



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,  
GUBBI.**

**Dated on this the 29<sup>th</sup> day of August, 2024**

**PRESENT: SMT. POORNIMA .K. YADAV,  
B.A.LL.B., LL.M.,**

**Addl. Sr. Civil Judge & JMFC,  
Gubbi.**

**ORIGINAL SUIT NO. 194/2023**

**Plaintiff/s : D.Brahmarayappa & Another**

(By Sri. C.R.B., Adv.)

**Vs.**

**Defendant/s: D. Susheelamma & Others.**

(D1 by Sri V.J.K., Adv.)

(D2 & 18 by Sri H.M.H, Adv.)

(D19 by Sri H.M.G. Adv.,)

(D4 to 8, 10 to 17 Exparte)

(D3 Dead)

**PARTIES TO I.A.NO.II**

**Applicant / Plaintiff : D.Brahmarayappa**

**Vs.**

**Opponents/Defendants : D. Susheelamma and others**



|                                                   |                                                                                                           |
|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| Provision under the Application                   | Under Order 39 Rule 1 and 2 of CPC                                                                        |
| Application Relief sought for                     | Temporary injunction restraining defendant no.19 from alienating item no.9 of the suit schedule property. |
| The date of the application is filed              | 11.06.2024.                                                                                               |
| Interlocutory Application Number                  | VI                                                                                                        |
| Date of objection filed by the defendant No.2 &18 | 22.06.2024                                                                                                |
| Date of objection filed by the defendant No.19    | 09.07.2024                                                                                                |
| Date of order passed                              | 29.08.2024                                                                                                |

Sd/-  
(POORNIMA K. YADAV)  
Addl. Senior Civil Judge &  
JMFC, Gubbi.

### **ORDERS ON IA NO. VI**

When the matter was pending for compliance under Section 89 CPC the present application came to the filed.

2. The Plaintiffs through their counsel filed this application U/O 39 Rule 1 and 2 of CPC restraining the defendant No.19 from alienating Item No.9 of the suit schedule property, pending disposal of the suit i.e. A vacabtsute bearing K.No. 269/3118 new K.No. 3118/169/1602 dand



E-Katha No. 1067906665 measuring East-West 5.97 mts and North- Sough 22.86 mts situated at Ashoka Nagara, Tumakuru Town.

- 3.** The application is accompanied with the affidavit of the of the Plaintiff No.1, wherein it is stated that, the present suit is for partition and separate possession. It is stated that, earlier Item No.9 of the suit schedule property was purchased by the father of the plaintiff No.1 Devarajappa in the name of his daughter Lalithamma and it was the absolute property of the said Devarajappa. In the said property western half portion was given by the said Devarajappa to Lalithamma and Eastern portion measuring 20X75 feet was retained by the said Devarajappa. The said Eastern portion is Item No.9 of the suit schedule property. After the death of the said Devarajappa, his two sons and five daughters including the plaintiff No.1 succeeded to the Item No.9 of the suit schedule property as co-owners. The plaintiff No.1 and his brother by name D Mahabalaraju filed suit in OS No.



3/2009 seeking declaration of title, permanent injunction in respect of Item No. 1 to 7 and partition in respect of Item No.9 of the suit schedule properties and the said suit came to be decreed by holding that in Item No.9 of the suit schedule property purchased by Devarajappa, he has given western portion to his daughter Lalithamma and the remaining half portion towards the eastern side is devolved upon the two sons and five daughters of the said Devarajappa. The said judgment was challenged in RA No. 155/2012 before the Hon'ble VII<sup>th</sup> Addl. District and Session Judge, Tumkur in RA No. 155/2012 wherein the appeal was allowed by holding that two sons and five daughter of the said Devarajappa are entitled for 1/7<sup>th</sup> share each in Item No. 9 of the present suit schedule property. The said judgment has attained finality. The defendant No.2 without any absolute title over Item No. 9 of the suit schedule property, sold the same to the defendant No.19 under registered sale deed dated 14.11.2022 to defeat the rights of the plaintiffs. On the



basis of the said sale deed the documents are transferred in the Name of the defendant No.19 in respect of Item No. 9 of the suit schedule property. The defendant No. 19 without any rights as illegally put up construction over the said property and he is trying to alienate the said property. Hence, sought to allow the application.

