

IN THE COURT OF THE SENIOR CIVIL JUDGE, AT KUDLIGI.

Present: Sri B.S. HONNASWAMY, B.A., LL.M.,
Senior Civil Judge & JMFC, Kudligi.

DATED THIS THE 19TH DAY OF JUNE, 2015.

O.S. NO: 47/2015

PLAINTIFF:-

N.K.Rudramuni, S/o. Late Bheemappa, aged: 68 years, R/o. Kanahosahalli village, Kudligi Taluk, Bellary District.

(By Sri: S.K.G.K., Advocate).

//VS//

DEFENDANTS:-

- 1) K.B.Thippeswamy, S/o. Late Bheemappa, aged: 78 years, R/o. Kanahosahalli village, Kudligi Taluk, Bellary District.
- 2) Smt.Gangamma, W/o. Late Thipperudrappa, aged: 63 years, R/o. Kanahosahalli village, Kudligi Taluk, Bellary District.
- 3) N.Thippa Shetty, S/o. Late Bheemappa, aged: 65 years, R/o. Kanahosahalli village, Kudligi Taluk, Bellary District.
- 4) Smt.K.B.Hemalatha, W/o. C.Nagaraj, aged: 32 years, R/o. # 692/F-7, 'Amma Nilaya', Behind DCM School, Kottureshwara Extension, Davanagere.
- 5) Smt.Mahalaxmi, W/o. Sudheer Kumar M.Benki, aged: 24 years, R/o. # 156/A, 4th Ward, Hosahalli village, Kudligi Taluk, Bellary District.

(By Sri: S.M., Advocate for D-1, Sri.H.S.V., Advocate for D-3 to 5 and D-2 - Exparte).

ORDERS ON I.A.NO: 4

The plaintiff has filed I.A.No.4 U/o.39 Rule-1 and 2 of CPC, praying this court to restrain the defendant Nos.4 and 5 or anybody claiming under them from interfering with his peaceful possession and enjoyment of suit 'B' schedule item No.9 property (infra schedule property) and thereby evicting this plaintiff from the said property in any manner by any means by way of ad-interim order of injunction till disposal of the above case.

SCHEDULE

A property being is # 101, 156/1 to 8, 158, 187 comprising of site and structure total measuring 105.68 Sq. meter, situated at Hosahalli village, Kudligi Taluk, Bellary District bonded as hereunder:

East : Jagalore Road

West : Property of Gangamma

North: Property of Mukkanna

South: Property of Siddanagowda

2. In the affidavit, the plaintiff has submitted that, one Bheemappa is their propositus. He is no more now. He had a wife by name Smt.Lakshamma and as on this day she is also no more. Bheemappa died on 5.5.1995. Smt.Lakshamma passed away in

the year 2013. Himself, defendant Nos.1, 3 and one Thipperudrappa are the sons of said Bheemappa and Lakshamma. Among them, Thipperudrappa is no more as on this day and he passed away on 29.9.2014. The defendant No.2 herein being the wife of said Thipperudrappa representing his branch. She further submitted that, propositus Bheemappa basically a weaver and he inherited the said occupation from his forefathers as basically they belong to Neekara community. As on those days the family of Bheemappa owned three weaving instruments, those are popularly called as Maggas. When the days lapsed, himself, defendant No.1 and husband of defendant No.2 were also joined their hands with their Bheemappa in weaving the cloths and marketing them around the village by carrying them on their head.

3. He further submitted that, fortunately the said business/occupation carrying out by their fetched very good income as on those days. Out of said business their family has acquired a vacant property in Kanahosahalli village way back in the year 1947. The said property was measuring 87 X 75 feet and the same is shown at 'B' schedule item No.1 property and the said property was standing in the name of said Bheemappa till to his last breath. He further submitted that, after purchasing the property as such, the propositus Bheemappa has constructed a house in the portion of said property out of joint family income and after constructing the house, as such all the family members were residing in the said house till to the year 1983. As on this day, the said property

is standing in his name as well as in the names of defendant No.1 and husband of defendant No.2.

