

**IN THE COURT OF THE PRL.CIVIL JUDGE AND JMFC
AT PAVAGADA**

DATED THIS THE 30th DAY OF OCTOBER – 2021.

:PRESENT:

Jagadeesh Biserotti., B.A., L.L.B.(SPL)
Prl. Civil Judge and J.M.F.C.
Pavagada.

O.S.No. 25/2021

Plaintiffs : C.T. Balaraju S/o Late Thippeswamy

(Plaintiff by learned Sri. M. B.,Adv.)
V/S

Defendants : 1. C.T. Sidaramappa S/o Late Thippeswamy

2. C.T. Adimurthy S/o Late Thippeswamy

3. Smt. B. Lakshmi W/o C.T. Adimurthy.

(Defendant no. 1 to 3 by learned Sri. S.N.C.,Adv.)

Applicant/s : C.T. Balaraju S/o Late Thippeswamy
(Plaintiff)

V/S

Opponents : C.T. Sidaramappa S/o Late Thippeswamy
(Defendants) and others

**ORDERS ON I.A.No-I FILED U/O 39 RULE 1 AND 2
OF C.P.C. BY THE PLAINTIFFS.**

1. The learned counsel for the plaintiff has filed the I.A.No-I U/o 39 Rule 1 and 2 of C.P.C, seeking to grant temporary injunction to restrain the defendants from alienating the suit schedule property by way of sale deed, gift deed, sale agreement, will, mortgage deed, lease agreement, etc., in any manner till disposal of the suit. The application is supported by affidavit of the plaintiff.

2. THE BRIEF FACTS OF THE CASE OF THE PLAINTIFF : It is stated in the affidavit accompanied to the I.A.No.1 that, the plaintiff has filed this suit for relief of partition and separate possession in respect of the suit property Sy. No. 54/7, measuring 3 acre, 37 gunta, situated at Chikkahalli village, as per boundary shown against the defendants. The plaintiff and defendants are Hindu Joint family members and the suit schedule property is the ancestral property of the plaintiff and defendants. The plaintiff and defendants have inherited the suit property and they are in joint possession and enjoyment of the suit property. There is no partition and separate possession in respect of the suit property between the plaintiff and defendants. The defendants are mismanaging the income of suit property . The plaintiff has demanded share in the suit property, but

the defendants refused to give his share. The plaintiff is having legitimate 1/3rd share in the suit schedule property.

3. It is further stated that, the defendants are trying to alienate the suit schedule property to the third parties. If the defendants alienate the suit property, it will create multiplicity of proceedings. Therefore it is necessary to restrain the defendants from alienating the suit property. The plaintiff has made out prima facie case and balance of convenience lies in favor of the plaintiff. If the application is allowed no loss or hardship to the defendants, If the application is rejected, the plaintiffs will be put to irreparable loss and injustice. On these reasons the plaintiffs have prayed to allow I.A. No.1.

4. After service of summons the defendants have appeared through their learned counsel. The defendants have filed the written statement. The learned counsel for defendants has filed objections to I.A.No.1.

5. The defendants have asserted that, in respect of the suit schedule property there is a registered partition deed dated 05-05-2016 entered between the plaintiff, defendant No. 1 and 2. As per the said registered partition, the suit property is fallen to the share of defendant No. 2. The plaintiff and defendant No. 1

have relinquished their right in the suit property by obtaining cash amount of Rs.20,000/- from the defendant No.2. The defendant No.2 has agreed to settle the bank loan of Rs.25,000/- pertaining to the suit property. The plaintiff has not included the property Sy. No. 88/3, measuring 0.32 gunta, Sy.No.88/2 measuring 1 acre, hence the suit of the plaintiff is liable to be dismissed. The property Sy. No. 88/3 is in the name of plaintiff, which has been purchased by the defendant No.2 in the name of the plaintiff. In the said property, to an extent of 0.15 gunta has been acquired by the Acquisition Authority and granted compensation amount of Rs.3,50,000/-, and the same is not included as suit property. The documents produced by the plaintiff are created and fraudulent documents, hence the application is liable to be dismissed. The reasons stated in the affidavit are false. The plaintiff has suppressed the facts and he has not approached the court with clean hands. There is no prima facie case of the plaintiff. The plaintiff is not entitled for the relief sought in I.A.No.1. If application is allowed, it will deprive the rights of the defendants over the suit schedule property. The plaintiffs have suppressed real facts before the Court and they have not approached to the Court with clean hands. The reasons stated in the affidavit are false and the plaintiffs are making a false claim over the suit schedule property. If application is rejected, no hardship to the plaintiff. On these assertions, the defendants have prayed to reject the application.