4. On the other hand, the counsel for the defendant No.2 and 18 filed objections and contended that the application is not maintainable and it is liable to be rejected. It is contended that the present application is filed only to harass the defendant No.2 and 18. It is contended that the defendant No. 2 and 18 and others have jointly sold Item No.9 of the suit schedule property to the defendant No. 19 for consideration of Rs. 58,55,000/- and the plaintiffs though aware of the market value of the suit schedule property, they have not paid proper court fee. The plaintiffs have not produced any document to show that they are in joint possession of Item No. 9 of the suit schedule property with the other defendants, as such the plaintiffs have to



pay court fee under Section 35 (1) of the Karnataka Court fee and suit valuation Act and not under Section 35(2) of the Act, as such, the application is liable to be rejected. It is further contended that the plaintiff No.1 and the mother of the plaintiff No.2 filed private complaint in PCR No. 36/2016 on the file of Senior Civil Judge and CJM, Tumkur against the defendant No.1 for the offence punishable Under Section 420, 465, 199, 200, 441 of IPC regarding transfer of Katha of Item No.9 of the suit schedule property and same was referred for investigation under Section 156 (3) of CrPC which came to be registered in Crime No. 136/2016 and after investigation B report was filed. The said court accepted B report against which CRP No. 1/2020 was filed before the Hon'ble II<sup>nd</sup> Addl. District and Session Judge, at Tumkur which came to be dismissed vide order dated 07.09.2021. The plaintiffs with malafide intention has added Item No. 9 of the suit schedule property in the present suit to harass the defendant No. 2, 18 and 19. The defendant No. 2 and 18



along with their children have jointly sold Item No. 9 property to the defendant No. 19 under registered sale deed dated 14.11.2022 and the katha of the said property is changed in the name of defendant No.19 and after obtaining building license, she has put up construction in the said property. Hence, sought to reject the application.

5. Further, the counsel for the defendant No.19 filed objections and contended that the application is not maintainable and it is liable to be rejected. It is contended that as the plaintiffs have not paid court fee hence, the suit is not maintainable as such, injunction cannot be granted against the defendant No. 19. The mother of plaintiff No.1, defendant No.2, father-in-law of defendant No.1 and grandmother of defendant No. 1 to 17 has deposed that property purchased under registered sale deed dated 27.09.1967 is the property purchased by her husband Devarajappa to gift the same to Lalithamma and Jwalamma and the said property was purchased in the name of Lalithamma as Jwalamma was a Minor. The said



deposition was admitted by father of plaintiff No.2. The plaintiffs are not in possession and enjoyment of Item No. 9 of the suit schedule property which belongs to defendant No.19, wherein she has constructed building. As on the date of said purchase on 14.11.2022, no suit or proceeding was pending. The defendant No. 19 has put up construction by raising loan. There is no prima facie case, balance of convenience in favor of plaintiff. If temporary injunction is granted, it will cause hardship and injury to the defendant No.19 who has made investment in the said property. Hence, sought to reject the application.

6. Heard the counsel for the plaintiff and defendant No.2, 18 and 19.
7. Upon hearing both the counsel and on perusal of the materials available on record, the points that arise for my consideration are;

1. ***Whether the plaintiffs have made out a prima facie case in their favour ?***
2. ***Whether the plaintiffs will be put to irreparable loss ?***



**3. *Whether the balance of convenience lies in favour of the plaintiffs?***

**4. *What order?***

**8.** My findings to the above points are as under:

***Point No.1: In the Affirmative***

***Point No.2: In the Negative***

***Point No.3: In the Negative***

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

### **REASONS**

**9. POINT NO.1 :** This suit is filed seeking relief of partition and separate possession of plaintiffs 5/28<sup>th</sup> share in the suit schedule properties on the ground that the said properties belonged to father of the plaintiff No.1 by name Devarajappa.

