

**IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C., AT SIRA.**

Dated this the 16th day of July 2020

PRESENT

SRI. S.MAHESH

B.A., LL.B.,

SENIOR CIVIL JUDGE AND J.M.F.C., SIRA.

O.S.No.87/2018

Plaintiff : H.S.Chandru, S/o late N.Hanumanthaiah,
Aged about 55 years,
R/at Uddaina Palya,
Kallambella hobli,
Sira Taluk,
Now R/at No.34/42,
59th “A” Cross, 4th N Block,
Rajaji Nagara, Bengaluru -10.
(By a advocate Sri.C.H.J.)

V/s

Defendants :

1. H.Nagaraju,
S/o late N.Hanumanthaiah,
Aged about 65 years,
R/at No.231, 1st Floor,
Meenakshi Sadana, 2nd Cross,
4th Main, Mahalakshmi Layout,
Bengaluru – 86.
2. H.Ramachandra,
S/o late N.Hanumanthaiah,
Aged about 63 years,
Raghunandana, No.55,
7th Cross, Chamundeshwari Nagar,
Laggere, Bengaluru – 58.

3. M.H.Chayadevi, W/o H.Ramachandra,
Aged about 56 years,
Raghunandana,
R/o No.55, 7th Cross,
Chamundeshwari Nagar,
Laggere, Bengaluru – 58.
4. H.Prakash, S/o late N.Hanumanthaiah,
Aged about 61 years,
R/at Uddaina Palya,
Kallambella hobli,
Sira Taluk, Now R/at No.34/42/1
59th A Cross, 4th N Block,
Rajaji Nagara,
Bengaluru – 10.
5. P.Rohan, S/o H.Prakash,
Aged about 32 years,
R/at No.34/42/1, 59th A Cross,
4th N Block, Rajaji Nagara,
Bengaluru – 10.
6. H.S.Kumari, W/o late K.V.Nagarajaiah,
D/o late N.Hanumanthaiah,
Aged about 59 years,
R/at No.392, 4th Main, 4th Block,
HBR Layout, 1st Stage, Bengaluru – 43.
7. K.N.Shrithu, D/o H.S.Kumari,
And late K.V.Nagarajaiah,
Aged about 33 years,
R/at No.392, 4th Main, 4th Block,
HBR layout, 1st Stage,
Bengaluru – 43.
**(D.1 by Sri.R.C. advocate, D.2 & 3
by Sri. K.U. advocate, D.4 & 5 by
Sri.S.V.M. advocate D.6 & 7 by
Sri.G.S.R.advocate)**

IN I.A.NO.1

Applicant

: H.S.Chandru

..... Plaintiff

V/s

Opponents : H.Nagaraju and others
.....Defendants

ORDERS ON I.A.NO.1 U/O 39 Rule 1 & 2 OF CPC

Plaintiff filed this application seeking temporary injunction against the defendant No.3 & 5 restraining them from alienating the suit schedule properties item No.1 & 2 in favour of any body till disposal of the suit in the ends of justice and equity.

2. It is stated in the annexed affidavit that, plaintiff instituted the suit seeking partition and separate possession. Plaintiff and defendants constituted joint Hindu family. The suit properties are joint family properties. The defendant No.3 & 5 taking advantage of khata of item No.1 and 2 standing in their name are attempting to alienate with an intention to defeat the rights of plaintiff. Plaintiff has made out prima-facie case and balance of convenience lies in his favour. If the defendant No.3 & 5 succeeded in alienating suit item No.1 & 2, plaintiff would put to great hardship and injury which cannot be compensated in terms of money. Hence, this application.

