

KAUK210015122022



IN THE COURT OF THE ADDL. CIVIL JUDGE, ANKOLA

PRESENT

Smt. Arpitha B Bellad.

B.Com., LL.B.,
Addl., Civil Judge and J.M.F.C.,
Ankola.

ORIGINAL SUIT NO.95/2022

Dated this the 21st day of October 2024

Plaintiffs:-

1. Smt. Prema Honnappa Nayak,
Aged about 63 years,
O/c: Household,
R/o:Hoskeri, Tq. Ankola
2. Smt.Shobha Pramod Nayak,
Aged about 54 years,
O/c: Household,
R/o:Adluru, Tq. Ankola
3. Smt. Rajamma Umesh Nayak,
Aged about 51 years,
O/c: Teacher,
R/o:Shedgeri, Tq. Ankola

[By Sri. R.N.H., Advocate]

V/s

Defendants:-

1. Sri. Devanna Subraya Nayak,
Aged about 59 years,
O/c: Agriculturist
R/o:Belekeri, Tq. Ankola

2. Sri. Narayan Bin Ramachandra
Nayak,
Aged about 60 years,
O/c: Agriculturist
R/o:Belikeri, Tq. Ankola

[D1 By: Sri. G.T.N., Advocate]
[D2 By: Sri. N.B.K., Advocate]

**ORDERS ON IA NO. I FILED BY PLAINTIFFS UNDER ORDER
XXXIX RULE 1 and 2 R/W Section 151 OF CODE OF CIVIL
PROCEDURE, 1908**

1. Plaintiffs have filed IA-I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 restraining the defendants, their men, agents or anybody claiming through them from alienating, transferring, mortgaging or creating charge over the suit schedule properties till the disposal of the suit.
2. The said application is accompanied with the common affidavits of the plaintiffs wherein they have stated that the main propositus was one by name Devanna Nayak and his wife was Devamma Nayak who are deceased and they had a son by name Subraya who had a wife by name Shanti and they both are also died and the plaintiffs and defendant No.1 are the children of deceased Subraya and Shanti. Defendant No.2 is the stranger to the family of plaintiffs and defendant No.1 and he has been arrayed as a party in the suit since the item No.3 of the suit property is standing in his name.

- 3.** It is further stated that suit properties are family properties of plaintiffs and defendant No.1 and no partition by metes and bounds has been effected among them. The suit properties originally belonged to deceased Devamma Devanna Nayak and after her demise, the name of their father Subray Nayak came to be mutated as per varasa on behalf of family in respect of moolgeni rights of suit properties. In this regard, Mutation Entry No.3633 dated 26/04/1964 came to be certified and the plaintiffs and defendant No.1 have assisted their father in cultivation of the properties. Being this the case, the defendant No.1 with an intention to gulp down the valuable property by colluding with their parents, has got entered his name in respect of the said property claiming to have got executed the registered partition deed on 11/02/2018 and plaintiffs are not the parties to the said registered partition deed and no consent has been obtained and since the partition deed is executed behind their back, it is null, void and not binding on their share and in this regard Mutation Entry No. 6489 came to be certified and also no notice was served upon them while certifying the said mutation entry. Like this way, the defendant No.1 who got entered his name in respect of Sy.No.296/10 measuring 1-14-00 in revenue records as per the alleged partition and mutation entry, it can be seen that defendant No.1 has converted an area of 0-5-0 out of total area of 1-14-0 into non-agricultural land and in this regard, M.R.NO.T9/2020-21 came to be certified as per the order of NA and it is entered in the revenue records in respect of the huge loan raised by defendant No.1 from various financial institutions though there was no any family necessity.

