



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

Dated : This the 11th Day of April, 2023

Present

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

O.S.No.469/2022

Plaintiffs :- Smt. Devamma and another
V/s

Defendants :- Smt. Kalyanamma and Others.,

I.A.No.1

Applicants :- Smt. Devamma and another
- (Plaintiffs)
-V/s-

Opponents : Smt. Kalyanamma and Others.,
- (Defendants)

ORDER ON I.A.No.1

The Plaintiffs have filed this application to restrain the Defendants and their agents from alienating the suit schedule properties, till the disposal of the suit.



2. In the affidavit sworn in support of the present application, the Plaintiff No.1 has sworn that, they have filed this suit for partition and separate possession of their half share (including the 1st Defendant) in the suit schedule properties. That the suit schedule properties are their joint family properties. They have prima-facie case and balance of convenience are in their favour. That the suit schedule properties are the ancestral and joint family properties and as such the 1st Defendant, she and the 2nd Plaintiff are together entitled for half share in the suit schedule properties.

3. That the Defendants colluded with each other and are trying to alienate the suit schedule properties and to create third party rights and in the event of they succeeding in doing so, it will lead to multiplicity of proceedings. Hence, they have prayed to allow the application.



4. Per contra, the Defendant No.2 to 8 have got filed their written statement and filed a memo adopting the same as objection to the present application.
5. In the written statement of Defendant No.2 to 8 the relationship as claimed by the Plaintiffs in the plaint is admitted. However, it is denied that, Mada @ Thammaiah S/o Devamma expired as a bachelor. That the said Mada @ Thammaiah was a married person, who had a wife by name Sakamma who is very much alive. The suit is bad for non-joinder of necessary parties and on this very ground, the suit is liable to be dismissed.
6. It is denied that, the Plaintiffs and they constituted the Hindu Joint Family and during the life time of late.Channappa @ Gopalli Channappa, he acquired the suit schedule properties. The Plaintiffs have not deliberately stated in the plaint with regard to the mode of acquisition of the suit schedule property by Channappa @ Gopalli Channappa.



7. That Channappa @ Gopalli Channappa who was the original propositus who had two wives. He had sons by name Madaiah and Venkatappa and a daughter by name Marithimmakka through his 2 wives. They and the Plaintiffs are the legal heirs and the representatives of said Madaiah and Venkatappa. Now Channappa @ Gopalli Channappa and his children are no more.
8. That Channappa @ Gopalli Channappa inherited the suit "N" schedule property from his ancestors. The remaining schedule properties i.e., suit schedule "A", "C", "D", "G", "H", "I", "J", "K", "L", "M", "P" and "Q" properties are the self acquired properties of the original propositus Channappa @ Gopalli Channappa.
9. That, during the life time of the said Channappa @ Gopalli Channappa, he orally effected division during the life time of his sons Madalah and Venkatappa, but there was no documentary evidence for such oral division. Hence, after



the death of Madaiah, he reduced the fact of partition on 20.07.1978 in writing. Under the said Panchayath Parikath, the 'A' schedule property of the said Panchahath Parikath was allotted to the share of Kalyanamma W/o Madaiah, 'B' schedule properties were allotted to the share of Venkatappa and 'C' schedule property was retained to his share and pursuant to the said Panchayath Parikath, Channappa @ Gopalli Channappa and his son Venkatappa made representation before the Deputy Tahsildar, Bidadi, but Kalyanamma who is the sharer did not join the said Channappa @ Gopalli Channappa and Venkatappa. Therefore, the said representation was treated as dispute by Deputy Tahsildar and assigned the case number as RRT CR No. 7/1987-88, which came to be allowed by ordering to make the khatha to the names of said Channappa @ Gopalli Channappa, Venkatappa and Kalyanamma by order dated:- 10.09.1987. Pursuant to the said order, mutation has been accepted into the names of sharers by name Channappa @



Gopalli Channappa, Venkatappa and Kalyanamma vide M.R. No.2/1987-88 and the khatha and RTC have been mutated into their names. The suit schedule 'B' property is the self acquired property of Madaiah and the other suit schedule properties are the self acquired properties of Kalyanamma and Venkatappa. So far as suit 'E' and 'F' schedule properties are concerned, the same were acquired by Mahadevaiah S/o Venkatappa during 2006. The suit schedule items 'P' and 'Q' are the site properties allotted to the Venkatappa and Kalyanamma respectively. Accordingly, the katha of the suit schedule 'P' and 'Q' properties stood in the name of Venkatappa and Kalyanamma.

