

KAVP310023632023



Presented on : 09-06-2023

Registered on : 14-06-2023

Decided on : 20-06-2024

**IN THE COURT OF THE ADDL. CIVIL JUDGE
AND JMFC, INDI.**

-PRESENT-

DEVARAJU H.R.

B.A., LL.B.

Additional Civil Judge & JMFC, Indi.

Dated this the 20th Day of June, 2024

Original Suit No.262/2023

PLAINTIFF/S:

1. **Smt. Sharubai W/o. Kasiram Chavan and another.**

-V/s-

DEFENDANT/S:

1. **Shri. Bhimasing S/o. Gopu Lamani and others.**

I.A.NO.I

Applicant/s/Plaintiff/s:

1. **Smt. Sharubai W/o. Kasiram Chavan**
Age: 45 Yrs., Occ: HH work,
R/o. Hittanalli LT,
Tq: Devar Hipparagi, Dist: Vijayapur
and another.

(By Sri.V.S.C. Adv.,)

-V/s-

Opponent/s/Defendant/s:

- 1. Shri. Bhimasing S/o. Gopu Lamani,**
Age: 65 Yrs., Occ: Agril.,
R/o. Karim Masjid Back side, Vijayapur
Tq & Dist: Vijayapur and others.

(Sri. M.S.P. Adv. for D-2 to 8)
(Sri. S.G.H. Adv. for D-1 & 9)

ORDERS ON I.A.NO.I

This is an application filed by the plaintiffs under order 39 Rule 1 and 2 of CPC for seeking temporary injunction order against the defendant No.7 and 9 restrained them from alienating the suit schedule properties by way of sale, gift, exchange, mortgage or in any other mode till pending disposal of the present suit.

2. The Brief facts of the plaintiffs' and defendant's case are as follows:-

The plaintiff No.1 in her affidavit annexed to this application has stated that, she herself and defendants are the members of Hindu undivided joint family and suit schedule properties are the ancestral and joint

family properties of plaintiffs and defendants. In the year 1980 father of the plaintiffs and defendant No.1, 7 and 8 and deceased Pulsing had effected partition in land Sy.No.92/1B of Tamba village Indi Taluka. Under partition defendant No.1 had acquired the property bearing Sy.No.92/1B/1 measuring 04 acres 11 guntas, the deceased Pulasingh had acquired the property bearing Sy.No.92/1B/3 measuring 04 acres 11 guntas, deceased Pulasing had acquired the property bearing Sy.No.92/1B/3 measuring 04 acres 12 guntas as per ME No.8457 dated: 03.10.1980. The said partition is not actual partition, but partition effected by the father of the plaintiffs to get benefit from the government. Hence, said partition is not binding on the share of the plaintiff. Thereafter, the defendant No.1 transferred the suit schedule property bearing Sy.No.92/X/2A measuring 04 acres 05 guntas to his son defendant No.9. Hence, said MR.No.H-210/2021-2022 dated:21.06.2022 is not binding on the legitimate share of the plaintiffs. The

plaintiffs have approached the defendants and requested them to allot their legitimate share, but defendants have refused to effect partition. Hence, they have filed present suit along with this application.

3. Plaintiff No.1 further submitted that, defendant No.7 and 9 are trying to alienate the suit schedule property to the 3rd person. They have made out prima-facie case, balance of convenience lies in favour of plaintiffs, if defendant No.7 and 9 alienates the suit schedule property, it creates hardship to the plaintiffs. Hence, pray for allow the application.

4. Per contra, the defendant No.1 and 9 put their appearance through their advocate and filed memo by adopting the contention of the written statement as objection to I.A.No.I filed by the plaintiffs. The defendant No.1 and 9 in their written statement has denied the allegations of facts made by the plaintiffs that, they themselves and defendants are the members of Hindu undivided joint family. Father of the plaintiffs by name

Sri. Gopu Lamani had effected partition among his sons in the year 1980 itself. In said partition, land bearing Sy.No.92/1B divided into 3 divisions. Property measuring 04 acres 11 guntas had been given to the share of the defendant No.1. The revenue authority renumbered the said survey number as Bl.No.92/1B/I, then 04 acres 11 guntas had been given to the share of deceased Pulasing, the revenue authority renumbered as Bl.No.92/B/II, and 04 acres 12 guntas has been given to the defendant No.7. The revenue authority renumbered as Bl.No.92/1B/III and land bearing Sy.No.54/2A situated at Ganganahalli village, Devar-Hipparagi taluka has been given to the defendant No.8 and land bearing Sy.No.21/2A situated at Ganganahalli village Devar-Hipparagi taluka has been given to the Premasing. The father of the plaintiff himself has made family arrangement and it is reported to the revenue authority. The revenue authority during the course of discharge of their official duty, have mutated said oral

partition as per ME No.8457 of Tamba village. The said oral partition effected in the year 1980, since said partition all the respective sharers are in possession, use and enjoyment as owners. Hence, nature of the joint family comes to an end in the year 1980 itself. All the members severed their joint interest in the joint family and have formed their own respective joint family and run their family. It is presumed that, all the Hindu family are joint family and till contrary is proved, but all the Hindu family properties are not joint family properties.

5. The defendant No.1 and 9 further contended that, the plaintiffs have not challenged the mutation entry bearing ME No.8457 till today. After lapse of 42 years, plaintiffs have filed the present suit. Hence, plaintiffs are not having any rights to claim their share in the suit schedule property. The plaintiffs have not shown the source of the suit schedule property into the hands of plaintiffs and defendant No.1 and 7 and deceased Pulasing. Hence, suit is liable to be dismissed. There is

no cause of action for the suit. Hence, they pray for dismiss the application.

