

**IN THE COURT OF PRL.CIVIL JUDGE, BHATKAL**

**AT: BHATKAL**

**Present:**

**Sri. Krishnaraj. K**

**B.A., LL.B.,**

**Prl. Civil Judge, Bhatkal**

**O.S.No.111/2017**

**Dated this the 17<sup>th</sup> day of December 2018**

1. Sri. Kuppa S/o Narayana Naik

**...Plaintiff**

**-Versus-**

1. Sri. Venkatramana S/o Balindra Naik  
and Others

**... Defendants**

**I.A.No.II & V**

1. Sri. Kuppa S/o Narayana Naik

**...Plaintiff/  
Applicant**

**-Versus-**

1. Sri. Venkatramana S/o Balindra Naik  
and Others

**...Defendants/  
Opponent**

(By - Sri. **S.M.N.**, Advocate for Plaintiff)

(By - Sri. **R.I.N.**, Advocate for Defendant No.22 to 25)

(By - Sri. **R.N.N.**, Advocate for Defendant No.30 & 31)

(By - Sri. **M.L.N.**, Advocate for Defendant No.41)

(By - Sri. **N.M.N.**, Advocate for Defendant No.62 (a))

**ORDER ON I.A.NO.II & V**

I.A.No.II is filed by the plaintiff under **Order 39 Rules 1 & 2 of the Code of Civil Procedure** seeking temporary injunction against the defendants from alienating or creating any kind of charge over the suit property till disposal of the suit.

2. I.A.No.V is filed by the defendant No.62 (a) under **Order 39 Rule 3 r/w Sec.151 of the Code of Civil Procedure** to vacate the exparte temporary injunction granted in favour of the plaintiff.

3. The plaintiff has filed suit for partition and separate possession in respect of the suit properties bearing Sy.No.454/2 measuring 0-12-0, Sy.No.456 measuring 0-13-0, Sy.No.473/3 measuring 0-1-14, Sy.No.473/5 measuring 0-0-8, Sy.No.481/6A measuring 0-14-0, Sy.No.489/1B measuring 0-17-0, Sy.No.508 measuring 1-9-0 out of it 0-29-0, Sy.No.511/3 measuring 0-38-0, Sy.No.647A measuring 0-7-8, Sy.No.647B measuring 0-13-0, Sy.No.647K/2 measuring 0-2-8 and Sy.No.647D measuring 1-36-0 of Bailuru village of Bhatkal Taluk. Originally the suit property was under cultivation of the grandmother of the plaintiff by name Honnamma w/o Gidda Naik. The grandmother of the plaintiff died leaving behind her 4 daughters i.e., 1. Honnamma Narayan Naik, 2. Nagamma Durga Naik, 3. Durgamma Balindra Naik and 4. Goida Kuppi Naik. After coming into course of the Karnataka Land Reforms Act Durgamma Balindra Naik has filed Form No.7 before the Land Tribunal. The Land Tribunal under proceedings LRM No.21/37 dated

14-12-1976 grant the suit properties in the name of Durgamma Balindra Naik on behalf of the entire family. The plaintiff is the legal heir of her mother - Honnamma Narayana Naik. The defendant No.1 to 3 are the legal heirs of Durgamma Balindra Naik. The defendant No.4 to 8 are the legal heirs of Nagamma Durga Naik. The defendant No.9 to 19 are the legal heirs of Goida Kuppi Naik. The suit properties are the ancestral joint family properties of the plaintiff, defendant No.1 to 9 and defendant No.26 to 39. The plaintiff and defendants are in joint possession and enjoyment of the suit properties. There is no partition between the plaintiff and defendants in respect of the suit properties. Such being the case the family members of the plaintiff and defendants i.e., 1. Jatta Narayana Naik, 2. Krishna Narayana Naik, 3. Venkatramana Naryana Naik, 4. Venkatramana Balindra Naik, 5. Dharma Kuppa Naik, 6. Nagappa Kuppa Naik and Manjappa Honnaiah Naik have transferred the properties bearing Sy.No.647A measuring 0-7-8, Sy.No.647B measuring 0-13-0, Sy.No.647K/1 measuring 0-2-4, Sy.No.647K/2 measuring 0-2-4 and Sy.No.647D measuring 1-36-0 of Bailuru village in favour of defendant No.22 & 23. There is no any registered documents in respect of the above transfer. The above transfer is made in favour of the defendant No.22 & 23 on the basis of Thondi Vantani mutation entry No.9311 was effected. The defendant No.22 & 23 are no way concern with the family of the plaintiff. Therefore, Thondi vantani and mutation entry No.9311 are not binding on the plaintiff.

