



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT MAGADI.**

Present: Sri. Shivakumar R., B.A.L., LL.B.,
Additional Senior Civil Judge & JMFC, Magadi.

Dated: 29th Day of April 2026
ORIGINAL SUIT NO.22/2020

Plaintiff : Sri. Mahantheshaiah

(By Sri. C.K.R. Advocate)

---V/s---

Defendants: Sri. Prabhushankar & Ors.,

(D1(a to c) by Sri. P.M.C. Advocate)

(D2ab, D3ab, 4 a to c & 5b & D8 Exparte)

(D5a Absent)

(D7 by Sri. M.S.S. Advocate)

PARTIES TO I.A.NO.7

Applicant : Sri. Mahantheshaiah

Vs.

Opponents : Sri. Prabhushankar & Ors.,



ORDER ON I.A.NO.7

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC for the relief of temporary injunction restraining the defendants, their agents, servants, family members, henchmen or acting on their behalf etc., from alienating or encumbering over the suit schedule properties in any manner pending disposal of this suit.

2. In the accompanying affidavit to the I.A. No.7, the plaintiff states that, he has filed the above suit for the relief of the partition and separate possession and other reliefs against the defendants with respect to suit schedule properties. The suit schedule properties are the ancestral and joint family properties of the plaintiff and defendant No.1 to 5. The plaintiff and defendant No.1 to 5 have jointly cultivated the suit schedule properties. The plaintiff and defendant No.1 to 5 are the Hindu undivided joint family



members and there was no partition effected in between the plaintiff and defendants by orally or documentarily. The father of the plaintiff was acquired the suit schedule properties through inheritance. The father and mother of the plaintiff by name Siddagangaiah and Parvathamma were enjoying along with the defendant No.1, 4, 5 and the plaintiff and husband of the second defendant all are jointly enjoying the suit schedule properties without partitioning the suit schedule properties.

3. It is further stated that, the father of the plaintiff was managing the suit schedule properties as a Kartha, after his death the defendant No.1 and 2 are managing the joint family properties as a KARTHA. The defendants have colluded each and misused the joint family income without legal necessities, same is questioned by the plaintiff and demanded the defendant No.1 to 5 to effect partition and put the plaintiff in separate possession over the suit schedule properties and



give the share of the plaintiff, but the defendant No.1 to 5 postponed the same by giving one or the other reasons best known to them. Further the defendant No.1 told that the defendant No.1 and 5 have colluded and obtained the court decree and on the basis of the decree the defendant No.1 and 2 and their family members are already alienated the portion of the item No.1 and item No.3 of the suit schedule Properties. The plaintiff after came to know about the same, immediately the plaintiff rushed to the concerned officials and obtained the documents and came to know that the defendant No.5 had filed the suit in OS.No.15/2015 on the file of this Court against the plaintiff and defendant No.1 to 4, 6 and 7 seeking the relief of partition and separate possession over the suit schedule properties, during the pendency of the said suit the defendant No.5 by colluding with the defendant No.1 and 8 compromised the above suit by deleting the plaintiff and defendant No.2 to 4 in the said suit by



compromise decree dated 9-9-2017. Further, the plaintiff had obtained the certified copy of the registered sale deed dated 05.05.2006, 12.03.2012 and 31.03.2018 and came to know that the defendant No.1 and 2 and mother of the plaintiff by name Parvathamma are colluded together and created the sale deed dated: 5-5-2006 in favour of the defendant No.7 in respect of the item No.3 of the suit schedule property, further on the basis of the alleged sale deed the defendant No.7 in turn sold the same in favour of the defendant No.8 under the registered sale deed dated 12-3-2012, further the defendant No.1 and their family members have jointly created the sale deed dated 31-3-2018 in favour of the defendant No.6 in respect of the portion of the item No.1 of the suit schedule property. Neither the plaintiff the party nor signatory of the alleged compromise decree passed in OS No.15/2015 and the alleged registered sale deed dated 5-5-2006, 12-3-2012 and



31-3-2018 and the same are not binding on the right and share of the plaintiff over the suit schedule properties.

4. Further it is submitted that, after coming to know about the illegal acts done by the defendants, on 27-12-2019 finally the plaintiff demanded the defendant No.1 to 5 to effect partition and put the plaintiff in separate possession over the suit schedule properties. The revenue documents with respect to the suit schedule properties is stands in the name of defendant No.1, 6 and 8, after demanding the defendants to effect the partition in the suit schedule properties, the defendants are colluded together and making attempt to alienate the suit schedule properties to the third person in order to deprive the right of the share of the plaintiff over the suit schedule properties. Hence, this application.