10. That during the life time of Channappa @ Gopalli Channappa there was an oral partition and subsequently by way of Panchayath Parikath dated 20.07.1978 including the properties purchased by Channappa @ Gopalli Channappa, Madaiah and Venkatappa and the same has been acted



upon among the sharers. Therefore, the contention of the Plaintiffs that, they and the Plaintiffs are the members of Hindu undivided family and the suit schedule properties are the ancestral properties of themselves and that they all are in joint possession and enjoyment over the suit schedule properties is denied. That there is no joint family as alleged by the Plaintiffs. There is already partition taken place by the kartha and the manager the then joint family, and they have been acquired by them after oral partition and subsequently such oral partition is reduced in writing.

11. That the allegations of the Plaintiffs that, the suit schedule 'R' and 'S' properties were acquired by Venkatappa and Madaiah in their individual capacity. Hence the same has been allotted to their share under the said panchayath parikath during 1978. The suit “B” schedule property is the self acquired property of Madaiah. The suit schedule “O” property has been purchased by Madaiah and Venkatappa



to an extent of 5 guntas each separately. That the suit schedule 'T' property is acquired by Mahadevalah and his wife Rathnamma in the year 1991 in their individual capacity. Therefore, the contention of the Plaintiffs that, the suit schedule "T" property is acquired out of the joint family funds is denied. Venkatappa has acquired 28 and ½ guntas during 1991.

12. That, the suit schedule 'U' property is also the self acquired property of Kalyanamma and Venkatappa and they acquired the same by virtue of the order passed in LRF No. 741/1974-75 and therefore under the Panchayath Parikath, the same is allotted to their share. Therefore, the present suit does not survive and the same is liable to be dismissed.

13. That, after the death of Venkatappa, his sons have partitioned the properties belonging to Venkatappa i.e., the properties acquired by Venkatappa under the first partition deed of the year 1978 and also the self acquired properties



of Venkatappa and also the properties acquired by them during the year 2006. Thus after the partition, the khatha and other revenue records have been mutated to the names of the sons of Venkatappa and therefore, the same is acted upon. That subsequently the sons of Venkatappa have also raised loan from the Canara Bank, Bidadi on the collateral security of their portions of the properties. The daughters of Venkatappa have relinquished their rights in favour of the sons of Venkatappa.

14. That, after Kalyanamma acquired the properties of her share, being the share of her husband Madaiah under the Panchayath Parikath during 1978, she has also obtained khatha into her name vide M.R.No.2/1987-88 and she has been enjoying the same in her individual capacity and she has given some items of the properties to Devamma, the 1st Plaintiff, being the daughter of Madaiah. Kalyanamma has also raised the loan on the collateral security of the



properties acquired by her under the Panchayath Parikath during 1978. Thus there is no joint family in existence as alleged by the Plaintiffs. As there was already partition taken place, the question of partitioning the suit schedule properties once again does not arise. Hence, on these among other grounds, they have prayed for the dismissal of the suit.

15. Heard the arguments of the learned counsel for the Plaintiffs and the Defendant No.2 to 8 on the present application and perused the materials on record.

16. 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?

17. 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

18. **Point No.1:-** Admittedly, there is no dispute among the parties with regard to their relationship with each other as described by the Plaintiffs in the plaint. It is also not in dispute that, the propositus of the family was one Channappa @ Gopalli Channappa. Further, there is a dispute between the parties with regard to the fact that, Mada @ Thammaiah, through his 1st wife Devamma was married and that he is still alive.

