

KATK500005102019



IN THE COURT OF THE SENIOR CIVIL JUDGE, KUNIGAL.

Presented by:

Sri. RAGHAVENDRA.R.

B.A.L, L.L.B.

Senior Civil Judge and JMFC,
Kunigal.

DATED THIS THE 0F 28TH DAY OF SEPTEMBER 2021

OS No.107/2019

Plaintiffs:-

Gururaj. B.S.
S/o late B.Shivalingaiah,
A/a. 48 years,
R/a. R. Byadarahalli Village,
Huliyurudurga Hobli,
Kunigal Taluk.

V/s

Defendants:-

1. Smt. Sharadha
W/o late B.Shivalingaiah,
A/a. 67 years,
2. Sri. Manjunath.B.S
S/o late B.Shivalingaiah,
A/a. 42 years, Both are R/a.
R.Byadarahalli Village,
Huliyurudurga Hobli,
Kunigal Taluk.
3. Smt. Shobha
W/o Gangaraju, A/a. 56 years,

4. Praveenkumar. G
S/o shobha, A/a. 38 years,
D.3 and 4 are R/a. No. 692,
3rd Block, 3rd Stage, Basaveshwara
Nagara, Bengaluru.

IA No. I

Applicants:- Gururaj. B.S
(By Sri. Jagadeesh. H.N Advocate)

V/s

Opponents:- Smt. Sharadha & Others.
(By Sri. Pradeepkumar. S.P., Advocate)

ORDERS ON IA No. I

This order arises out of interlocutory application filed by the applicants/plaintiffs under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendants and their agents, henchmen, servants, supporters or any other person or persons claiming any right under or through them from alienating or creating any encumbrance over the suit schedule properties till disposal of the suit.

02. The brief facts of the affidavit annexed to application is that, the suit schedule properties are the ancestral and joint family properties of plaintiff and defendant No.1 and 2. The suit schedule properties are not yet partition among the plaintiff and defendant No.1 and 2. On the basis of the revenue entries in the name of defendant No.1 and 2, in order to make unlawfully

has try to alienation the suit schedule properties in favour of other persons. The plaintiff being helpless Man unable to prevent the the on saughter of defendants without any aid of this Court. Hence, the plaintiffs have filed this application for supra relief.

03. The defendant No.3 and 4 have jointly filed the written statement and filed the memo to considered the written statement as objections to IA No.I. The defendant No.3 and 4 have contended that, the suit schedule properties are all separate and self acquired properties of Sri. Shivalingaiah and he had acquired the suit schedule properties out of his own earning. The same were purchased by Shivalingaiah vide registered sale deeds. Further, Shivalingaiah has clearly admitted in the judicial proceedings about acquisition of properties in O.S. No.08-2010 filed by Sri. B.Nagaraju. The defendant No.3 and 4 are wife and son of said Shivalingaiah. Item No.1 of the Schedule property is self acquired property of Shivalingaiah and he has bequeathed the same in favour of defendant No.3 vide a registered Gift deed which in turn was bequeathed in favour of defendant No.4 by defendant No.3. Since then, the defendant No.4 is is the absolute owner in possession an enjoyment of the item No.1 of the suit schedule property. The item No.3 of the suit schedule property is concerned the same measures 2 acres 4 guntas. Out of which, the defendant No.3 has purchased one acre vide a registered

sale deed dated 28.01.2005 out of her own income and remaining extent of 1 acre 4 guntas o land was purchased by Shivalingaiah. In so far as the item No.2, 4 and 5 are the separate properties of Shivalingaiah and after his death, the defendant No.3 and 4 are also entitled for share in the suit schedule property No.2 to 5. the plaintiff and defendant No.2 are son of Shivalingaiah, however the defendant No.1 is not his wife as she was divorced by Shivalingaiah by filling a divorce petition. The plaintiff, defendant No.2 to 4 alone are entitled for the share in the schedule item No.2, 3 to an extent of 1 acre 4 guntas, item No.4 and 5. Hence, the defendant No.3 and 4 prayed to dismiss the application with costs.

04. I have heard the counsel for the defendant No.3 and 4. The plaintiff counsel has not chosen to argue the matter on IA No.1 in spite of several opportunities. Perused the materials on record. The following points are for my consideration.

- **Point No.1:** Whether the plaintiffs have made out a prime facie case in his favour?
- **Point No.2:** Whether balance of convenience lies in favour of the plaintiffs?
- **Point No.3:** Whether the plaintiffs would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by him?
- **Point No.4.** What order?

