

1) OS. No. 327-2018 Order on IA

IN THE COURT OF THE SENIOR CIVIL JUDGE

AND J.M.F.C. AT: MAGADI

Present:- Sri. Manohara M
BA (Law) LLB
Sr. Civil Judge & JMFC.
Magadi

OS. No. 327-2018

Dated this the 15th Day of July 2020

Smt. Ganganarasamma and another **Plaintiffs**

Vs

Sri. Aswath Narayana and others **Defendants**

IA No.3

Smt. Ganganarasamma and another **Applicants**

Vs

Sri. Aswath Narayana and others **Opponents**

(Sri. Manohara M).,
Sr. Civil Judge & JMFC.,
Magadi.

ORDERS ON IA No. 3

The plaintiff filed IA 3 under Order 39 Rule 1&2 r/w Sec. 151 of CPC to restrain the defendant No 1, 2 and 4, their agents, servants, followers, henchmen, supporters, power of attorney holder or anybody claiming through them from putting up of any sought of construction or changing the nature and structure of the suit schedule property till disposal of suit by way of temporary injunction.

2. In support of this application, the plaintiff No.1 has sworn to separate affidavits stating that the plaint averments may be read as part and parcel of this affidavit and suit schedule properties are ancestral and joint family properties of them and defendant No.1 to 3. The suit schedule property were originally owned by her maternal grand father Muddanarasimhaiah who had only two daughters namely her mother Narasamma and Thimmakka. Thimmakka died issue less. As father and mother died they and defendants no.1 to 3 succeeded to suit schedule properties as legal heirs. They entitled 1/4th share there is no partition in the joint family. They have been continuously demanding partition. But 1st defendant

3) OS. No. 327-2018 Order on IA

failed to effect partition. Recently they came to know the illegal sale transaction after collecting copies of documents. Though 1st defendant and deceased Narasimhamurthy had no right to alienate suit schedule property, the defendant no.4 has not divided any right, title over the suit schedule property. The defendants are trying to put up construction and to change nature and structure of the suit schedule property to defeat their legitimate right. Thereby the very purpose of the suit would be defeated. It may leave to complication and multiplicity of proceeding. They have made out prima-facie case. The balance of convenience lies in their favour. If the injunction is not granted they will be put to great hardship and injury which cannot be compensated by any means.

3. The defendants No.4 filed objection on IA 3 stating that the written statement averments may be read as part and parcel of this objection. It is also denied the averments of the affidavit. It is further stated that the suit schedule properties come within the limits of Bachenahalli Gram Panchayath. The revenue authorities

4) OS. No. 327-2018 Order on IA

are developing existing Nakasha Road over the suit schedule property. The Plaintiff cannot restrict the same. He is no way concerned to the said improvement. The defendants did not put up any sought of structure. If the application is dismissed no hardship or injury would be caused to plaintiff. On the other hand she will be put to great hardship and injury which cannot be compensation by any means. Hence, it is prayed to dismiss the application with the exemplary cost.

4. The defendants No.1 and 2 objection on IA 3 stating that plaintiff has sworn to false affidavit. The marriage of plaintiff was solemnized on 21-05-1970. They are residing in their respective husband's house since 50 years. On 10-01-1980 1st defendant and father of defendant No.2 and 3 namely Narasimhamurthy partitioned suit schedule property under Panchayath Palu Patti and A schedule property was fallen to the share of 1st defendant and B schedule was fallen to the share of said Narasimhamurthy the khatha was also made out in their respective names as per partition deed. The said Narasimhamurthy died on 23-09-2003 and the mother of

5) OS. No. 327-2018 Order on IA

defendant No.2 and 3 Susheelamma died on 02-07-2010. The 1st defendant sold bit of property in favour of defendant No.4 under registered sale deed dated 12-02-1998. Khatha was made out in the name of defendant No.4 in respect of land in Sy. No.30 measuring 2 acres. The said Narasimhamurthy also sold land infavour of defendant No.4 under registered sale deed dated 30-01-2001. The khatha was made out in the name of defendant No.4 in respect of land in Sy. No. 32/A measuring 20 guntas. The said Narasimhamurthy also sold land in Sy. No. 34/1 measuring 1 acre 20 guntas in favor of defendants No.4 under registered sale deed dated 13-02-1995. He also sold Sy. No.34/1 measuring 20 guntas under registered sale deed dated 16-12-1996 in favor of defendant No.4. The plaintiff has not made out prima-facie case. The land in Sy. No.34/1 is belonged to 1st defendant and land in Sy. No.32/1A is belonged defendant No.4. There is a Nakasha Dari leading from Shanubhoganahalli Village from land in Sy. No.34/1 and 32/1A to the property of Jayamma and Huchappa. The Gram Panchayath officials formed stoned bubbles road the panchayath has got right to improve Nakasha Dari.

6) OS. No. 327-2018 Order on IA

Hence it is prayed to dismiss the application with the exemplary cost.

5. Heard the arguments of the learned advocates for both the side.

6. The points that arise for my consideration are as under:-

1. Whether the plaintiff has made out prima facie case in his favor ?
2. Whether the balance of convenience lies in favor of plaintiff ?
3. Whether the plaintiff would be put to hardship and injury, which cannot be compensated in terms of money, if injunction is not granted ?
4. To what order ?

