



**IN THE COURT OF THE SENIOR CIVIL JUDGE
AND JMFC., AT GUBBI.**

Dated this the 27th Day of January 2022

**Present: Undi Manjula Shivappa,
B.Sc.LLM.,
Senior Civil Judge.**

O.S.25/2021

Plaintiff : Lakshmi

V/s

Defendants: I.V. Ramananda & Others

I.A.No.I/2021

Applicant: Lakshmi

V/s

Opponents: I.V. Ramananda & Others



ORDER

The applicant/plaintiff has filed this I.A under Order XXXIX Rules 1 and 2 of CPC seeking to grant order of temporary injunction restraining the 1st defendant from alienating the suit schedule properties to any person in any manner pending disposal of the suit.

2. In the affidavit, the applicant has stated that suit is filed for partition and separate possession of her share in the suit schedule properties and suit schedule properties were fallen to the share of I.V. Venkategowda in the partition. From the date of partition her father was in possession and enjoyment of the same. It is further stated that 1st defendant has acquired 4 items of suit schedule properties in his name and his wife Manjula out of joint family nucleus. After the death of her father she, her brothers and sister have succeeded to the joint



family properties as class-I heirs and were in joint possession and enjoyment of the same. Subsequently her brother Venkataramu @ Venkatamaraiah died leaving behind his wife and sons, the defendants No.2 to 4 as his class-I heirs and they are in joint possession and enjoyment of the suit schedule properties. The 1st defendant has obtained katha and pahani of the suit schedule properties into his name and make attempts to alienate the suit schedule properties. It is submitted that she has made out prima face case and balance of convenience also lies in her favour and if an order of temporary injunction is refused, much hardship and injustice will cause to her. Hence, she has prayed to allow the I.A.

3. Upon due service of suit summons the defendant No.1 appeared through his counsel and filed the written statement by contending that the marriage of the plaintiff is solemnized about three decades back and after the marriage she has been



residing with her husband and she has never cultivated the suit schedule properties at any point of time and she is having fully knowledge that suit schedule properties are in possession and enjoyment of this defendant and defendants No.2 to 4 are also having knowledge that the records of the suit schedule properties changed in the name of defendant No.1 in their respective names basing on the partition. The plaintiff is not claiming any share in the suit schedule properties from number of decades, hence suit is clearly barred by limitation. This defendant admitted the relationship of plaintiff and defendants and he also admitted that these properties originally belongs to their ancestors and in that family partition between the I.V.Venkategowda and their brothers, these suit schedule properties fallen to the share of I.V. Venkategowda. It is averred that defendant No.1 is working in SBM since 1975 out of his own earnings had purchased the



suit item No.3 from its lawful vendor through registered sale deed dated 03.09.2011. It is his self acquired property. After the death of Giriyappa and I.V. Venkategowda, the Venkataramu the husband of defendant No.2 and father of defendants No.3 and 4 being the adopted son of Giriyanna and said Gangadoddamma D/o Giriyanna and defendant No.1 and his mother Thimmamma have got divided their ancestral properties through palupatti dated 23.03.1997 in which land measuring 2.08 guntas i.e., suit items No.13, 9, 15 properties have fallen to the share of mother of defendant No.1 Thimmamma and since then she became the owner and possessor of the same and in the said partition defendant No.1 has allotted with properties of suit items No.1, 7, 10, 16, 10, 17. Suit item No.6 property fallen to the share of defendant No.1 and in said partition defendant No.2 has been allotted suit item No.5 properties situated at Idagur, Adikekere,



Mavinahally and Beeramaranahally and had fallen to the share of defendant No.2 and her children defendants No.3 and 4. The said Gangadoddamma @ Gangamma has also allotted with land bearing Sy.No.41/2, 20/13, 20/11, 193/6 and Sy.No.160 measuring 1 acre 32 guntas etc.

4. It is further contended that the partition is effected between defendant No.1, his mother Thimmamma, the defendant No.2 Yashodhamma and Gangadoddamma and plaintiff and the defendants are not the members of Hindu Undivided Joint Family. The defendant No.1, his mother Thimmamma, the defendant No.2 Yashodhamma and Gangadoddamma and plaintiff and the defendants are not the members of Hindu Undivided Joint Family and as per the partition defendant No.2, Gangadoddamma and Thimmamma have obtained the revenue entries in their names. It is further contended that defendant No.1 is working in SBM since 1975



out of his own earnings had purchased the suit item No.3 from its lawful vendor through registered sale deed it is his self acquired property. Further defendant No.1, his wife Manjula.S. and his daughter Pallavi .R. have partitioned their properties under registered partition deed dated 10.12.2020 and there is no prima facie case made out by the plaintiff to grant an order of temporary injunction against the defendants in respect of the suit schedule property and there is no balance of convenience lies in favour of the plaintiff, if the application is allowed much hardship and injury would cause to the defendants and hence prayed to dismiss the application with costs.

5. I have heard the arguments on both side and perused records.

6. The following points arise for my consideration:



- 1) Whether the applicant has made out prima-facie case to grant an order of Temporary injunction in her favor?
- 2) Whether the balance of convenience lies in favor of applicant?
- 3) Whether the hardship and injury will cause to the applicant, if an order of temporary injunction is refused?
- 4) What order?

7. My answers to the above points are as follows:

Points No.1 to 3 : In the Affirmative,
Point No.4 : As per final Order, for the following:-

REASONS

8. **POINTS No.1 To 3:** All these points are taken up together for common discussion to avoid repetition of facts and evidence, as they are based on same set of facts and law.