4. It is further stated that item No.1 and 2 of the suit properties are standing in the name of defendant No.1 as on today and item No.3 of the suit property is standing in the name of defendant No.2 who is alleged to have been purchased the said property. But no intimation was given to the plaintiffs and neither their consent was obtained while purchasing the said property and the said sale was not for family necessity, as such it is not binding on their share. Though the item No.1 to 3 are standing in the name of defendant No.1 and 2 respectively, but the suit properties are family properties of the plaintiffs and defendant No.1 in which they have 1/4th share and item No.4 to 6 of the suit properties are still standing in the name of their parents Subraya and Shanti and no partition has been effected among them. They have requested the defendant No.1 several times to get their names mutated through varasa but of no avail and defendant No.1 came on prolonging by stating to mutate the names after deducting the names of their parents and recently, the plaintiffs came to know the fraud played by the defendant No.1. Though the plaintiffs have 1/4th share in the suit schedule properties but the defendant No.1 and 2 with an intention to defeat their legitimate share are planning to alienate the item No.1 and 2 of the suit properties and already charge has been created on the suit properties and it came the knowledge of the plaintiffs that defendant is attempting to create more charge over the suit properties. If they succeeds in doing so, then the plaintiffs would be put into hardship and there is a prima facie case in favour of the plaintiffs. Therefore, prays to grant temporary injunction as prayed for.

- 5.** Per contra, the defendant No.2 has filed the written statement contending that that moolgeni rights of the item No.3 of the suit property was acquired by deceased Subray Devanna Nayak by virtue of registered Gift deed dated 26/05/1948 and thereafter, Land Tribunal has granted malki rights to deceased Subray Nayak and Shanti Nayak and during their life time, they have sold the said property to this defendant by virtue of registered sale deed dated 26/04/1999 for valuable consideration of Rs.35,000/- and on the basis of the said sale deed, defendant No.2 became the absolute owner and in possession of the said property and the said property is not inherited by the plaintiffs and the said property is not the family property of plaintiffs and defendant No.1 and the said property being self acquired property of deceased Subray and Shanti has sold the property to this defendant to meet the family necessity and the plaintiffs have no right or share over the said property and the plaintiffs have filed this suit only to harass this defendant.
- 6.** On the other hand, defendant No.1 has filed the written statement contending that the suit properties were in cultivation of maternal family members of deceased Devamma and the said Devamma acquired the properties from her maternal home and though deceased Devamma and her maternal family members were cultivating the properties, but R.C Prabhu and others were the owners of the said properties, as such the said Devamma or her family members were not the owners of the said properties. It is denied that the suit properties are family properties of plaintiffs and defendant No.1 and it is also denied that there was

no partition among the plaintiffs and defendant No.1. It is contended that partition was effected on 21/01/1998 during the lifetime of their parents and in this regard, partition deed was prepared and it has been registered before the Sub-Registrar office, Karwar and the plaintiffs are well within the knowledge of the said partition deed and they have not objected for the same nor they preferred any appeal challenging the said partition deed. After the demise of deceased Devamma, her son Subray continued to cultivate the properties and in the year 1976, deceased Subraya has filed an application before the Land Tribunal in his individual capacity and after due enquiry, the Land Tribunal by allowing the said application conferred with occupancy rights, as such the suit properties are self acquired properties of deceased Subray and not the family/ancestral properties. The deceased Subray, his wife Shanti and defendant No.1 effected the partition which came to be registered before the Karwar Sub-Registrar Office and Sy.No.296/10 was fallen to the share of defendant No.1 for which no one has objected.

- 7.** It is further contended that the names of deceased Subray and Shanti was entered in revenue records and said Shanti, mother of plaintiffs and defendant No.1 died in 2011, afterwhich the name of deceased Subray continued in revenue records. Being this the case, the deceased Subray Nayak executed registered Willnama on 21/01/2016 and the said Subray died on 17/03/2018 and on the basis of the said registered Willnama, the name of his grandson Ashwat Devanna Nayak came to be entered. The suit properties are self acquired properties of

deceased Subray and during his life time, he has given the share to defendant No.1 as per partition deed and executed Willnama in favour of his grandson in respect of remaining properties, as such the plaintiffs are not having any right/share over the suit properties. It is further contended that the suit properties were barren lands and the defendant No.1 has developed the said lands by investing his money by growing arecanut, coconut etc. It is also contended that some of the properties were acquired and the defendant No.1 had given sum of Rs.20,000/- to plaintiff No.1 in a compensation amount of Rs.30,000/- received by him and he has given Rs.10,000/- to plaintiff No.2 with love, besides he has also given Rs.10,000/- for the marriage of daughter of plaintiff No.2 and forgetting all this, the plaintiffs have filed the false suit. It is denied that the plaintiffs have 1/4th share over the suit properties.

