

IN THE COURT OF PRL. CIVIL JUDGE & JMFC., AT SIRA

Dated this the 24th day of September 2020

PRESENT : Smt. Asha K.S.
B.A. L. LL.B.,
Prl. Civil Judge & JMFC., Sira
O.S.NO. 295/2019

PLAINTIFF : Doddakataiah,
S/o. Late Sannappa,
Aged about 80 years,
Residing at
Dwaralu Gollarahatti,
Lakshmisagara Post,
Kasaba Hobli,
Sira Taluk,
(By Sri. B. Ranganath,
Advocate)

/Vs/

DEFENDANTS : 1. Katanna,
S/o. Late Doddaiiah,
Aged about 55 years,

2. Rajanna,
S/o. Late Doddanna,
Aged about 50 years,

3. Srinivas,
S/o. Late Doddanna,
Aged about 49 years,

4. Ajjanna,
S/o. Late Doddanna,
Aged about 40 years,
All are Residing at
Aged about 42 years,

Dwaralu Gollarahatti,
Lakshmisagara Post,
Kasaba Hobli,
Sira Taluk,
**(Sri. C. Someshwar,
Advocate for D2 to 4,
D1-Exparte)**

Parties in I.A. No.1

APPLICANT : Doddakataiah

/Vs/

OPPONENTS : Katanna and others

ORDERS ON I.A. NO.1

This is an application filed by plaintiff U/Or. XXXIX Rules 1 & 2 CPC to restrain the defendants from putting up construction over 'B' schedule properties, till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff has stated that he has filed suit for permanent injunction against the defendants. In the year 1915, partition was effected in his family, but some of the parties of his family were not allotted share in the schedule properties. Some parties died without marriage and other properties not partitioned in the partition effected in the year 1915. Without

partition, the defendants are trying to construct the house in the schedule properties. Writ petitions in respect of schedule properties are pending before the Hon'ble High Court of Karnataka. The plaintiff and defendants are the joint owners and possessors of the schedule properties and are enjoying jointly. In such circumstances, defendants have no right to construct house in the schedule property as absolute owners. Hence to resist the defendants' activity, the plaintiffs has filed this I.A.

- 3.** The defendants have not filed objections.
- 4.** The following points that arise for consideration:
 1. Whether the plaintiff has made out prima facie case to grant Temporary Injunction?
 2. Whether the balance of convenience lies in favour of the plaintiff?
 3. Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted in their favour?
 4. What order?

5. Heard the learned counsel for the plaintiff. Perused the record.

6. The above points are answered 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

7. **Points No.1 to 3:** All these points are taken together for consideration as they require discussion on the same set of facts.

The plaintiff has filed the suit for permanent injunction. It is the case of the plaintiff that, the schedule properties belongs to him and defendants' family. The ancestors of plaintiff and defendants partitioned the family properties under a Registered partition deed dated 13.07.1915. As per partition, revenue documents not changed in the name of plaintiff's father and defendants' father. Thereafter,

defendants' grand father Ajjaiah and his brother Kuntada Doddaiiah and plaintiff's father Sannappa partitioned the schedule properties on 20.05.1926.

8. It is further submits that due to non payment of revenue, the government forfeited Sy. No. 86/1 and Sy. No. 88 and Sy. No. 80 of Dwaralu village as phada. Plaintiff's father, defendants and Doddakka were approached the Tahasildar and prays to restore the phada. After verifying the documents, the Tahasildar of Sira restored the phada in respect of schedule properties on 08.06.1984. Thereafter, an appeal preferred before the Asst. Commissioner and Deputy Commissioner. They have also preferred writ petitions before the Hon'ble High Court of Karnataka and the same is pending for consideration.

9. On perusal of plaint, it is noticed that plaintiff is seeking an injunction against the co-owners of the schedule property. In para No. 17 of plaint, plaintiff himself pleaded that he and defendants are in joint possession and enjoyment of the schedule properties. The documents produced by the

plaintiff also shows that schedule properties are standing in the name of defendants' father Doddaiiah, plaintiff and one Doddakka. It is not the case of plaintiff that, as per partition, he is in exclusive possession of the schedule properties. In one para, plaintiff has pleaded that there was partition between his father and defendants' father, but in another para, he has pleaded that, he and defendants are in joint possession of the schedule properties. The documents show that plaintiff, defendants and Doddakka are in joint possession of the schedule properties. There is no division between them. Even though there was partition in the year 1915 and 1926, but as per partition, they have not separated the properties to enjoy the same.

10. In a suit for permanent injunction, the plaintiff must establish that, he is in exclusive possession of the schedule property and interference by the defendants. In this case, the plaintiff himself stated that he and defendants are in joint possession of the schedule properties. After phada, the Tahasildar has restored the phada, but the parties to the suit

were challenged the said order and same is pending before the revenue court and also Hon'ble High Court of Karnataka. In such circumstances, the plaintiff cannot claim he is in exclusive possession of the schedule properties. When the parties to the suit are in joint possession, the co-owner cannot seek an order of injunction against another co-owner. When there is no division among the co-owners, court cannot restrict the one co-owner from putting up construction. The photos produced by the plaintiff shows that already construction is completed. The pleadings of the plaintiff are contrary to another para. He has not approached the court with clean hands. There is no prima facie case in favour of plaintiff. In such circumstances, if the I.A. is allowed, irreparable loss cause to the defendants than the plaintiff. The plaintiff has not made out grounds to allow the I.A. Accordingly, these points are answered in the **Negative**.

11. Point No.4: In view of findings on Point No.1 to 3, this court proceed to pass the following;

ORDER

I.A.No.1 filed by the plaintiff U/Or. XXXIX

Rule 1 & 2 CPC is rejected.

(Dictated to the stenographer, transcribed, computerized and printout taken by her, then corrected, signed and pronounced by me in the open Court on **24.09.2020**)

(ASHA K.S.)
Prl. Civil Judge & JMFC.,
Sira