7. My findings to the above points are as follows:-

Point Nos.1 to 3 In the **negative**

Point No.4 : As per the final order,
For the following

REASONS

8. POINT No. 1 :- It is the case of plaintiff that they and defendant No.1 to 3 are members of undivided Hindu Joint family. The Muddanarasimhaiah is their ancestral and he owned suit schedule properties he had two wives namely Chikkamma and Thimmakka and Thimmakka had no children and he had only daughter Narasamma and the said Narasamma has four children i.e., plaintiffs, 1st defendants and father of defendant No.2 and 3 namely Narasimhamurthy and the plaintiffs and defendants 1 to 3 are only the surviving legal heirs and successor of suit schedule properties. The 1st defendant and Narasimhamurthy sold suit schedule properties illegally to 4th defendant without settling the share of means.

9. It is the contention of the defendant No.1 and 2 that the marriage of plaintiff was solemnized on 21-05-1970.

8) OS. No. 327-2018 Order on IA

They are residing in their respective husband's house since 50 years. On 10-01-1980 1st defendant and father of defendant No.2 and 3 namely Narasimhamurthy partitioned suit schedule property under Panchayath Palu Patti and A schedule property was fallen to the share of 1st defendant and B schedule was fallen to the share of said Narasimhamurthy the khatha was also made out in their respective names as per partition deed. The said Narasimhamurthy died on 23-09-2003 and the mother of defendant No.2 and 3 Susheelamma died on 02-07-2010. The 1st defendant sold bit of property in favor of defendant No.4 under registered sale deed dated 12-02-1998. Khatha was made out in the name of defendant No.4 in respect of land in Sy. No.30 measuring 2 acres. The said Narasimhamurthy also sold land in favour of defendant No.4 under registered sale deed dated 30-01-2001. The khatha was made out in the name of defendant No.4 in respect of land in Sy. No. 32/A measuring 20 guntas. The said Narasimhamurthy also sold land in Sy. No. 34/1 measuring 1 acre 20 guntas in favor of defendants No.4 under registered sale deed dated 13-02-1995. He also sold Sy. No.34/1 measuring 20 guntas

9) OS. No. 327-2018 Order on IA

under registered sale deed dated 16-12-1996 in favor of defendant No.4. The plaintiff has not made out prima-facie case. The land in Sy. No.34/1 is belonged to 1st defendant and land in Sy. No.32/1A is belonged defendant No.4. There is a Nakasha Dari leading from Shanubhoganahalli Village from land in Sy. No.34/1 and 32/1A to the property of Jayamma and Huchappa. The Gram Panchayath officials formed stoned bubbles road the panchayath has got right to improve Nakasha Dari. The defendant No.1 and 2 have not specifically stated that how 1st defendant and Narasimhamurthy acquired suit schedule properties prior to the alleged partition between them. The plaintiffs produced Mutation Extract, RTC Extract, showing the name of Narasaiah and Nanjamma in respect of the suit schedule property. No doubt defendant No.4 purchaser of portion suit schedule properties. As observed above, it is the contention of the plaintiff that during the pendancy of this suit the defendant Nos. 1, 2 and 4 are colluded each other and are making hectic attempts to put up construct and change the nature of the suit schedule properties.

10) OS. No. 327-2018 Order on IA

10. The plaintiffs produced the photos showing the formation of road by putting stone bubbles. Even defendants also produced such photos showing the putting of stone bubbles. Moreover, there is no material to show that the new road has been forming in the suit schedule property by putting stone bubbles. It is also not the case of plaintiff that the defendant 1, 2 and 4 have been forming new road by putting stone bubbles in the suit schedule property. However, It is the contention of the defendants that the panchayath is improving the mud road into stone bubbles road. They are not putting any structure. There is no material to show that the defendants are trying to put up structure on the suit schedule property. Under these circumstances, the plaintiff failed to prove prima-facie case in his favor. **Consequently, I answered this point in the affirmative.**

11. Point Nos. 2 and 3:- These points are interrelated. Hence, they are taken up together for my discussion.
“In a decision reported in ILR 1985 KARNATAKA 1701, Sri. Gowrishankara Swamigalu Vs. Sri. Siddaganga Mutt. the Hon'ble High Court of Karnataka held as under:-

11) OS. No. 327-2018 Order on IA

“The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since, the plaintiff would fall at the very first style itself.....” ‘

12. In this case, as observed above, the plaintiff has failed to make out prima facie case. Hence, considering of balance of convenience and irreparable loss would not arise in view of the above ratio of the Hon'ble High Court of Karnataka. Consequently, **I am holding these points in the negative.**

13. POINT No.4:- In view of my findings to point No. 1 to 3 and the reasons stated therein, I proceed to pass the following:-

ORDER

The IA No.3 filed by plaintiff under Order 39 Rule 1&2 r/w Sec. 151of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed by him, corrected and signed by me and then pronounced in the open court on this the **15th Day of July 2020**)

(Sri. Manohara M).,
Sr. Civil Judge & JMFC.,
Magadi.