

creating any encumbrance in respect of the petition schedule lands till disposal of the suit in the interest of justice.

2. Along with the application, the petitioner has filed the affidavit and contended that he has filed suit against the defendant's partition and separate partition in respect of suit schedule property. Further sated that the defendant No.1 and 2 are the cousins to the plaintiffs and the defendant No.3 and 4 are third party purchasers of the suit schedule "B" item No.1 property. Further stated that the suit " B" schedule property is the joint family properties of the plaintiffs and defendant No.1 and 2 and acquired by the above said parties from the nexus of the joint family funds, the landed properties bearing Sy.No.148 A/4 paiki, 148A/2 and 148A/3 extent of 1-13 Acres, and Sy.No.148C1/1 extent of 1-66 Paiki situated at Ittigi Village of Hadagali taluk. Further stated that the item No.1 of the suit 'B' schedule property bearing Sy.No.148A/4, Paiki, 148a/2, 148a/3 extent of 1-13 Acres has been sold by the defendants NO.1 and 2 to the defendant No.3 to 4 through a registered sale deed dated: 22.02.2013 to an extent of 0-98 Acres and mutated that same defendant name in the revenue records. Further stated that the defendant No.1 and 2 had sold that suit "B" schedule item No.1 property illegally. Further stated that the "B" suit schedule property was purchased by one Late Anandappa and Basappa from one Holiyappa Navara Kotrappa on 5-11-1948 who is non other

then the father of the plaintiff. Further stated that the defendant No.4 is trying to construct a building in the item No.1 of the suit "B" schedule property. Further stated that the defendant No.1 and 2 are the parties in the ROR appeal No.64/2012-13 and in the side appellants and the respondents appeared before the Assistant Commissioner, Hospet and filed compromise petition and got the order by suppressing the real facts and got mutated the entries in the R.O.R and now they re trying to alienate the item NO.2 of the suit "B" schedule property. Further stated that the plaintiff constrained to file this suit and also filed this separate application for granting temporary injunction. The further contended that he is having prima facie case and balance of convenience lies in his favour and if T.I. is not granted, he will put to great loss and injustice. Hence, he prayed to allow the application.

3. After service of summons the defendant has filed the written statement along with memo stating that the contentions of the written statement may be treated as objection to I.A.No.II. The defendant in their written statement has contended that para No.6 this defendant most respectfully begs to submits as follows:

a) That the plaintiffs father by name Basavarajappa son of late Anandappa and defendant No.1 and 2's father by name Shekarappa son of Late Basappa were got divided

orally very-very long back as per the order of bearing MR No.246/83-84.

b) As per the oral partition the following properties were fallen to the share of plaintiffs father by name Basavarajappa son of Anandappa:

- 1) Sy.No.399-B measuring 2.42 Acres,
- 2) Sy.No.62-B measuring 0.71 Acres,
- 3) Sy.No.59 measuring 3.20 Acres,
- 4) Sy.No.59-B measuring 6.13 Acres,

The land Sy.No.59 measuring 3.20 Acres and Sy.No.59-B measuring 6.13 Acres are standing in the name of plaintiffs mother by name Myduru Shanthamma wife of Late Myduru Basavarajappa.

c) As per the oral partition the following properties were fallen to the share of defendant No.1 and 2's father by name Shekarappa son of Myduru Basappa:

- 1) Sy.No.399-B measuring 2.41 Acres,
- 2) Sy.No.148-A measuring 2.26 Acres,
- 3) Sy.No.148-C measuring 3.30 Acres,

d) As per the oral partition the Katha was changed in favour of plaintiff's father and defendant No.1 and 2's father and they were cultivating and enjoying the properties fallen to their share.

