

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 4th day of August, 2022

O.S.No.96/2021

Plaintiff/s: 1. Smt. Mamatha
W/o Late Chandra .R,
35 years,

2. Panchami
D/o Late Chandra .R
13 years,

3. Shivani
D/o Late Chandra .R
10 years,
plaintiff No.2 and 3
are minors, All are Rep. By
her mother natural Guardian,
Valagere doddi Village,
Malur Hobli,
Channapatana Taluk,
Ramanagara District.

(By Sri. L.A., Adv.)

V/s.

Defendant/s : 1. Sri. T. Ramada S/o
Late Thimmegowda
75 years,

2. Varalakshmi W/o Boralingaiah,
D/o T. Ramadas, 50 years,
3. Jayarathna R W/o M.Manhegowda,
D/o T. Ramadas, 45 years,
4. Gowramma V.R. W/o Mariswamy,
D/o T. Ramadas,

All are R/at Valageredoddi Village,
Malur Hobli,
Channapatana Taluk,
Ramanagara District.

(By Sri H.J., Adv.)

I.A.NO.I

Applicant: : Smt. Mamatha & others

V/S

Respondents : Sri. Ramadas & others

ORDERS ON I.A.NO. I

The plaintiffs have filed this application u/O.39 R.1 & 2 r/w.Sec.151 of CPC seeking temporary injunction against the defendant restraining him from alienating or encumbering the suit schedule property in any manner till disposal of this suit.

2. In support of the application, the plaintiff No.1 has filed affidavit stating that on behalf of the plaintiff No.2 & 3 as natural guardian has filed this

suit seeking relief of partition. Defendant No.1 is the father and defendant No.2 to 4 are the sisters of husband of the plaintiff No.1. The husband of the plaintiff is the only son of the defendant No.1. The plaintiff No.2 and 3 are the grand children of the defendant No.1. The suit schedule properties are the ancestral and joint family properties of the defendants and the plaintiffs and all are members of Hindu undivided joint family. Presently all the suit schedule properties are standing in the name of the defendant No.1. The husband of the plaintiff No.1 was earning person in the joint family and out of his earnings purchased the suit schedule properties in the name of the defendant No.1 and he was looking after the welfare of the entire family till today no partition took place between the defendants and the plaintiffs. After the death of the husband of the plaintiff No.1, the defendant No.1 neglected the plaintiffs and also without any right, title and interest executed gift deed dated 29-09-2020 in favour of the defendant No.2 to 4 for the Sy.No.249/7 measuring 1 acre 18 guntas which is one of the ancestral joint family properties and the plaintiffs are entitled for their share in the said suit schedule properties. The defendant is trying to create third party rights alienate over the suit schedule the property. The defendant is making

hurried attempts to alienate/encumber the suit schedule properties. They have got rights over the suit schedule properties and hence prayed for allowing this application.

3. The defendants have filed their written statement and have adopted the same as objections to the application and the defendants has denied the averments of the plaint as false and further submitted that Since 20 years back the wife of defendant No.1 was passed away and after the demise of Smt. Puttachannamma the marriages of defendant No.3 and 4 performed by the defendant No.1 out of his own earnings and after the marriages of the defendant No.2 to 4, the marriage of Chandru was performed by the defendant No.1. At the time of marriage of Chandru, he was not doing any work and he was living under the earnings of 1st defendant. The marriage of Chandru was performed with an intention to look after the family of defendant No.1 as there is no female members in the house. But the 1st plaintiff without thinking the responsibility of the family, the 1st plaintiff taken away her husband to her parental house and after marriage of 1st plaintiff even a single day has not taken care and welfare of defendant No.1 nor defendant No.2 to 4.

4. The defendant further contended that when the item No.2, 4 and 6 was purchased by defendant No.1 the husband of 1st plaintiff was a student and he was not an earning member of joint family and there is no contribution from the husband of the plaintiff No.1 to the joint family as alleged by the plaintiff No.1. The defendant No.2 to 4 were looking after the welfare of defendant No.1 and hence on the love and affection on the daughters, the defendant No.1 gifted the suit item No.4 in favour of these defendant No.2 to 4 jointly by way of registered gift deed.