9. It is the application filed by the plaintiff seeking temporary injunction order against the defendants restraining



them from alienating the suit schedule properties. She has also filed affidavit in support of I.A. where she stated that she has filed the present suit seeking the relief of partition and separate possession in the suit schedule properties. As per plaintiff the suit schedule properties were fallen to the share of her father I.V. Venkategowda in a partition that taken place between I.V. Venkategowda and his brothers. From the date of partition his father was in possession and enjoyment of the same. The 1st defendant has acquired 4 items of suit schedule properties in his name and also in the name of his wife Manjula out of joint family nucleus and funds. Her father has got 3 sons and 2 daughters including herself they have constituted joint family except the above said 4 properties other properties were joint family properties of their family. After the death of her father herself and his brothers and sisters succeeded the joint family properties as class I heirs.



Subsequently her brother Venkataramu @ Venkataramaiah died leaving behind his wife and sons defendants No.2 to 4 as his class I heirs. The 1st defendant is managed to obtain katha and pahani of most of the suit schedule properties in his name behind her back. Taking advantage of katha and pahani standing in the name of 1st defendant making to alienate the suit schedule properties, since she is having legitimate share in the suit schedule properties, it is necessary to prevent the 1st defendant from creating 3rd party interest on the suit schedule properties.

10. On the other hand defendant No.1 filed objection where in Paragraph No.9 he submitted that the marriage of the plaintiff is solemnized about three decades back and after the marriage she has been residing with her husband and she has never cultivated the suit schedule properties at any point of time and she is having full knowledge that suit schedule



properties are in possession and enjoyment of this defendant and defendants No.2 to 4 are also having knowledge that the records of the suit schedule properties changed in the name of defendant No.1 in their respective names basing on the partition. The plaintiff is not claiming any share in the suit schedule properties from number of decades, hence suit is clearly barred by limitation. However this defendant admitted the relationship of plaintiff and defendants and he also admitted that these properties originally belongs to their ancestors and in that family partition between the I.V.Venkategowda and their brothers. This suit schedule properties fallen to the share of I.V. Venkategowda. His defense is this plaintiff has never claimed any share in the suit schedule properties now she cannot claim. This defense is very strange to law, joint family member can ask partition at any point of time when he or she make mind for partition.



11. Further the defense of the defendant is defendant No.1 is working in SBM since 1975 out of his own earnings had purchased the suit item No.3 from its lawful vendor through registered sale deed, it is his self acquired property that can be considered only after full fledged trial. Now admittedly the suit schedule properties are ancestral properties of plaintiff and defendants. His further defense is after the death of Giriyappa and I.V.Venkategowda, the Venkataramu the husband of defendant No.2 and father of defendants No.3 and 4 being the adopted son of Giriyanna and said Gangadoddamma D/o Giriyanna and defendant No.1 and his mother Thimmamma have got divided their ancestral properties through palupatti dated 23.03.1997 in which land of 2.08 guntas i.e., suit items No.13, 9, 15 properties has fallen to the share of mother of defendant No.1 i.e., Thimmamma and since then she became the owner and possessor of the same and in the said partition



defendant No.1 has allotted with properties of suit items No.1, 7, 10, 16, 10,17. Suit item No.6 property fallen to the share of defendant No.1 and in said partition defendant No.2 has been allotted suit item No.5 properties. Sy.No.119 measuring 3.30 guntas, Sy.No.41/2 measuring 1.07 guntas and Sy.No.193/6 measuring 0.30 guntas and 161 measuring 0.08 guntas and Sy.No.112 measuring 0.04 guntas situated at Idagur, Adikekere, Mavinahally and Beeramaranahally had fallen to the share of defendant No.2 and her children defendants No.3 and 4. The said Gangadoddamma @ Gangamma has also allotted with land bearing Sy. No.41/2, 20/13, 20/11, 193/6 and Sy.No.160 measuring 1 acre 32 guntas etc.

12. It is further submitted that the partition is effected between defendant No.1, his mother Thimmamma, the defendant No.2 Yashodhamma and Gangadoddamma and plaintiff and defendants are not the members of Hindu



Undivided Joint Family as per that partition. I have perused the said palupatti. This palupatti is unregistered document and in which the rights on properties given to the parties. Anyhow this document can be considered only after full fledged trial. This document has to proved by these defendants only. At this stage the plaintiff has made out prima facie case and in order to preserve the property for trial, it is just and necessary to grant injunction order, if defendants succeeded to alienate the suit schedule property to any 3rd party, then it will create multiplicity of litigations. It is just and necessary to grant injunction order restraining defendant No.1 not to alienate or create any type of charge on the suit schedule properties. Balance of convenience also lies in favour of the plaintiff, if defendants succeeded to alienate the suit schedule properties the very purpose of suit will not survive and it will leads to multiplicity of litigations. Hence, if temporary



injunction is not granted more hardship will cause to the plaintiff as compared to the defendants. Hence Points No.1 to 3 are answered in the Affirmative.

13. **POINT No.4:** For the aforesaid reasons and finding on Points No.1 to 3, I proceed to pass the following:-

ORDER

I.A No.I filed by the plaintiff under Order XXXIX Rules 1 and 2 of CPC., is hereby allowed.

An order of temporary injunction is granted by restraining the 1st defendant from alienating the suit schedule properties to any person in any manner, till final disposal of the suit.

(On my dictation transcribed and typed by the Stenographer, print out taken by her, corrected and then pronounced by me in the Open Court on this the 27th Day of January 2022.)

(UNDI MANJULA SHIVAPPA)
Senior Civil Judge & JMFC.,
Gubbi.