

IN THE COURT OF THE ADDL. CIVIL JUDGE
CHANNAPATNA.

Present: Smt. Usharani B.N.,
B.A.LL.B.,L.L.M.,
Addl. Civil Judge and JMFC.,
Channapatna.

Dated this the 10th day of January, 2023

O.S.No.280/2020

Plaintiff/s: Syed Wadi Muslim Committy
Jamayath, Rep. By Ahmed Khan.
(By Sri. H.K., Adv.)

V/s.

Defendant/s : Sri. Dildar Bengum & others
(D1 to 4-Exparte)

(By Sri DJA, Adv. For D5 to 8)
(By Sri ABK, Adv. For D9)

I.A.NO.I

Applicant: : Syed Wadi Muslim Committy
Jamayath, Rep. By its Muthawali
Sri.Ahmed Khan.

V/S

Respondents : Sri. Dildar Bengum & others

ORDERS ON I.A No.I

The plaintiff has filed this application u/O.39 R.1 & 2 r/w.Sec.151 of CPC seeking ad interim temporary injunction restraining the defendant No.9 from alienating the suit schedule property till disposal of the suit by allowing this IA.

2. In support of the application, the plaintiff has filed affidavit stating that the memorandum of plaint may be read as part and parcel of this affidavit to avoid repetition of facts. The plaintiff has filed the above case for partition and separate possession of our Jamayath 1/4th share which is wakf by Smt.Rahamuthunnisa legitimate share in the suit schedule properties and other consequential relief. The suit schedule property is his ancestral property. Further stated that 1/4th share of Rahamathunnisa and defendant No1 to 8 are the members of joint family and they are enjoying the suit schedule properties jointly till to-day the schedule property. Without his knowledge and consent the defendant No.1 to 8 are sold some portion of the suit schedule property to defendant No.9. Defendant No.1 to 8 without any exclusive right title or individual right defendant No.9 are trying to alienate the suit schedule property. Thereby to deprive his share. If the defendant No.9 is succeed in their illegal acts, their right and share will be defeated and the plaintiff have great loss which cannot compensate by any

means. Hence it is just and necessary and expedient to prevent the intended illegal acts of the defendant No.9. The plaintiff has established a prima facie case and balance of convenience lies in his favour. If the accompanying application is not allowed. He will be put to great hardship, loss and injury. On the other hand, no hardship of any kind will be caused to the other side. Hence prayed for allowing this application.

3. The defendant No.9 has filed objections to the I.A. and stated that which may be read as part and parcel of this objection to avoid repetition. The plaintiff himself have no any right and is not manager or nor member nor mutavalli to Syed wadi Jamath and with false pretention filed this suit. Sri. Ahmed Khan is not the person concerned to Syed wadi Jamath and that according to plaintiff himself 25% out of the entire property was gifted to Syed wadi Jamath by one of the daughters of Gulam Dastagir and even as per sale deed which is produced by plaintiff itself in the sale deed and also the schedule clearly mentioned the 75% out of the entire property and on eastern side the property of syedwai masjid Committee. In fact the said gifted property by daughter of Gulam Dastagir is under the control of custody of Syedwadi Masjid Committee formed by wakf board. On this aspect also the suit is not maintainable and the application also not maintainable. The plaintiff has not made

out any prima facie case. The balance of convenience lies in favour of this defendant. In case if the exparte order is vacated and IA is dismissed nothing would be caused to Syedwadi Jamath Masjid committee since 25% out of entire property was already bifurcated long back and same also mentioned in the sale deed of this defendant and that this defendant has not purchased the property of Jamath/Syedwadi Masjid committee and ths said property is very much left vacant and that this defendant is nothing to do with the said property likewise the plaintiff committee not Ahmed Khan is nothing to do with the property so purchased 75% out of entire property. The application is not maintainable in law and on facts and it is frivolous and vexations one and liable to be dismissed in limine. Hence prays to dismiss the application.

4. Heard and perused.

5. The following points arise for my determination;

- 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 irreparable loss and hardship will be caused if T.I. is not granted?

