

**IN THE COURT OF THE CIVIL JUDGE AND JMFC AT
KORATAGERE**

Dated this the **28th** day of **June 2017**

P R E S E N T

SRI. PRAKASH V, *BA.L., LL.B.*,
Civil Judge and JMFC,

O.S.No.89/2016

Plaintiff : Smt. Siddagangamma W/o Nagaraj,
aged about 53 years,
resident of Maidala Village,
Urudigere Hobli, Tumakuru Taluk.

Versus

Defendants : 1. Nanjamma W/o Basavaraju,
aged about 40 years,
R/o Holavanahalli @ Hobli,
Koratagere Taluk.

2. Pankaja W/o Shivarudraiah,
aged about 38 years,
Channasagar, Pravara Hobli,
Kodagadhala Post, Madhugiri Taluk.

3. Honnamylaralinga @ Manu
S/o Late Honnamallappa,
aged about 36 years,
55/370, Shama Match Industries,
Distric Khadi And Gramodyoga Mandali,
Tumakuru.

PARTIES TO IA. No.I

Applicant : Smt. Siddagangamma Plaintiff

Versus

Opponents: Nanjamma & Ors. ... Defendants

ORDERS ON I.A. No.I

The plaintiff has filed I.A.No. I, under Order 39 Rule 1 and 2 of CPC with a prayer to grant an ad-interim ex-parte order of temporary Injunction restraining the defendant No.3, his agents, servants or anybody claiming under him from alienating the suit schedule property item No.1 to anybody in any manner, pending disposal of the suit for the reasons sworn in the annexed affidavit.

2. The plaintiff has sworn the affidavit annexed to the application and contended that, the suit is filed for the relief of partition and separate possession of her $\frac{1}{2}$ share in all the suit schedule properties, and plaint averments of the plaint may be read as part and parcel of this affidavit. The plaintiff is the daughter of Honnamallappa through first wife Parvathamma, and the defendants are the children of Honnamallappa through second wife Parvathamma. The plaintiff and defendants are the joint family members. The father of the plaintiff died about 5 years back. After the death of father of the plaintiff and defendants, 3rd defendant became the Manager of the family and managing the suit schedule properties. There is no partition in between the plaintiff and defendants. The plaintiff entitled $\frac{1}{2}$ share. Some misunderstanding arose between the parties, and 3rd defendant made attempts to alienate the suit schedule property item No.1 to defeat and defraud the right of

the plaintiff. The plaintiff demanded the defendants for partition. Now the khatha and pahani stands in the name of 3rd defendant. There is no necessity for the joint family to sell the suit schedule property item No.1. If he alienates the suit property, it will lead multiplicity of proceedings and plaintiff will be put to heavy loss and injury, which cannot be compensated by any means. The plaintiff has got prima facie case and balance of convenience in her favour and prays to allow the application.

3. In pursuance of the suit summons, the defendants appeared through their counsel. The 3rd defendant filed his written statement. The defendants No.1 and 2 adopted the same and the same written statement has also adopted as objections to I.A.No.1 filed by the plaintiff.

4. The defendants in their written statement admitted the relationship between the plaintiff and defendants and denied all other averments, and contended that the defendants' father Honnamallappa died on 16.06.2013. About 10 years back prior to his death, he sustained loss in agriculture and arecanut business due to draught on account of failure of crops and bore-well. He incurred huge debts by way of hand loans. After his death, the 3rd defendant discharged the debts incurred by his father and also discharged debt incurred for his marriage and complete the construction work of house. For the said

reasons, the 3rd defendant had obtained huge loan to the tune of Rs.5,00,000/- by executing Pronotes, agreements in favour of H.P.Shanthakumar S/o Puttashamaiah, Jayamma and Sujatha of Holavanahalli Village and also in State Bank of Mysore, Holavanahalli. Since the marriage of the plaintiff, she is residing in her husband's house. She is not a member of the joint family of the defendants. She is not entitled any shares in the suit properties. The suit is not maintainable under law. There is no cause of action for the suit. The suit is barred by limitation. Still if the Court comes to conclusion that the plaintiff is entitled in the share in the suit schedule property, the plaintiff may be directed to discharge the above said debts proportionately, and prays to dismiss the suit with costs.

5. Heard arguments.

6. The following points that arise for my consideration ;

P O I N T S

1. Whether plaintiff made-out prima facie case ?
2. Whether balance of convenience lies in favour of plaintiff ?
3. If an order is not granted whether plaintiff will be put to irreparable loss and injury which cannot be compensated by any means?

