the name of Girimallaiah for about 40 years. The Plaintiffs, without questioning the change of revenue documents, about 40 years back, has now come up with this present false suit.



9. That, the sale deeds which are questioned by the Plaintiffs in the present suit are not entitled to seek declaration regarding them at this belated stage of 21 years from the date of the sale deeds. It is denied that the khatha pertaining to the suit schedule properties are jointly in the name of Nanjaiah @ Karigowda and the Defendants No.1 and 2 and the father of the Plaintiffs jointly.

10. That, there is no existence of joint family status and already there was a partition in respect of the items of the joint family properties and therefore the question of partitioning any property at this juncture does not arise. That, already there was a partition in the family of the Plaintiffs and them in respect of the joint family properties and by virtue of the same, they are in possession of their respective shares of the properties. Therefore, except them, none other has any right over the suit schedule properties.



11. That, there was already partition among the three sons of the propositus Bajjegowda, by virtue of the same, the name of Nanjaiah @ Karigowda was entered in revenue records as per his share. Likewise, Peechamallaiah @ Mallaiah and Girimallaiah got the khatha entered in their respective names and the dispute has arisen only in respect of the properties of Bajjegowda and Girimallaiah. The children of Peechamallaiah have already sold the property of Girimallaiah by creating documents. However, the children of Girimallaiah have misunderstood the same and filed this false suit against the Lrs of Nanjaiah @ Karigowda. Thus, it is contended that, during the lifetime of Nanjaiah @ Karigowda, Peechamallaiah @ Mallaiah and Girimallaiah, there was partition in respect of the joint family properties and the same is well within the knowledge of the Plaintiffs and their elder members.

12. That Mallaiah @ Peechamallaiah is the propositus of the family of the Plaintiff No.7 to 15 and he is also called



by the name of Mallaiah. The said Mallaiah purchased the 2 acres of land in Sy.No.48/14 from Puttanarasaiah on 05.04.1961. The Plaintiffs, without including this property filed this false suit. The son of Peechamallaiah @ Mallaiah viz., Shivaraju, who is the kharta of the family of the Plaintiffs No.12 to 15 had sold the 1 acre 32 guntas in Sy.No.87 of Hebbakodi Village in favour of one Prakash through sale deed dated:- 12.06.2006. The Plaintiffs have neither impleaded the said Prakash nor included the said property.

13. That the Plaintiffs No.12 to 15, along with the Shivaraju have also executed the sale deed dated:- 26.10.2022 to an extent of 0.09.08 guntas in Sy.No.54/1, the southern side of the sale deed reveals the name of Revanna, who is the own brother of Shivaraju. This fact also clearly reveals that, already there was a partition in the family of the Plaintiffs and them.



14. Peechamallaiah also has sold 0.09.08 guntas of Sy.No.54/1 of Hebbagodi Village in favour of the Plaintiffs No.12 to 15 through sale deed dated 26-10-2012. The southern boundary in the sale deed refers to the property of Revanna, who is the own brother of Shivaraju. This fact would clearly show that there is severance of joint family status.

15. The Plaintiff No.7, along with his children has already sold 10 guntas of land in Sy.No.54/1 new Sy.No.54/10 through registered sale deed dated 01.02.2006 in favor of C.Ramesh. Thus, the daughter of the Plaintiff No.7 by name Nanjamma @ Bhagyamma has executed the consent deed in respect of the said sale deed executed by the Plaintiff No.7 in favour of one Ramesh.

16. That the Plaintiffs No.12 to 15 have sold the entire extent of lands in Sy.No.54/5 new Sy.No.54/17 in favour of one Thriveni S.C. vide registered sale deed dated:-



25.08.2022. In the said sale deed, there is no recital that the said properties are the self acquired properties of Peechamallaiah by virtue of partition, which fell to the share of the propositus of the Plaintiffs No.12 to 15 viz., Shivaraju.

17. Likewise, though the land in Sy.No.65 is the self-acquired property of Kariyappa @ Nanjaiah, the Plaintiff No.8 has illegally got entered his name in the revenue documents to an extent of 1 acre 14 guntas in the said land. This fact has come to their knowledge only after their appearance in the present suit. This fact is pleaded, since if the said property was the ancestral property, they nothing prevented the Plaintiffs to include the said property in the present suit. Likewise, the name of the Plaintiff No.8 is being shown to an extent of 0.22.08 guntas in Sy.No.54/12 as per MRH 11/2017-18. If that is so, even the said property constituted the ancestral property. However, the Plaintiffs have not included even the said property.



