

**IN THE COURT OF THE SENIOR CIVIL JUDGE AT:
ANKOLA**

Dated this the 21st day of March 2023

PRESENT:

Sri. Manohara M.

LL.M.

Senior Civil Judge, Ankola.

ORIGINAL SUIT No.1/2023

Plaintiffs: 1. Smt. Seetabai Kom Ramachandra Naik and Ors.

-Vs-

Defendants: U.F.M Dayanand Krishna Naik
Aged 68 years, Occ: Rtd. Contractor &
Agriculturist, R/o: Matakariwada, Aversa,
Pin: 581316, Ankola.

I.A.No.I

APPLICANTS: 1. Smt. Seetabai Kom Ramachandra Naik
and Ors.

V/s

RESPONDENT: U.F.M Dayanand Krishna Naik
Aged 68 years, Occ: Rtd. Contractor &
Agriculturist, R/o: Matakariwada, Aversa,
Pin: 581316, Ankola.

ORDER ON IA NO.I

The plaintiff filed this application under Order XXXIX
Rule 1 and 2 R/W Section 151 of CPC to restrain defendant

No.1 or his agents from alienating and mortgaging the suit B schedule properties during the pendency of this suit.

2. In support of this application, the plaintiff No.2 has sworn to an affidavit stating that the plaintiff No.1 is his mother, and the plaintiff Nos.3 to 6 are his brothers and sisters, and his father is Ramachandra Purushottam Naik. His grandfather namely Purushottam has got two brothers namely Krishna and Vasudev. In this suit, the legal heirs of children of his grand-father Purushottam namely deceased Satu, deceased Peeru and deceased Gopu and the legal heirs of said Krishna and Vasudev are also shown as defendants. The joint family properties viz., Sy.No.58/1 measuring 1-18-0, Sy.No.58/2 measuring 1-15-0 and Sy.No.158 measuring 0-17-0 of Sakalabena village and present Sy.No.58/1 measuring 0-29-0, Sy.No.58/2 measuring 0-12-0 and Sy.No.58/5 measuring 0-26-0 were entered in the name of defendant NO.1 and continued his name. The defendant No.1 sold his share property already and also sold the property of defendant Nos.2 to 5 measuring 0-9-0. Now the defendant No.1 is trying to alienate their share property. His grand-father Purushottam has got 1/3rd share in land property situating at Sakalabena village i.e., B schedule property i.e., 0-37-0. The said properties revenue records are

standing in the name of defendant No.1. On the basis of said revenue entries, he is trying to alienate the said property for illegal gain. Though he stated that he would give share, he also got prepared 11E sketch for their share extent 0-37-0 and postponed the same, and he is now trying to alienate the same to third parties. If he succeeded, they would not get their share. On 04/01/2013 they demanded for partition. But he has not given correct answer, and he is trying to alienate the same, and the chance of their property would be gone to some other persons. Hence, restraining of alienation is very much necessary. If it is not restrained, there is chance of multiplicity of proceeding, and thereby, they will put to irreparable loss which cannot be compensated by means of money. The suit schedule properties are their ancestral properties. Hence, this application is filed.

3. The defendant No.1 filed objection denying the averments made in the affidavit except that the plaintiff No.1 is the mother of plaintiff No.2, and plaintiff Nos.3 to 6 are his sisters and brothers, and Ramachandra Purushottam Naik is his father, and Krishna and Vasudev are also the brother of of his grand-father namely Purushottam, and the legal heirs of sons of said Purushottam namely deceased Satu, deceased Peeru and deceased Gopu and legal heirs of said Krishna and

Vasudev are also shown as defendants. It is further averred that the said Purushottam has also got Dummi, Nuna and Santamma and one sister, and the said Krishna and Vasudev are not only the brothers of said Purushottam. The land in Sy.No.58/1, Sy.No.58/2 and Sy.No.158 of Sakalabena village are the self acquired properties of defendant No.1. The father of defendant No.1 Krishna Ajjanna Naik was the tenant of Sy.No.58/1 and Sy.No.58/2 in the year 1948 as per Mumbai Tenancy Act, and was personally cultivating the same, and hence, they were self tenancy lands of Krishna Ajjanna Naik. The Sy.No.158 of Sakalabena village was also acquired by said Krishna Ajjanna Naik as per Mumbai Tenancy Act which was his self tenancy land. In the said three properties, the ancestor of plaintiff and defendant Nos.2 to 9 i.e., Purushottam Ajjanna Naik, Vasudev Ajjanna Naik and Ajjanna Khemu Naik have got no right, title or possession. The said Sy.No.58/1, Sy.No.58/2 and Sy.No.158 were cultivated by said Krishna Ajjanna Naik prior to 01/03/1974. After his death, the mother of defendant No.1 namely Janaki W/o Krishna Naik filed Form-7A in her 85 years age as per Karnataka Land Reforms Act to District Commissioner, Uttar Kannada, Karwar, and it is numbered as LRM: 7A : SAKALABENA : CR:16 dated 19/01/2000 in the office of Assistant Commissioner, Kumta and granted the said lands in the

