

KARN410014492014



**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 17th DAY OF JUNE, 2022

O.S.No.558/2014

Plaintiff : Smt. Manjula @ Narasamma,
First W/o. Late. Nanjundaiah,
Aged about 35 years,
R/at: Kunchigarapalya Village,
Uttarahalli Hobli,
Bangalore South Taluk,
Bangalore – 560 082.

(By Sri. **S.L.** Advocate)

---V/s---

Defendants : 1. Smt. Nagamma,
2nd W/o. Nanjundaiah,
Aged about 33 years,

2. Master Krishna,
S/o. Late. Nanjundaiah,
Aged about 14 years,

3. Master Naveen,

S/o. Late. Nanjundaiah,
Aged about 12 years,

D2 & 3 are since minor
represented by their natural
guardian and mother
Smt. Nagamma - 1st defendant.

4. Smt. Galamma,
W/o. Late. Muthaiah,
Aged about 80 years,
5. Smt. Nanjamma,
W/o. Hanumanarasappa,
D/o. Late. Muthaiah,
Aged about 42 years,

D1 to 5 are R/at:
Mayasandra Village,
Tavarekere Hobli,
Bangalore South Taluk.

6. C. Revanasiddaiah,
S/o. Channigaiah,
Aged about 53 years,
R/at: Dodderi Village,
Tavarekere Hobli,
Bangalore South Taluk.

(D1 to 5 by **Sri. B.V.K.** Advocate)
(D6 **Exparte**)

ORDER ON IA NO.8

The present suit is for partition and separate possession.

2. The present application has been filed by the plaintiff 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 the plaintiff she is the first wife of Nanjudaiah and defendant no.1 is his second wife. Defendant no.2 and 3 are the children of Nanjudaiah through defendant no.1. Muthaiah S/o Narasimaiah is the father of Nanjudaiah. The said Nanjudaiah died on 01.07.2005. She and the defendants are the members of the joint family. After the death of Muthaiah there was a division vide partition deed dated 17.03.2004. In the said partition the suit schedule properties were allotted to the share of Nanjudaiah. The defendants are trying to alienate the suit schedule properties. In this regard, the plaintiff prays as above.

3. Defendant no.1 to 5 in their objections denied the application averments. The defendants contended that the application is liable to be dismissed for not following the procedural law. The plaintiff is not related to their family. They being the absolute owners of the suit schedule properties got every right to deal with the properties. The suit is 10 years old.

The suit was reserved to dismiss as the plaintiff did not show interest in contesting the suit. The present application is filed to drag the matter. If the plaintiff has rights over the suit schedule properties Sec.52 of the Transfer of Property Act will come to her aid. The intention of the plaintiff is not to assist the Court in deciding the matter. In this regard, defendant no.1 to 5 prayed to reject the application.

4. Heard arguments of both counsel.
5. Considering the contentions of the parties, 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 plaintiff?
 3. Whether plaintiff will suffer irreparable injury if temporary injunction is not granted?
 4. What order?
6. 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

7. **Point No.1:-** It is the case of the plaintiff that she is the first wife of Nanjudaiah and defendant no.1 is his second wife. Defendant no.2 and 3 are the children of Nanjudaiah through defendant no.1. Mutahaiah S/o Narasimaiah is the father of Nanjudaiah. The said Nanjudaiah died on 01.07.2005. She and the defendants are the members of the joint family. After the death of Muthaiah there was a division vide partition deed dated 17.03.2004. In the said partition the suit schedule properties were allotted to the share of Nanjudaiah.

8. Having said this, I have perused the documents on record. Be it stated, the partition deed dated 17.03.2004 prima-facie shows that the suit schedule properties are the joint family properties and they were allotted the share of Nanjudaiah. Thus considering the partition deed I am of the view that the suit schedule properties were prima-facie ancestral properties of plaintiff and defendants.

9. Defendants contended that plaintiff is not the wife of Nanjudaiah and she is not related to their family. Be it stated, the documents on record prima-facie show that suit schedule properties were allotted to Nanjudaiah in view of the partition deed dated:17.03.2004. As such, suit schedule properties are prima-facie joint and ancestral properties of plaintiff and defendants. This being the case, the issue as to whether the plaintiff is related to the family of defendants or not is triable in nature. In this view of the matter I am of the view that the above said contention raised by the defendants are the subject matter of trial, which can be decided by taking evidence.

10. The defendants further contended that the application is liable to be dismissed for not following the procedural law. Be it noted, it is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar

Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held as below

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of8 justice and not its mistress”.

In view of the law laid down by the Hon'ble Apex Court I am of the view that this contention of the defendants is of no avail to them.

11. Be it stated, the present suit is one for partition and separate possession. Further, for the above said reasons it is prima-facie clear that suit schedule properties are the joint and ancestral properties of plaintiff and defendants. That apart, for the above said reasons, the contention raised by the defendants is the subject matter of trial. In these circumstances, 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. In this view of the matter, considering the application, objections, pleadings and materials on record, I am of the view that the plaintiff has made out prima-facie case. Accordingly, point no.1 is answered in the affirmative.

12. **Point No.2:** - In the case on hand for the above said reasons it is held that there is a prima-facie case for trial. In these circumstances, if temporary injunction is not granted and if defendants alienate the suit schedule properties as alleged, the plaintiff will suffer inconvenience, as the plaintiff 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 plaintiff is more than the inconvenience which may be caused to defendants. Further, during the pendency of the suit, if defendants alienate the suit schedule properties as alleged by the plaintiff, the very purpose of the suit will be frustrated. Since 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 suit schedule properties is in favour of the plaintiff. Resultantly, point no.2 is

answered in the affirmative.

13. **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 suit schedule properties. In these circumstances, if temporary injunction is not granted and if defendants alienate suit schedule properties as alleged, the plaintiff will suffer irreparable injury and such injury cannot be compensated in terms of money, as the plaintiff will be put into multiplicity of litigation. Further, during the pendency of the suit if defendants alienate suit schedule properties as alleged by the plaintiff, the very purpose of the suit will be frustrated. In these circumstances, the plaintiff showed that she will suffer irreparable injury, if temporary injunction is not granted with respect to suit schedule properties. Resultantly, point no.3 is answered in the affirmative.

14. **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.8 U/o.XXXIX Rule 1 & 2 r/w
Sec.151 of CPC filed by the plaintiff is hereby
allowed.**

**Defendants, their agents or anybody
claiming through them are hereby temporarily
restrained from alienating 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 **17th day of June, 2022.**)

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