- e) The plaintiffs and defendants No.1 and 2 are not at all constituted Hindu undivided joint family. So, question of joint possession and share in the above said properties does not arise at all.
- f) The plaintiffs have not included the properties fallen to their share in the schedule i.e., Sy.No.62-B measuring 0.71 Acres, Sy.No.59-C measuring 3.20 Acres, Sy.No.59-B measuring 6.13 Acres, Sy.No.399-B measuring 4.83 Acres and house property bearing door number 112, all the above said properties are situated at Ittigi Village were included by the plaintiffs in the schedule. So, partial partition is not at all maintainable under law. On this count alone the suit of the plaintiffs is liable to be dismissed.
4. Heard arguments and perused the records.
5. The following points arise for my consideration:
- 1) Whether the plaintiff/petitioner proves that there is prima-facie case in his favour?
 - 2) Whether the plaintiff/petitioner proves that the balance of convenience lies in his favour?
 - 3) Whether the plaintiff/petitioner proves that if injunction is not granted, he put into heavy and irreparable loss?
 - 4) What order

6. My answers to the above points are as under:

Point No.1: In the Affirmative,
Point No.2: In the Affirmative,
Point No.3: In the Affirmative,
Point No.4: Is as per final order for the following reasons;

REASONS

7. **Points No.1 to 3:-** Since these points are inter-linked with each other, they are taken up together for discussion to avoid repetition.

I have gone through the pleadings and documents placed by the respective parties, The plaintiffs have filed this suit against the defendants for partition and separate possession in respect of suit schedule properties. In the plaint the averred that the suit schedule properties was joint family properties of plaintiffs and defendant No.1 and 2, further averred that the defendant No.1 and 2 had sold out the suit schedule 'B' item No.1 property in favour of the defendant No.3 and 4 to suppressed the real facts, they were compromised in the appeal NO.64/2012-13 in hidden real facts, the plaintiffs are having ½ share in the suit schedule 'B' item No.1 property.

8. The contention of the defendant is that already partition was taken placed between father of plaintiffs and father of defendants, as per mutation NO.246/83-84 in respect of their

family properties and the properties was mutated according to the partition taken place, and plaintiffs have not including the all the joint family properties in the suit as such the application filed by the advocate for plaintiffs may be rejected.

9. I have carefully perused the pleadings of the both parties, there is no dispute between the both parties with regarding to the relationship. I have carefully perused the mutation copy, as per pooti patta mutated the joint family properties in their name and some of the properties was standing in the name of Myduru Shantamma W/o Late Myduru Basavarajappa and others. The defendants are not denied that Anandappa had purchased the Sy.No.148/C measuring 1.66 Acres and as per the Assistant Commissioner order the respondents, who are the defendant No.1 and 2 in the appeal No.64/2012-13 the compromised the matter without made the necessary parties in the above appeal because the father of the plaintiffs has purchased the suit Sy.No.148/C measuring 1.66 Acres without adding necessary parties defendants were compromised the case with the defendant No.3 and 4. The sale deed and order copy of the Assistant Commissioner, Hospet dated 20-11-20012 are reveals that the plaintiffs have got rights over the suit schedule properties. No doubt the plaintiffs have not inserted their family properties in the plaint, might be in future they would inserted remaining properties in the proceedings. I am of the opinion that at this stage, the plaintiffs have made out prima facie case and balance of

convenience lies in their favour. Hence, if the T.I.order were not granted in their favour of the plaintiffs, they would put to great hardship and injustice. Hence, I have answered the Point No.1 to 3 in the Affirmative.

10. **Point No.4:-** For the discussion made above, I proceed to pass the following order.

ORDER

The I.A.No.II filed by the petitioner/plaintiff U/O.39 Rule 1 and 2 R/W.151 of CPC is hereby allowed.

The defendants their agents, servants, legal heirs or any body claiming on their behalf are hereby restrained by way of temporary injunction order from alienating the suit 'B'-schedule Item No.1 property till disposal of the suit.

No order as to costs.

(Dictated to the stenographer, transcribed and computerized by him, corrected by me and then order pronounced in the open court on this 22nd day of September 2016)

(Yamanappa Kare Hanumanthappa),
Civil Judge, Hadagali.