**10.** The plaint averments discloses that in OS No. 26/1957 pertaining to joint family properties of Devarajappa which ended in compromise Smt. Maduramma i.e. the daughter in law of Devarajappa relinquished her rights over the joint



family properties under the said compromise dated 30.01.1962. Further, son of Devarajappa from his second wife by name A.D. Rajanna executed Registered Release Deed dated 24.09.1952 in respect of joint family properties in favour of his father Devarajappa. After the death of said Devarajappa, his wife Jayamma and his children became the Co-Owners of the suit schedule properties. Further, the plaintiff No.1 and his brother filed OS No. 3/2009 in respect of Item No.1 to 7 and Item No.9 of the suit schedule properties which came to be decreed against which appeal was preferred in RA No. 155/2012 wherein the judgment was set aside. The said judgment was preferred in appeal before the Hon'ble High Court of Karnataka in RSA No. 478/2020 which came to be dismissed by upholding the judgment of first appellate Court. Hence, the plaintiff and the defendant No. 1 to 7 being the Co-owners are in joint possession and enjoyment of the suit schedule properties but the defendant No.2 by Misrepresenting the facts executed Gift Deed in favour of



her husband i.e. the defendant No.18 on 01.02.2023.

- 11.** The written statement of the defendant No.2 and 18 shows that they denied the plaint averments and contended about partition deed dated 15.06.1955 in respect of Item No. 1 to 8 of the suit schedule properties. It is further contended that the plaintiff and the defendants are in joint possession and enjoyment of the suit schedule properties. The defendant No. 2 and 18 denied proceedings of OS No. 3/2009, RA No. 155/2012 and RSA No. 478/2020.
- 12.** The defendant No. 19 contended that she is the bonafide purchaser of Item No.9 of the suit schedule property from the defendant No. 2 and 18 on the basis of registered sale deed dated 14.11.2022 for valid consideration of Rs. 58,55,000/- and there was no suit or any proceeding pending on the date of the said transaction.
- 13.** As juncture, I would like to place reliance on the ratio of the Hon'ble High Court of Rajasthan in **AIR 2003 RAJ 21 between Sukka Singh Vs. Mahal Singh**, wherein it is held



that,

***“ While considering the question of prima facie case, it is not to be confused with prima facie title. What is required is that the plaintiff has to show that he has bonafide raised a substantial question, which needs to be adjudicated at the trial of the suit.”***

- 14.** Hence, it is clear that prima facie case means showing that there is dispute between the parties which has to be decided in a full fledged trial. The said pleadings of the parties shows that the plaintiffs are claiming their rights over the suit schedule properties stating that they are the self acquired properties of father of plaintiff No.1 Devarajappa. The said fact is denied by defendant No. 2 and 18 as they have denied the entire earlier suit proceedings. The said suit proceedings relates to the facts of this case on the basis of which the plaintiffs have pleaded rights over the suit schedule properties. Further, the bonafide claim is set up by the defendant No.19 in respect of Item No.9 of the suit schedule property. This



shows that there is dispute between the parties regarding the nature of the suit schedule properties which require adjudication by way of trial and which shows existence of prima facie case for trial. Accordingly, Point No.1 is answered **in the Affirmative.**

15. **POINT NO.2 & 3:** These points are taken up for discussion together as they are inter related to each other.
16. Mere existence of prima facie case is not the ground for grant of temporary injunction and existence of balance of convenience as well as irreparable injury in favour of the plaintiff is mandatory to grant such an order. Hence, it is necessary to examine if in this case there is balance convenience and irreparable injury in favour of the plaintiffs.
17. The materials on record discloses that this court vide order dated 25.04.2024 on IA No.2 filed under Order 39 Rule 1 and 2 of CPC allowed the said application temporarily restraining the defendant No.2 and 18 from alienating the



suit schedule properties till disposal of the suit. It is specific to mention that at the time of passing of the said orders, the defendant No. 2, 18 and 19 counsel did not produce single document as such, there was no situation upon this court to consider the documents that were available on behalf of the said defendants.

- 18.** The plaintiffs through this application sought for an order of Temporary injunction restraining the defendant No.19 or anybody claiming through her from alienating Item No. 9 of the suit schedule property.
- 19.** Order 39 Rule 1 of CPC, provides for grant of Temporary Injunction when the subject matter of the suit is in the danger of being alienated, damaged or wasted by the defendant for the purpose of staying and preventing such alienation, damage or wastage, until the disposal of the suit. Order 39 Rule 2 of CPC provides for grant of injunction in respect of breach of contract.
- 20.** The application of the plaintiffs states that the defendant No.19 on the basis of illegal sale deed has got Municipal



records changed to her name and she has illegally put up construction in Item No. 9 of the suit schedule property and is trying to alienate the said property to defraud the rights of the plaintiff.