18. Next, as admitted by the Plaintiffs, the revenue documents are in the names of the 2nd son of Bajjegowda viz., Girimallaiah. Thus by virtue of their shares, already there are sale transactions and it is brought to their knowledge that, there are proceedings pending before the revenue courts and civil courts with respect to the family properties of the Plaintiffs, against the persons, who are in no way concerned to their family. Therefore, the present suit filed by the Plaintiffs, without impleading the necessary parties to the suit is liable to be dismissed. Accordingly, it is prayed to dismiss the suit with costs.

19. Heard the counsel for the Plaintiffs and the Defendant No.2 to 4 in respect of the present application and perused the materials on record.

20. The following Points arise for my consideration:-

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



(2) Whether the balance of convenience and comparative hardship is made out by the Plaintiffs?

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

(4) What order?

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

Point No.1 to 3 : In the Negative;

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

REASONS

22. Point No.1:- Admittedly, this is a suit filed by the Plaintiffs against the Defendants, who are all the family members and except the members of the family, none of the Defendants are strangers of their family.

23. As per the case of the Plaintiffs, all the items of the suit schedule properties are the ancestral and joint family properties of Defendants and them and till date, there is no partition among them. However, the Plaintiffs have alleged



that, despite there being no partition in respect of the suit schedule properties, the khatha has been illegally transferred to the names of the deceased Nanjaiah @ Karigowda and the deceased Girmallaiah as per IHC No.16/1981-82 and thereafter, the Lrs of the Defendant No.2 had got khatha in respect of the suit schedule item No.5 property in their favour.

24. It is further alleged by the Plaintiffs that the Defendants No.1 and 2, in collusion with each other have got the khatha in the name of Defendant No.2 in favour of the Defendant No.2 in respect of 8 guntas of land, out of 16 guntas of the suit schedule item No.5 property and on the basis of the same, he has executed the sale deed pertaining the said property in favour of Defendant No.1 on 11.01.2001.

25. It is also alleged by the Plaintiffs that, the joint khatha pertaining to the suit schedule item No.2, 3, 7 and 9 were in the names of the 1st son of Bajjegowda viz., Nanjaiah



@ Karigowda, Defendant No.1 and 2 and the father of the Plaintiff and thereafter the Defendants have submitted application to the Tahsildar, so as to change the khat in their names by virtue of pouthi and in this regard, the dispute is pending before the Tahsildar in R.R.T. (DS)93/2022-23.

26. It is also alleged that, the Defendants, by having colluded with the revenue officials have got the khatha pertaining to some of the items on the suit schedule properties in favour names. Therefore, it is the apprehension of the Plaintiffs that the Defendants would deprive them their legitimate share in the suit schedule properties. However, the defence of the Defendants No.2 to 4, which is evident from their written statement is that, though the relationship of the parties is admitted, the suit is not maintainable, since the Plaintiffs has not impleaded all the legal heirs of Nanjaiah @ Karigowda, Girmallaiah and Peechamallaiah and that suit is also bad for partial partition.



27. It is further alleged that, the Plaintiffs are very well aware of the earlier partition in their family and it is alleged that, inspite of it, the Plaintiffs have filed this false suit in respect of the properties which are already partitioned, since already there are various sale transactions, which have been entered in respect of some of the items of the suit schedule properties. Therefore, it is the contention of the Defendants No.2 and 4 that there is already severance of joint family status and the Plaintiffs are not entitled for any share.

28. It is pertinent to note that, the Defendants have come up with a defence of prior partition in the family and in pursuance of the same, there are various sale transactions according to them. The burden of proving the same is upon them. However, considering the fact that, as per the plaint averments itself, the Defendants are also the legal heirs of the joint family members headed by the propositus Bajjegowda. In such circumstance, it is a well settled



position of law that, no injunction can be granted against the legal heirs or co-sharer.

29. Even in the present case, the question whether the suit schedule properties are still ancestral and joint family properties and whether there exists joint family as claimed by the Plaintiffs or if there is already the severance of the joint family status and there is already a prior partition in the family or question, which are required to be adjudicated during the course of trial. Till then, considering the fact that the Defendants and the Plaintiffs are co-sharers, the claim of the Plaintiffs have an order of T.I. against the Defendants is not sustainable. **Hence, this Point is answered in the “Negative”.**

30. Point No.2 and 3:- Though the question of entitlement of the Plaintiffs over the suit schedule properties is required to be established only after a full-fledged trial, at this juncture, there cannot be an order of T.I. against the co-



sharers. **In view of the same, these Points are also answered in the “Negative”.**

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

ORDER

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

In the circumstances, no order as to costs.

(Dictated to the Stenographer, transcribed by her, the transcript thereof is corrected, pronounced and then signed by me in the open Court on this the 31st day of July, 2023).

(Saraswathi K.N.)
Prl.Senior Civil Judge & CJM,
Ramanagara.