4. He further submitted that, later they purchased a rick yard in the year 1959 which is measuring E - W: 65 feet and N - S: 95 feet and the said property was in the name of Bheemappa till his last breath. After his death, the said property has been mutated in the name of husband of defendant No.2 and till today, they are using this property as threshing floor for the purpose of harvesting the food grains grown in the agricultural lands. He further submitted that, later their family was acquired another property in the year 1963. At the time of purchasing the property, it was a dilapidated building and the said property is shown at 'B' schedule item No.3 property. Later the said Bheemappa constructed a shop premises in the said property and started running a cloth business in the name and style of M/s K.Bheemappa and sons under KST No.83118718. The said property and business was in the name of Bheemappa till to his last breath and after his death business has been transferred in the name of husband of defendant No.2 and property has been transferred in the name of this plaintiff. After the death of Thipperudrappa, the business is continued by his son by name Raghavendra. All the transfers were made after the death of Bheemappa with the consent of all the family members.

5. He further submitted that, later their family purchased a site measuring E - W:

21 feet, N - S: 18 feet in his name in the year 1973 and later shop was constructed in the said site and their family has started running a provisional shop in the said premises in the name of style of K.B.Thippeswamy and brothers. Later katha of the said property has been mutated in the name of defendant No.1 with his consent. Till today the said business is looking after by defendant No.1. He further submitted that, later in the year 1976 their family purchased a site approximately measuring 60 X 100 feet in the name of defendant No.1 and till today the said property is standing in the name of defendant No.1 and using by all the family members as thresher ground and the said property is described as 'B' schedule item No.5 property. He further submitted that, later their family has purchased a house property approximately in the year 1978 in the name of N.K.Nagesh, S/o. K.B.Thippeswamy and in the said property, the said Nagesh is doing hard wear shop in the name and style of Chandana General Stores.

6. He further submitted that, later their family has purchased another property in the year 1979 which is adjacent to the supra referred shop premises described as 'B' schedule item No.4 property in the name of defendant No.3 and later construction was made in the said property in the year 1980. After constructing the building, he started fertilizer business in the said premises in the name and style of 'Shree Laxmi Fertilizers' in the year 1983 and he started the business in the said premises till to the year 1994. In the year 1994 it has been shifted to some other property owned by the

family which is detailed at infra. He further submitted that, later their family purchased the shop premises in the year 1980 in the name of defendant No.3 and later katha of the property has been transferred in the name of husband of defendant No.2. After purchasing the property, tenants were in occupation of the same and very recently the family has undertaken constructional work by demolishing the earlier structure.

7. He further submitted that, later in the year 1982 their family has purchased two site properties total measuring 105.68 Sq. Meter in the name of defendant No.3 and later in the year 1993-94 out of joint family income a house was constructed and later he shifted my business running in the name and style of Shree Laxmi Fertilizer has been shifted to this premise In addition to that, he started a business in the name and style of K.Beemappa and sons and started dealing with cement and such other constructional articles. Now both the entire property are comprising of two shop premises which are in his occupation and eight rooms which are in occupation of some other tenants. He further submitted that, later in the year 1983 their family purchased built house in the name of Bheemappa and the said property was in the name of Bheemappa till his last breath. After his death, it has been transferred in the name of defendant No.1 herein with the consent of all the family members. As on this day, one among the son of defendant No.1 by name Malleshappa is in occupation of said premises.

