

Order below exh.5 in R.C.S. No.88/2018
(Shrimati.Bhouravva Shrishailya Magdum Vs. Shri.Malkappa
Basgonda Magdum and others)

(CNR NO. MHSN080005602018)

1. This application is filed by plaintiff u/o 39 Rule 1 and 2 of the Civil Procedure Code against defendant no.1 for temporary injunction restraining him from disposing disputed properties on the say of defendant no.2 and 3, by sale, mortgage, lease etc. till final decision of the suit.

In short, facts of the application are as under :-

2. Description of Disputed properties situated in Village Sindur, Tal.Jath, Dist.Sangli is as under.

A] Landed Properties-

Sr.No.	Gat No/Sr.No.	Area H.R.	P.K.	Assessment R.P.
1.	535	3.28	0.02	2.56
2.	527	0.44	0.00	0.29

B] House Property-

Sr.No.	Property No.	Area (sq.ft.)
1.	350	330.4

According to plaintiff, above mentioned properties are ancestral properties. Plaintiff have share in the said properties. Suit is filed for partition, separate possession and perpetual injunction.

3. According to plaintiff, her marriage was solemnized with Shrishailya Magdum on 10.07.1998. Defendant no.1 is father-in-law and defendant no.2 and 3 are brother-in-laws of plaintiff. Defendant no. 4 and 5 are sister-in-laws of plaintiff. Defendant no.6 sister of defendant no.1. After marriage with Shrishailya,

plaintiff was residing in village Sindur with her husband in Joint Family. At that time defendant no.1 to 3 harassed her mentally and physically. Plaintiff and Shrishailya have no issue, therefore they were not allowed by their family members for attending public or relatives programmes. Therefore, Shrishailya committed suicide on 12.01.2018 by taking poison. After death of husband plaintiff was residing in Joint Family along with defendant no.1 to 3. In march 2018, defendant driven her out of her matrimonial house. Therefore plaintiff is residing in her parental house. In April 2018 and May 2018, through mediator efforts were made for settlement but defendants responded rudely and neglected to maintain plaintiff.

4. It is further contended that defendant no.1 is taking about transferring disputed properties on the name of defendant no.2 and 3. After death of Shrishailya, defendants are neglected to maintain plaintiff and neglected to provide to her daily requirements i.e. Food, Clothes, Medicines etc. According to plaintiff, suit properties are ancestral properties and purchased from Joint Family income. Plaintiff's husband Shrishailya get 1/6 share in disputed properties. After his death, said share goes to the plaintiff. Defendant no.1 has trying to alienate disputed properties on say of defendant no.2 and 3. Plaintiff has prima facie case and balance of convenience lies in her favour. If injunction is not granted against defendants then irreparable loss would be caused to her. Hence prays for allowing this application.

5. Defendant no.1 to 6 have filed say at exh.37 and denied all the contentions made in the application. According to defendants, Gat no.535 is self acquired property of the defendant no.1 and Gat no.527 total property is owned by defendant no.6. Plaintiff has no right to ask partition in house property no.350. According to defendants, Gat no.535 (S.N.172/3) was purchased by defendant no.1 by sale deed dt.20.02.1979. House property no.350 was constructed in Gat no.535 from separate income from Gat no.535 and labour income of the defendant no.1. After death of Basgounda, names of defendant no.1, defendant no.6 and wife Basavva, daughters Bhairavva, Nilavva and Mahadevi were enrolled on 7/12 extract of Gat no.527 by mutation entry no.901. Basavva (wife of Basgounda) died on 04.12.2009. Then

defendant no.1 and his sisters Bhairavva, Nilavva and Mahadevi relinquished their share in favour of defendant no.6 by register deed bearing no.5524/2011 dt.23.11.2011. Then by mutation entry no.2893 name of defendant no.6 was enrolled on 7/12 extract of Gat no.527. Therefore, plaintiff has no right to ask partition in Gat no.527 and injunction against defendant no.6.

