

ORDERS ON I.A.NO.I

Heard the learned Counsel for the plaintiffs and perused the materials on record.

2. On perusal it reveals that, the instant suit is filed by the plaintiffs seeking relief of declaration that Sale Deeds executed by defendant no.2 and defendant no.9 in respect of the suit schedule properties in favour of defendant nos.3 to 8 and defendant no.10 are illegal, null, void ab initio and not binding on their shares. In addition to it, the plaintiffs have also sought relief of declaration that the Will alleged to have been executed by Sharada Vishweshwar Bhat Gopi dated 23-12-2016 is illegal, null, void ab initio and not binding on their share in the said properties included in the said Will. Further, the plaintiffs have also sought for relief of partition and separate possession of their 1/4th share each in the suit schedule properties. The plaintiffs have produced 37 documents in support of their contention which includes RTC Extract pertaining to the suit schedule properties and the alleged Sale Deed said to have been executed in favour of defendant nos.3 to 12.

3. The materials available on record including pleadings on record reveals that, it is the specific case of the plaintiffs that the defendant no.1 is their brother and defendant no.2 was the G.P.A. holder of themselves and defendant no.1 and it is alleged that,

the defendant no.2 has illegally sold plaint 'A' and 'B' schedule properties in favour of defendant nos.3 to 11. The defendant nos.3 to 11 are the purchasers of the plaint 'A' and 'B' schedule properties from defendant no.2 and defendant no.12 is the wife of defendant no.1. It is further pleaded that, defendant no.12 claims to be the beneficiary of the alleged Will said to have been executed by Sharada Vishweshwar Bhat Gopi. According to the plaintiffs, themselves and defendant no.1 are the members of the Hindu Undivided Joint Family and the suit schedule properties are their joint family properties. It is the specific contention of the plaintiffs that, each of them are entitled for 1/4th share in the suit schedule properties.

4. The plaintiffs have filed I.A.No.III under Order 39 Rule 1 and 1 r/w Section 151 of CPC seeking an ex parte order of temporary injunction to restrain the defendant nos.3 to 8 and defendant nos.10 to 12 from alienating the suit schedule properties or creating any charge over the suit schedule properties and from effecting any changes in the records of suit "A' to 'H' schedule properties till disposal of the suit. In the affidavit annexed to I.A.No.III the plaintiff no.1 has reiterated the plaint averments and sought to allow the application. It is apprehension of the plaintiffs that, in case the prohibitory order as sought in I.A.No.III is not passed, the plaintiffs will be put to untold hardship and it may lead to multiplicity of proceedings.

5. The careful perusal of the documents and pleadings on record clearly reveals that, at this stage the plaintiffs have made out existence of prima facie case. The Court is of the opinion that if an ex parte order of temporary injunction as sought in I.A.No.III is not passed, it may lead to multiplicity of proceedings. Further, the Court is of the opinion that, if an ex parte order of temporary injunction as sought in I.A.No.III is granted at this stage, no hardship will be caused to the said defendants or any persons claiming through or under them. The plaintiffs have filed I.A.No.I under Section 151 of CPC to take the case on board and pass emergent orders and I.A.No.II is filed by the plaintiffs under Order 39 Rule 3 r/w section 151 of CPC seeking to dispense with issuance of prior notice to the defendants on I.A.No.III. Since the Court has held the view that at this stage the plaintiffs have made out prima facie case, the Court is of the opinion that issuance of prior notice to the defendants before passing I.A.No.III has to be dispensed with and accordingly, I.A.No.I and II filed by the plaintiffs is disposed off. Taking into consideration all these facts on record, the Court proceed to pass the following :-

ORDER

The defendant nos.3 to 8 and defendant nos, 10 to 12 or any persons claiming through or under them are hereby restrained from alienating the suit schedule

properties or creating any charges over the suit schedule properties and from effecting any changes in the records pertaining to the plaint 'A' to 'H' schedule properties by way of grant of an exparte order of temporary injunction.

The above nature of order shall be in force till the next date of hearing only.

The plaintiffs shall comply mandatory provisions of Order 39 Rule 3(a) of CPC.

Office is hereby directed to furnish certified copy of Order of Temporary Injunction to the plaintiffs, only if they complies the above said mandatory provisions of law.

Issue emergent suit summons and notices on I.A.No.III and copy of the order of Temporary Injunction to the defendants, if sufficient process fee is paid, returnable by 17-9-2021.

Senior Civil Judge, Kumta.