

KARN320016962015



**IN THE COURT OF PRL CIVIL JUDGE AND JMFC,
KANAKAPURA**

Present:

**Sri. Suresh Annappa Savadi, B.A., LLB., (Spl.)
Prl. Civil Judge & JMFC, Kanakapura
O.S.No.440/2015**

Dated this the 02nd day of June 2023

PLAINTIFF:

1. Smt. Anusuyamma

-Versus-

DEFENDANTS:

1. Sri. Nagaraju and others

PARTIES ON I.A.I

APPLICANT:Plaintiffs

1. Smt. Anusuyamma

-Versus-

OPPONENT:Defendants

1. Sri. Nagaraju and others

PARTIES ON I.A.III

APPLICANTS:Defendants

1. Sri. Nagaraju and others

-Versus-

OPPONENT:Plaintiff

1. Smt. Anusuyamma

ORDER ON I.A.No.I AND III

The plaintiff filed this application under Order 39 Rule 1 and 2 r/w Sec.151 of CPC to restrain the defendants from interfering the peaceful possession and enjoyment of the suit schedule properties of the plaintiff.

On the other hand the defendant filed an application under Order 39 Rule 4 of CPC to vacate the injunction order.

2. The plaintiff in the affidavit contended that, the plaintiff filed this suit for bare injunction against the defendants in respect of the suit schedule properties. One Sri. D. Shivaram is the husband of the plaintiff, the said Sri. D. Shivaram, Sri.D. Balakrishna and Sri. D. Shivakumar are the sons of late Sri.Dasa Shetty. M. and they were already died. The suit schedule 'A' property is the self acquired property of the father-in-law of plaintiff who is died on 01.07.1989 leaving behind a WILL dated 07.09.1977 and bequeathed the said property to the husband of the plaintiff and to the Sri.Balakrishna as equal share. The plaintiff further contended that suit schedule 'B' to 'M' properties are self acquired properties of the husband of the plaintiff and they were not the joint family properties. The brother of the husband of the plaintiff filed the suit in O.S.No.47/1994 before the

Senior Civil Judge, Ramanagara for partition of the suit schedule properties and on 10.01.2015 same was partly decreed. Being aggrieved by the said Judgment and Decree the brother of the plaintiff's husband filed the appeal before the Hon'ble High Court of Karnataka in RFA No.558/2005 and same was allowed. Being aggrieved by the said order of the Hon'ble High Court the husband of the plaintiff preferred SLP No.3111/2014 before the Hon'ble Supreme Court of India and the Apex Court granted the stay order. This being of fact the defendant No.1 to 5 interfering the possession of the self acquired property of the husband of the plaintiff. The defendant No.5 being the wife of the Sri.Shivakumar filed suit for maintenance and other proceedings and subsequently stopped further proceedings. The first defendant Sri.Nagaraju and defendant No.4 and 5 have given their evidence in O.S.No.47/1994 and they have stated that Sri.Dasashetty executed a WILL and stated about the self acquired property. Further contended that, as per the statements of the parties they admitted that the other properties are the self acquired properties of the husband of the plaintiff. Under such circumstances the defendant No.1 concocted sale agreement and the defendant issued the legal notice to execute the sale deed on such created fabricated fraudulent agreement, for that

the plaintiff filed private complaint with these set up contentions prays to restrain the defendants from interfering the possession of the plaintiff over the schedule property.

3. On the other hand, the defendants filed objections to filed their written statement and also I.A.No.III to vacate the T.I. The defendants contended that, in respect of the suit schedule properties already the litigation approached before the Hon'ble Apex Court and stayed the operation of the order of the Hon'ble High Court of Karnataka in RFA No.558/2005 in view of the pendency of the SLP this suit is premature and there is no cause of action to file the suit and also the defendants have narrated the facts of the case and also contended that, the plaintiff are children and son-in-law's have undertaken before the Kanakapura Police on 15.09.2015 even then continued their illegal acts and trying the dispossess the plaintiff from the schedule 'A' property by using coercive method this defendants have also filed suit for permanent injunction in O.S.No.465/2015 on 13.10.2015 and this Hon'ble Court granted the exparte T.I. against the plaintiff. This being of fact the plaintiff taking law into their hands and interfering the possession of this defendant with these set up contention

prays to reject the I.A.No.I by vacating the interim injunction order.

