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

Dated : This the 7th Day of June, 2023

Present

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

O.S.No.403/2021

Plaintiffs :- Smt. Ningamma and others

V/s

Defendants :- Smt. Bhagyamma and others

I.A.No.I

Applicants :- Smt. Ningamma and others
- (Plaintiffs)

-V/s-

Opponents : Smt. Bhagyamma and others
- (Defendants)

ORDER ON I.A No.I

The Plaintiffs have filed this application seeking to restrain the Defendant No.12 from disbursing the compensation amount in favour of the Defendants or



any persons claiming through or under them till the disposal of the suit.

2. In the affidavit sworn in support of the present application, the Plaintiff No.2 has sworn that, the suit schedule properties are the ancestral and joint family properties of the Defendant No.1 to 11 and them. That they are demanding for their legitimate share over the suit schedule properties from the Defendants. However the Defendants have refused to effect partition of their legitimate share. Defendant No.1 to 11 have been making illegal and hectic attempts to withdraw the award compensation amount passed by the Defendant No.12 by hiding the true facts and are trying to deprive them of their legitimate share over the suit schedule properties. Therefore, they have prima-facie case and balance of convenience and



comparative hardship lie in their favour. Accordingly, they have prayed to allow the application.

3. Per contra, the Counsel for the Defendant No.12 has filed objections to the present application by apposing to allow the same on the ground that the same is not maintainable and that the application is pre-mature, since only the preliminary notification has been published and no compensation is awarded in respect of Item No.3 of the suit schedule property. On this ground alone, the application is liable to be dismissed. It is contended that, the preliminary notification is only a proposal and the relevant process for the publication of final notification is under progress. That, subsequent to the publication of the final notification, the award would be passed by the Defendant No.12 in respect of the land as notified under said notification. Therefore the preliminary notification is dated:- 15.11.2021, while the final



notification is yet to be published and therefore, the suit is pre-mature. Hence on these among other grounds it is prayed to dismiss the application with exemplary costs.

4. The record reveals that, subsequent to the filing of the suit, the Plaintiffs have impleaded the Defendant No.13 as a party to the suit. Thereafter, the counsel for the Defendant No.13 has filed his written statement, with memo adopting the same as objection to I.A.No.1. In the written statement, the Defendant No.13 has denied the genealogy as described by the Plaintiffs in the plaint. Likewise the plaint averments are denied.

5. It is contended that the suit schedule Item No.3 property was originally purchased by Sri.H.Syed Ahamed, Silk Merchant from Sri.Thimmaiah S/o Nadukeregowda through registered sale deed dated



04.05.1960. Thereafter, his father Sri.H.Shivanna purchased the said property from Sri.Syed Ahamed through registered sale deed dated:-13.09.1962. After the death of his father, the khatha pertaining to the said property came to be transferred to the name of his mother as per IHC No.4/79-80.

6. That among the joint family properties of his family, the suit schedule Item No.3 property of the present suit and two other joint family properties were sold by her and her mother Smt.Mayamma and her children Sri.H.R. Rajahanumegowda, Sri. S.K. Tejas Kumar and Smt. Pavithra S.K. through GPA in favour of the Chief Finance Officer of the B.M.S. Education Trust for Rs.21,58,500/- through registered sale deed dated 18.04.2017. By virtue of the same, they have sold 0.05.12 guntas out of the suit schedule Item No.3

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of the property in favour of the said B.M.S. Education Trust.

7. Thereafter, the khatha pertaining to the said property came to be registered in the name of the B.M.S.Education Trust and thereby Sy.No.110/2 is entered, as she is the only daughter of her parents and her mother has allotted the joint family properties in her favour through partition Deed dated:- 14.07.2021. As per the said partition deed, the suit schedule Item No.3 property to an extent of 1 acre 13.08 guntas has been given to her share along with other properties. Thus the share in Item No.3 property which is allotted to her is assigned as Sy.No.110/1 as per M.R.H.No.2/21-22.