5. The I.A., copy was served to the other side. The counsel for the defendant No.7 has filed the detailed statement of objection and resisted the I.A.No.7 filed by the



plaintiff and denied the averments made out in the supportive affidavit of the plaintiff and interalia contended that, the plaintiffs and defendants have partitioned the suit schedule properties orally and the plaintiffs and defendants are partitioned equally in respect of the suit schedule properties, accordingly in the first item of the suit schedule property, the plaintiff, first defendant and second defendant are partitioned to the extent of 0.19 guntas of land each. The second item of the suit schedule properties is allotted to the share of defendant No.5 in OS No.15/2015. The third item of the suit schedule properties was allotted to the share of the defendant No.1 and 2, the same is in favour of the defendant No.8. The item No.4 of the suit schedule property is allotted to the share of the plaintiff, the item No.5 of the suit schedule property was allotted to the share of the defendant No.5 and the item No.6 of the suit schedule property is allotted to the share of the first defendant. Accordingly, the plaintiff is in possession



and enjoyment of the item No.4 of the suit schedule property measuring to an extent of 2 acres 3 guntas and in the first item No.1 of the suit schedule property is acquired 0.19 guntas and the plaintiff put up the construction in the item No.4 of the suit schedule property and he is personally cultivating the properties which has allotted to his share. The defendant No.1 and 2 have sold the first item of the suit schedule property which is got their share to the defendant No.7 under the registered sale deed dated 31-3-2018 measuring to an extent of 0.37 guntas. As on the date of purchase the defendant No.1 and 2 are put the defendant No.7 in actual possession of the property. The defendant No.7 is bonafied purchaser. The defendant No.7 obtained the possession under a registered sale deed, on the basis of the registered sale deed the Khatha and Pahani were mutated in the name of the defendant No.7 in respect of item No.1 of the suit schedule property. After purchase the suit schedule



property the same is Phoded in actual possession of the defendant No.7, the revenue officials given a new Phodi number as Sy.No.55/6. Thereby the defendant No.7 is in possession and enjoyment of the property which is acquired under the registered sale deed dated 31-03-2018. The possession of the defendant No.7 is well within the knowledge of the plaintiff, the plaintiff with a malafied intention and to harass this defendant filed this false and frivolous suit against this defendant. There is already partition in between the plaintiff and defendant No.1 to 5, the question of partition does not arise at all. The plaintiff not come up with clean hand and he is malafied intention to harass this defendant and grab the valuable property of this defendant. hence the suit of the defendant No.7 is the bonafied purchaser of the item No.1 of the suit schedule property to an extent of 0.37 guntas. The rest of the allegation which are not specifically traversed herein are hereby denied as false.



6. The defendant No.7 further contended that, the plaintiff with a malafide intention to drag the proceeding and harass this defendant filed this false and frivolous application. the application itself is not maintainable and the suit schedule properties is not in joint family properties, plaintiff have no rights, interest or much less possession over the suit schedule property the plaintiff is out of possession and he has not entitle for any relief against the true owners, the Defendant No.7 is bonafide purchaser and he is in possession and enjoyment of the above said properties the plaintiff swearing the false and frivolous affidavit with support of application the plaintiff with an malafide intention. For all these grounds, the defendant No.7 has prays to reject the above application.

7. Heard the arguments of both sides.



8. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the plaintiff/applicant has made out a prima-facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff/applicant?
- 3) Whether the plaintiff/applicant will be put to irreparable loss and injury, if the temporary injunction is not granted as prayed in the I.A.?
- 4) What order?

9. My answer to the above points are as under :

Point No.1 : In the Negative,

Point No.2 : In the Negative,

Point No.3 : In the Negative,

Point No.4 : As per the Order,

for the following:



REASONS

10. **POINT NO.1 TO 3:** As these points are interconnected and interlinked with each other, these points are taken up together for common discussion to avoid repetition of facts. I have already narrated in brief what is the case of the plaintiff is and what is the defense of the defendant No.7 is. According to plaintiff, the plaintiff and defendant No.1 to 5 are the members of the Hindu undivided joint family and suit schedule properties are their ancestral and joint family properties, they are in joint possession of the same without effecting partition. The defendant No.1 to 5 have denied the partition in favour of plaintiff in respect of suit schedule properties. Thereafter, the plaintiff obtained the documents, at that time he came to know that, the defendant No.5 has filed the suit in O.S.No.15/2015 on the file of this Court against the plaintiff and defendant No.1 to 4, 6 & 7 herein for the relief of partition and the defendant No.5



colluded with the defendant No.1 & 8 and compromised the above suit vide compromise decree dated: 09.09.2011 by deleting plaintiff and defendant No.2 to 4 in the above suit. It is further urge of the plaintiff that, the defendant No.1 & 2 and mother of the plaintiff have colluded with each other and created the sale deed dated: 05.05.2006 in favour of defendant No.7 in respect of item No.3 of the suit schedule property, in turn the defendant No.7 has sold the same in favour of defendant No.8 in respect of said property by virtue of the registered sale deed dated: 12.03.2012. The defendant No.1 and their family members have jointly created the sale deed dated: 31.03.2018 in favour of defendant No.6 in respect of some portion of the item No.1 of the suit schedule property. On the strength of the alleged sale deeds and the khata of the suit schedule properties are stands in the name of defendants and they are trying to alienate the suit



schedule properties in order to deprive the rights of the plaintiff over the suit schedule properties.

