

**IN THE COURT OF THE SENIOR CIVIL JUDGE &
J.M.F.C., AT : CHANNAPATNA**

BEFORE

Smt.Shubha,

B.A.L.L.B.,

Senior Civil Judge & JMFC, Channapatna.

Dated this 8th day of October 2021

O.S.61/2021

- PLAINTIFFS:
- 1 Jayalakshmi W/o H.B. Venkaesh D/o Late Shivalinge gowda @ Shivalinaiah, aged about 48 years, R/o Byrapatna, Malur Hobli, ChannapanaTaluk Now R/o No.158, Hanakere, Mandya Taluk.
 - 2 Sudha W/o Jayaramu D/o Late Shivalingegowda @ Shivalingiah, aged about 47 years, R/o Byrapatna, Malur Hobli, Channapatna Taluk, Now R/o Vaalegerehalli, Maddur Taluk, Mandya District
 - 3 R.Venkatesh S/o Ningamma and Ramegowda aged about 55 years, R/o Byrapatna, Malur

Hobli, Channapatna Taluk.
(By Sri. SN Advocate)

-VS-

DEFENDANTS: 1 Lakshamma W/o Late B.C.
Chennappa aged about 65 years

2 Yogesha S/o Late B.C.Chenna-
ppa aged about 50 years

3 Ravikumar S/o Late
B.C.Chennappa, aged about 45
years

4 Sathisha S/o Late
B.C.Chennappa aged about 38
years

5 Asha D/o Late B.C.Chennappa
aged about 40 years
Defendant Nos 1 to 5 are R/o
Byrapatna, Malur Hobli,
Channapatna Taluk.
(By Sri.A.C.C. Advocate)

I.A.NOs 2

PLAINTIFFS

Jayalakshmi and others

-VS-

DEFENDANTS

Lakshamma and others

ORDER ON I.A No.2

1. The plaintiffs have filed the application U/O 39 Rule 1 and 2 r/w/s/ 151 of CPC against the defendants praying this court to grant an order of Temporary Injunction restraining the defendants or anybody claiming through them from making any construction in the suit schedule properties till the disposal of this suit on merits.

2. The above application is supported with the affidavit of the 3rd plaintiff wherein he has submitted that they have filed this suit against the defendants seeking the relief of partition and separate possession of the suit schedule properties. That one Doddaiah was the propositus of his family. The father of Doddaiah was having 2 brothers by name Javarayigowda and Chennegowda. The said Doddaiah was unmarried. One Ningamma was the daughter of said Javarayi gowda. The said Ningamma was having a son by name Shivaraju. The plaintiffs are the legal representatives of said

Channegowda @ Chennappa and one Venkatamma @ Tayamma was the wife of said Channegowda @ Chennappa who was having 4 children by name B.C.Chennappa,(2) Narayanagowda,(3)Ningamma and (4) Shivalinegowda @ Shivalingaiah. The defendans are the wife and children of said B.C.Chennappa. That the suit schedule properties were purchased by said B.C.Chennappa for and on behalf of the joint family, therefore the suit schedule properties are also joint family properties. When such being the case the said B.C.Chennappa after the death of Chennegowda got entered his name in respect of Item No.1 property as per IHC 10/82-83 by misleading the revenue officials that he is the only son of said B.C.Chennappa. The defendant No.1 has also got entered his name in respect of the suit schedule properties without the knowledge of the plaintiffs. The 2nd item of suit schedule property was purchased by the said B.C.Channeowda for and on behalf of the family. The 1st defendant has got entered his name in respect of said property after the death of said

B.C.Chennappa in M.R.No.114/2003-04. The 3rd Item property was also mutated in the name of B.C.Chennappa in the year 1996. The suit schedule properties are still in the joint possession and enjoyment of plaintiffs and defendants. When such being the case the defendants without the knowledge of the plaintiffs got entered their name in the suit schedule properties and trying to alienate the suit schedule properties and also making construction in the said properties. Hence, the plaintiffs have prayed for Temporary Injunction against the defendants.

3. The defendants have filed written statement and filed the memo for having adopting of the written statement as objections to I.A.No.2.