19. According to the Plaintiffs, the said Mada @ Thammaiah died as a bachelor and according to the Defendant No.2 to 9, the said Mada @ Thammaiah is



married and his wife Sannamma is still alive. Admittedly the Plaintiffs have not made the said Sannamma as a party to the present suit. According to the Plaintiffs, as well as the Defendants, the propositus Channappa was managing the joint family as its kartha. Further, according to the Plaintiffs, the suit schedule properties are the ancestral and joint family properties of the Defendants and them, since they were acquired by the propositus Channappa @ Gopalli Channappa and that, till date, there is no division of the suit schedule properties among the Defendants and them.

20. On the contrary, the defence of the Defendant No.2 to 8 is that, among the suit schedule properties, the major items of the suit schedule properties viz., the suit schedule “A”, “C”, “D”, “G” to “M”, “P” and “Q” properties are the self acquired properties of the propositus Channappa @ Gopalli Channappa, while the suit schedule “B” property is the self acquired property of Madaiah S/o



Channappa and the other suit schedule properties are the self acquired properties of Kalyanamma and Venkatappa. In this regard, even after the filing of the written statement by the Defendant No.2 to 8 claiming that, among the suit schedule properties, some items are the self acquired properties of Gopalli Channappa and some properties are the self acquired properties of Kalyanamma, Venkatappa and Madaiah. The Plaintiffs have not disputed and denied the same.

21. Further according to the Defendant No.2 to 8, during the life time of propositus Channappa @ Gopalli Channappa, there was a oral partition, which was subsequently reduced to writing by way of Panchayath Parikath dated:- 20.07.1978, by including all the properties purchased by Channappa @ Gopalli Channappa and his sons Madaiah and Venkatapa and by virtue of the said partition, the respective sharers viz., Kalyanamma W/o



Madaiah, Venkatappa and the propositus Channappa continued to enjoy their respective shares of the properties by getting changed the revenue records in their names.

22. In this regard, it is pertinent to note that, according to the Defendant No.2 to 8, subsequent to the Panchayath Parikath which has taken place on 20.07.1978, the same is acted upon, since the mutations have been accepted in the names of the respective sharers and the khatha of the respective properties are entered to the names of the respective sharers.

23. In this regard, it could be seen that, along with the memo, the counsel for the Defendant No.2 to 8 has produced the revenue records viz., the photocopy of the Panchayath Parikath dated:- 20.07.1978, the copy of the M.R.No.2/1987-88, RTC's pertaining to the suit schedule properties and also copies of the various registered sale deeds, mortgage deeds and the mutation register extracts.



24. By relying upon these documents, it is the argument of the counsel for the Defendant No.2 to 8 that, the Panchayath Parikath dated:- 20.07.1978 is acted upon. Therefore, he argued that the suit itself is not maintainable.

25. On the contrary, in support of the case of the Plaintiffs, the counsel for the Plaintiffs has produced the RTC Extracts, which are admittedly pertaining to the year 2022-23 in respect of the suit schedule properties. However, at this stage, though this court cannot consider the documents produced by the respective sides in detail, prima-facie it appears that, the Plaintiffs have failed to make out a triable case in their favour.

26. Further, the question whether the suit schedule properties are the ancestral properties of the parties or not?, whether there is existence of the status of the Hindu Joint Family among the members as on date or not? and



whether the earlier oral partition as claimed by the Defendant No.2 to 8 is acted upon or not? are the questions to be adjudicated by this court only after a full fledged trial. Therefore, at this stage, from the materials placed on record by the Defendant No.2 to 8, it appears to the court that, the Plaintiffs have failed to make out a prima-facie case in their favour. Hence, this point is answered in the “Negative”.

27. **Point No.2 and 3:-** As the Plaintiffs have failed to make out a prima-facie case in their favour, when the balance of convenience and comparative hardship are weighed, they tilt in favour of the Defendants and not the Plaintiffs. Therefore, these Points are answered in the “Negative”.

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



ORDER

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

In the circumstance, no order as to costs.

(Dictated to the Stenographer, transcribed by him, the transcript corrected and then pronounced by me in the open Court on this the 11th day of April, 2023).

Prl.Senior Civil Judge & CJM,
Ramanagara.