

KARN320021092013



**IN THE COURT OF THE I ADDL.CIVIL JUDGE & J.M.F.C.,
AT KANAKAPURA.**

Present: Smt. Savita Rudragouda
Chikkanagoudar., *B.A., LL.B.*,
I Addl. Civil Judge & JMFC.,
Kanakapura.

Dated: This 22nd day of January 2024

O.S. No. 551/2013

PLAINTIFF : Sri. Nagesh
S/o late Balaiah @ Balegowda
Aged about 64 years,
R/at: Raste Jakkasandra Village,
Maralavadi Hobli,
Kanakapura Taluk,
Ramanagara District.

(By Sri.A.Govindaraju, Adv.)

V/s.

DEFENDANTS : **1. Smt. Venkatamma**
W/o late Balaiah @ Balegowda
Since dead by her LR's

2. Sri. Aswathanarayana
S/o late Balaiah @ Balegowda
Since dead by her LR's

- a) Smt. Yallamma
W/o late Ashwathanarayana
Aged about 60 years,
 - b) Sri. Ananda
S/o late Ashwathanarayana
Aged about 35 years,
 - c) Sri. Srinivasa
S/o late Ashwathanarayana
Aged about 32 years,
 - d) Smt. Jayamma
W/o late Ashwathanarayana
Aged about 55 years,
 - e) Sri. Manjunath
S/o late Ashwathanarayana
Aged about 28 years,
 - f) Smt. Mamatha
D/o late Aswathanarayana
Aged about 26 years,
3. Smt. Nagamma
D/o late Balaiah @ Balegowda
Aged about 60 years,
 4. Sri. Balaraju
S/o late Balaiah @ Balegowda
Aged about 70 years,
 5. Sri.Krishna
S/o late Balaiah @ Balegowda
Aged about 70 years,

All are R/a:
Raste Jakkasandra Village,
Maralavadi Hobli,
Kanakapura Taluk
Ramanagara District.

(By Sri. Vivekanand.V.Jalde, Adv.
for D3, Sri. A.C.Channegowda Adv.
for D5, Sri.K.Nanjegowda Adv. for
D4, Sri. R.Krishna Gopal Adv.
for D2{d to f})

I.A.No.I

Applicant/s : Sri. Nagesh
Plaintiff/s

//Vs.//

Opponent/s : Smt. Venkatamma and Others
Defendant/s

ORDER ON I.A. No.I UNDER ORDER XXXIX RULE
1 & 2 R/w Sec. 151 OF CPC

The plaintiff has filed application U/o XXXIX Rule 1 and 2 R/w Sec. 151 of CPC seeking the relief of temporary injunction to restrain the defendants or anybody acting on their behalf from alienating the suit schedule property or portion thereof to others pending disposal of the suit in the interest of justice and equity.

2. In the affidavit accompanying the application sworn by the plaintiff, it is stated that, the suit schedule property i.e. Sy. No.45 measuring 2 acres 16 guntas situated at Raste Jakkasandra Village, is the ancestral undivided joint family property of himself and the defendants and that he has also got the share in the said property but the defendants after the death of original propositious Sri. Balaiah @ Balegowda by colluding with each other and by misrepresentation got the katha changed as to suit schedule property in the name of first defendant who is the wife of original propositious and the mother of plaintiff and other defendants and on the basis of alleged katha they are also making efforts to alienate the said property to others with ulterior motive to obtain unlawful gain and with malafide intention to deprive plaintiff from getting his legitimate share in the said property and in the event if the application is not allowed, the plaintiff would be put to severe hardship and injury and same would also lead to multiplicity of proceedings. Hence, prays to restrain the defendants from alienating the suit schedule property to others pending disposal of the suit.