8. He further submitted that, later again in the year 1983-84 their family has purchased one vacant site measuring 17 X 15 feet and a built house measuring 17 X 15 feet (adjacent each other) in the name of Bheemappa. As on this day, these two properties are in occupation of defendant No.3 and it is significant to note here that, till today the katha of the property is standing in the name of deceased propositus. He further submitted that, later again in the year 1984 their family has purchased a dilapidated house measuring 47 X 29 feet in the name of defendant No.3 and later by removing old structure, new house was constructed out of joint family income and present defendant No.3 is in occupation of said house. This property is described as 'B' schedule item No.13 property. He further submitted that, again in the year 1984 family has purchased a vacant site measuring 185 X 105.5 feet in his name and later construction is made in the said property out of joint family income. He further submitted that, besides the aforesaid properties, their family has acquired agricultural lands in the name of his father which are described as 'A' schedule item No.1 to 12 properties. It is significant to note here that, till today these properties are standing in the name of his father and they are all enjoyed them as their joint family properties. He further submitted that, besides the aforesaid agricultural lands, their family also acquired several agricultural lands in his name as well as in the names of defendants. As on this day all the members of the family enjoying those properties as their joint family

properties. Those properties are shown at 'A' schedule item No.13 to 31 properties.

9. He further submitted that, as on this day, no partition was effected in the family of Bheemappa and even though the properties are purchased and mutated in the name of different persons, till to this day, all the properties are put into common hutch pot and enjoying them as their joint family properties. In other words it can be said that, as on this day, all the properties are their joint family properties and they are enjoying them as tenants in common. He further submitted that, everything was cordial till to the death of propositus and after the death of Bheemappa there was started a small difference of opinions among the family members. He being the responsible person has managed and pulled on the joint family and its status till to this day. But, nowadays, it is become highly impossible for him to manage the difference of opinion due to the adamant behaviour of defendant No.3 and his wife. He further submitted that, supra stated adamancy of the defendant No.3 and his wife become intolerable and for that, he advised all his brothers to effect the partition with respect of joint family properties. As such negations were begin amongst the brothers in the presence of their family well wishers in the month of January-2015. But, it is become highly impossible for the middle persons to bring cordiality amongst them and several panchayaths/meetings were held and went fetal due to adamant behaviour of the defendant No.3 and his wife. He further submitted that, till today efforts are going by the elder persons to settle the

controversy between the brothers.

10. He further submitted that, after the death of Bheemappa, he shouldered entire responsibility of the family and the defendant No.1 as well as husband of defendant No.3 were even though hard labouring persons are good for nothing so for as administration of family affairs are concerned. All the brothers have decided and encouraged the defendant No.3 to do his education as he was good in studies as on those days. As such he completed his BAMS education at Bellary and now he is doing his private clinic at Kanahosahalli village. In addition to medical practice, the defendant No.3 is also looking after money lending business which is run in the name and style of Rekha Money lenders and Pawn Broker. He further submitted that, the defendant No.3 is last son born to his father and as such naturally his father was having lots of intimacy and inclination on defendant No.3. Even himself and his other brothers were also having lots of intimacy on the defendant No.3 as he is their younger brother. For that, several properties were purchased in the name of defendant No.3 out of joint family income during the life time of his father and even after his death. This fact is evidenced in the orders passed by the Hon'ble Income Tax Tribunal at Bangalore in dispute bearing its number ITA No.545 to 552/2000. He further submitted that, as such now it appears that, the defendant No.3 and his wife are using their fox intelligence and trying to evade him and other members of family from getting our legitimates share in the

schedule properties which are standing in his name.

11. He further submitted that, he was under the impression that, one fine day all the controversies will attain saturation as negotiations are going on. But, on 8.5.2015 all of a sudden the daughters of defendant No.3 have come near the schedule property along with their mother and started pressuring him to vacate the schedule item No.9 property as they are the owners by virtue of alleged gift deed executed by their father. Even they have exhibited Xerox copy of documents to the public who were gathered at that time. He further submitted that, even though negotiations are began in the month of January-2015 and going on till to this day regarding effecting partition amongst family members, the defendant No.3 being an ill minded person has used his fox intelligence and managed to register a document styled as gift deed in the joint names of his daughters with respect of schedule item No.9 property, wherein he carrying out his fertilizer and cement business. Whatever may be the documents executed by the defendant No.3 in favour of his daughters or anybody, the same is not at all binding against him in any manner.

