

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C-INDI.**// P R E S E N T //****SRI. ISHWAR S.MUSLAMARI., B.A LL.,B (SPL)
Civil Judge and JMFC-Indi.****DATED THIS 6th DAY OF JULY 2024****O.S No.167/2018****PLAINTIFF:**

1. Renuka Lalsangi.

- Versus -**DEFENDANTS:**

1. Shashidhar Lalsangi and another.

IA No.I**Applicant.****(Ori. Plaintiff):**

1. Renuka W/o. Ravikumar Lalsangi,
Age: 30 years, Occ: H.H.Work,
R/o. Indi, Now at C/o. Gurunath
Irappa Pattar Nandral 2nd Cross Hubballi.

[By Sri M.S.P., Advocate]**- Versus -****Opponents.****(Ori. Defendant-1):**

1. Shashidhar S/o. Dhasharath Lalsangi,
Age: 55 years, Occ: Business,
R/o. Near Jain Galli, Indi,
Tq: Indi, Dist: Vijayapur.

[By Sri. S.V.K., Advocate]

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ORDER ON I.A NO.III

The plaintiff has filed IA No.III U/0.39 Rule 1 and 2 of CPC, praying this court to restrain the defendant to not to make any renovation (Construction) without effecting the legitimate share of the plaintiff in the suit property as shown in schedule A of the plaint.

2. The IA is accompanied with affidavit wherein the plaintiff has contended that, the suit property shown in the schedule A of the plaint, originally owned by father-in-law of plaintiff. During his life time, the said Dasharath Lalsangi has transferred the suit property in the name of defendant No.1 and husband of defendant No.2 and also in the name of husband of plaintiff. The suit property was well built-up and it was jointly hired by them. The plaintiff further contended that, in the master plan the some portion of the suit property i.e., front portion $\frac{1}{2}$ feet was demolished by Government. Thereby closing the suit property was not possible due to said demolition. In the mean while the dispute arose between the plaintiff and defendant No.1. That the husband of plaintiff was expired and without the help of others, the plaintiff went to her mother's house for shelter herself and her son. Taking

disadvantage of it the defendant No.1 is wanted to renovation (Construction) the suit property without allotting the share of plaintiff. When the plaintiff requested the defendant No.1 to make the division in the suit property, but the defendant No.1 refused the same. On those grounds, the plaintiff prays to allow the IA No.1.

3. The defendant No.1 has filed written statement and the same is adopted as objection to the IA No.1, wherein the defendant No.1 has contended that, the plaintiff has already filed the suit bearing OS No.65/2013 and in the said suit also the plaintiff sought partition, therefore the present suit is not maintainable in view of order 7 Rule 11 of CPC. The plaintiff has filed suit for partition. The plaintiff is the legal heir of Ravikumar Lalsangi. Therefore, the plaintiff has filed the suit for partition of the share of her husband, but the plaintiff is having a son by name Prashant who is not made as party to the proceedings. The defendant No.1 is having sisters and mother, they are also not arrayed as party to the proceedings. The plaintiff has not furnished the genealogy alongwith plaint. But they are also necessary party to the proceedings.

4. The defendant No.1 admitted that, the plaintiff and

defendants are the legal heirs of deceased Dhasharath Lalsangi. The defendant No.1 also admitted that, the plaintiff and defendants are in joint possession of the suit property. The defendant No.1 also admitted that, during the life time of Dhasharath Lalsangi, he has transferred the suit property jointly in the name of plaintiff and defendants, but the defendant No.1 denied that, the plaintiff and defendants jointly put up construction. The defendant also denied that, plaintiff and defendants have let out the suit property. The defendant No.1 further taken contention that, in the year of 2018 in road winding half of the suit property was demolished, but he denied that at that time the defendant No.1 without knowledge to the plaintiff has put up construction for his own gain. The defendant No.1 further taken contention that, the plaintiff has shown the cause of action in this suit as well as in OS No.65/2013 is that 20.01.2018, thereby it is clear that the plaintiff has shown the date of cause of action one and the same. The defendant No.1 has taken specific contention that, the defendant No.1 is having the sisters by name Prema, Jyoti and Sumitrabai and also mother. The sisters of defendant No.1 have filed suit

for partition with respect to suit properties in the year of 2010 in the said suit the plaintiff was also party and her son was also party. In the said suit the tenant by name Rajashekhar Patange was also party to the said suit and he has filed written statement in that suit. In the said suit there was compromise and the said Rajashekhar has filed WP before Hon'ble High Court of Karnataka to not to vacate him from the suit property. The said WP was disposed off. The defendant No.1 further contended that, the defendant No.1 his mother Sumitra and his brothers Vijayakumar and Ravikumar on 02.03.1998 have entered into a contract which was reduced on a stamp paper. As per the said agreement the mother of defendant No.1 and his brother Vijayakumar and Ravikumar have agreed to give the expenses for construction of building in the suit property. Then the defendant No.1 has got estimated the expenditure of construction from one Vishwanath Jampa Engineer of Rs.2,50,000/- and in all spent Rs.3,00,000/- for construction permission and other miscellaneous expenditure and as per the IA No.6 in OSNo.226/2010 the advance amount was repaid to the Rajakumar Patange on 12.03.2012 and thereafter in the suit

property one Chaalaram S/o. Lacchaji Choudari by advancing Rs.1,00,000/- has started his business due to demolition in road winding the said Choudari has vacated the suit property, but the advance amount paid by him is not paid till date. Therefore, plaintiff and defendant No.2 and defendant No.1 as per the agreement are liable to pay the respective share of amount to the plaintiff No.1. Therefore, the defendant No.1 prays to direct the plaintiff and defendant No.2 to pay the expenditure borne by the defendant No.1 in order to construct the building in the suit property.

