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**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT:MAGADI**

Present:

**Sri. Hanumanth Satwik., LL.M,
Addl. Senior Civil Judge & JMFC. Magadi.**

Dated : this the 19th day of April, 2022

O.S.No.152/2021

Plaintiffs : 1. Smt. Puttarevamma,
W/o. Late. Revanna,
Aged about 68 years,

2. Smt. Narasamma,
D/o. Late. Revanna,
Aged about 47 years,

3. Smt. Renukamma,
D/o. Late. Revanna,
Aged about 45 years,

4. Sri. Bhogaiah,
S/o. Late. Revanna,
Aged about 43 years,

5. Sri. Kemparaju,
S/o. Late. Revanna,
Aged about 41 years,

6. Smt. Gowramma,
D/o. Late. Revanna,

Aged about 39 years,

7. Sri. Narasimhaiah,
S/o. Late. Revanna,
Aged about 37 years,

All are R/at:
Cholanayakanahalli,
Tavarekere Hobli,
Bangalore South Taluk.

(By **Sri. B.V.K.** Advocate)

-V/s-

- Defendants** :
1. Smt. Hanumanarasamma,
W/o. Late. Bhogaiah,
Aged about 70 years,
 2. Smt. Thimmakka,
W/o. Late. Lakshminarasimhaiah,
Aged about 40 years,
 3. Kum. Pavithra,
D/o. Late. Lakshimnarasimhaiah,
Aged about 19 years,
 4. Smt. Nagamma,
D/o. Late. Bhogaiah,
Aged about 50 years,
 5. Smt. Renukamma,
D/o. Late. Bhogaiah,
Aged about 48 years,
 6. Sri. Dhananjaiah,
S/o. Late. Bhogaiah,
Aged about 46 years,
 7. Smt. Ashwathamma,

D/o. Late. Bhogaiah,
Aged about 44 years,

8. Smt. Lakshamma,
D/o. Late. Bhogaiah,
Aged about 42 years,
9. Smt. Shobha,
D/o. Late. Bhogaiah,
Aged about 40 years,
10. Smt. Manjula,
D/o. Late. Bhogaiah,
Aged about 38 years,
11. Sri. Lokesh,
S/o. Late. Bhogaiah,
Aged about 36 years,

All are R/at:
Cholanayakanahalli,
Tavarekere Hobli,
Bangalore South Taluk.

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

ORDER ON IA NO.I

The present suit is for partition and separate possession and for permanent injunction.

2. In the case at hand, the learned counsel for the plaintiffs filed memo praying this Court to consider the application only with respect to item no.9 and 10 of the suit schedule properties. As such, in view of the memo

the present application is considered only with respect to item no.9 and 10 of the suit schedule properties.

3. The present application has been filed by the plaintiffs U/o. XXXIX rule 1 and 2 R/w. Sec.151 of CPC praying to temporarily restrain the defendants from alienating the suit schedule properties. It is the case of plaintiffs that one Kappaiah S/o. Bogaiah is the propositus of their family. He was managing the affairs of the family. He mortgaged all the properties in favour of one Channappa S/o. Gurappa. Subsequently, the said Channappa initiated legal proceedings in O.S.No.22/1937-38 and obtained decree and got registered the properties in his name. Thereafter Kappaiah purchased the said properties vide sale deed dated: 08.07.1945. Kappaiah and his wife Narasamma has three children by name Doddananjaiah, Revanna and Bogaiah. Plaintiff no.1 is the wife of Revanna and the other plaintiffs are his children. Defendant no.1 is the wife of Bogaiah and other defendants are his children. Doddananjaiah is no more. After the death of Kappaiah, the revenue records of the suit schedule properties were mutated in the name of Doddananjaiah. The said Doddananjaiah died living behind them and the defendants as his legal heirs. Item no.1 to 8 of the suit schedule properties stood in the name of Doddananjaiah. Because

of non-payment of revenue to the government, the revenue records of item no.1 to 8 of the suit schedule properties reflecting *phada*. Their ancestors and defendants were habitual in borrowing money. Husband of plaintiff no.1 continued to avail loan as and when necessity arose. As such, the husband of plaintiff no.1 executed certain documents. Taking undue advantage of the situation, husband of defendant no.1 in collusion with the revenue authorities got transferred the revenue records with respect to item no.9 and 10 of the suit schedule properties in his name. The suit schedule properties are not the absolute properties of the defendants. They have equal rights and interest over the suit schedule properties. The defendants are attempting to alienate the suit schedule properties. In this regard, the plaintiffs pray as above.

4. The defendants filed memo of adoption adopting their written statement as objections to the application. The defendants in their written statement denied the plaint averments. The defendants contended that there was already a partition of the family properties prior to 1961. The husband of plaintiff no.1 sold properties allotted to his share in favour of one Ivagalaiah @ Chikkegowda S/o. Ivagalaiah through registered sale deed dated: 10.07.1961. The said Ivagalaiah was the owner and possessor of the

properties purchased from husband of plaintiff no.1. After the death of Ivagalaiah his wife continued to be in possession of the said properties as owner. The husband of defendant no.1 purchased the properties sold to Ivagalaiah vide sale deed dated: 21.06.1973. The husband of defendant no.1 was in possession of the said properties. The plaintiffs have no manner of right, title, interest or possession over the suit schedule properties. In this regard, the defendants pray to reject the application.

5. Heard arguments of counsel.

6. Considering the contentions of the counsel, following points arise for my consideration.

1. Whether the plaintiffs have made out prima-facie case for grant of temporary injunction with respect to item no.9 and 10 of the suit schedule properties?
2. Whether balance of convenience is in favour of the plaintiffs with respect to item no.9 and 10 of the suit schedule properties?
3. Whether plaintiffs will suffer irreparable injury if temporary injunction is not granted with respect to item no.9 and 10 of the suit schedule properties?
4. What order?

