

**ORDERS ON I.A.NO.XII UNDER SECTION 151 OF C.P.C.**  
**FILED BY PLAINTIFF.**

This order arising out of an application filed by plaintiff with a prayer to direct the revenue officer/Tahashildar to enter the pendency of the suit along with interim order passed in I.A.No.II in the RTCs in the ends of justice.

2. In support of the application, sworn to an affidavit that plaint 'A' and 'B' schedule properties belonged to their joint and undivided family. The suit filed for partition of 'A' and 'B' plaint properties with reference to good and bad soil. Temporary injunction passed against defendant No.1 restraining him from alienating and creating charge over the suit schedule properties till disposal of the suit. Even the said order is in force, defendant No.1 has scheme to alienate the suit schedule properties and also trying to create third party interest over the said properties by suppressing the pendency of the suit. The application filed before the concerned Tahashildar who had given endorsement without direction of the Hon'ble Court, they unable to enter the pendency of the suit. If entry in records in respect of the pendency of the suit entered in the RTC which should be notice to all persons who

are interesting to purchase and also to avoid multiplicity of proceedings, hence it is just and necessary to direct the Tahashildar/Revenue Officer to enter the pendency of the suit and its interim order in the RTC as the Revenue Officers unable to enter without the direction of this Court. Hence, prayed to allow the application.

3. The said application has been resisted by filing objections that the application is false, frivolous, vexatious and not maintainable in law and on merits. After thought an application filed is nothing but malafide one. The application filed after the Hon'ble High Court of Karnataka passed an order in MFA No.6172/2021 dated 23-12-2021 granting interim stay of impugned order so far as plaint 'B' schedule properties till further orders and the Hon'ble High Court of Karnataka clearly observed that plaintiff has admitted execution of registered release deed dated 30-06-2007 in respect of 'B' schedule property that no declaration sought for setting aside the release deed. Therefore maintainability of the suit in respect of 'B' schedule property becomes doubtful. In the light of the above plaintiff legally barred from seeking the amendment also. So far as plaint A schedule properties 1 to

16 the Hon'ble Court modified the order permitting the defendant No.1 to let out the premises for a term not exceeding 10 months which is beneficial for both parties and he is accountable for accrued rent subject for the result of said appeal.

4. In view of pendency of the MFA and interim stay order passed on I.A.No.II in respect of B schedule properties and modification of order I.A.No.II by the Hon'ble High Court of Karnataka and since the matter is seized before the Hon'ble High Court of Karnataka and orders passed on I.A.No.II is under challenge before the Hon'ble High Court of Karnataka accordingly, this Court cannot direct Tahashildar to enter the pendency of the interim order passed on I.A.No.II in the RTCs relating to plaint schedule properties as sought by them. Any such direction sought by for enforcement of an injunction order they have to file an application seeking direction to enter the interim order in MFA before the Hon'ble High Court of Karnataka hence, the application not maintainable since the alleged right over the schedule properties are yet to be decided in the trial hence, prayed for dismissal of the application with exemplary cost.

5. Heard on both side.
6. The points that arise for my determination are as under:
  1. Is there any sufficient grounds to direct the Revenue Officer/Tahashildar to enter the entries in the RTC as prayed?
  2. What order?
7. My findings on the above points are as under:

Point No.1: In the negative.

Point No.2: As per final order

For the following:

**REASONS**

**8. Point No.1:** It is not in dispute that the suit filed for partition. The dispute is that according to plaintiff the properties are not joint family properties, but his self acquired properties and it is the contention of defendant No.1 that item No.1 and 2 of 'A' schedule properties have been though jointly purchased in the name of himself and defendant No.2 and plaintiff jointly, but plaintiff and defendant No.2 have executed release deed on 07-03-2017 by virtue of General Power of Attorney executed on 19-03-2013 accordingly neither the plaintiff and defendant No.2 have no right to question the alleged release deed.

9. So far as item No.3 of the 'A' schedule property is concerned which is purchased out of his own self earnings and he settled the property by executing a registered settlement deed in the name of his wife and is not at all being the owner of item No.3 of the property, accordingly by virtue of settlement deed dated 28-11-2016 his wife is in possession and enjoyment of the property by mutating khata in her name and also by availing loan and the loan in respect of item No.1 and 2 of 'A' schedule properties and item No.3 now subsisting.

10. According to plaintiff the suit schedule properties are purchased out of joint family funds. The dispute in the present suit is in respect of acquisition of properties are concerned and the crux is whether the suit schedule properties are self acquired or joint family properties, in the existence of release deed. By considering the contention of the parties the observations already made by this Court by allowing I.A.No.II restraining defendant No.1 from alienating the suit schedule properties and so far as orders on I.A.No.II is concerned it was before the Hon'ble High Court of Karnataka, wherein the Hon'ble High Court of Karnataka has made observation with

regard to maintainability of the suit with regard to 'B' schedule property and so far as item No.1 to 16 of 'A' schedule modified the order permitting the defendant No.1 to let out premises for terms not exceeding 10 months which is beneficial for both parties i.e., accountable for accrued rent subject to result of the appeal and in view of the pendency of the MFA before the Hon'ble High Court of Karnataka, wherein interim stay granted on I.A.No.II and no doubt the matter seized before the Hon'ble High Court of Karnataka and the orders of this Court no doubt is under challenge accordingly, during pendency of the MFA and in the existence of stay granted by the Hon'ble High Court of Karnataka directing the Tahashildar to enter the interim orders passed in the RTC in respect of suit schedule properties not holds good moreover, the present suit is for partition the parties appear having knowledge with regard to the orders passed by this Court that too restraining the defendant No.1 from alienating the property and having knowledge of their case, such being the thing, the plaintiff need not fear or if at all any transaction taken place definitely the principle of Transfer of Property Act with regard to lispendente lite attracts. Accordingly there are no sufficient grounds to allow the application. Hence **I answer point No. 1 in the negative.**

**ORDER**

Application filed by plaintiff i.e., I.A.No.XII Under Section 151 of C.P.C.,with a prayer to direct the Tahashildar to enter the interim order passed on I.A.No.II in the RTC is hereby rejected.

Cost will follow the result of the suit.

**(Smt. Shakunthala S.)**  
Prl. Sr. Civil Judge and CJM.,  
Udupi.

Call on 15-07-2022.