



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

Present:

**Sri. Sandeep S. Reddy, B.A.L., LL.B.,
Addl. Senior Civil Judge & JMFC., Magadi**

DATED: THIS THE 3rd DAY OF JULY, 2024
O.S.No.508/2021

Plaintiffs : Smt. Doddamma & Ors.,

(By **Sri. M.V.S.** Advocate)

---V/s---

Defendants : Smt. Chikkamma & Ors.,

(D1 **Dead**)
(D2 & 3 by **Sri. N.K. Advocate**)
(D6 & 7 **Exparte**)

ORDER ON IA NO.1 U/O.39 R.1 & 2 r/w. S.151 of C.P.C.,

The I.A.No.1 is filed by the plaintiff U/O. 39 R.1 & 2 praying for an order of temporary injunction restraining the defendants, their agents, servants, supporters or anybody claiming through them from alienating or transferring or creating charge over suit schedule property pending disposal of the suit.

2. The aforesaid suit is filed by the plaintiff praying for the relief of partition, separate possession and other consequential reliefs.



3. The plaintiff has stated in the accompanying affidavit to I.A.No.1 that, one Sri. Mudlaiah was the propositus and he had five children. That, land bearing Sy.No.23 & 24 of Karlamangala Village was a tenanted land over which the said Mudlaiah was an occupant. That after the death of Sri. Mudlaiah, his wife Smt. Mariyamma had succeeded her husband as a L.R., in the Land Tribunal. That, the land was granted in the name of said Smt. Mariyamma. That, during the life time of Smt. Mariyamma her children got divided the said property through oral partition. That in the said oral partition the first son of Smt. Mariyamma, Annayappa and 2nd son Puttaiah jointly were allotted Sy.No.23 of Karlamangala Village. That, the 3rd son of Smt. Mariyamma Sri. Papanna had sold the properties fallen to his share. That, the Mariyamma's 1st and 2nd sons who were allotted the properties jointly have not divided the schedule property. That, no partition is effected among the sons of Mariyamma's 1st and 2nd son. The Mariyamma's 2nd son is the husband of the plaintiff. That, the defendants are the children of Late. Puttaiah who is Mariyamma's 1st son. That, behind the back of Smt. Mariyamma's 2nd son khata was changed in the name of Puttaiah. That, the revenue entries are mutated in the name of the defendants on the death of Sri. Puttaiah. That, the defendants are not partitioning the schedule



properties and further they are trying to alienate the schedule properties forcing the plaintiff to file the aforesaid application.

4. The defendant No.2 & 3 have appeared before the Court and have filed the written statement. The defendant No.3 has filed memo praying for treating the written statement as objections to the aforesaid I.A. Only the relevant facts pertaining to the aforesaid application relating to the aforesaid suit shall be traversed herewith in order to avoid discussion of irrelevant facts.

5. The defendant No.3 states that, the documents produced by the plaintiff are concocted. He further submits that, the plaintiff has not made the daughters of Sri. Annayappa as parties to the aforesaid suit. That, Smt. Mariyamma had executed a registered Vyavastapatra of settlement deed on 19.06.1972 and under the said settlement deed Smt. Mariyamma allotted the shares to her five children. That, due to oversight revenue records were mutated in the name of sharers as per Vyavastapatra. That, the plaintiff is not entitled for the relief of partition as there was already a partition in the joint family. That, the defendant had invested huge amount of money for



developing the lands fallen to the share of Sri. Puttaiah. That, the aforesaid suit is filed based on wrong assumptions. That, the Land Tribunal had mutated the name of husband of 1st defendant Sri. Puttaiah during his life time and that the land so granted is his absolute property and plaintiff has no right over the schedule properties. That, the father of plaintiff by name Annayappa was a school master and he settled in Bangalore and that the said Annayappa or his son Sri. Govindappa had never been the family members and hence they are not entitled for share in the schedule properties.

6. Heard learned counsel for plaintiff and defendant No.2 & 3.

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

1. Whether plaintiff has made out prima-facie case for grant of temporary injunction?

2. Whether balance of convenience is in favour of the plaintiffs?

3. Whether plaintiffs will suffer irreparable injury if temporary injunction is not granted?

4. What order?



8. 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

9. **POINT NO.1:-** The aforesaid suit is for partition of the schedule properties. The plaintiffs have contended that, the suit schedule properties are the land granted in favour of Smt. Mariyamma on the death of Sri. Mudlaiah. The defendants have further contended that, the 1st and 2nd sons of Smt. Mariyamma on oral partition of the schedule properties were living jointly.