3. On the other hand, the defendant No.3 has filed memo to treat the written statement as objection to I.A.No.I filed by the plaintiff. In her written statement, the defendant No.3 admits the relationship alleged by the plaintiff but denies that the plaintiff and defendants constituted a Hindu Undivided Joint Family and also denies that the suit schedule property is owned and possessed by

them jointly. The defendant No.3 contends that, the original propositous Sri.Balaiah owned and possessed the 6 properties i.e. land bearing Sy.No.31/2 measuring 1 acre 20 guntas and land in Sy. No.45 measuring 2 acres 23 guntas and land in Sy.No.47 measuring 4 acre 35 guntas, land in Sy. No.77 measuring 0.19 guntas, land in Sy.No.78 measuring 16 guntas and land in Sy.No.15 measuring 1 acre 33.08 guntas all situated at Jakkasandra Village, and the said properties were acquired by the said original propositous under registered partition deed dated 15.12.1975 entered into between himself and his brothers and after such a partition he got the katha made out in his name and after the death of original propositous the plaintiff and defendant No.1, 2, 4 and 5 have got the ancestral joint family properties divided among them through oral partition in the year 1989 and in such a partition, the suit schedule property was allotted to the share of defendant No.1 and also got the katha changed in her name and other above said lands were allotted to the share of plaintiff and defendant No.2, 4 and 5 and they also got the katha of the lands of their share made out in their names.

4. The defendant No.3 further contends that, the defendant No.1 out of her free WILL and accord, executed registered WILL dated 19.02.2014 in favour of defendant No.3 and defendant No.4 and 5 signed the same as witnesses and now the defendant No.1 is dead and after her death defendant No.3 became the absolute

owner of the suit schedule property and the plaintiff and defendant No.2, 4 and 5 have already taken their share in their joint family properties hence, the question of partition does not arise. On these grounds prays to dismiss the application.

5. Heard both sides and perused the materials placed on record.

6. The following points arise for my consideration;

1) Whether the plaintiff has made out a prima-facie case in his favour?

2) Whether the plaintiff proves that the balance of convenience lies in his favour?

3) Whether the plaintiff proves that he will be put to irreparable loss and injury if temporary injunction is not granted as sought for?

4) What Order?

7. My findings on the above Points are as under;

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

Point No.4 : As per final order

for the following:-

REASONS

8. **Point No.1** : In order to get the temporary injunction it is first and foremost necessary for the plaintiff to establish the fact that, he has a prima-facie case in his favour. In the case on hand, the plaintiff contends that, suit schedule property is the ancestral and undivided joint family property of the plaintiff and defendants and he also has a legitimate share in the said property but the defendants by colluding with each other and by misrepresentation of facts got the katha changed in the name of first defendant, who is the wife of original propositus and the mother of plaintiff and the other defendants and on the basis of alleged katha standing in the name of defendant No.1, the defendants are making efforts to alienate the suit property to others with ulterior motive to obtain the unlawful gain and with malafide intention to deprive him from getting legitimate share in the suit schedule property. In support of his contention, the plaintiff has produced several documents i.e. the RTC extracts standing in the name of defendant No.1 with respect to suit schedule property which is stated to have been mutated in her name on the basis of pouthy katha and even he has produced the mutation register extracts which also show that the suit property is mutated in the name of defendant No.1 on the basis of pouthy katha.

9. On the other hand, the defendant No.3 in her written statement to be treated as objection to I.A.No.I, even though she has

admitted the alleged relationship existing between the plaintiff and the defendants, she denies the joint family status and she also denies that suit schedule property is in joint possession of the defendants and plaintiff. According to defendant No.3, the original propositus Sri.Balaiah had 6 suit schedule properties in his name which he got acquired through registered partition deed dated 15.12.1975 entered into between himself and his brothers and those 6 properties in Sy.No.31/2, Sy.No.45, Sy.No.47, Sy.No.77, Sy.No.78 and Sy.No.15 were divided among the plaintiff and defendant No.1, 2, 4 and 5, after the death of original propositus Sri. Balaiah through oral partition in the year 1989 and the suit schedule property was allegedly allotted to the share of the defendant No.1 and based on that, katha of the suit property was made out in the name of defendant No.1 and katha of other said lands were allotted to the share of plaintiff and defendant No.2, 4 and 5 and as per their shares they got the khata made out in their separate names.

10. The defendant No.3 further contends that, the defendant No.1 on her free WILL and accord executed registered WILL dated 19.02.2014 in her favour and hence, after the death of first defendant, the defendant No.3 has become the absolute owner of the suit property and hence, prays to reject the application.