7. My findings for the above points are as follows.

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:-** At the cost of repetition, it is made clear that in view of the memo filed by the plaintiffs the present application is considered only with respect to item no.9 and 10 of the suit schedule properties.

9. It is the case of the plaintiffs that Kappaiah was the propositus of their family. Kappaiah and Narasamma has three children by name Doddananjaiah, Revanna and Bogaiah. They are the successors of Revanna and the defendants are the successors of Bogaiah. The suit schedule properties are their joint and ancestral properties. The husband of plaintiff no.1 executed certain documents to avail loan. Taking undue advantage of the situation, husband of defendant no.1 in collusion with revenue officials got entered his name in the revenue records of item no.9 and 10 of the suit schedule properties. In this regard, I have perused the written statement. It is the specific case of the defendants that there was a

partition between Revanna and Bogaiah prior to 1961. Accordingly, the husband of plaintiff no.1 sold the properties allotted his share to Ivagalaiah, which in turn were purchased by the husband of defendant no.1 from the wife of Ivagalaiah.

10. Having said this, considering the contention of defendants about prior partition alleged to have happened prior to 1961, it is prima-facie clear that item no.9 and 10 of the suit schedule properties were ancestral and joint family properties at an undisputed point of time.

11. Further, it is contended by the defendants that Bogaiah repurchased the properties sold to Ivagalaiah from his wife. In this regard, the plaintiffs contended that the sale deed executed in favour of Ivagalaiah is nominal sale deed which was executed to borrow loan. In that regard, I have perused the sale deed dated: 21.06.1973 and the RTCs. From the said sale deed it is prima-facie clear that Bogaiah purchased item no.9 of the suit schedule property from the wife of Ivagalaiah. Be it stated, for the above said reasons, it is prima-facie ostentatious that item no.9 and 10 of the suit schedule properties were the joint and ancestral properties at an undisputed point of time. This being the case, the question of alleged

partition as contended by the defendants is a triable issue. Further, I am of the view that whether the said sale deed executed by Revanna is a nominal sale deed or not is the question which can be determined only during trial. Sequentially, whether Bogaiah purchased item no.9 of the suit schedule property from the joint family funds or from his self-earnings is also a triable issue.

12. Be it stated, the present suit is one for partition and separate possession and permanent injunction. In the case at hand, it is necessary to determine whether the suit schedule properties are the joint and ancestral properties of plaintiffs and defendants and whether the plaintiffs are entitled for share in the suit schedule properties. In the case at hand, for the above said reasons, it is prima-facie clear that item no.9 and 10 of the suit schedule properties were joint and ancestral properties at an undisputed point of time. Further, the contentions raised by the defendants are the subject matter of trial, which cannot be decided at this stage of the case. Such being the case, having regard to the issues that are required to be answered in the present suit, I am of the view that there is a prima-facie case for trial with respect to item no.9 and 10 of the suit schedule properties. In this view of the matter, considering the application,

pleadings and the documents on record I am of the view that plaintiffs have made out prima-facie case with respect to item no.9 and 10 of the suit schedule properties. Accordingly, point no.1 is answered in the affirmative.

13. **Point No.2:** - In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial with respect to item no.9 and 10 of the suit schedule properties . In these circumstances, if temporary injunction is not granted and if the plaintiffs alienate item no.9 and 10 of the suit schedule properties as alleged, the plaintiffs will suffer inconvenience, as the plaintiffs will be put into multiplicity of litigation. Such being the case, if temporary injunction is not granted the inconvenience which will be suffered by the plaintiffs is more than the inconvenience which may be caused to the defendants. Further, during the pendency of the suit, if the defendants alienate item no.9 and 10 of the suit schedule properties as alleged by the plaintiffs, the very purpose of the suit will be frustrated. Since the defendants have an opportunity to contest the matter and get the matter decided on merits, I am of the view that balance of convenience with respect to item no.9 and 10 of the suit schedule properties is in favour of plaintiffs. Resultantly, point no.2 is answered in the affirmative.

14. **Point No.3:-** In the case on hand from the pleadings and the documents produced, it is prima-facie clear that there is a prima-facie case for trial with respect to item no.9 and 10 of the suit schedule properties. In these circumstances if temporary injunction is not granted and if the defendants alienate item no.9 and 10 of the suit schedule properties as alleged, plaintiffs will suffer irreparable injury and such injury cannot be compensated in terms of money, as plaintiffs will be put into multiplicity of litigation. Further, during the pendency of the suit if the defendants alienate item no.9 and 10 of the suit schedule properties as alleged by the plaintiffs, the very purpose of the suit will be frustrated. In these circumstances, plaintiffs showed that they will suffer irreparable injury, if temporary injunction is not granted with respect to item no.9 and 10 of the suit schedule properties. Resultantly, point no.3 is answered in the affirmative.

15. **Point No.4 :** - In view of reasons on point No.1 to 3 and in the interest of justice and equity, I proceed to pass the following;

ORDER

**IA No.I U/o.XXXIX Rule 1 & 2 r/w Sec.151 of
CPC filed by plaintiffs is hereby allowed with respect
to item no.9 and 10 of the suit schedule properties.**

Defendants, their agents, servants or anybody claiming through them are hereby temporarily restrained from alienating item no.9 and 10 of the suit schedule properties till the disposal of the suit.

Parties to bear their own cost.

(Dictated to the Typist directly on the computer, typed by her corrected by me and then pronounced in the open court on this the **19th day of April, 2022.**)

**(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.**