6. It is further contended that plaintiff has no right to ask partition in disputed properties. Plaintiff has no prima facie case. Balance of convenience doesn't lie in her favour. If injunction is granted against defendants then more loss would be caused to them. Hence, prays for rejection of application.

7. Heard advocate for plaintiff Shri. Walujkar and advocate for defendants no.1 to 6 Shri. P.A.Naik. Following points arise for my determination, I have recorded findings thereon with reasons given thereunder.

Sr.No.	Points	Answer
1.	Does plaintiff prove prima facie case ?	No
2.	In whose favour balance of convenience lies ?	In favour of defendant no.1
3.	Whether irreparable loss would be caused to plaintiff by rejecting this application ?	No
4.	What order ?	As per final order

-REASONS-

8. Ld. advocate for plaintiff has relied upon 8 A extract of Gat no.535, 7/12 extract of Gat no.535, 7/12 extract of original Gat no.172/3, mutation entry no.1668, 8 A extract of Gat no.527, 7/12 extract of Gat no.527, Assessment extract of property no.350, Xerox copy of resolution about plaintiff's marriage, Death extract of plaintiff's husband, Xerox copy of ration card, Election card, Notice issued in Daily Kesari, Xerox copy of medical documents of plaintiff.

9. Ld. advocate for defendant has relied upon birth extract of

Shrishilya Magdum, Sale-deed, mutation entry no.901, Deed of relinquishment mutation entry no.2893, Death extract of Basavva Magdum, 9(3) and 9(4) extract of Gat no.535.

As to Point no.1 to 3 :-

All these points are interlinked with each other, so avoid repetition discussed commonly.

10. Ld. advocate for plaintiff submitted that, According to plaintiff, her marriage was solemnized with Shrishailya Magdum on 10.07.1998. Defendant no.1 is father-in-laws and defendant no.2 and 3 are brother-in-laws of plaintiff. Defendant no. 4 and 5 are sister-in-law of plaintiff. Defendant no.6 sister of defendant no.1. After marriage with Shrishailya, plaintiff was residing in village Sindur with her husband in Joint Family. At that time defendant no.1 to 3 harassed her mentally and physically. Plaintiff and Shrishailya have no issue, therefore they were not allowed by their family members for attending public or relatives programmes. Therefore, Shrishailya committed suicide on 12.01.2018 by taking poison. After death of husband plaintiff was residing in Joint Family along with defendant no.1 to 3. In march 2018, defendant driven her out of her matrimonial house. Therefore plaintiff is residing in her parental house. In April 2018 and May 2018, through mediator efforts were made for settlement but defendants responded rudely and neglected to maintain plaintiff.

11. It is further contended that defendant no.1 is taking about transferring disputed properties on the name of defendant no.2 and 3. After death of Shrishailya, defendants are neglected to maintain plaintiff and neglected to provide her daily requirements i.e. Food, Clothes, Medicines etc. According to plaintiff, suit properties are ancestral properties and purchased from Joint Family income. Plaintiff's husband Shrishailya get 1/6 share in disputed properties. After his death, said share goes to the plaintiff. Defendant no.1 has trying to alienate disputed properties on say of defendant no.2 and 3. Plaintiff has prima facie case and balance of convenience lies in her favour. If injunction is not granted against defendants then irreparable loss would be caused to her. Hence prays for allowing this application.