12. He further submitted that, he is astonished by aforesaid unexpected attempt made by the defendant Nos.3, 4, 5 and their mother. But, somehow he managed and prevented the high handed act of the defendant Nos.4 and 5 with the active help of his sons, well wishers and friends. He further submitted that, again on 10.5.2015 aforesaid

persons have made similar attempt. At that time, the husband of defendant No.5, who is Sub-inspector of police was also accompanied the defendant No.4 and 5, who threatened him with dare consequence if he is not vacated the schedule item No.9 property. Since the husband of defendant No.5 is Police Sub-Inspector, nobody has come to his aid except his sons and at that juncture the husband of defendant No.5 forced him to sign a cheque bearing its No.665476 drawn at State Bank of Mysore, C.J.Halli branch and snatched it. He further submitted that, he somehow rescued from the ill minded clutches of the defendant Nos.3 to 5 and Sub-Inspector of Police. Due to several mental agony caused by the above said persons, he suffered cardiac pain and immediately he had been shifted to Davanagere for higher treatment.

13. He further submitted that, all the schedule properties are their joint family properties and even this fact is admitted by the defendant No.3 before Hon'ble Income Tax Appellant Tribunal at Bangalore in dispute No.545 to 552/2000. In spite of the same, the defendant No.3 being ill minded person has joined his hands with his wife, daughters and son-in-laws that too a Sub-Inspector of police has ventured to alienate the schedule item No.9 property in the name of his children and manage to throw out him and his business from the schedule item No.9 property illegally and high handedly. He further submitted that, the said act of the defendant Nos.3 to 5 is highly illegal and condemnable under law. Even though defendant No.1 and his sons are also entitled for

share in all the properties, were silent spectators, when he was under bad clutches of defendant No.3 to 5. For that, he constrained to file this suit for partition and such other reliefs.

14. He further submitted that, the defendant Nos.3 to 5 may repeat their illegal attempt against in due course. Himself and his business which is running in the schedule item No.9 property is under jeopardy in the hands of defendant No.3 and his henchman and he being lonely person struggling cannot withstood the high handed act of the defendants without the mandate of his court. He further submitted that, if withholding of T.I. will defiantly cause irreparable loss and legal injury to him which cannot be measured or compensated in terms of money or its value. On the other hand, no such loss or injury will be caused to the defendants. The documents produced and relied upon by him clearly reveals a fact that, he got a prima facie both for trial and success. Even balance of convenience is also lies in his favour. Hence, he prayed to restrain the defendant Nos.3 to 5 or anybody claiming under them from interfering with his peaceful possession and enjoyment of schedule item No.9 property (I.A. Schedule property) and thereby evicting him from the said property in any manner by any means by way of ad-interim order of injunction till disposal of the above case.

15. The defendant No.3 has filed objections contending inter alia that, the interim application filed by the plaintiff is misconceived one and not maintainable either in law

or on facts of the case. He further submitted that, I.A. Filed by the plaintiff with a view to harass the defendant Nos.3 to 5 and to cause them wrongful loss and thereby obtain wrongful gain for themselves in an illegal manner. He further submitted that, the facts sworn to in support of the interim application by the plaintiff is nothing but the prototype of plaint, which requires evidentiary proof to believe the same. Such being the facts, the plaintiff is not entitled for the relief of restricting the free movement of the defendant Nos.3 to 5 in their own property for which they are also co-owners by way of co-parcenary right over the property, according to the details of the plaint averments in support of the same.

16. He further submitted that, even otherwise, the plaintiff has sworn to a false affidavit in support of the application which without proof if accepted in extending the present interim relief against the defendant Nos.3 to 5 from interference in schedule 'B' item No.9 property, will result in great injustice and injure their personal right over the same. As such, the application relief claimed by the plaintiff is itself opposed to law of the land and such relief cannot be granted under law at any stretch of imagination.