- 8.** Heard learned counsel for the plaintiffs. No arguments came to be addressed on behalf of defendants.
- 9.** Upon hearing arguments and on perusal of material placed on record, the following points arise for consideration:
 1. Whether plaintiffs have established prima facie case?
 2. Whether balance of convenience tilts in favour of plaintiffs?
 3. Whether irreparable loss or injury will be caused to the plaintiffs, if the injunction is not granted?
 4. What order?

10. My answers to the above points are as under:

Point NO.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Affirmative..

Point NO.4: As per the final order, for the following:

REASONS

11. POINT NO.1 to 3: Admittedly, the suit has been instituted by the plaintiffs seeking the relief of partition of their 1/4th share each in suit schedule properties. It is the case of the plaintiff that the suit properties original belonged to deceased Devamma, grandmother of plaintiffs and defendant No.1 and after her demise the name of her son Subray Nayak, father of plaintiffs and defendant No.1 came to be entered in respect of the suit properties on behalf of the family. No partition has been effected by metes and bounds as on today and the alleged registered partition deed said to have been executed between their parents and defendant No.1 behind their back is null, void and not binding on their share and the suit properties being family properties of plaintiffs and defendant No.1, plaintiffs are having 1/4th share over the said properties.

12. Per contra, the defendant No.1 has contended that the suit properties were acquired by deceased Devamma from her maternal home and after her demise, her son Subraya has filed an application before the Land Tribunal in his individual capacity and after due enquiry, the land Tribunal has conferred occupancy rights in favour of deceased Subraya and during the

life time of their father and mother, partition was effected which came to be registered and Sy.No.296/10 was fallen to the share of defendant No.1 and deceased Subraya executed Willnama in favour of his grandson Ashwat in respect of remaining properties and the plaintiffs have no right over the suit schedule properties.

- 13.** On the other hand, defendant No.2 contends that he is the owner and in possession of item No.3 of the suit property having been purchased from deceased Subraya Nayak for valuable consideration and he and his wife Shanti sold the said property to meet the family necessity, as such the plaintiffs have no right over the said property since it was the self acquired property of deceased Subraya who acquired tenancy rights through registered gift, afterwhich Land Tribunal granted the said property in favour of deceased Subraya and Shanti.
- 14.** At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.
- 15.** The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated.

In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

- 16.** The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

17. This Court has carefully perused the materials on record in order to ascertain whether the Plaintiffs have made out prima facie case for grant of temporary injunction as sought for. Admittedly, there is no dispute in respect of the relationship of the parties. It is also not in dispute that defendant No.2 is the purchaser of the item No.3 of the suit property. This Court has carefully perused the list of documents produced by the Plaintiff. The list of documents of the Plaintiff consists of Record of Rights and Mutation Entries in respect of suit schedule proeprties. The case of the plaintiffs is that the suit property originally belonged to their grandmother Devamma and after her demise, the name of their father Subraya came to be effected as per varasa entry. In this regard, on perusal of Mutation Netry No.2572 dated 12/06/1948, the name of Devamma can be seen in respect of suit property bearing Sy.No.296/10. On perusal of the old Record of Rights in respect of the said property from the year 1952 to 1982, the name of Devamma is forthcoming in kabjedar column as Moolgenidar and after her demise, the name of her son Subraya came to be entered in respect of the said proeprty as per Mutation Entry No. 3633 dated 26/04/1964 which is a varasa wherein he became a tenant of the said proeprty. Record of Rights for the year 2022-23 pertaining to item No.1 and 2 are standing in the name of the defendant No.1, item No.3 is standing in the name of defendant No.2 and record of rights in respect of remaining suit properties that is item No.4 to 6 depicts the names of Subraya Nayak and Shanti Nayak, parents of plaintiffs and defendant No.1 which prima facie signifies that

the suit properties are joint family properties of plaintiffs and defendant No.1.