11. In order to substantiate the case of the plaintiff, at this stage he has produced the documents i.e., Genealogical Tree, Mutation Register Extracts, RTC Extracts and certified copy of the registered sale deeds dated: 05.05.2006, 31.03.2018, xerox copy of the registered sale deed dated: 05.05.2006.

12. On the other hand, the defendant No.7 has contended that, there is no joint family status between the plaintiff and defendant No.1 to 5, there was already oral partition taken place between the plaintiff and defendant no.5 in respect of their family properties and they are in separate possession of their respective shares. The said facts is very much aware of the plaintiffs. The plaintiff has filed this I.A., only with an intention to drag the proceedings. Hence, the plaintiff is not entitled for any relief as sought in the plaint.



13. In order to substantiate the case of the defendant No.7, at this stage the defendant No.7 has not produced any documents.

14. At this stage, without going through the merits of the case and conducting mini trial, the court is considering the aspect of prima-facie. At this stage, this court makes very clear that this court is looking towards prima-facie case and not for the prima-facie title. I have carefully perused the pleadings of both the parties and documents produced by the plaintiff and also other materials placed on record. In order to show the prima-facie case, at this stage the plaintiff has produced the RTC Extracts for the year 2019-20 in respect of item No.1 of the suit schedule property. On perusal of the same, at this stage it appears that, the khata of the land bearing Sy.No.55/2 and Sy.No.55/6 of Chodibegur is stands in the name of defendant No.1 and the khata of the land bearing Sy.No.55/2 is stands in the name of defendant No.8



herein. The plaintiff has produced the RTC Extract for the year 2019-20. On perusal of the same, the khata of the item No.2 of the suit schedule property is stands in the name of defendant No.1 herein. The plaintiff has produced the RTC Extract for the year 2019-20. On perusal of the same it appears that, the khata of the item No.5 of the suit schedule property is stands in the name of defendant No.1 herein. The plaintiff has produced the certified copy of the registered sale deed dated: 05.05.2006. On perusal of the same, Smt. Parvathamma and defendant No.1 herein and children of the defendant No.1 and Kumaraswamy have sold the item No.3 of the suit schedule property in favour of defendant No.6. It is to be noted that, the plaintiff is not either signatory nor parties to the said sale deed. It is very relevant to note that, at this stage the plaintiff has not produced any document to show that, the item No.4 & 6 of the suit schedule properties are the ancestral and joint family properties of plaintiff and



defendants. In the absence of the same, at this stage it cannot be held that, the item No.4 & 6 of the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 to 5. In the absence of the same, its hold no water in the eye of Law. At this stage the rights of the parties cannot be adjudicated, it needs full fledged trial.

15. Looking in to the pleadings and documents produced by the both parties, at this stage it appears that, the plaintiff has not made out the prima-facie case. The plaintiff has not made out a prima-facie case for grant of injunction and once that the admitted circumstances, question of this Court having to advert to the other aspects would not arise which is what has been held by the Hon'ble Apex Court in **Kashi Math Samsthan Vs. Shrimad Thirtha Swamy**, reported in **(2010) 1 SC 689**, wherein it has been held as under;



“It is well settled that, in order to obtained an order of injunction, the party who seeks for grant of injunction has to prove that, he has made out a prima-facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But, it is equally well settled that when a party fails to prove prima-facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima-facie case to go for trial, it is not open to the court to grant injunction in his favour. Even if, he has made out a balance of convenience being in his favour and would suffer irreparable loss and injury, if no injunction order is granted. Therefore, keeping these principles in mind, let us now see whether the appellant has been able to prove prima-facie case to get on order of injunction during the pendency of the two appeal in the High Court.”



In the light of the aforesaid discussion, I answer Point No.1 to 3 in the Negative.

16. **POINT NO.4** : In the light of the above discussion on Point No.1 to 3, I proceed the following :

ORDER

I.A.No.7 filed by the plaintiff/applicant under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC is hereby rejected.

No order as to cost.

(Dictated to the Typist directly on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of **29th day of April, 2026.**)

(SHIVAKUMAR R.,)
ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., MAGADI.