4. What order ?

7. My findings to 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. **Points No.1 to 3** : These three points are connected with each other, hence they are taken-up together for common discussion in order to avoid repetition of facts.

The plaintiff has filed this suit against the defendants for partition and separate possession of plaintiff's $\frac{1}{2}$ share in the suit schedule properties by metes and bounds in respect of suit schedule property item No.1 Sy.No.14/2 to an extent of 1 acre 01 gunta and item No.2 house and site property bearing No.52/369/370 house measuring East-West : 35 feet and North-South : 27 feet situated at Holavanahalli Hobli, Koratagere Taluk.

9. The plaintiff averred in the plaint that the father of the plaintiff and defendants Honnamallappa had two wives by name (1) Parvathamma and (2) Parvathamma. The plaintiff is the daughter through 1st wife, defendants are the children of 2nd

wife. The suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. The father of the plaintiff and defendants died about 5 years back. Now 3rd defendant is the Manager of the joint family and managing the suit schedule properties. About one week back the 3rd defendant made attempts to alienate the suit schedule properties taking advantage revenue entries are in his name. The plaintiff demanded for partition and separate possession of her ½ share in the suit schedule properties. But, they have denied to do so. The plaintiff is entitled ½ share interference eh suit schedule properties. On these grounds filed suit for partition and separate possession.

10. Admittedly, the plaintiff and defendants are the daughters and son of deceased Honnamallappa and the plaintiff is the daughter through 1st wife. The defendants are the daughters and son through 2nd wife. Undisputedly, the suit schedule properties are the ancestral joint family properties of plaintiff and defendants. House and site property is stands in the name of father of the plaintiff and defendants. Earlier RTC extract in respect of item No.1 were stands in the name of father of the plaintiff and defendants and thereafter now the suit item No.1 of the suit schedule property stands in the name of 3rd defendant through inheritance.

11. Admittedly, the plaintiff is daughter of deceased Honnamallappa. The father of the plaintiff and defendants was died on 16.06.2013, i.e., after coming into force of the Hindu Succession (Amendment) Act 2005. Under the said law, the family member became a co-parcener along with son. In view of any angle, plaintiff made out prima facie case and balance of convenience lies in her favour. Now the item No.1 of suit property stands in the name of 3rd defendant. As contended by 3rd defendant in his written statement, he had executed Pronotes, agreements in favour of H.P.Shanthakumar S/o Puttashamaiah, Jayamma and Sujatha of Holavanahalli Village and also in State Bank of Mysore, Holavanahalli. Under these circumstances, if 3rd defendant alienates the suit schedule property item No.1 in favour of 3rd parties, it will lead multiplicity of proceedings and great harm to the plaintiff, which cannot be compensated in terms of money. The relief claimed by the plaintiff is an equitable relief. If the order is granted, no harm or injustice will be caused to the defendants. Under these circumstances, the plaintiff made out sufficient grounds to grant the relief claimed by her. Hence, I answer these points No.1 to 3 in the Affirmative.

12. **Point No.4** : In view of discussion made above and under the facts and circumstances of the case, I proceed to pass the following :

ORDER

I.A.No.I, under Order 39 Rule 1 and 2 of CPC filed by the plaintiff is hereby allowed.

It is further ordered that the defendant No.3 or his agents, servants or anybody claiming under him, are hereby temporarily restrained from alienating the suit schedule property item No.1 to anybody in any manner, pending disposal of the suit by granting Temporary injunction.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by him, printout taken, corrected, signed and then pronounced by me in the open court on the **28th day of June 2017**)

(PRAKASH V)
Civil Judge & JMFC,
Koratagere.

28.06.2017

Plaintiff : AMK,
D-1 to 3 : HKM,

For Orders on I.A.No.I,

(Vide separate order is passed and pronounced in the open court)

ORDER

I.A.No.I, under Order 39 Rule 1 and 2 of CPC filed by the plaintiff is hereby allowed.

It is further ordered that the defendant No.3 or his agents, servants or anybody claiming under him, are hereby temporarily restrained from alienating the suit schedule property item No.1 to anybody in any manner, pending disposal of the suit by granting Temporary injunction.

No order as to costs.

(PRAKASH V)
Civil Judge & JMFC,
Koratagere.