6. This court has heard the arguments by both sides learned counsels and perused the records, thereafter the following points arise for consideration of the court as follow:-

POINTS

1. **Whether plaintiff has made-out a prima-facie case?**
 2. **Whether the balance of convenience lies in favour of plaintiff?**
 3. **Whether plaintiff would suffer irreparable loss or injury if the prayer of interim injunction were not granted?**
 4. **What order ?**
7. My findings to the above said points are as follows:

Point No. 1: Negative.

Point No. 2: Negative.

Point No. 3: Negative.

Point No. 4: As per final order

REASONS

8. **Points No.1 to 3:-** These three points are inter linked with each other and requires common discussion in order to avoid the repetition of discussion. Therefore, these three points are discussed commonly.

- 9.** This court has already narrated the both parties contentions taken in respect of the I.A. No.1.
- 10.** In support of the case of the plaintiff, he has produced documents, which are **1)** Copies of R.T.C. of Sy. No. 54/7, which is standing in the name of defendant No. 2 of the year 2017-18, 2018-19, 2019-20, **2)** R.T.C. of Sy. No. 54/7, which is standing in the name of defendant No. 3 of the year 2020-21, **3)** Copy of the registered gift deed dated 03-07-2020, which is said to have been executed by defendant No. 2 in favor of defendant No. 3 in respect of the suit schedule property **4)** Genealogical Tree, which reveals that, the plaintiff, defendant No. 1 and 2 are sons of Thippeswamy, defendant No. 3 is the wife of defendant No. 2, **5)** Copy of M.R. No. 51-2014-15 which reveals that, on the basis of partition , khatha of property Sy. No. 54/7 is mutated in the name of plaintiff and defendant No. 1 and 2.
- 11.** The defendants have not produced documents in support their contentions taken in the written statement and objections to I.A. No. 1.
- 12.** This court has perused, both parties pleadings and documents placed before the Court. It is not in dispute that, the plaintiff, defendant No. 1 and 2 are sons of Thippeswamy and defendant No. 3 is the wife of defendant No. 2. It is specific

case of the plaintiff that, the suit property is ancestral property of plaintiff and defendants, they are joint family members and there is no partition in respect of the suit property between the plaintiff and defendants. The defendants have denied the legitimate share of the plaintiff, hence the plaintiff has filed the suit for partition.

13. It is relevant to note that, the defendants 1 to 3 have specifically contended that, as per registered partition deed dated 05-05-2016, entered between the plaintiff, defendant No. 1 and 2, the suit property is fallen to the share of defendant No. 2. The defendant No. 2 has purchased the Sy. No. 88/3 and same is registered in the name of plaintiff. The said property has not included in the suit. It is relevant note that as per M.R. No. 51/2014-15, the khatha of the suit property mutated in the name of plaintiff, defendant No. 1 and 2. As per the R.T.C. produced by the plaintiff reveals that, earlier khatha of the suit property was standing in the name defendant No. 2 and presently khatha of the suit property is standing in the name of defendant No. 3. The copy of the gift deed dated 03-07-2020 reveals that, the defendant No. 2 has executed the gift deed in favor of defendant No. 3 in respect of the suit property. In said gift deed, it is mentioned that, as per the registered partition deed dated 05-05-2016 entered between the brothers of defendant No.2 and the document is registered in document No. PVG-1-00641/2016-17 before the sub-registered,

Pavagada, and M.R. No. 16/2015-16, the present suit property is fallen to the share of defendant No. 2. It is relevant note that, the plaintiff has not produced the registered partition deed dated 05-05-2016 and M.R. No. 16/2015-16, which are relevant documents to appreciate the contentions of the parties. The Plaintiff has not produced document to show that he challenged the registered partition deed dated 05-05-2016, which is said to have been executed by plaintiff, defendant No. 1 and 2 and M.R. No. 16/2015-16, which is pertaining to the mutation of katha of the suit property in the name of defendant No. 2 as per registered partition deed. The defendants have specifically contended that, the plaintiff has suppressed the facts and not approached to the Court with clean hand, hence he is not entitled for the relief of injunction as sought in I.A. No. 1.

- 14.** It is relevant note that, the records reveals that, in respect of the suit property, registered partition deed dated 05-05-2016 is taken place and registered gift deed dated 03-07-2020 is taken place. The plaintiff has not produced M.R. No. 16/2015-16 and registered partition deed dated 05-05-2016, when the plaintiff not produced the material documents, which are said to have been pertaining to the suit property, the contention of the plaintiff as there is no partition in respect of the suit property and the defendants have denied the legitimate share of the plaintiff in the suit property, has to be appreciated after

evidence of the parties at the stage it is not proper to hold that, the plaintiff has made out prima facia case and balance of convenience lies in his favour, to grant temporary injunction in respect of the suit schedule property.

