

KAVP400000172017



Presented on : 03-02-2017
Registered on : 02-02-2017
Decided on : --
Duration :

**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
MUDDEBIHAL**

**Present: Smt. Laxmi N.Garag
B.Com.LL.B(Spl),
Sr., Civil Judge & JMFC.,**

ORIGINAL SUIT No.17/2017

Dated this the 31st Day of October 2023

Plaintiffs:

1. Fatima W/o Abdulkhadir Ranjanagi
and others.

//Versus//

Defendant:

1. Khatanabi W/o Modinsab Ranjanagi,
R/o: Momin Galli, Muddebihal,
Tq: Muddebihal.

PARTIES TO I.A.No.VI

Applicants/Plaintiffs:

1. Fatima W/o Abdulkhadir Ranjanagi
and others.

[By Sri.M.S.Navadagi, Advocate]

//Versus//

Opponent/Defendant:

1. Khatanabi W/o Modinsab Ranjanagi,
R/o: Momin Galli, Muddebihal,
Tq: Muddebihal.

[By Sri.C.R.Joshi., Advocate.]

ORDERS ON I. A. No.VI

The applicants/plaintiffs have filed IA No.VI U/O XXXIX Rule 1 and 2 of CPC prays to issue temporary injunction against the defendant restraining her from withdrawing/receiving the 1/3rd share of compensation amount in respect of suit property bearing R.S.No.105/1A/2 Situated at Shirol Village of Muddebihal taluka, in L.A.C.No.717/2019 pending before the Hon'ble III Additional District and Sessions Judge, Vijayapur, till disposal of the suit.

2. In support of the application annexed to the affidavit, it is stated that the plaintiffs have filed this suit for declaration and injunction in respect of the suit schedule property against the defendant. The plaintiff No.1 is wife and plaintiffs No.2 to 6 are children of

Abdulakhadir S/o Modinsab Ranjanagi. During the life time of Abdulakhadir S/o Modinsab Ranjanagi and other two persons jointly purchased the suit property bearing R.S.No.105/1A/2 measuring 4 acres 1 gunta of land Situated at Shirol Village of Muddebihal and he got 1/3rd share in the suit property. The said Abdulakhadir died on 26.08.2012 leaving behind the plaintiffs as his legal heirs and they are owner in possession of the suit property to the extent of 1/3rd share. The defendant without the knowledge of the plaintiffs has illegal got entered her name in the suit property under a concocted Will dated 01.08.2012 in her favour, which is said to have been executed by the Abdulakhadir. During the lifetime of Abdulakhadir has not executed any alleged Will in favour of the defendant. The signature appearing in the Will is not belongs to their father. The defendant has taken the award compensation amount behind the back of the plaintiffs in respect of suit property in LAQSR No.37/2012-13 dated 27.01.2016. Now the defendant has filed LAC.No.717/2019 before the Hon'ble III

Additional District and Sessions Judge, Vijayapur for additional compensation amount and also LAC.No.2504/2020 pending before the Hon'ble I Additional District and Sessions Judge, Vijayapur, both are pending for consideration. In the meanwhile, if the defendant receives or withdraw the compensation amount in respect of the suit land, it will cause great hardship and irreparable loss to the plaintiffs. The plaintiffs have made out prima-facia case in their favour and also balance of convenience is lies in their favour. On these grounds pray to allow the application.

3. On the other hand the defendant has filed objections to the application contending that the application filed by the plaintiffs is false, frivolous and not maintainable either in law or on facts. On 01.08.2012 the father of the plaintiffs No.2 to 6 has executed a Will in respect of the suit property in her favour. On the basis of Will the defendant has enter her name in the suit schedule property and become absolute owner of the

same and also on the basis of the Will the defendant received the compensation amount from the SLAO Alamatti. The defendant has acquired exclusive title over the suit property. Now LAC.No.717/2019 is pending before the Hon'ble III Additional District and Sessions Judge, Vijayapur for additional compensation and also LAC.No.2504/2020 is pending before the Hon'ble I Additional District and Sessions Judge, Vijayapur, both are pending for consideration. In the said petitions three claimants were jointly filed the petition and in the said petition, the defendant has got 1/3rd share in it. The other claimants in the above petitions are not made the parties to this suit. Hence, the suit filed by the plaintiffs is bad for non-joinder of necessary parties and not maintainable in law. On these grounds prays to dismiss the application.

4. Heard the arguments of counsel for plaintiffs as well as defendant. Perused the application, objections and material available on records.

5. On careful examination of contentions of both the side and the materials on record, the following points that arise for my consideration as under:

POINTS

- 1) Whether the plaintiffs have made out prima facie case in their favour?
- 2) Whether the balance of convenience lies in favour of the plaintiffs?
- 3) Whether the plaintiffs will be put to irreparable loss and injury, if the Temporary Injunction is not granted?
- 4) What Order?

6. The above points are answered as follows:-

Points 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 up together for discussion as they are inter connected with each other in order to avoid repetition of facts.

8. The plaintiffs have filed this suit for declaration and permanent injunction in respect of suit schedule properties against the defendant. During the pendency

of this suit the plaintiffs have filed I.A.No.VI U/O XXXIX Rule 1 and 2 of CPC., and prays to restraining the defendant from withdrawing/receiving 1/3rd share in additional compensation amount in respect of suit property bearing R.S.No.105/1A/2 Situated at Shirol Village of Muddebihal taluka in L.A.C.No.717/2019 pending before the Hon'ble III Additional District and Sessions Judge, Vijayapur, till disposal of the suit.