6. Heard both sides, perused the available materials on record.

7. The following points that arise for consideration of this Court are as under:

1. Whether the plaintiffs/applicants have made out *prima-facie* case?

2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether the plaintiffs will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?

4. What Order?

8. My answer to the above points are as follows;

Point No:1. **In the Affirmative**

Point No:2. **In the Affirmative**

Point No:3. **In the Affirmative**

Point No:4. **As per final order** for the

following:-

REASONS

9. Point No 1:- It is the case of the plaintiffs that, they themselves and defendants are the members of

Hindu undivided joint family and suit schedule properties bearing Sy.No.92/*/2A, 92/*/2B and 92/*/2C of Tamba village, Indi Taluka, Vijayapur district are the ancestral and joint family properties of plaintiffs and defendants. Their father Gopu Lamani had divided the property in the year 1980 among his sons for getting government benefits as per ME No.8457 dated: 03.10.1980. The defendant No.7 and 9 are trying to alienate the suit schedule properties on the strength of the khata. Hence, they have approached the defendants and demanded them to allot their legitimate share, but defendants have refused to allot their legitimate share. Hence, they have filed the present suit along with this application.

10. The learned counsel Sri. V.S.C. has argued that, the khata of the suit schedule property stands in the name of defendant No.7 and 9, if they alienated the suit schedule property, it creates multiplicity of

proceedings and cause loss to the plaintiffs. Hence, he prays for allow the application.

11. The plaintiffs in support of their application have furnished RTC Extract of the suit schedule property bearing Sy.No.92/2A and 92/3C wherein khata of the above said property stands in the name of defendant No.7 and 9 under watni bearing ME No.8457 and MR No.210/2021-22 dated: 21.06.2022.

12. On the other hand, the defendant No.1 and 9 have admitted the fact that, property divided by his father. However, they have contended that, partition effected by their father is actual partition. Partition already effected in the year 1980 itself. Hence, suit filed by the plaintiff is not maintainable and liable to be dismissed.

13. The Learned counsel for the defendant No.1 and 9 has argued that, plaintiffs have not included the property bearing Sy.No.54/2A and 21/2A of

Ganganahalli village, Devar-Hipparagi Taluka, Vijayapur District. Hence, suit is not maintainable.

14. The defendant No.1 and 2 furnished the said RTC of the above said properties, wherein khata of the said properties stands in the name of Niranja S/o. Premasing Nayik, Nirjal D/o. Premasing Nayik, Nima W/o. Premasing Nayik. According to the defendants, plaintiff intentionally have not included the said property. Hence, suit is not maintainable. Question is whether plaintiffs have included all the joint family properties are not is subject matter of trial till then it is just and necessary to protect the interest of the plaintiffs over the suit schedule properties.

15. Further, the Learned counsel for the defendant No.1 and 9 has argued that, as per ME No.8457 father of the plaintiffs have divided the property among defendant No.1 and husband of defendant No.2 & 7. Hence, said partition is actual partition. The property divided by his father in oral partition. Hence, oral partition is accepted

under Hindu law and it is not a compulsory registrable document. In support of his argument, he relied on decision reported in **AIR 1995 between Digamabar Adhar Patil V/s. Devram Giridhar Paul (died)** and another wherein Hon'ble Supreme Court of India at para No.5 of the judgment has held that; partition should not be necessary registration record of rights maintained in the official course of business is relevant piece of evidence.

16. On perusal of the ME.No.8459 it appears that father of the plaintiffs by name Gopu Lamani had given waradi to effect partition. The question is whether waradi is a proof of partition or not. I am of the opinion that, waradi is not proof of partition. Hence, it requires full pledged trial to prove previous partition. Hence, the decision relied by the defendant No.1 and 9 is not helpful to them until completion of evidence of both the parties. Hence, I am of the opinion that, it is just and necessary to protect the interest of the plaintiffs over the suit

schedule property. Hence, I am of the opinion that, plaintiffs have made out prima-facie case. Hence, I hold point No.1 in the **Affirmative**.

17. Point No.2 & 3:- These two points are inter-linked to each other. Hence, they are taken together for common discussion to avoid repetition of facts.

18. The plaintiffs have successfully proved prima-facie case, karta of the suit schedule property stands in the name of the defendant No.7 and 9. If they alienated the suit schedule properties it creates multiplicity of the proceedings and hardship to the plaintiffs. Hence, I am of the opinion that, if this IA is not allowed, much hardship causes to the plaintiffs rather than the defendants and balance of convenience lies in favour of plaintiffs. Hence, without much discussion, I hold Point No.2 and 3 in the **Affirmative**.

19. Point No.4 :- On above made discussions on points No.1 to 3, this court proceeds to pass following:-

ORDER

I.A.No.I filed by the plaintiffs under order 39 Rule 1 and 2 of CPC is hereby allowed.

Consequently, Defendant No.7 and 9 are hereby temporarily restrained from alienating the suit schedule properties bearing Sy.No.92/*/2A measuring 04 acres 05 guntas and Sy.No.92/*/2C measuring 4 acres 04 guntas of Tamba village, Indi Taluka Vijayapura district by way of sale, gift, exchange, mortgage, or in any other types of transfer to anybody till pending disposal of the present suit.

(Dictated to Stenographer, transcribed and typed by her, corrected and then pronounced by me, in the open Court on this the 20th day of June, 2024.)

**(DEVARAJU. H.R.)
Addl. Civil Judge and J.M.F.C.,
Indi**