4. Heard the plaintiff side. The counsel for defendant filed written argument.

5. The following points arises for my consideration;

1. Whether the plaintiff has made out the prima-facie case ?

2. Whether the plaintiff shows that the balance of convenience lies in her favour?

3. Whether the plaintiff show that, if the application is not allowed irreparable injury will caused to the plaintiff ?

4. Whether the defendant has made out sufficient ground to allow the I.A.No.III?

5. What order ?

6. My answered to the aforesaid points are as under;

1. Point No.1 to 3 : In the negative

2. Point No.4 : In the affirmative

3. Point No.5 : As per final order for the following

REASONS

7. POINT NO.1 to 4: The plaintiff filed this suit for bare injunction on the strength of the decree passed in O.S.No.47/1994 dated 10.01.2005 being aggrieved by the said decree the brother of the husband of the plaintiff Sri.Shivakumar preferred appeal before the Hon'ble High Court of Karnataka in RFA No.558/2005 and same is allowed on 08.11.2012, against that the plaintiff's husband filed SLP before the Hon'ble Apex Court in SLP No.3111/2014 and the Hon'ble Apex Court granted the stay order to the operation of order of the Hon'ble High Court of Karnataka and till today the appeal is pending for adjudication. On the strength of the decree the plaintiff claiming that the suit schedule properties are the self acquired property and she is in possession and for that the defendant trying to interfere the possession of the plaintiff over the suit schedule properties. Hence, the present suit was filed for permanent injunction. For that the defendant filed objections and also filed application for vacating interim injunction order.

8. After going through the entire material documents and the decision relied by the parties, as per the records the originally the Sri.Dasashetty had acquired the some of the properties and husband of the

plaintiff having some properties which is his self acquired properties, under such circumstances in respect of family property of the Sri.Dasashetty in O.S.No.47/1994 filed for partition and same was decreed being aggrieved by the same the both side parties have approached Hon'ble High Court of Karnataka as well as Hon'ble Apex Court and the Hon'ble Apex Court has granted the stay order to the order of the Hon'ble High Court of Karnataka dated 08.11.2012. This being a fact the plaintiff filed this suit for injunction alleging that the defendants are interfering the possession and enjoyment of the property of the plaintiff. In view of the pendency of the SLP before the Hon'ble Apex Court in respect of the suit properties and also there is a stay order by the Hon'ble Apex Court. Moreover, in a suit for partition only preliminary decree was passed and there is no final decree proceedings was initiated. This being a suit for injunction on the strength of the preliminary decree passed in partition suit and the said suit is not come to an end as there is a pending of SLP before the Hon'ble Apex Court and more ever the said preliminary decree only share has been allotted and in respect of self acquisition and joint family property the lis is before the Hon'ble Apex Court and Apex Court granted the stay order. Hence, under such circumstances this court is of the opinion that the plaintiff has not

shows the prima-facie case in respect of I.A.No.I and balance of convenience does not lie in favour of plaintiff. The defendant filed application for vacating the temporary injunction order but there is no final order on I.A.No.I. Hence, under such circumstances this court answered the Point No.1 to 3 in the negative and point No.4 in the affirmative.

9. **POINT NO.5:** For the reasons stated in the Point No.1 to 4, this court proceed to pass the following;

ORDER

The I.A.No.I filed by the plaintiff U/O XXXIX Rule 1 & 2 r/w Sec. 151 of CPC is hereby rejected.

The I.A.No.III filed by the defendant U/O XXXIX Rule 4 of CPC is hereby allowed.

(Dictated to the Steno, transcribed by her, corrected and then pronounced by me in the open Court on this the 02nd day of June 2023)

Sd/-

(SURESH ANNAPPA SAVADI)

Prl. Civil Judge & JMFC.,
Kanakapura.