4. In the written statement the defendants have contended that the suit schedule properties are the self acquired properties of B.C.Chennappa, therefore neither the plaintiffs or anybody else are having right in respect of the suit schedule properties. Apart from that they have also contended that there was a

partition in their family about 15 years back and all the joint members are separately enjoying properties allotted to their shares. They have further contended that the father of plaintiff No.1 and 2 by name Shivalingegowda had sold the 00.01.12 guntas properties in Item No.1 to B.C.Chennappa on 21.6.1973. That there was a injunction suit in O.S.29/2006 before the Civil Judge Court at Channapatna which was decreed in favour of defendants and there was a Writ Petition before the Hon'ble High Court of Karnataka also. Accordingly, the defendants have subsequently contended that they are the absolute owners of the suit schedule properties. Accordingly, prayed to dismiss the above application.

5. I have heard the arguments of learned advocates for both the parties on I.A.No.2 Now the points that arise for my consideration are;

POINTS

- 1 Whether the plaintiffs have made out prima-facie case for issue of

Temporary Injunction against the defendants?

- 2 Whether the Balance of Convenience lies in favour of plaintiffs ?
- 3 Whether the plaintiffs prove that they will be put to irreparable loss and injury if Temporary Injunction is not granted ?
- 4 What order ?

6. My findings to the above points are as follows:-

Point Nos.1 to 3: In Negative

AND

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

REASONS

7. **Point Nos 1 to 3 :** In this case, the order sheet clearly shows that the plaintiffs had not pressed for any orders on I.A.No.2 at the initial stage. However after filing of the written statement by the defendants, the plaintiffs have insisted for order on I.A.No.2.

8. The relief claimed by the plaintiffs in the application is not to make any construction in the suit schedule properties. However the documents produced by the plaintiffs as well as defendants clearly goes to show that already the construction is completed in the suit schedule property. The photos furnished by the defendants clearly shows that the said construction is continuously doing upon by them in the suit schedule properties and there is a collection of construction materials kept near the suit schedule properties. Therefore, if at this stage the alleged construction is stopped it will cause financial loss to the persons who ever it may be constructing. The construction materials like Sand, Cement and Iron materials will get decayed if it is kept for a long time. In fact it is not the object of law to disturb any person from construction.
9. In this case the defendants are making construction of the said property which is their

risk. If finally the court comes to conclusion that the suit schedule properties are joint family properties the defendants will be prevented from claiming equity or claiming their share in the said constructed area. However at this the said construction is stopped they will be put to hardship. Therefore, in this case the balance of convenience lies in favour of the defendants. It is the defendants who will be put to hardship.

10. The plaintiffs have not at all pressed for order on this this application before construction of the said building. Therefore, if the said construction is stopped financial loss will be caused to the persons who intend to complete the said building and it will amount to national waste also. The documents produced by the defendants shows that the said construction is on the verge of completion. Therefore, the plaintiffs have not at all made out prima-facie case for issuance of Temporary Injunction. However whatever the

construction made by the defendants are subject to final result of the suit. Accordingly, I answer the Point Nos 1 to 3 in the Negative.

11. **POINT NO.4**:- In view of my findings given on Point Nos.1 to 3 for the reasons discussed herein above paragraphs, I proceed to pass the following:

ORDER

The I.A.No.2 filed by the plaintiffs U/o 39 Rule 1 and 2 r/w/s/ 151 of CPC is dismissed.

However,Whatever the construction made by the defendants in the suit schedule property is subject to final result of the suit. Accordingly, IA.2 is disposed off.

(Dictated to the Judgment writer transcribed and computerized by him, corrected and initialed by me and then pronounced by me in the open court on this the **8th day of October 2021**).

(Smt.Shubha)
Senior Civil Judge & JMFC,
Channapatna.

Orders on I.A.No.2
pronounced in open court

O R D E R

The I.A.No.2 filed by the
plaintiffs U/o 39 Rule 1 and 2
r/w/s/ 151 of CPC is dismissed.

However, Whatever the construction made by the defendants in the suit schedule property is subject to final result of the suit. Accordingly, IA.2 is disposed off.

For Issues. Call on 29.11.2021.

(SUBHA)
Senior Civil Judge & JMFC,
Channapatna.