17. He further submitted that, the plaintiff has stated about the present interim application in his affidavit at para-25 to 31 are all false and hatched up story just with the sole purpose of obtaining a wrong order and thereby cause irreparable injury to the right of these defendants through this case. He further submitted that, the sole base

of this case is the orders of the Income Tax Authorities in I.T.A. No.545 to 552/2000. The plaintiff has utilized the order in partial form and canvassing the same without complete details of about it. Whereas the entire records of the Income Tax Authority speaks quite contrary to the facts elucidated in support of the plaint. Thus, without support of cogent evidence, is not at all a believable piece of evidence. But, looking to the circumstances of filing of the suit at Vacation Court seeking interim orders, the Vacation Judge has casually thought of interference in a mistaken manner and passed order only upto 6.6.2015, with a clear view restricting the operation of the same subject to review of the same by this court. Therefore, viewed from this angle, the primary object of this court will be to see that hardship and inconvenience to the defendant Nos.3 to 5 suffer out of this interim orders.

18. He further submitted that, it is very much highlighted by the plaintiff that the son-in-law of the defendant no.3 is a Police Sub-Inspector and all. Whether is it within his custody to execute the orders of this court as per his whims and fancy is unclear from the statement of the plaint. This shows the way the plaintiff wants to influence the mind of the court in misguiding it to obtain this type of order through which he may harass the defendant Nos.3 to 5 without there being an end to the same pending final disposal of this suit.

19. He further submitted that, it is well established principles of law that, no co-

owner can be restricted the use and occupation of any property to which he is also the owner. The plaint averments says that, the defendant Nos.3 to 5 are also rightful coparceners of the suit schedule properties and such being the case, the question of interference into only one property by only defendant Nos. 3 to 5 with the support of the defendant No.1 seems to be confusing and suspicious in the circumstances of the case. Thus, the entire facts of the affidavit is unacceptable without any cogent proof of the same. Therefore, the defendant No.3 prayed this court to dismiss the application with exemplary cost.

20. Heard the arguments on both sides.

21. On the above said pleadings of both the parties, the following points that arise for my consideration are.

- 1. Whether the plaintiff has made out a prima facie case in his favour?**
- 2. Where does the balance of convenience lies?**
- 3. Who would be put to irreparable loss and injury if injunction is granted?**
- 4. What order?**

22. My answers to the above Points for consideration are:-

Point No:1 Is in the affirmative.

Point No:2 Is in the affirmative.

Point No.3 Is in the affirmative.

Point No.4 Is as per the final order.

For the following:-

REASONS

23. **POINT No.1 to 3:-** As these points are inter connected to each other, hence, I would like to discuss these points together at one stretch in order to avoid repetition of facts.

24. The plaintiff has filed a suit for partition against the defendant Nos.1 to 5 claiming 1/4th share in the suit schedule properties. The plaintiff has pleaded that, out of the joint family income, they have purchased different properties in different names. When the plaintiff demanded his share, the defendant No.3 has refused to give the same all the properties are put into a common hutch pot and enjoying them as their joint family properties. As per the pleadings, all the properties are their joint family properties of plaintiff and defendant and they are enjoying them as tenant in common. But the defendant No.'s husband who is Sub-Inspector of Police who has caused harass to the plaintiff and there is dispute with regard to 'B' schedule item No.9 property. As per the contention of the defendant No.4 that, it is a gift property, which is gifted by his father.

But, no gift deed is produced by the said defendant. But, the defendant No.3 has taken the contention that, plaintiff and defendants are co-owners and no injunction can be granted against the co-owners and he has totally denied the plaintiff's case. But the relationship is admitted. But, he has filed a memo stating that, he has not alienate the 'B' schedule item No.9 property. The defendant counsel also relied upon the ruling reported in AIR 1990 198, which reads as follows:

“ Order 39, Rule-1 - Suit for partition of joint family property along with application for interim injunction - The plaintiff, however, could not prove that the property was a joint Hindu Family property - Since the plaintiff failed to prove his case, no relief of interim injunction could be granted in his favour”.