- 21.** On perusal of the proceedings of OS No. 3/2009 and its RA No. 155/2012, it is seen that the father of present plaintiff No.2 and the present plaintiff No.1 filed OS No. 3/2009 against the present defendant No. 1, 2 and others seeking relief of declaration, permanent injunction and partition wherein the said suit came to be decreed vide judgment dated 23.08.2012. The said judgment was challenged in appeal registered in RA No. 155/2012 wherein the judgment of OS No. 3/2009 was set aside by the Hon'ble VII<sup>th</sup> Addl. District Judge, Tumakuru vide judgment dated 23.08.2019. Hence, it is clear that though the trial court in OS No. 3/2009 entitled 1/7<sup>th</sup> share each to the parties in Item No. 13 i.e. the present Item No.9 of the suit schedule property, the said judgment was set aside in RA No. 155/2012. It is the case of the plaintiff that in RA No.



155/2012 it is held that the sons and daughters of Devarajappa are entitled for 1/7<sup>th</sup> share each in Item No. 9 of the suit schedule property. On perusal of the said judgment of RA No. 155/2012 while answering Point No.3 it is observed that the suit has to be dismissed in toto and the said judgment will not come in fresh suit for partition of suit schedule properties and held that the trial Court committed error in decreeing the suit. Hence, it is clear that the Hon'ble Appellate Court has not discussed regarding 1/7<sup>th</sup> share in Item No. 13 of the suit schedule property as all the class I heirs of Devarajappa was not party to the said suit proceeding.

- 22.** The counsel for the plaintiff produced Copy of judgment of the Hon'ble High Court of Karnataka in RSA No. 478/2020 dated 02.08.2022 wherein the judgment of RA No. 155/2012 was challenged wherein the said judgment of RA was confirmed and RSA No. 478/2020 was dismissed.
- 23.** On the other hand the counsel for the defendant No. 2 and 18 produced copy of judgment of OS No.200/1988



and 182/1986 dated 31.01.1996 wherein it is held that the plaintiff i.e. Smt. Jwalamma is entitled exclusively for Eastern portion of the property i.e., the Item No. 9 of the present suit schedule property. The said judgment was challenged in RA No. 412/2004 and 413/2004 before the Hon'ble 1<sup>st</sup> Addl. District Judge, Tumakur wherein the appeals came to be dismissed vide judgment dated 07.10.2006.

- 24.** When the said earlier proceedings are considered both having attained finality, the rights of the parties over the present Item No. 9 of the suit schedule property is confirmed in favour of Smt. Jwalamma i.e. the present defendant No.2 on the basis of judgment of OS No.200/1988 and 182/1986 dated 31.01.1996.
- 25.** The defendant No. 2 along with her husband i.e. the defendant No. 18 and their children have sold Item No. 9 of the suit schedule property to the defendant No. 19 under registered sale deed dated 14.11.2022 for consideration of Rs. 58,55,000/-.



**26.** The materials on record discloses that no suit was pending pertaining to Item No. 9 of the suit schedule property at the time of sale deed of the defendant No. 19 dated 14.11.2022. That apart, it is clear that the defendant No. 19 has put up construction in Item No. 9 of the suit schedule property. That apart, the counsel for the defendant No. 19 produced copy of loan sanction letter to show that the defendant No. 19 has raised building loan. There is no document on record to show that the defendant No.19 is trying to alienate Item No. 9 of the suit schedule property.

**27.** In the circumstances of the present suit, when the rights of the defendant No. 2 is confirmed over Item No. 9 of the suit schedule property by virtue of judgments of OS No.200/1988 and 185/1986 dated 31.01.1996 and its RA No. 412/2004 and 413/2004 dated 07.10.2006 and by considering the principles of Section 52 of the Transfer of Property Act, this Court is of the opinion that if the temporarily injunction is granted as sought for by the



plaintiffs, it is the defendant No. 19 who will suffer irreparable injury that cannot be compensated in terms of money as such, the balance convenience tilts more in favour of defendant No. 19 than the plaintiffs. Accordingly, Point No. 2 and 3 are answered in the **Negative**.

**28. POINT NO.4:** In view of the reasons assigned above, I proceed to pass the following;

**ORDER**

***The IA No.VI filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby rejected with costs.***

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the **29<sup>th</sup> day of August, 2024**)

**Sd/-**  
**(POORNIMA. K. YADAV)**  
**Addl. Sr. Civil Judge & JMFC,**  
**Gubbi.**