5. The defendant further contended that the plaintiffs are only entitled to get 1/4th share in suit schedule item No.1 and 3 properties and the plaintiffs are not entitled any shares over the suit schedule item No.2, 4 and 6 properties which are self-acquired properties of defendant No.1. Hence the suit of the plaintiffs may kindly be dismissed on item No.2, 4 and 6. The item No.5 is neither belong to joint family nor the self-acquired property of the defendant No.1. The plaintiffs are entitled to get the right and share in suit item No.1 and 3 equally along with defendants No.1 to 4. Hence, prayed for dismissal of the application.

6. Heard and perused.

7. 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?

8. 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

9. **Points 1 to 3:-** These points taken together for the sake of convenience and avoid repetition.

10. The case of the plaintiffs is that they have filed this suit for partition against the defendants. The suit schedule properties are the ancestral and joint family properties of the defendants and the plaintiffs and all are members of Hindu undivided joint family. Presently all the suit schedule

properties are standing in the name of the defendant No.1. The husband of the plaintiff No.1 was earning person in the joint family and out of his earnings purchased the suit schedule properties in the name of the defendant No.1 and after the death of the husband of the plaintiff No.1, the defendant No.1 neglected the plaintiffs and also without any right, title and interest executed gift deed dated 29-09-2020 in favour of the defendant No.2 to 4 for the Sy.No.249/7 measuring 1 acre 18 guntas which is one of the ancestral joint family properties and the plaintiffs are entitled for their share in the said suit schedule properties. The defendant is trying to create third party rights alienate over the suit schedule the property. The defendant is making hurried attempts to alienate/encumber the suit schedule properties.

11. The plaintiff has produced family tree, RTCs for Sy.No.252/3, 240/2, 121/B, 249/7, 248/2, 237/3 and Mutation Registrar and certified copy of Gift Deed certified copy of the Gift deed dated 07.08.2015 and copy of mutation register.

12. The defendant has produced any documents.

13. I have gone through the case record. The plaintiffs have filed this suit for partition and the defendants has denied their case. The defendants contended that the suit schedule properties item No.1 and 3 are ancestral properties, item No.2, 4 and 6 are the exclusively self-acquired properties of the defendant No.1 and item No.5 neither belongs to joint family or self-acquired property of the defendant No.1. Whether the partition took between the family members and out of that the suit schedule properties fall in to the share of the defendants or not and whether the plaintiffs have any right over the suit schedule properties or not, it needs to be decided after trial and at this stage the same cannot be considered.

14. As per the copy of Gift deed the defendant No.1 has executed in favour of the defendant No.2 to 4 though the contents of the document reveals that the property is self-acquired property of the defendant No.1 but prima facie, he has not furnished any document to show that the property is his self- acquired property. As the plaintiffs have filed this suit for partition and if the defendants alienate the suit properties 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 plaintiffs have got a prima facie case which is fit for trial and fit for consideration. If at this stage the I.T. is granted no loss or hardship will be caused to the defendants when compared to that of the plaintiffs 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 plaintiffs but not in favour of defendant. As the plaintiff have made out a prima-facie case, balance of convenience in their favour and hence they are entitled to get T.I. in their favour or otherwise they will be put to loss and hardship. Accordingly, I answer point Nos.1 to 3 in the affirmative.

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

ORDER

I.A. filed under Order 39 R.1 &
2 r/w.Sec.151 of CPC is allowed.

The defendants or their agents
etc., are hereby restrained by way of
temporary injunction from
alienating the suit schedule
property in any manner till disposal
of the suit.

Call on 17.09.2022.

(Typed by Typist copyist on online computer corrected,
signed and pronounced by me on this the **4th** day of **August,**
2022.)

Addl. Civil Judge & JMFC.,
Channapatna.

(Order pronounced vide separate
order in the open court)

ORDER

I.A. filed under Order 39 R.1 &
2 r/w.Sec.151 of CPC is allowed.

The defendant or his agents
etc., are hereby restrained by way of
temporary injunction from
alienating the suit schedule
property in any manner till disposal
of the suit.

Call on 17.09.2022.

Addl. Civil Judge & JMFC.,
Channapatna.