11. In support of her contention she has produced the RTC extract of Sy.No.15/1 and the mutation register extracts, RTC of

Sy.No.15/9 and copy of O.S.No.142/2014, sale deeds dated 02.04.2004, 24.11.2004 and notice of K.I.A.D.B, and copy of the P and SC Order and other documents. On perusal of RTC bearing Sy. No.15/1, Sy.No.15/9, Sy.No.15/14 it appears that property in said survey numbers is obtained by the defendants and the plaintiff under partition and on perusal of the sale deeds it appears that the property in survey number 15/1 is sold and on perusal of the order passed by the Hon'ble II Addl. District and Sessions Judge, Ramanagara, in P and SC. No.5022/2021 it appears that the probate petition filed by the defendant No.3 is allowed and the probate certificate to the registered WILL is given to her and based on that, as per the RTC produced by her the katha of suit property is mutated in her name. At this point of time what is notable is that, whatever contentions the defendant has taken regarding the oral partition which has taken place between the plaintiff and the other defendants and about the execution of WILL in her favour by first defendant and the documents produced by her to prove the alleged oral partition and the execution of WILL are concerned those aspects cannot be considered at this point of time. At this point of time at the most court can only look into the question whether there is a prima-facie case in favour of plaintiff. From the facts stated by both the parties it is clear that the suit schedule property originally belonged to the propositous Sri.Balaiah and that the plaintiff and defendants are his legal heirs hence, the other contentions taken by both the parties cannot be considered at this

point of time. Even though the probate certificate is granted in favour of defendant No.3 that itself is not a ground to deny the injunction in favour of plaintiff because at the most by looking into the probate it can be said that the WILL is executed in favour of defendant No.3 but whether the testator of the WILL had any right to execute the said WILL with respect to suit property in favour of defendant No.3 cannot be decided at this stage by looking into the probate certificate. Hence, I am of the opinion that the plaintiff has established prima-facie case in his favour. Hence, I answer **Point No.1 in the Affirmative.**

12. **Point No.2 :-** So far as balance of convenience is concerned it is notable fact that, the suit schedule property is allegedly the ancestral joint family property of the plaintiff and defendants which the defendant No.3 states to have been acquired by the defendant No.1 under oral partition which alleges to have been bequeathed defendant No.1 in favour of defendant No.3 if at this stage when there is a serious dispute regarding the suit schedule property if the said property is alienated it would in turn leads to multiplicity of proceedings. On the other hand, if the defendant No.3 is restrained from alienating the same then after the determination of rights of both the parties if at all defendant No.3 has an exclusive right over the suit schedule property then she can very well to alienate the same and her rights will not be affected. Further if during the pendency of the suit defendant No.3

alienate the suit property then that would even affect the rights of subsequent purchaser and it takes times to undo the same. Hence, I am of considered opinion that balance of convenience lies in favour of plaintiff. Hence, I answer **Point No.2 in the Affirmative.**

13. **Point No.3:-** It is not sufficient if the applicant shows that he has a prima-facie case in his favour, he must further satisfy the court that if the temporary injunction is not granted he will be put to irreparable loss and injury. In the case on hand, it is a notable fact that, if at all the suit schedule property is alienated in favour of third persons then that would lead to multiplicity of proceedings and would cause greater hardship to the plaintiff than to the defendants. If the temporary injunction is granted the defendants will hardly suffer any loss or injury. On the other hand, if the same is rejected it is the plaintiff who will be put to irreparable loss and injury and would be forced to litigate the case even against the third person. If at all defendants are restrained from alienating the same, then after determination of rights of both the parties, if at all they have right over suit property, they can very well alienate the same. If they alienate the same during pendency of suit, then even the subsequent purchaser's right will be affected and it takes time to undo the same. Hence, I answer **Point No.3 in the Affirmative.**

14. **Point No.4:** For the above stated reasons I proceed to pass following:-

ORDER

I.A. No.I filed under Order XXXIX Rule 1 and 2 R/w 151 of CPC filed by the plaintiff is hereby allowed.

Thereby defendants their agents, servants, or anybody acting on their behalf are hereby restrained from alienating the suit schedule property in favour of third persons pending disposal of the case.

(Dictated to the Stenographer, transcribed and computerized by her, then corrected and pronounced by me in the Open Court on this 22nd day of January 2024)

**Sd/-
I Addl. Civil Judge & JMFC.,
Kanakapura.**