10. The plaintiff in order to prima-facie prove his case, has produced the Genealogical Tree, the RTC., the copy of the affidavit and endorsement in LRF(M)9/1982-83 and mutation register extract.



11. The defendant on the other hand, contends that, the schedule property is not joint family property and that the plaintiffs have no right over the schedule property.

12. The defendant has produced the Genealogical Tree, xerox copy of the registered Partition Deed dated: 19.06.1972, endorsement dated: 26.12.1974, Grant Certificate, RTC Extracts, Tax Paid Receipts and Patta receipts.

13. The crux of the matter lies in the fact that, either of the parties have produced the endorsement for having granted the property. The plaintiff has produced the endorsement dated: 24.07.1982. The said endorsement produced by the plaintiff was issued as per LRF(M) 9/1982-83 in favour of Smt. Mariyamma W/o. Mudlaiah. The 2nd endorsement is again issued on the same date by the same authorities in favour of Sri. Puttaiah S/o. Mudlaiah. On careful perusal of the said endorsements, it can be seen that, one of the said endorsement is not genuine. It is this endorsement that, the parties are claiming to have got their rights from. At this stage of the case the benefit of doubt has to be given in favour of plaintiff for the fact that, if the suit



schedule properties are alienated, then plaintiff would be put to great hardship.

14. The defendant has no doubt produced the Vyavastapatra or the partition deed dated: 19.06.1972. The said Vyavastapatra is not in dispute. This being the case, the plaintiff has made out a prima-facie case. The other documents also establishes the facts that, the documents are standing in the name of Sri. Puttaiah.

15. The Hon'ble Supreme Court of India in *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, (1995) 5 SCC 545 at page 574 has stated as under;

"43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (i) whether the plaintiff has a prima-facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its



alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See: Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727] , (SCC at pp. 731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial."

16. Thus, it can be seen from the aforesaid facts Judgement and the facts of the present case that, if the defendants are allowed to alienate the schedule



properties, then the plaintiffs would suffer great legal injury. The defendants has some properties standing in their name. Hence, the plaintiff has made out prima-facie case. Hence, I answer point No.1 in the affirmative.

17. **Point No.2:-** The plaintiff has made out prima-facie case as discussed above. The defendants and defendants have produced the documents to show that, schedule properties are either the self-acquired properties or ancestral properties. The plaintiff has produced the certified copies of the documents. The defendants have not produced the certified copies. They have only produced the copies of the certified copies. Since, the doubt arises regarding the genuineness of the documents, the documents produced by the plaintiff in the form of certified copies is more reliable. Further, the plaintiff has made out a case that, the balance of convenience lies in his favour. If any alienations are made, then the plaintiffs would suffer from such alienations. On the other hand, the defendants would not suffer if TI order is granted.

18. The Hon'ble Supreme Court of India in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1 : 1999 SCC OnLine SC 774 at page 13:



"24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

(i) extent of damages being an adequate remedy;

(ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;

(iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;

(iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;

(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;



(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise."

19. Thus, it can be seen from the aforesaid facts and from the Judgement of Hon'ble Supreme Court of India that, the amount of injury that the plaintiff would suffer, would be more than the defendants. Hence, following the aforesaid judgement I hold, balance of convenience lies in favour of plaintiffs and I answer point No.2 in the Affirmative.

20. **Point No.3:-** It is seen from the aforesaid facts that, the plaintiffs have made out prima-facie case. The balance of convenience is also in favour of the plaintiffs. If the alienations are allowed to be made, then the plaintiffs would suffer much greater hardship and irreparable loss and injury than the defendants. Hence. I answer point No.3 in the Affirmative.



21. **POINT NO.4:** In view of reasons on point No.1 to 3, I proceed to pass the following,

ORDER

**IA No.I filed U/O.39 Rule 1 and 2 of C.P.C.,
filed by plaintiff is hereby allowed and defendants,
their agents, servants or any persons claiming
through them are hereby restrained by way of
temporary injunction from alienating the
suit/application schedule properties till disposal of
the suit or till further orders.**

Parties to bear their own cost.

Call on for issues by 15.07.2024.

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **3rd day of July, 2024.**)

**(Sandeep S. Reddy)
Addl. Sr. Civil Judge & JMFC.,
Magadi.**