12. Ld. advocate for defendant submitted that, Gat no.535 is self acquired property of the defendant no.1 and Gat no.527 total property is owned by defendant no.6. Plaintiff has no right to ask partition in house property no.350. According to defendants, Gat no.535 (S.N.172/3) was purchased by defendant no.1 by sale deed dt.20.02.1979. House property no.350 was constructed in Gat no.535 from separate income from Gat no.535 and labour income of defendant no.1. After death of Basgounda, names of defendant no.1, defendant no.6 and wife Basavva, daughters Bhairavva, Nilavva and Mahadevi were enrolled on 7/12 extract of Gat no.527 by mutation entry no.901. Basavva (wife of Basgounda) died on 04.12.2009. Then defendant no.1 and his sisters Bhairavva, Nilavva and Mahadevi relinquished their share in favour of defendant no.6 by register deed bearing no.5524/2011 dt.23.11.2011. Then by mutation entry no.2893 defendant no.6 was enrolled on 7/12 extract of Gat no.527. Therefore plaintiff has right to ask partition in Gat no.527 and injunction against defendant no.6.

13. It is case of plaintiff that suit properties i.e. S.N.535, 527 and house property no.350 are ancestral properties of her husband Shrishailya Magdum. After his death on dt.12.01.2018, plaintiff has got right in the suit properties. On the contrary it is case of defendants that Gat no.535 is self acquired property of defendant no.1. To substantiate contentions, defendants have produced on record sale deed dt.20.02.1979. It shows that Malkappa Basappa Magdum (defendant no.1) had purchased S.N.172/3 from Malappa Sangappa Chubachi on dt.20.02.1979. In consolidation scheme S.N.172/3 is became Gat no.535. 8 A extract and 7/12 extract of Gat no.535 shows the name of defendant no.1 in ownership and possessors columns. Mutation entry no.1638 was approved by concerned authority. According to Ld. advocate for plaintiff, Gat no.535 (Original S.N.172/3) was purchased on the name of defendant no.1, from the income of the Joint Family. Therefore, it is Joint Family, but nothing is available on record in support of contentions made by the plaintiff.

14. It is case of defendant that defendant no.6 is owner of Gat no.527. Defendant no.1, his sisters Bhairavva, Nilavva and Mahadevi relinquished their share in Gat no.527 in favour of

defendant no.6 by relinquishment deed dt.23.11.2011. It is filed on record at exh.54/4. It is also contended by defendant that House property no.350 is constructed by defendant no.1 in Gat no.535. Therefore, plaintiff has no right to ask any kind of relief especially like injunction about landed as well as house properties.

15. Considering the all documents on records it shows that Gat no.535 (Original S.N.172/3) was purchased by defendant in the year 1979. In sale deed, it is no where written that sale deed was executed in the capacity of Karta of Joint Family or it was purchased from income of Joint Family. It is prima facie seen that Gat no.535 is self acquired property of defendant no.1. Nobody inherits this property during the life time of defendant no.1. Record shows that defendant no.6 is owner of Gat no.527. Her name is shown in the ownership column of Gat no.527. It is prima facie seen that property no.527 is separate property of defendant no.6. House property no.350 stands on the name of defendant no.1. At this stage of suit, nothing is produced on record which shows that suit properties are ancestral or Joint Family properties of plaintiff's husband Shrishailya. In my considered opinion plaintiff has no prima facie case and balance of convenience doesn't lie in her favour. Rejection of this application would not cause irreparable cause to the plaintiff. It may cause more loss of defendants in comparison of plaintiff. Hence, I answer point no.1 and 3 in the negative and point no.2 in accordance with it and for point no.4, proceed to pass following order.

ORDER

1. Application is rejected.
2. Ad-Interim ex-parte order dt.19.05.2018 is set-aside.
3. Cost shall follow costs in cause.

Jath
Date : 15.03.2019

Sd/-xx
(Sou. S.R. Patil)
Judicial Magistrate First Class,
Jath

I affirm that the contents of this P.D.F. file order/judgment are same word for word as per original judgment.

Name of steno : Shri. S.B.Yadav,
Name of court : Sou. S.R. Patil
Civil Judge (J.D.) & J.M.F.C., Jath.

Date : 15.03.2019

Judgment signed by Presiding Officer on : 22.03.2019

Judgment uploaded on : 26.03.2019