8. That, recently, the Special Land Acquisition Officer of the National Authority of India has passed



the preliminary notification in respect of Sy.No.110 on 15.12.2018. Defendant No.1 to 12 and the Plaintiffs are making attempts to gulp the compensation amount that is going to be awarded to the said acquired property, without impleading her as a party to the suit and that she is only related to the Plaintiffs and the Defendant No.1 to 12, but she is not the member of the Hindu joint family of the Defendant No.1 to 12 and the Plaintiff. That, her father was residing separately and he was enjoying his properties separately and as such though the RTCs are in her name, the Plaintiffs and the Defendant No.1 to 12, without impleading her as a party to the suit are making attempts to get disbursed the compensation amount in respect of suit schedule Item No.3 property. Hence, she has prayed to reject the application.



9. Heard the arguments of the learned counsel for the Plaintiffs and the Defendant No.13. Despite given sufficient opportunities, the counsel for the Defendant No.12 has not addressed his arguments. I have perused the materials on record.

10. 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 lie in favour of the Plaintiffs?

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

(4) What order?

11. 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

12. Point No.1:- Admittedly, this is a suit filed by the Plaintiffs seeking the relief of partition and separate possession in respect of the suit schedule properties. There is no dispute among the parties regarding the the relationship among the Defendant No.1 to 12 and the Plaintiffs. There is also no dispute that the Defendant No.12, being the statutory authority has issued the preliminary notification, by virtue of which, the land in Sy.No.110 is notified for acquisition. Therefore, by virtue of the present application, the Plaintiffs are seeking to restrain the Defendant No.12 from disbursing the acquisition amount in favour of the Defendants or anybody on their behalf till the disposal of the suit.



13. It is pertinent to note that, in the application schedule, the Plaintiffs have included all the three items of the suit schedule properties and they have sought an order of temporary injunction in respect of all the three properties.

14. However, it is pertinent to note that, it is only in respect of the suit schedule item No.3 property that the Defendant No.12 has passed the preliminary notification and not in respect of Item No.1 and 2 properties. Therefore at the out set, the claim of the Plaintiffs under this application in respect of the suit schedule Item No.1 and 2 properties does not survive.

15. The next point to be considered by the court is with regard to Item No.3 of the plaint schedule property. In this regard, according to the Plaintiffs, even the said Item No.1 property is the joint family and



ancestral property of the Defendant No.1 to 11 and them. However, according to Defendant No.12, the suit filed by the Plaintiffs in respect of suit schedule Item No.3 property itself is not maintainable, since there is a preliminary notification passed in respect of only to an extent of 6,257 Square mtrs of Sy.No.110 for the purpose of widening of NH-948A.

16. It is pertinent to note that, along with the statement of objections, the counsel for the Defendant No.12 has produced the copy of the Gazette Notification dated:- 15.11.2021, as per which, the land in Sy.No.110 is notified only to an extent of 6,257 Square Mtrs. Moreover it is only a preliminary notification as rightly contended by the counsel for the Defendant No.12.



17. In so far as the claim of the Plaintiffs with regard to the remaining extent of the land in Item No.3 property is concerned, the Counsel for the Defendant No.13 has produced the documents viz., original title deeds, RTCs, Encumbrance Certificates, Patta and Receipt book, Tenancy Certificate, Land Holding Certificate, Boundary Certificate and Tax paid receipts, by relying upon which, it is claimed by him that, the remaining extent of the land in Sy.No.110, i.e., an extent of 1 acre 13.08 guntas has been transferred to the name of the Defendant No.13 by virtue of partition deed dated:- 14.07.2021. The claim of the Defendant No.13 is fortified through the documents produced on her behalf.

18. However, the question regarding the right and title of the Defendant No.13 in respect of the suit schedule Item No.3 property is a matter of trial. At this



stage, the material on record reveals that the Plaintiffs have failed to make out a prima-facie case. Therefore, **this Point is answered in the “Negative”.**

19. Point No.2 and 3:- Defendant No.13 is claiming her right in respect of the suit schedule Item No.3 property to an extent of 1 acre 13.08 guntas. In this regard, she has also produced all the relevant documents. In such circumstance, when there is no final notification and there is no award passed in respect of the suit schedule Item No.3 property, the question of apprehending that the Defendant No.13 would disburse the compensation amount in favour of Defendants does not arise. Therefore, when the Defendant No.13 is supported by title documents, if the order of T.I as sought for is granted by this court, it would cause comparative hardship to her. Therefore, the Plaintiffs have failed to make out balance of



convenience and comparative hardship in their favour.

Accordingly, these Points are also answered in the “Negative”.

20. 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 7th day of June, 2023).

Prl.Senior Civil Judge & CJM,
Ramanagara.