4. On the basis of earlier transaction under M.E.No.9311, the defendant No.21 & 22 have executed the various sale deeds in respect

of the other defendants. The defendant No.21 & 22 have executed the sale deed dated 8-9-2005 in favour of the defendant No.43 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 8-9-2005 in favour of the defendant No.45 in respect of the suit property bearing Sy.No.647D measuring 0-4-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 31-8-2005 in favour of the defendant No.44 in respect of the suit property bearing Sy.No.647D measuring 0-9-0 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 26-07-2005 in favour of the defendant No.53 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 20-10-2005 in favour of the defendant No.47 in respect of the suit property bearing Sy.No.647D measuring 0-9-0 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 29-11-2005 in favour of the defendant No.48 in respect of the suit property bearing Sy.No.647D measuring 0-3-12 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 7-10-2005 in favour of the defendant No.49 in respect of the suit property bearing Sy.No.647D measuring 0-4-8 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 7-10-2005 in favour of the defendant No.50 in respect of the suit property bearing Sy.No.647D measuring 0-4-8 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 28-03-2006 in favour of the defendant No.52 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 17-11-2006 in favour of the defendant No.46 in respect of the

suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 27-03-2008 in favour of the defendant No.51 in respect of the suit property bearing Sy.No.647D measuring 0-8-8 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 23-05-2018 in favour of the defendant No.42 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 6-6-2008 in favour of the defendant No.40 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 01-08-2007 in favour of the defendant No.41 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 10-06-2010 in favour of the defendant No.52 in respect of the suit property bearing Sy.No.647D measuring 0-4-8 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 9-7-2010 in favour of the defendant No.53 in respect of the suit property bearing Sy.No.647D measuring 0-4-8 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 8-8-2011 in favour of the defendant No.50 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 19-10-2011 in favour of the defendant No.51 in respect of the suit property bearing Sy.No.647D measuring 0-4-0 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 09-11-2011 in favour of the defendant No.56 in respect of the suit property bearing Sy.No.647D measuring 0-4-8 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 29-11-2011 in favour of the

defendant No.55 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 13-03-2012 in favour of the defendant No.54 in respect of the suit property bearing Sy.No.647D measuring 0-4-8 (A.G.A), The defendant No.21 & 22 have executed the sale deed dated 8-5-2013 in favour of the defendant No.57 in respect of the suit property bearing Sy.No.647D measuring 0-2-4 (A.G.A) and The defendant No.21 & 22 have executed the sale deeds dated 31-03-2016 in favour of the defendant No.24 & 25 in respect of the suit property bearing Sy.No.647D measuring 0-36-8 (A.G.A), Sy.No.647K1 measuring 0-7-4 (A.G.A) and Sy.No.647B measuring 0-8-0 (A.G.A). The above sale deeds executed by the defendant No.21 & 22 in favour of the other defendants are not binding on the share of the plaintiff. Therefore Mutation Entry No.9311 and subsequent sale deeds are not binding on the share of the plaintiff.

5. The defendant No.37 & 38 have filed partition suit in O.S.No.143/2014 against the defendant No.1 to 3 and defendant No.21 to 51. The said suit is pending before this Court. The plaintiff has filed an application to implead him as a party to the said suit. However, this Court has rejected the impleading application of the plaintiff. Therefore the plaintiff has filed present suit seeking partition and declaration that the muatation entry No.9311 and subsequent sale deeds are not binding on the plaintiff.

6. On the service of suit summons and I.A.Notice, the defendants have appeared and defendant No.41 and defendant No.62 (a) have filed their written statements denying the plaint averments.

The defendant No.41 in his written statement denied the entire plaint averments and contended that the suit properties are separate properties of defendant No.21 & 22 and he has purchased the suit property bearing Sy.No.647D measuring 0-2-4 from the defendant No.21 & 22 under registered sale deed dated 1-8-2007. Therefore the defendant No.41 is a bonafide purchaser for valid consideration. The defendant No.62 (a) also filed his written statement and denied the plaint averments. The defendant No.62 (a) in his written statement submitted that he has purchased the property bearing Sy.No.647K measuring 0-2-4 (A.G.A) from erstwhile owner Smt. Jaya w/o Laxminarayana Hegde. The plaintiff has not arrived vendor of the defendant as a party to the suit. Therefore suit is not maintainable. It is further contended that the defendant No.62 (a) is bonafide purchaser for valid consideration of the property bearing Sy.No.647K measuring 0-2-4 (A.G.A) of Bailuru village of Bhatkal Taluk.

7. Heard the arguments of learned counsel for the plaintiff and defendants.

8. The points arise for my consideration are as follows :-

**1. Whether the plaintiff has made out prima-facie case to grant temporary injunction as prayed in the I.A.No.II ?**

**2. Whether the defendant No.62 (a) has made out prima-facie case to vacate the temporary injunction as prayed in the I.A.No.V ?**

**3. In whose favour the balance of convenience lies ?**

**4. Who will suffer irreparable loss, if the temporary injunction is granted or refused ?**

**5. What order?**

9. My findings on the above points are as under:

- 1. In the affirmative.**
- 2. In the negative.**
- 3. In the favour of plaintiff**
- 4. Plaintiff will suffer irreparable loss if temporary injunction is not granted**
- 5. As per final order for the following:**

### **REASONS**

10. **Point No.1 to 4:** The point No.1 to 4 are taken up together in order to avoid repetition of facts.