9. Before going to the case on hand, it is necessary to consider that while exercising the power conferred under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908, the court has to satisfy with the grounds as enumerated under Order XXXIX Rule 1(a), (b) and (c) Rule 2 of Code of Civil Procedure, 1908. The essential requirements for grant of temporary injunction are:

1. Prima-facie
2. Balance of convenience
3. Irreparable loss and injury will be caused to the plaintiff, if injunction is not granted.

10. These principles are culled out in catena of decisions rendered by higher echelons of judiciary. It is also important to note that the word used is “prima-facie case” and not “prima-facie title”. It has been consistently held by the higher echelons of judiciary that in order to entitle temporary injunction, the plaintiff have to establish prima-facie and not prima-facie title. Meaning of the word “prima-facie case” has been succinctly explained by the Hon’ble High Court of Karnataka in a decision reported in **ILR 1996 KAR 753 (A P NAGARAJ VS. V R KRISHNA)**, which runs thus:

“12. Prima-facie case what is meant- prima-facie case always got to be distinguished from prima-facie title. The prima-facie case really means that there is a case which requires trial and that the case is not the one based on erroneous and vexatious grounds.”

11. Prima-facie case means a triable issue, which is entirely different from prima-facie title. Keeping these

principles in mind, let me proceed to decide this application.

12. In this case, the relationship between plaintiffs and defendants is not at all in dispute. It is specific case of the plaintiffs that they are the wife and children of deceased Abdulakhadir and they are owner in possession of the suit property to the extent of 1/3rd share.

13. The defendant claims that during the lifetime of Abdulakhadir had executed a Will in favour of defendant on 01.08.2012 in respect of suit property, thereby the defendant has become the absolute owner and is in possession of the suit property. This contention is yet to be proved by evidence and requires adjudication. The matter requires trial. Admittedly, the suit property is self-acquired property of deceased Abdulakhadir. The defendant is the mother of deceased Abdulakhadir and the plaintiffs are the wife and children of deceased Abdulakhadir. These relationships are admitted by the

parties. If the compensation in respect of suit property is withdrawn by the defendant without proving the Will, which is contested by the plaintiffs, it will lead to multiplicity of proceedings and greater hardship and irreparable loss would be caused to the plaintiffs. While deciding the present suit for declaration and permanent injunction, this court will have to determine the aforesaid contentions considering the materials and evidence on record. The suit for declaration and permanent injunction filed by the plaintiffs and contention of the defendant about "Will" necessarily involves an adjudication of the rights of the parties in the suit property. Without deciding the rights of the parties, none of the parties are entitled to receive the compensation amount awarded in respect of suit property. The contentions raised by the parties are yet to be proved and disproved by the parties during the course of trial. Hence, the grounds sought for dismissal of the IA by the defendant is not tenable at this stage. They require full-fledged trial. The matter will be considerably

complicated and third party rights will be created, if the IA No.VI is not allowed.

14. Admittedly, it is a suit for declaration and permanent injunction. If the defendant receives the compensation amount without proving the Will, it will cause greater hardship to the plaintiffs, who claim to be the legal representative of deceased Abdulakhadir. No harm or prejudice will be caused to either parties, if the compensation amount in L.A.C.No.717/2019 pending before the Hon'ble III Additional District and Sessions Judge, Vijayapur, Who ever will prove the case, that party will be entitled for compensation amount. Till then it is necessary that none of the parties will entitle to receive the compensation amount in respect of suit schedule property, in the interest of justice and equity.

15. The grievance of the plaintiffs is that they have got 1/3rd share in the suit property, the defendant had filed LAC.No.717/2019 before the Hon'ble III Additional District and Sessions Judge, Vijayapur for additional

compensation amount and also LAC.No.2504/2020 pending before the Hon'ble I Additional District and Sessions Judge, Vijayapur, both are pending for consideration. In the above circumstances, if injunction as prayed is not granted very purpose of the suit would be defeated by delay and irreparable loss will be caused to the plaintiffs. The matter is regarding declaration and injunction in respect of the suit property, which requires trial. Until then if the additional compensation amount is received by defendant or any one of the parties, it would lead to multiplicity of proceedings. Hence, the plaintiffs have made out prima-facia case in their favour and also balance of convenience is lies in their favour. Therefore, the plaintiffs are entitled for relief of temporary injunction against the defendant. Accordingly, I answered the points No.1 to 3 are in the **Affirmative**.

16. **POINT No.4:-** In view of the findings on points No.1 to 3 in the affirmative, I proceed to pass the following ;

ORDER

I.A No.VI filed by the plaintiffs U/O XXXIX Rules 1 and 2 of C.P.C is hereby allowed.

The defendant is hereby restrained from withdrawing/receiving the 1/3rd share in additional compensation amount in LAC.No.717/2019 pending before the Hon'ble III Additional District and Sessions Judge, Vijayapur, till the disposal of this suit.

Under the circumstances of the case, no order as to cost of this I.A.

(Dictated to the stenographer directly on computer, corrected and then pronounced by me in open court on this **31st day of October 2023**).

**[Smt. Laxmi.N.Garag]
Senior Civil Judge & JMFC.,
Muddebihal.**