

IN THE COURT OF SENIOR CIVIL JUDGE & J.M.F.C.,

AT KUDLIGI

**PRESENT : ANAND, B.Com., LL.B.,(Spl).,
SENIOR CIVIL JUDGE & JMFC,
KUDLIGI**

DATED THIS 29TH DAY OF MAY 2017

ORIGINAL SUIT No.107 OF 2015

Between :

Smt.Siddalingamma & another .. Plaintiffs

- **A N D** -

K.Goneppa .. Defendant

PARTIES TO I.A.No.I

Smt.Siddalingamma .. Petitioner

- **A N D** -

K.Goneppa .. Respondent

ORDERS ON I.A.No.I

1. The plaintiffs have filed present application under Order 39, Rules 1 & 2 read with Section 151 of Code of Civil Procedure seeking to issue temporary injunction against the defendant from alienating the petition schedule property

and to execute any kind of documents in favour of any others in any manner till disposal of suit.

2. The brief averments of the plaint and affidavit sworn to application and plaint are as under :-

The plaintiffs No.1 & 2 are wife and husband. Plaintiff No.1 is daughter of Bommappa of Sovenahalli village, who had no male issues. Plaintiff No.1 inherited properties of her father Bommappa and after her marriage, she sold properties of her father bearing Sy.No.367-A and Sy.No.429-A to one Sanna Basappa son of Subbayya on 4.4.1975 under registered sale deed. From income of said sale consideration and other Sthreedhana properties, plaintiff No.1 purchased suit schedule properties bearing Sy.No.879 measuring 10.49 acres on 7.4.1975 from one Yuvaraj Singh son of Shiva Singh under registered sale deed along with plaintiff No.2. Since then plaintiffs are absolute owners, in possession and enjoyment of suit schedule properties. The defendant is son of brother of plaintiff No.2 namely Sanna Siddappa. He has no right over suit schedule properties as

the ancestral properties of plaintiff No.2 and his brothers are partitioned long back. The father of defendant namely Sanna Siddappa sold his share in favour of one Nabi Sab by converting the land into non agriculture purpose and by making residential sites, which is now known as Bapuji Nagar Extension Area, Kudligi. The defendant and his father have also sold other properties allotted to them to various persons. Hence defendant has no manner of right over suit schedule properties. On 29.9.2015 while plaintiff No.1 was working in suit schedule properties, she came to know that, Sy.No.879 is sub divided as 879/1 measuring 7.79 acres and 879/2 measuring 2.68 acres. Defendant has got entered his name to Sy.No.879/2 on 20.8.2013 vide M.R.No.75/2012-13 by creating some documents without knowledge of plaintiffs. Plaintiffs also came to know that defendant has applied for conversion of said property into non-agriculture purpose for forming layout. Hence present suit. Now defendant taking advantage of his name to Item No.2 of suit property i.e., Sy.No.879/2, is trying to alienate the said property to third persons. If he succeeds in his act,

plaintiffs will be put to great hardship and injury. Hence plaintiffs have made out prima facie case and These amongst other grounds, it is prayed to allow the application.

3. Defendant appeared through his counsel and filed his written statement. The defendant has filed a memo dated 18.2.2016 seeking to treat his written statement as objection to present application. The defendant has denied entire averments of plaint with regard to purchase of suit schedule properties by plaintiff No.1 out of sale proceeds of her father's property and exclusive right, title and possession of suit schedule properties by plaintiffs and also the sub division of suit properties without knowledge of plaintiffs by creating documents. It is specifically contended by defendant that, the plaintiffs have filed false suit by suppressing true facts, the suit properties are not Sthreedhana properties of plaintiff No.1 and same are joint family properties of plaintiffs and this defendant. It is averred that the suit properties are purchased in the name of plaintiff No.1 & 2 from joint family funds and after said

purchase, plaintiffs and father of this defendant namely Sanna Siddappa were in peaceful possession and enjoyment of the same. Said Sanna Siddappa died on 5.1.2012 and even till today there is no partition of ancestral joint family funds including suit schedule properties among plaintiff No.2 and his brothers. It is further averred that on 2.4.2013 a partition was effected between plaintiffs and this defendant and as per said deed Item No.2 measuring 2.68 acres has fallen to share of this defendant. Accordingly mutation is effected in his name and plaintiffs are aware of said facts. These amongst other grounds, it is prayed to dismiss the application.