05. My findings to the above points are as under.

- Point No.1: In the Negative
- Point No.2: In the Negative
- Point No.3: In the Negative.
- Point No.4: As per final order for the following

REASONS

06. **Point No.1 to 3:** I considered these points together in order to common discussion as they are related to each other. The present suit filed by the plaintiffs is for the relief of partition and separate possession. The defendant No.3 and 4 have categorically pleaded that the suit schedule properties are self acquired properties of Shivalingaiah. And the defendant No.3 has purchased one acre in suit item No.3 through registered sale deed dated 28.01.2005 and the defendant No.3 has bequeathed the item No.1 in favour of defendant No.4 through registered gift deed. The plaintiff has narrated in the affidavit that, the suit schedule properties are ancestral and joint family properties. The defendants No.3 and 4 have produced the certified copy of written statement filed by the legal heirs of Shivalingaiah in OS No.8 of 2010. On careful perusal of that document it reveals that, the defendant No.1 of OS No.8 of 2010 has pleaded in the written statement that, the suit item No.5 to 8, 11 and 12 are self acquired properties of defendant No.1 i.e., Shivalingaiah and item No.3 and 4 are self acquired property of the defendant No.2(a) by name

Siddalingamma @ Lingamma. Suit item No.13 and 16 are self acquired property of one Smt. Shobaha who purchased under a registered sale deed. The suit item No.5 to 8 and 11 are Survey No.194, 41, 197, of R. Byadarahli Village and house property and survey No. 128 of Byadarahalli Village respectively. These properties have find place as suit item No.3 to 5 in the present case on hand. The plaintiff have placed records of rights extract in supporting of the pleadings. To ascertain the fact of Whether, the suit properties are joint family properties or self acquired properties of Shivalingaiah as pleaded by the defendant No.3 and 4, it needs full fledged trial. And further initial burden is on the plaintiffs to prove contention pleaded in the pleadings. At this stage, the Court has to be considered whether the plaintiff has made out prima facie and balance of convenience to grant the relief as sought in the application or not?.

07. On careful scrutiny of the pleading of both parties, it is worth to note that, the plaintiff has pleaded about the gift deed in the plaint. The defendant No.3 and 4 have categorically pleaded that, Shivalingaiah has bequeath the item No.1 to defendant No.3 through registered gift deed and the defendant No.3 in turn bequeath the item No.1 to defendant No.4 under registered gift deed. As I mentioned ago, to decide the real controversy between the parties, it needs full fledged trail. It is well settled principle of Law that, the discretion of the Court is

exercised to grant a temporary injunction only when the plaintiffs have made out existence of prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; when the need for protection of the defendant's right is compared with or weighed against the need for protection of the defendants rights, the balance of convenience tilting in favour of the plaintiffs and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction order is not granted. The facility to Principles Governing Grant of Injunction is at the discretion from the Court. This foresight, however, should be exercised reasonably, judiciously as well as on sound lawful principles. Injunction must not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his right in a suit or any other proceeding. Therefore, the Court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunction restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. The provisions of temporary injunction as well as ad interim temporary injunction is contained in Rule 1 of Order 39

of the Civil Procedure Code. The contention of the defendants are clearly indicates that, they have not having any kind of interest to alienate the suit properties any persons. It is true that, If the acts of the defendants have been postponed some time, no harm would be caused to defendants but injunction can not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. Under these circumstances, the Court find that it is not necessary to issue prohibitory order against the defendants as prayed by the plaintiff in this application. In other words, the plaintiff has failed to establish the prima facie case and balance of convenience to get relief as prayed in the application. Further, the interlocutory application does not bears the dual cause title as enumerated in Rule 18(1) and (3) of Karnataka Civil rules of Practice. Rule 18(1) (3) of Karnataka Civil Rules of Practice read thus: **“(1) Every interlocutory application shall be indicated by the abbreviation “IA” shall be consecutively numbered in each suit, Appeal or Proceedings in which it is filed.”**

“(3). Every interlocutory Application shall bear the cause title of the main matter in which it is made and shall set out the name of the applicants and the opponents and their respective ranks in the main matter, the provision of Law under which it is made and the prayer or relief sought,

in clear and precise terms. On this ground also, the application filed by the plaintiff is not maintainable. Hence, I answer point No.1 to 3 in the negative.

08. Point No.4: As per following;

O R D E R:

Interlocutory Application No. I filed by the plaintiff under Order XXXIX rules 1 and 2 of Code of Civil Procedure is here by dismissed with costs.

The interim orders passed by this Court is here by Vacated.

(Directly typed and computerized by me in All-in-one PC and corrected, signed and then pronounced by me in Open Court on this the 28th day of September 2021)

(Raghavendra. R)
Senior Civil Judge and JMFC, Kunigal.