name of his mother Janaki W/o Krishna Naik. After her death, her children i.e., defendant No.1, Leela D/o Krishna Naik, Kusuma D/o Krishna Naik are only the having right. The plaintiffs have no right and interest. The said properties are not the joint family properties. The sold properties by defendant No.1 are not the properties of defendant Nos.2 to 5. The said properties are not the ancestral properties. If plaintiffs and defendant Nos.2 to 9 have got any objection, they should have filed appeal before appellate tribunal against the order of Land-tribunal. They cannot file suit for partition stating as a ancestral properties for the self acquired properties of defendant No.1. Hence, it is prayed to dismiss the application.

4. Having heard both side and having perused the plaint, IA No.I, WS and other materials following points arise for consideration.

1. Whether the plaintiffs made out prima facie case?

2. Whether the plaintiffs made out balance of convenience in his favour?

3. Whether the plaintiffs are put to irreparable loss and injury which cannot be compensated in terms of money

if the temporary injunction is not granted?

4. What order?

5. My answer 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

6. Point No.1: There is no dispute that the plaintiff No.1 is the mother of plaintiff No.2, and plaintiff Nos.3 to 6 are his sisters and brothers, and Ramachandra Purushottam Naik is his father, and Krishna and Vasudev are also the brothers of his grand-father namely Purushottam, and the legal heirs of sons of said Purushottam namely deceased Satu, deceased Peeru and deceased Gopu and legal heirs of said Krishna and Vasudev are shown as defendants.

7. It is the case of plaintiffs that the Sy.No.58/1 measuring 1-18-0, Sy.No.58/2 measuring 1-15-0 and Sy.No.158 measuring 0-17-0 of Sakalabena village are joint family properties, and presently Sy.No.58/1 measuring 0-29-0, Sy.No.58/2 measuring 0-12-0 and Sy.No.58/5 measuring 0-26-0 were entered in the name of defendant No.1 and continued his name. The defendant No.1 sold his share property already and also sold the property of

defendant Nos.2 to 5 measuring 0-9-0. Now the defendant No.1 is trying to alienate their share property. His grandfather Purushottam has got 1/3rd share in land properties situating at Sakalabena village i.e., B schedule properties i.e., 0-37-0. On the basis of entries in his name in respect of properties, the defendant No.1 is trying to alienate the said properties for illegal gain. Though he stated that he would give share, he postponed the same and also got prepared 11E sketch for their share extent 0-37-0, and he is now trying to alienate the same to third parties.

8. It is the case of defendant No.1 that the said Purushottama had four brothers and one sister i.e., his father namely Krishna, Vasudev, Dummi, Nuna and Santamma. The land in Sy.No.58/1, Sy.No.58/2 and Sy.No.158 of Sakalabena village are the self acquired properties of defendant No.1. The father of defendant No.1 Krishna Ajjanna Naik was the tenant of Sy.No.58/1 and Sy.No.58/2 in the year 1948 as per Mumbai Tenancy Act and was, personally, cultivating the same, and hence, they are self tenancy lands of Krishna Ajjanna Naik. The Sy.No.158 of Sakalabena village was also acquired by said Krishna Ajjanna Naik as per Mumbai Tenancy Act which was his self tenancy land. In the said three properties, the ancestor of plaintiff and defendant Nos.2 to 9 i.e., Purushottam Ajjanna Naik, Vasudev Ajjanna Naik and Ajjanna Khemu Naik have got no right, title or possession.

The said Sy.No.58/1, Sy.No.58/2 and Sy.No.158 were cultivated by said Krishna Ajjanna Naik prior to 01/03/1974. After his death, the mother of defendant No.1 namely Janaki W/o Krishna Naik filed Form-7A in her 85 years age as per Karnataka Land Reforms Act to District Commissioner, Uttar Kannada, Karwar, and it is numbered as LRM : 7A : SAKALABENA: CR:16 dated 19/01/2000 in the office of Assistant Commissioner, Kumta and granted the said lands in the name of his mother Janaki W/o Krishna Naik. After her death, her children i.e., defendant No.1, Leela D/o Krishna Naik, Kusuma D/o Krishna Naik are only the having right. The said properties are not the joint family properties. The said properties are not the ancestral properties. If plaintiffs and defendant Nos.2 to 9 have got any objection, they should have filed appeal before appellate tribunal against the order of Land-tribunal.