4) What order or decree?

6. My findings on the above points are as under;

- 1 In the Affirmative,
- 2 In the Affirmative,
- 3 In the Affirmative,
- 4 As per final order, for the following;

REASONS

7. **Points 1 to 3** :- The case of the plaintiff has that he has filed this suit for partition and separate possession against the defendants. The plaintiff submit that the suit schedule property is his ancestral property. Further stated that 1/4th share of Rahamathunnisa and defendant No1 to 8 are the members of joint family and they are enjoying the suit schedule properties jointly till to-day the schedule property. Without his knowledge and consent the defendant No.1 to 8 are sold some portion of the suit schedule property to defendant No.9. Defendant No.1 to 8 without any exclusive right title or individual right defendant No.9 are trying to alienate the suit schedule property.

8. The defendant No.9 filed objections stating that 25% out of entire property was already bifurcated long back and same also mentioned in the sale deed of this defendant

and that this defendant has not purchased the property of Jamath/Syedwadi Masjid committee and the said property is very much left vacant and that this defendant is nothing to do with the said property likewise the plaintiff committee not Ahmed Khan is nothing to do with the property so purchased 75% out of entire property. The application is not maintainable in law. Hence prays to dismiss the application.

9. The plaintiff has produced copy of Wakf deed dated 31.01.1979, copy of Katha extract, Copy of E.C. Form No.15, C/c of sale deed dated 24.09.2020, copy of Revision Petition MWD/35/WLM/2012.

10. The defendant No.9 has produced copy of Registered Wakf deed dated 31.01.1979, Registered sale deed dated 07.10.2020, Copy of E khatha 15.09.2020 and 08.02.2021.

11. I have gone through the materials on record. The plaintiffs have filed this suit for partition and separate possession against the defendant. Whether the plaintiff has any right over the suit property or not, it needs to be decided after trial and at this stage the same cannot be considered.

12. As the plaintiff has filed this suit for partition and if the defendant No.9 alienate the suit property to the third party pendent lite and that to without adjudicating the dispute between the parties, then there is chance of

multiplicity of proceedings. In case, the plaintiff succeeds in the suit and if the alienation was made, then they may not get the fruits of the decree which leads to hardship and loss. Looking to the nature of the suit and facts and circumstances, it appears that the injunction is needed at this stage to avoid multiplicity of proceedings and to cure the said basic defect at this preliminary stage as the trial and disposal of this case may take a year or more or within year if the parties co-operate. Therefore, the plaintiff has got a prima facie case which is fit for trial and fit for consideration. If at this stage the T.I. is granted no loss or hardship will be caused to the defendants when compared to that of plaintiff and if this court decides the case in the favour of the defendants, then the compensatory costs can be awarded to the defendants. Therefore, at this stage looking from any angle the balance of convenience lies in favour of the plaintiff but not in favour of defendant. As the plaintiff has made out a prima-facie case, balance of convenience in his favour and hence he is entitled to get T.I. in his favour or otherwise he will be put to loss and hardship. **Accordingly, I answer point Nos.1 to 3 in the affirmative.**

13. **Point No.4:-** As per discussion made above, I proceed to pass the following;

ORDER

I.A. No.1 filed under Order 39 R.1 & 2 r/w.Sec.151 of CPC is allowed.

The defendant No.9 is hereby restrained by way of temporary injunction from alienating the suit schedule property in any manner till disposal of the suit.

(Typed by Typist copyist on online computer corrected,
signed and pronounced by me on this the **10th day of
January, 2023**)

Addl. Civil Judge & JMFC.,
Channapatna.

(Order pronounced vide separate
order in the open court)

ORDER

I.A. No.1 filed under Order 39 R.1 &
2 r/w.Sec.151 of CPC is allowed.

The defendant No.9 is hereby
restrained by way of temporary
injunction from alienating the suit
schedule property in any manner till
disposal of the suit.

Call on 20.02.2023.

Addl. Civil Judge & JMFC.,
Channapatna.