3. The defendant No.3 filed the written statement and adopted the same as objections to I.A.No.1. The defendant No.5 filed no

objections. The defendant No.3 contended that, the suit item No.1 originally belongs to one Gopal Iyengar. He sold the property to one Chikkabyrappa under sale deed dated: 18.12.1947. After the death of Chikkabyrappa his brother Muniswamappa and other legal heirs were enjoying the property and have executing power of attorney dated: 04.04.1987 in favour of one M.Krishnappa. Said Krishnappa executed a power of attorney dated: 12.08.1987 in favour of N.Hanumanthappa, the father-in-law of defendant No.3. Said Hanumanthappa sold the property to the defendant No.3 under sale deed dated: 23.07.2011. Khata stands in the name of defendant No.3. She has constructed the house by investing more than Rs.20,00,000/-. The property is her self acquisition. Accordingly, prayed to reject the application.

4. Heard both sides and perused the records.

5. The points that arise for my consideration are;

1. Whether plaintiff has made out prima facie case in his favour?
2. Whether plaintiff shows that, the balance of convenience lies in his favour?
3. Whether the plaintiff put to great hardship and injury, if an order of injunction is not granted?
4. What order ?

6. My answer to the above points are as follows;

POINT NO.1 to 3 : In the **Partly Affirmative** ;

POINT NO.4 : As per Final order
for the following;

REASONS

7. POINT NO.1 to 3: Plaintiff filed the suit for the relief of partition and separate possession claiming the suit properties as the joint family properties consisting of himself and defendants. As per plaint averment suit item No.1 is the self acquisition of plaintiff's father N.Hanumanthaiah. He has executed sale deed in favour of defendant No.3 subject to coercion made by the defendant No.2 & 3. The suit item No.2 is the self acquisition of his mother Puttamma. The defendant No.4 and 5 have by playing force/coercion obtained Will deed dated: 26.10.2006 in favour of the defendant No.5.

8. Plaintiff has produced the sale deed dated: 23.07.2011 under which plaintiff's father Hanumanthaiah has sold suit item No.1 in favour of the defendant No.3. In the document it is specifically mentioned that, N.Hanumanthaiah alienated the property as a power of attorney holder to M.Krishnappa. Hence, this property cannot be considered as the self acquisition of N.Hanumanthaiah. As a power of attorney holder, N.Hanumanthaiah has sold the suit item No.1 in

favour of the defendant No.3. Suit is filed after lapse of seven years from the date of alienation. Hence, I decline to accept that plaintiff had any interest in this property.

9. Plaintiff has produced the RTC extracts of suit item No.2. Khata stands in the name of defendant No.5 on the basis of a Will deed. Further produced the alleged Will deed dated: 26.10.2006 executed by Smt. Puttamma in favour of the defendant No.5. Plaintiff has seriously disputed the due execution of the alleged will deed. The defendant No.5 filed no objections to the application. Unless and until the due execution of the will is proved, no absolute right accrue to the defendant No.5. If the defendant No.5 succeeded in alienation, would certainly cause serious prejudice to the right or interest of the plaintiffs in suit item No.2.

10. In the light of above discussion, I come to conclusion that, the plaintiff has made out prima-facie case in his favour only with respect to suit item No.2. The balance of convenience lies in favour of plaintiff only with respect to suit item No.2. The alienation of suit item No.2 would cause great hardship to the plaintiff which cannot be compensated in terms of money. No prima-facie made out by the plaintiff with respect to suit item No.1. Hence, it is just and necessary

to restrain the defendant No.5 from alienating the suit item No.2. This is not a fit case to restrain the defendant No.3 from transacting with the suit item No.1. Accordingly, I answer the above points in the **Partly Affirmative.**

11. **Point No.4:** For the above discussed reasons, I proceed to pass the following;

ORDER

The I.A.No.1 filed by the plaintiff U/O 39 rule 1 and 2 r/w Sec.151 of CPC is allowed in part.

The defendant No.5 is restrained from alienating suit item No.2 till disposal of the suit.

The I.A.No.1 is rejected against the defendant No.3 and suit item No.1.

It is made clear that the aforesaid discussions have no impact over merits of the suit.

Parties to bear their costs.

(Directly dictated to steno through online, the same is corrected and then pronounced by me in the open court on **16.07.2020**)

(S.MAHESH)
Senior Civil Judge and
J.M.F.C., Sira.