4. The following points arise for my consideration :

- 1) *Whether plaintiffs have made out prima facie case in their favour?*
- 2) *Whether balance of convenience lies in favour of plaintiffs ?*
- 3) *Whether plaintiffs will be put to loss and injury if temporary injunction is not granted ?*
- 4) *What order ?*

5. Heard both sides.

6. My findings to the above points are as under :-

Point No.1 to 3 ... *In the Affirmative*

Point No.4 .. *As per final order for the following ;*

REASONS

7. **POINT No.1 TO 3** :- These points are taken together for discussion as finding on one point may have bearing on finding of other points and also for the sake of avoiding repetition of facts and evidence.

8. On perusal of pleadings of both sides, it shows that relationship between parties is not disputed. It is also not disputed that suit schedule properties were previously single land bearing Sy.No.879 and same is recently sub divided as Sy.No.879/1 and Sy.No.879/2. It is specific case of plaintiffs that, suit schedule properties, which were single land earlier was purchased by plaintiffs out of sale consideration derived by selling properties of father of plaintiff No.1 namely Bommappa and by Sthreedhana

properties of said plaintiff. On the other hand, it is specific contention of defendant that suit properties were purchased in the name of plaintiffs out of joint family funds and as per recent partition deed dated 2.4.2013, Item No.2 has fallen to his share. At this stage, plaintiffs have produced certified copy of registered sale deed dated 4.4.1975 along with encumbrance certificates showing sale of Sy.No.364-A and Sy.No.429-A by father of plaintiff No.1 Bommappa and plaintiff No.1 herself, which appears to be just prior to purchase of suit schedule properties which is dated 7.4.1975 as per certified copy of sale deed produced by plaintiffs themselves. On the other hand, the defendant has produced a copy of partition deed dated 2.4.2013 and RTC extracts of suit properties showing sub division and entry of name of defendant to Item No.2. Whether plaintiffs have purchased suit properties out of Sthreedhana property of plaintiff No.1 or whether suit properties were purchased out of joint family funds of plaintiff No.2 can only be decided after full-fledged trial. More over, the copy of registered sale deeds produced by plaintiffs clearly show that suit

properties were purchased immediately after sale of properties of Bommappa. Further the plaintiffs have seriously disputed the genuineness of partition deed or any other document in support of mutation in favour of defendant and as such the genuineness of said document is also subject matter of the suit. In the meanwhile if defendant succeeds in alienating the suit schedule properties or executing any documents in favour of third parties on the basis of his name to Item No.2, it will definitely results into multiplicity of proceedings and irreversible situation. Hence in order to protect the properties till the rights of parties is decided, it appears just and proper to grant ad interim temporary injunction against defendant as prayed for in the application. Hence plaintiffs have made out prima facie case and balance of convenience and if temporary injunction is not granted they will be put to irreparable loss and injury. Hence Point No.1 to 3 are answered in the Affirmative.

9. POINT No.4 :- For the reasons stated and findings given on Point No.1 to 3, I proceed to pass the following :

ORDER

I.A.No.I filed under Order 39, Rules 1 and 2 read with Section 151 of C.P.C. on behalf of plaintiffs is hereby allowed.

Defendant is hereby restrained from alienating the petition schedule property and executing any kind of document in favour of any other persons till disposal of suit

No order as to costs.

(Dictated to stenographer directly on computer, typed by him, corrected and signed by me and then pronounced in open Court on this 29th day of May 2017)

(ANAND)
SENIOR CIVIL JUDGE AND JMFC.,
KUDLIGI