- 18.** The aforesaid documents produced by the plaintiffs corroborates the averments of the plaint. However, the defendant No.1 has contended that there was a partition during the life time of their parents Subraya and Shanti and the suit property bearing Sy.No.296/10 was fallen to the share of defendant No.1. When the defendant No.1 has taken a plea of prior partition, then the said plea itself signifies that the suit properties are joint family properties of plaintiffs and defendant No.1 and the burden lies on the party who raises the plea of prior partition. However, at this stage, the defendant No.1 has not produced an iota of document much to say a registered partition deed to show prima facie that partition was effected among them. However, on perusal of Mutation Entry No. 6489 dated 11/02/1998, it appears that the said entry came to be certified based on alleged partition said to have been effected between defendant No.1 and his parents Subraya and Shanti and on the basis of the said mutation entry, the name of defendant No.1 came to be entered in record of rights in respect of item No.1 and 2 of the suit properties. It is well settled law that the mutation entries neither create nor extinguish any title or interest over the property and the same are made only for the fiscal purpose of recovering the revenue and do not constitute a document of which title is created or has been conferred. Mutation entries are not the conclusive proof of the partition and partition cannot be presumed on mere strength of mutation entries. It can also be

given a consideration to the fact that the plaintiffs are not the parties to the said partition nor their signatures are forthcoming. However, the question whether there was prior partition or not and whether the Land Tribunal has conferred occupancy rights in favour of deceased Subraya in his individual capacity are the matter of the trial which requires complete adjudication and at this stage only prima facie case has to be looked into. Also the defendant No.1 has contended that deceased Subraya Nayak has executed a Will in favour of his grandson Ashwat in respect of remaining properties but as observed above, he has not placed on record any of the documents to prove the same nor he produced any Will deed said to have been executed by deceased Subraya. On the other hand, the defendant No.2 has contended that he is absolute owner and in possession of item No.3 of the suit property having been purchased from Subraya but it is settled position of law that the purchaser has no say in a suit for partition and vendor steps into the shoes of vendee and he is entitled for the share of vendee only.

- 19.** On perusal of the documents including record of rights in respect of item No.4 to 6 of the suit schedule properties which depicts the names of Subraya and Shanti, it prima facie shows that the suit properties are joint family properties in which the interest of the plaintiffs is also included and the plaintiffs can seek an injunction in order to prevent violation of his rights over the suit properties. Prima facie case cannot be equated with prima facie title. Prima facie case is a triable issue. At this juncture, Court is not expected to hold a mini trial. At this juncture, the plaintiffs have made out a triable issue.

- 20.** It is also trite that, main intention of granting temporary injunction is to maintain the status quo of things as it is till conclusion of the trial. If the parties are permitted to alienate or create charge over the suit properties, it will lead to multiplicity of proceedings.
- 21.** The core question to be determined in the present suit is “Whether the plaintiffs are entitled for 1/4th share in the suit properties”. Unless this question is determined, the suit properties are required to be kept intact without affecting it. To maintain status quo, it is just and necessary to grant temporary injunction. If the defendant No.1 and 2 alienates, mortgages or creates a charge over the suit properties, it will certainly much hardship to the plaintiffs to implead the subsequent purchasers also as one of the parties to the suit, on the other hand it will cause hardship to the subsequent purchasers also which may lead to multiplicity of proceedings. And also defendants have not taken undertaking for not transferring the suit properties. As such I can safely hold that the plaintiffs have made out an arguable case.
- 22.** At this juncture, the affidavit of the plaintiffs, coupled with documentary evidence placed on record, the plaintiffs have established a triable issue i.e. Prima Facie case. If the injunction is not granted and the defendants are able to transfer the suit properties in any manner, the hardship will be caused to the plaintiffs. Balance of convenience also tilts in favour of plaintiffs. Hence considering over all circumstances of the case, Points No.1 to 3 is answered in the **Affirmative**.

23. Point NO.4: For the foregoing reasons, this Court proceeds to pass the following:

ORDER

Interim Application No. I filed by the plaintiffs U/O XXXIX Rules 1 and 2 R/W 151 of the Code of Civil Procedure, 1908 is hereby allowed.

The defendants or anybody acting on their behalf are hereby restrained from transferring, alienating, mortgaging or creating a charge over the suit schedule properties in any manner till the disposal of this suit.

Note : Any observations/findings made in this order is confined only to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations of this order during the course of trial or for any other purposes.

(Prepared and typed by myself, then corrected by me and printed through stenographer, then pronounced in the open court on this the 21st day of October 2024)

(Arpitha B Bellad)
Addl. Civil Judge, Ankola.

(Order Pronounced by in the open court vide separate order)

ORDER

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Addl. Civil Judge, Ankola.

