

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE & C.J.M.
RAMANAGARA.

Dated this the 13th Day of March, 2014

Present:

Sri. S. H. Hosagoudar, B.Sc., LL.B.,(Spl.)

Prl. Senior Civil Judge & C.J.M.
Ramanagara.

O.S.No.377/2012

Plaintiff : Sri. Thimmaiah @ Thimmegowda
(By **Sri. S.L.** Advocate.)

V/s.

Defendants : Sri. Thimmaiah and another.
(D1 & D2 by **Sri. S.R. Advocate.**)
(D3 & D4 by **Sri. S.G. Advocate.**)

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ORDER ON I.A

Advocate for plaintiff filed this IA U/O XXXIX R. 1& 2 of C.P.C., restraining the defendants from alienating the suit schedule properties in any manner till pending disposal of this suit.

2. In support of this IA plaintiff has filed affidavit stating the suit schedule properties are the joint family properties of himself and defendants. Now defendants are making hectic

attempts of alienating the suit schedule properties with an intention to deprive his legitimate share in the suit schedule properties. Hence he sought for temporary injunction order restraining defendants from alienating suit schedule properties in any manner.

3. Defendants opposed said IA by filing detailed objections. Defendants contended that, suit schedule properties are not at all joint family properties of plaintiff and defendants. The propositus Thimmaiah did not possess any properties of ancestral or self acquired. The suit schedule properties are the self acquired properties of defendants. Plaintiffs' father Bhadraiah had left to Bangalore in search of Job during his life time and settled there. Bhadraiah had no right over the properties nor claimed any right during his life time. Hence plaintiff is not entitled to claim any right nor is he entitled to partition. On these grounds defendants prays for dismissal of this IA.
4. I have heard the arguments on both sides and perused the entire records of the case.
5. On perusal of the records of the case the following points are arises for my consideration:

1. *Whether the plaintiff has made out a prima-facie case in his favour?*
2. *Whether the balance of convenience lies in favour of the plaintiff?*
3. *Whether plaintiff will be put to greater hardship if temporary injunction order is not granted?*
4. *What order?*

6. My findings to the above points are as under:

<i>Point No. 1</i>	<i>:</i>	<i>In the 'Affirmative'.</i>
<i>Point No. 2</i>	<i>:</i>	<i>In the 'Affirmative'.</i>
<i>Point No. 3</i>	<i>:</i>	<i>In the 'Affirmative'.</i>
<i>Point No.4</i>	<i>:</i>	<i>As per the final order for the following:</i>

:REASONS:

7. **Point No.1 to 3:** Now I consider these points together for the sake of brevity. Plaintiff has filed this suit against defendants for partition and separate possession of his legitimate share in the suit schedule properties. It is the case of the plaintiff that all the suit schedule properties are the Joint Family properties of himself and defendants and there was no partition among them and he is also having share in the suit schedule properties. Further it is the case of the plaintiff that now defendants are making hectic

efforts to alienate the suit schedule properties with an intention to deprive his legitimate share in the suit schedule properties. In this case defendants admitted their relationship with the plaintiff. But they denied that suit schedule properties are the joint family properties of plaintiff and defendants. Defendants contended that, suit schedule properties are their self acquired properties.

8. In this case both plaintiff and defendants have produced documents in support of their contention. I have perused documents produced by the both parties. It is an admitted fact that one Thimmaiah is the original propositus of the plaintiff's and defendants family. It is also admitted fact that original propositus Thimmaiah had four sons namely, (1.) Chikkkeeraiah, (2.) Hombaiah, (3.) Bhadraiah and (4.) Eariah. It is an admitted fact that plaintiff is the son of Bhadraiah. The 4th son of Thimmaiah by name Eariah is the 2nd defendant in this suit. Defendant No.1 is the son of Chikkeeraiah and defendant No. 3 and 4 are the sons of Hombaiah. Defendants contended that, plaintiff father Bhadraiah had left to Bangalore in search of job during his life time and settled there and his children's are born there.

Further defendants contended that, Bhadraiah himself had no right over the suit schedule properties and hence plaintiff is not entitled to any share in the suit schedule properties. It is pertinent to note that, plaintiff is the son of Bhadraiah who is the son of original propositus Thimmaiah. According to plaintiff all the suit schedule properties are the joint family properties of himself and defendants and he is also entitled to share in the suit schedule properties. But defendants contended that, suit schedule properties are not the joint family properties, on the other hand suit schedule properties are their self acquired properties. It is pertinent to note that, whether suit schedule properties are the joint family properties or whether they are the self acquired properties of defendants, it requires full pledged trial to consider the same. Now at this stage we cannot jumped to the conclusion that, suit schedule properties are the self acquired properties of defendants only on the basis of RTC extract without full pledged trial. Looking to the contention taken up by both the parties, it requires full pledged trial to decide the controversy between the parties. It appears from the

records that, there are triable issues in this case. Hence looking to the facts and circumstances of the case and considering the nature of relief sought by the plaintiff, it is just and proper to preserve the suit schedule properties without any alienation till pending disposal of this suit. If suit schedule properties are not preserved till pending of the suit from alienation then it leads to multiplicity of proceedings. As I already stated there are triable issues in this case. Hence plaintiff has made out a prima facie case in his favour. Further balance of convenience is also lies in favour of defendants. If temporary injunction order is not granted and if defendants are allowed to alienate the suit schedule properties, then the plaintiff will be put to greater hardship. On the other hand no hardship is caused to defendants if temporary injunction order is granted, since defendants are actually enjoying the suit schedule properties. Hence plaintiff is proved point No. 1 to 3. Accordingly I answered point no. 1 to 3 in the **'Affirmative**

9. Point No. 4 : From my above discussions and reasoning's on point no. 1 to 3, the plaintiff is entitled for temporary injunction order restraining the defendants from alienating

the suit schedule properties till pending disposal of this suit. Hence in the result I proceed to pass the following:

- : ORDER : -

IA filed by the plaintiff U/O. XXXIX R.1 & 2 of C.P.C., is hereby allowed and defendants are restrained from alienating the suit schedule properties in any manner till pending disposal of this suit.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by him, corrected, revised and then pronounced by me in the open court on this the **13th day of March 2014.**)

(S.H. Hosagoudar)
Prl. Senior Civil Judge & C.J.M.
Ramanagara.

***(Pronounced in the Open Court
vide separate order)***

IA filed by the plaintiff U/O. 39 R.1 & 2 of C.P.C., is hereby allowed and defendants are restrained from alienating the suit schedule properties in any manner till pending disposal of this suit.

No order as to cost.

(S.H. Hosagoudar)
Prl. Senior Civil Judge & C.J.M.
Ramanagara.