9. In this way, the plaintiffs asserted that the suit B schedule properties are the joint family properties of them and defendants, and their grand-father Purushottam has got 1/3rd share in the said properties, and hence, they, being his legal heirs, are also entitled for 1/4th share in the suit B schedule properties. Whereas the defendant NO.1 asserted that the suit B schedule properties are the self tenanted lands of his father Krishna Ajjanna Naik, and after his death, his mother filed application under form-7A

to grant the said lands before District Commissioner Uttar Kannada Karwar, and Assistant Commissioner Kumta in LRM7A:SAKALABENA:CR:16 dated 19/01/2000 granted the said lands in the name of his mother Janaki Kom Krishna Naik, and hence, the said properties are his self acquired properties.

10. The plaintiff produced RTC extract of suit B schedule properties for the year 2021-22 standing in the name of defendant No.1 as per MR No.45/2004-05. The plaintiff also produced certified copy of land records in Sy.No.55/1 and Sy.No.58/2 from 1939-40 which show the name of Ajjanna S/o Khemu Naik. The defendant No.1 also produced RTC extract showing his name and also the name of Krishna Ajjanna Naik in respect of Sy.No.158 and application and grant certificate showing the grant of suit B schedule properties in the name of Janaki Kom Krishna Naik. Moreover, the copy of Form-7A shows the rounding of name of Krishna Ajjanna Naik and mentioning of name of Smt. Janaki Kom Krishna Naik and the grant order says the mentioning of name of husband of said Janaki in column No.12 for the year 1973-74 in records of rights. The above said records of rights in respect of item No.1 and 2 of B schedule properties show the name of Ajjanna S/o Khumu as tenant, earlier and subsequently the name of Krishna Ajjanna. There is no dispute that the Purushottama, Krishna and Vasudev are the children of said Ajjanna.

11. The arguments of learned counsel for defendant No.1 is that the lands are granted under Mumbai Tenancy Act, and hence, the said lands are not be joint family properties and ancestral properties, and they are the self acquired tenanted lands, and it is granted in the name of mother of defendant No.1 in individual capacity, and the mutation entry does not say undivided joint family properties, and the said properties are not derived from Ajjanna, and they are acquired by defendant No.1 from the name of his mother.

12. The prima facie case is a case which is not frivolous or vexatious, but it involves serious questions to be investigated. Whether the suit B schedule properties are ancestral and joint family properties of plaintiffs and defendants or the absolute properties of defendant No.1 and showing of name of Ajjanna in records of rights for the year 1939-40 in respect of item No.1 and 2 of B schedule properties establishes the nature of properties as ancestral properties, are serious question to be investigated in this case. Till deciding of the said serious question the suit B schedule properties are to be preserved intact for the benefit of both the parties. Consequently, I answer this point in the affirmative.

13. POINT NO.2 & 3:- These points are inter related. Hence, they are taken-up together for my discussion. As the plaintiff in his affidavit stated that on the basis of entries in his name in respect of properties, the defendant No.1 is

trying to alienate the said properties for illegal gain; though he stated that he would give share, he postponed the same and also got prepared 11E sketch for their share extent 0-37-0, and he is now trying to alienate the same to third parties; if he succeeded, they would not get their share; on 04/01/2013 they demanded for partition of the property situating at Sakalabena village, and but he has not given correct answer; hence, restraining of alienation is very much necessary.

14. The threat of alienation of suit schedule B properties by way of sale will certainly create third party right in the suit B schedule properties. Thereby the suit B schedule properties will not be kept intact for the benefit of the parties to this suit. If the right of alienation by way of sale is restrained, the right of alienation will only be postponed till disposal of this case. The very right will not be restrained permanently. If the defendant No.1 succeeded in this case, he will certainly exercise the said right. If the defendant No.1 succeeded in his attempt of alienation and the plaintiffs succeeded to establish their right in the suit B schedule properties, certainly plaintiffs will be put irreparable loss and injury which cannot be compensated in terms of money as the right of getting share and enjoying the properties are their statutory right. Therefore, the comparative hardship is more to plaintiffs than defendant No.1 if the injunction is denied. Under these circumstances,

I am of the considered opinion that the balance of convenience lies in favour of plaintiffs and the plaintiffs will be put to more hardship and injury if the injunction is denied. Consequently, I answer point NO.2 and 3 in the affirmative.

15. Point No.4: In view of my reasons on Point No.1 to 3, I proceed to pass the following:

ORDER

**I.A No.I filed under Order
XXXIX Rule 1 and 2 R/w
Sec.151 of CPC is hereby
allowed as under:**

**The defendant No.1 is
restrained from alienating the
suit B schedule properties by
way of temporary injunction
till disposal of this suit.**

(Dictated to the Stenographer, transcribed by him, transcription corrected by me and then pronounced in the open court on 21st March 2023)

(Manohara M.)
Senior Civil Judge, Ankola