11. The plaintiff has filed suit for partition and separate possession in respect of the suit properties situated at Bailuru village of Bhatkal Taluk. The originally the suit properties was under cultivation of grandmother of the plaintiff by name Honnamma w/o Gidda Naik. Smt. Honnamma Gidda Naik is died leaving behind her 4 daughters i.e., 1. Honnamma, 2. Nagamma, 3. Durgamma and 4. Goida Kuppi Naik. The Land Tribunal has granted the suit property in the name of Durgamma on behalf of the entire family. The plaintiff being the grand son of original propositor – Honnamma Gidda Naik is also entitle for the share in the suit property. The Land Tribunal has granted suit property in the name of Durgamma Balindra Naik as elder member of the family. Therefore subsequent Mutation Entry

No.9311 and subsequent sale deeds executed by the defendant No.21 & 22 in favour of the other defendants are not binding on the share. The defendant No.1 to 10, 26 to 79 are the members of family of the plaintiff. None of the above defendants have contended the matter, only the defendant No.41 & 62 (a) have filed their written statements and objection to the above application. The defendant No.41 & 62 (a) are subsequent purchaser of the suit property. In their written statement they have contended that they are bonifide purchasers for valid consideration and the alienation was made for legal necessities.

12. In support of the above pleadings the plaintiff has produced RTC Extract of the suit properties. The RTC Extracts of the suit properties are the standing in the name of the defendants. The property in Sy.No.647D was alienated in favour of several defendants. RTC extracts of those properties are the standing in the name of the purchaser of the respective properties. The plaintiff further produced Form No.10 and copy of Order passed in LRM.No.21/38 dated 14-12-1976. The above documents prima facie shows that the suit properties are the ancestral joint family properties of the plaintiff and other defendants. The defendant No.41 & 62 (a) in their written statements contended that the suit properties are the exclusive properties of defendant No.21 & 22. Whether the suit properties are exclusive properties of the defendant No.21 & 22 and whether defendant No.41 & 62 (a) are the bonafide purchaser for valid consideration is question of trial. Unless there is a trial on the above issues it cannot be decided at this stage. The plaintiff in the above application sought for temporary injunction restraining the

defendants from alienating the suit properties to third person. If the defendants are allowed to create third party interest in the suit property, in the event the plaintiff succeed the suit, same will result in multiplicity of proceedings. Under such circumstances the plaintiff has made out prima facie case. The contention of the defendant No.62 (a) i.e. he is a bonafide purchaser for valid consideration is a question of trial. Unless there is a trial on the above issue it is not proper to vacate the temporary injunction as prayed by defendant No.62 (a). Therefore defendant No.62 (a) is failed to make out prima facie case.

13. The plaintiff has filed for partition in respect of the joint family properties against to the defendants. Prior to the institution of the suit the defendant No.21 & 22 were already executed several sale deeds in favour of the other defendants. Under such circumstances the plaintiff has filed the suit for partition against the joint family members as well as subsequent purchasers. The defendant No.21 & 22 already created the third party interest over the suit properties by executing 23 sale deeds in favour of several defendants. If the defendants are allowed to create third party interest over the suit properties during the pendency of the suit, same will result in multiplicity of proceedings. Hence, the balance of convenience is in favour of plaintiff, plaintiff will suffer irreparable injury if temporary injunction is refused. Accordingly point No.1 answered in the affirmative, Point No.2 answered in the negative and point No.3 & 4 are answered accordingly.

14. **Point No.5:** In view of my discussion made supra, I proceed to pass the following:

**ORDER**

I.A.No.II filed by the Plaintiff under **Order 39 Rules 1 & 2 of the Code of Civil Procedure** is hereby allowed.

I.A.No.V filed by the defendant No.62 (a) under **Order 39 Rules 1 & 2 r/w 151 of the Code of Civil Procedure** is hereby rejected.

The defendants are restraining from alienating or creating any kind of charge over the suit property till final disposal of the suit.

*(Dictated to the stenographer, transcribe by him, corrected by me and then pronounced in the open court on this the 17<sup>th</sup> day of December 2018)*

**Sd/-**  
**(Krishnaraj.K)**  
**Prl. Civil Judge, Bhatkal.**

**“Order pronounced in open Court”**

**ORDER**

I.A.No.II filed by the Plaintiff under **Order 39 Rules 1 & 2 of the Code of Civil Procedure** is hereby allowed.

I.A.No.V filed by the defendant No.62 (a) under **Order 39 Rules 1 & 2 r/w 151 of the Code of Civil Procedure** is hereby rejected.

The defendants are restraining from alienating or creating any kind of charge over the suit property till final disposal of the suit.

**(Krishnaraj.K)**  
**Prl. Civil Judge, Bhatkal.**