15. As per the documents produced by the plaintiff himself, the recital of the registered gift deed reveals that, a registered partition deed is taken place, between the brothers of defendant no.2, but the plaintiff has not stated the same in his pleadings and not produced the said registered partition deed dated: 05-05-2016 and M.R.No.16/2015-16, which are material documents in this case. When the plaintiff has not produced the material documents before the court, it prima facia appears to the court that the plaintiff has not approached to the court with clean hands. Prima facia, the as per the said registered gift deed, the defendant no. 3 has got right over the suit property. Under these facts and circumstance, unless the challenge the registered partition deed and said registered gift deed, at this stage it is not proper to hold that the plaintiff has made out the prima facia case to grant the relief as sought in I.A.No. 1.

16. This court has relied the decision in the case ***Kashi Math Samsthan & Anr vs Srimad Sudhindra Thirtha Swamy***, reported in (2010) 1 SCC 689, wherein it is held and observed that,

13. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if

*injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, **if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.** Therefore, keeping this principle in mind, let us now see, whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court.*

17. This court relied the decision **A.D. Narayanappa and another V/s Muniyappa and another**, which is reported in **1997 (1) Kar.L.J 182** wherein the Hon'ble High Court has held that,

*“Even the limited relief of permanent injunction granted by the trial court is liable to be set aside **when the plaintiffs have not come to the court with clean hands.** As I agree with the learned Judge that the plaintiffs have not approached the court with clean hands, they are not entitled to any relief at the hands of the Court”.*

18. This court has relied the decision reported in **ILR 1992 Karnataka 2905 in the case R.Dilip Kumar V/s S. Ramu**, wherein it is held that,

“ The principles regarding granting or refusal of an injunction are well settled now. It cannot be disputed that in order to entitle to a temporary

injunction, the plaintiff must have a clear prima facie case. Where there is doubt about the case of the plaintiff or when the case of the plaintiff is not clear, this extraordinary relief of temporary injunction cannot be granted to him. When judged in the light of the principles discussed in the ruling cited above, it will have to be held that the lower court was right in coming to the conclusion that the plaintiff has not been able to establish any prima facie case to entitle him to temporary injunction". The said decisions are applicable to this case.

19. Hence, keeping in mind the above principles laid down in the above decided cases relied by this court and which are applicable to this case. This court is of the considered opinion that, the plaintiff has not made out prime facia case. The plaintiff ought to have been produced the above said documents, but he has not produced the material documents. Thus, it appears that, the plaintiff has not approached the court with clean hands. At this stage, it is not just and proper to hold that, whether the suit schedule property is ancestral property of plaintiff and defendants or the suit schedule property is absolute property of the defendant no. 3, unless evidence of the parties. It is settle principles of law that, the grant of injunction is the discretionary of the court on the basis of judicial principles. Unless the said registered partition deed and gift deed are challenged, it is not proper, at this stage to hold that the suit schedule property is ancestral and joint family property of the plaintiff and defendant No.1 to 3. Therefore, the plaintiff is not entitled for the relief of

temporary injunction as sought in I.A No.I. After perusing the pleadings and documents placed on record by the parties, this court finds that, considering the both parties contentions and documents produced by the parties, at this stage the plaintiff has not made out the prima facie case, hence, it is necessary to look into the evidence of the parties, unless that, it is difficult to hold that, the suit schedule property is ancestral and joint family property of the plaintiff and defendant No.1 to 3. Therefore, this court holds that the plaintiff has not made out a prima-facie case and balance of convenience lies in his favor, when there is no prima-facie and balance of convenience in favor of plaintiff, granting relief temporary injunction does not arise. Further, the contention of the plaintiff as if the application is not allowed, it will create the multiplicity proceedings is not tenable. Therefore, the plaintiff is entitled for the relief of temporary Injunction in respect of the suit property. In view of the above discussions and reasons, this court answers **Point No.1 to 3 in the Negative.**

20. **POINT No.4:-** In view of my findings on above points and having regard to the facts and circumstances of the case, this court proceeds to pass the following;-

ORDER

The I. A. No. I U/O 39 Rule 1 and 2 of CPC
filed by the plaintiff is hereby rejected.

No order as to cost.

(Dictated to Typist directly On-line in the computer typed by her, corrected by me and then pronounced it in open court on this the day of 30th day of October -2021)

[Jagadeesh Biserotti]
Prl. Civil Judge and J.M.F.C.,
PAVAGADA.