25. On perusal of the documents produced by the plaintiff are one photograph showing that, some abrasions mark on the chest and neck and another photograph showing that, middle finger is bleeding due to the harassment given by the defendant No.4 and photo receipt also produced. One photo dated 29.5.2015 which shows that, plaintiff was standing in front of his shop and another photo shows that, the shop is standing in the name of K.Bheemappa and Sons, which was

running under the name and style of Sree Lakshmi Fertilizers and another photo shows that, plaintiff was standing in front of the shop, which is standing in the name of K.Bheemappa and Sons and another photo shows that, a lot of fertilizer is stored in the said storage room and photo receipt also produced and C.D. also enclosed. The plaintiff has also produced the list of documents in Sl.No.1 to 59, out of that, Sl.No.54 which shows that, Xerox copy copy of the orders passed by the Hon'ble Income Tax Appellant Tribunal, Bangalore in dispute number ITA No.545 to 552/2000, in which the said defendant No.3 has filed his written statement stating that, all the properties are the joint family properties and he has purchased the properties out of joint family income and all the RTC extracts standing in the name of Bheemappa i.e., father of defendant No.3 and RTC No.5 with regard to Sy.No.25 the joint family members names are shown i.e., K.Bheemappa, Thimmappa, Giriyappa, Giriyappa and Basappa and all the RTC extract shows that, with regard to different surveys, which shows that, different persons in the joint family have purchased the different properties. The case of the plaintiff is that, it is a joint family properties, which is purchased in joint family income. But, the case of the defendant No.3 is totally denied and his contention is that, it is self acquired properties. The only

contention of the defendant No.3 is that, co-owners are enjoying the properties, no injunction can be granted against them. The ruling produced by the defendant's counsel holds no water and the principles are laid which is not disputed. At this stage, the ruling reported by the Hon'ble Supreme Court of India in 1988 () SCC 77 in between Sunil Kumar Vs. Ram Prakash in Sec.35 and 41 of ruling Act – Suit by co-parcener for permanent injunction restraining the karta of the joint Hindu family from alienating the joint family property in pursuance of a sole agreement with a third party In case of waste or ouster the Manager can be restrained – But issue of permanent injunction against karta for acts of waste or ouster not considered. Another ruling reported in 1995 KLJ (4) 339 in between Bhimana Gowda Vs. Syed Murtuza, wherein it is held by the Hon'ble High Court of Karnataka – Suit for possession by one co-owner on behalf of others co-owners is maintainable. Hence, for the above said reasons discussed above, it is very clear that, it has to be decided during trial whether the properties are purchased out of joint family income or not. The contention of the defendant No.4 is that, the said property is gifted property, which is gifted by his father i.e., defendant No.3. But, no gift deed is produced by the defendant No.4. It has to be decided during trial. Therefore, at this stage, prima facie case is made out in favour of the plaintiff and balance of convenience lies in favour of the plaintiff, no injury or hardship will be caused to the defendants and if injunction is not granted in favour of the plaintiff, the plaintiff would be put to irreparable injury and hardship and definitely defendant No.3 will enter into the 'B' schedule item No.9 property and definitely the defendant No.3 cause interference. Hence, if the

properties are not protected from the defendant No.3, the plaintiff would be caused loss and other co-parceners also caused loss. Accordingly, I answer the above points NO:1 to 3 in the affirmative.

26. POINT No:4:- For the aforesaid discussions and reasons stated above on point, I proceed to pass the following:-

ORDER

I.A.No:4 filed by the plaintiff U/O.39
Rule-1 and 2 of CPC is hereby allowed.

The Temporary Injunction is granted, restraining the defendant Nos.4 and 5 not to cause any interference with regard to suit schedule item No.9 of the properties till disposal of the suit.

(Dictated to the stenographer, corrected by her, corrected by me and then pronounced in the open court on this the 19.6.2015 at Kudligi)

(B.S. HONNASWAMY),
Senior Civil Judge, Kudligi.

O.S.No: 47/2015