5. The defendant No.1 further contended that, the mother of defendant No.1 Sumitrabai in the year of 2010 under the registered relinquishment deed has relinquished her share in favour of defendant No.1, therefore the plaintiff has no locus-standi to question the same. On those grounds, the defendant No.1 prays to reject the IA No.1.

6. Heard both sides.

7. Upon hearing and perusal of materials placed on record the following points that would arise for my consideration are;

1. Whether the plaintiff has made out prima-facie case?

2. Whether the balance of convenience is infavour of plaintiff?
 3. Whether irreparable loss or hardship will be caused to the plaintiff if interim injunction is not granted?
 4. What order?
8. My findings 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 - As per the final order

for the following;

: R E A S O N S :

9. **POINT NO.1 to 3:** These points are inter-related to each other, in order to avoid repetition of facts, I have taken together for common discussion.

It is the case of the plaintiff that, the plaintiff and defendants are joint owners of the suit property and the plaintiff is having legitimate share in the suit property. The husband of the plaintiff was expired, therefore she went to her mother's house, since no one was there to help her. During the relevant period road winding process was undertaken and the suit property was demolished to the extent of half feet and by taking disadvantage of the same the defendant No.1 has started putting up a construction and also

changing the nature of the suit property. Hence, plaintiff prays to restrain the defendant No.1 from putting up any construction and changing the nature of the suit property till plaintiff's get her legitimate share.

10. On the other hand, the defendants have admitted the relationship between the parties and nature of the property and also extent of share of the plaintiff, but defendant No.1 taken contention that, the plaintiff has not arrayed all the joint family members as party to the proceedings and there was an agreement between husband of plaintiff and defendant No.2 and the defendant No.1 alongwith mother of defendant No.1 that, the defendant No.1 has to borne all the expenditure for putting up of construction over the suit property and the husband of plaintiff and defendant No.2 and mother of defendant No.1 have to pay their equal share of expenditure to the defendant No.1, but that is not paid by the plaintiff and the defendants sought direction to the plaintiff and defendant No.2 to pay the said amount spent by the defendant No.1. On those grounds, the defendant No.1 prays to reject the IA. But as per admission given by the defendant No.1 it is clear that, suit property is a

joint family property and plaintiff and defendants are the members of Hindu joint family, even the defendant No.1 admitted that, the share of plaintiff in the suit property. But the defendant No.1 contended that, the plaintiff has already filed the suit for partition bearing OS No.65/2013, but on perusal of the records the said suit was got withdrawn by the plaintiff and the said suit was one for the relief of declaration and injunction and not for partition as contended by the defendant No.1. Therefore, the said contention will not come into aid of the defendant No.1. Further as far as the contention of defendant No.1 about non-joinder of necessary parties are concerned that will be taken care of at the time of framing the issues. Now at this stage, the only moot question is whether defendant No.1 is changing the nature of the suit property. Admittedly, the defendant is doing the said act as admission given by him in his pleadings. Therefore, this is being the suit for partition and separate possession and unless the parties get their legitimate share in the suit property the nature of the suit property cannot be changed or there can be any new construction which will lead to multiplicity of proceedings. Therefore, unless plaintiff gets

her share by succeeding the suit the interest of the parties is to be protected. But however, for the delay caused in disposal of IA No.I, the plaintiff shall co-operating the speedy disposal of the case with this observation I find that the plaintiff has made out the prima-facie case to go for trial and the balance of convenience is in favour of the plaintiff. Further the injunction is not granted it is the plaintiff who will suffer great loss and hardship she being the widow. Hence, for the foregoing reasons and discussion, my findings to point No.1 to 3 are in the Affirmative.

11. **POINT NO.4** :-In view of the reasons, discussions and findings given to point No.1 to 3, I proceed to pass the following order.

ORDER

The I.A.No.III filed by the plaintiff U/o.39 Rule 1 and 2 of CPC, is hereby allowed.

The defendant No.1 is hereby temporarily restrained from putting up any construction or making renovation in/over the suit property, till further orders subject to condition that, the cooperation of the plaintiff in speedy

disposal of the case failing which on attempt of defendant No.1 the interim order will be vacated.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her corrected by me and then pronounced in the open court on this the 6th day of July, 2024)

(ISWHAR S.M)
Civil Judge & JMFC-Indi.