

IN THE COURT OF THE XII ADDL. CITY CIVIL JUDGE,
AT BENGALURU CITY

**PRESENT: SRI. SATHISHA L.P., B.A., LL.B.,
XII ADDL.CITY CIVIL & SESSIONS JUDGE
(CCH.No.27), BENGALURU**

Dated this the 3rd day of January, 2022

O.S.No.624/2021

PLAINTIFF : Sri.Sridhar Pillay.R
S/o Raghavendra Pillay.R,
Aged about 48 years,
residing at No. 519,
Raghavan Building,
between II and III cross,
Sampige road, Malleshwaram,
Bangalore – 560003.

VS.

DEFENDANTS : 1. Smt. Radha.R.,
W/o Raghavendra Pillay.R.,
Aged about 71 years,
residing at Padmalaya,
No. 18, A-II cross, Annayappa
block, Kumara Park,
Bangalore – 560020.

2. Smt. Jayanthi Ravichandran,
D/o Raghavendra Pillay.R.
Aged about 53 years,
Rajajinagar 6th block,
Bangalore – 560010.

3. Smt.Bharathi Harish,
D/o Raghavendra Pillay.R.,
Aged about 45 years,
Residing at No. 18, 3rd temple
road, 15th cross, Malleshwaram,
Bangalore – 560003.

4.Smt. Priya Kandamaran,
W/o Kandamaran.K.,
D/o late Raghavendra Pillay.R.,
Aged about 44 years,
residing at No.68, Grackle Trail,
Scarborough, On tario,
MIX2C5, Canada.

5. Sri. Gopal Pillay.R.,
S/o Raghvendra Pillay.R.,
Aged about 39 years,
residing at Padmalaya, No.18,
A-II cross, Annayappa block,
Kumara park,
Bangalore – 560020.

6. Sri.M.Anil Kumar Mehta,
Aged about 44 years,
S/o Sri.G.M.Manoharlal Mehta,
Residing at No.11, B street,
1st cross, Magadi road,
Bangalore – 560023.

7. Smt. Taradevi,
aged about 41 years,
W/o Sri.B.Sunil Kumar,
Residing at No. 716, 1st cross,
B street, Magadi road,
Bangalore – 560023.

ORDERS ON I.A.No.1

I.A.No.1 is filed by the plaintiff under order 39 Rule 1 & 2 of CPC for an interim order of injunction restraining the defendants, their representatives, agents, employees, henchmen or anybody claiming under or through them in any way alienating/ encumbering or creating any third party rights in respect to A to Y schedule properties in any manner till the disposal of the suit.

2. In support of the application affidavit of plaintiff is filed, wherein he has contended that, the defendant Nos. 1 to 5 are the members of the Hindu Undivided Joint family and they are in joint possession of the suit schedule properties.

3. That, the suit A to Y schedule properties are ancestral properties of his grandparents late

Sri.Muniswamy Pillai and Late Smt. Rajamma, who died intestate and said suit schedule properties were inherited by his father late Sri.Raghavendra Pillay, who died intestate and now they are all entitled for equal share in and over the suit schedule properties. That he was residing with defendant No.1 and defendant No.5 at Malleshwaram house i.e., schedule A property till 10.11.2020, thereafter defendant No.1 and defendant No.5 have shifted to a rented house and thereafter they are regularly pressurizing him to vacate the schedule A property in order to demolish and build the commercial complex over the schedule A property.

4. That the defendants are also trying to alienate the other suit schedule properties, since defendants have entered into a partition deed among themselves without including him as the necessary party, based on the such deed they would try to alienate the suit schedule properties to the prospective purchasers without his

knowledge or the knowledge of this court, even though they do not have any independent right, title or interest over the suit schedule properties and they would execute any document to create third party interest or to encumber the same. As seen from the facts, the defendant Nos. 1 to 5 have already made such attempts favouring defendant Nos. 6 & 7. They would also attempt to through the plaintiff out of the schedule A property, where plaintiff is residing with his wife and child.

5. Under the circumstances, it is just and necessary to grant an interim order of injunction as prayed for. That he has a prima facie case, as he is in joint possession of the suit schedule property as lawful owner and as such he has equal right in and over the suit schedule properties. On the other hand, the defendants have no absolute right, title and interest over the suit schedule properties and trying to alienate the same. The balance of convenience is in his favour as he is

in the possession and enjoyment of the suit schedule properties jointly.

6. That, if the temporary injunction is not granted he would be put to irreparable loss and injury which cannot be compensated in terms of money. On the other hand, the defendants would not suffer any hardship or prejudice as they have no absolute right, title or interest or for that matter possession over the suit schedule property but are only trying to speculate. Hence, it is just and necessary to allow the accompanying application as prayed for. That as the matter is of grave urgency issuance of notice would delay the matter and embolden the defendants to take law into their hands. With these contentions seeks to allow the application.

7. The defendants filed objection to oppose the application by contending that, the suit filed by the plaintiff deserves to be dismissed on technical grounds of non payment of court fee and for want of cause of action.

8. The plaintiff has not approached this court with clean hands. The plaintiff seeks relief without doing justifiable act as a son to the first defendant, and brother to the defendants No. 2 to 5 herein. As such the entire claim of the plaintiff in the suit deserves to be dismissed.

9. The plaintiff has not come to the rescue of his ailing mother viz., the first defendant, when she had undergone heart operation on 20-03-2020. The plaintiff has turned his back in rendering his responsible obligation towards his mother. The conduct of the plaintiff is not new and all along he had expressed his disinterest in rendering his obligation as a family member but he now intends to claim property rights.

10. That the disinterest of the plaintiff towards the affairs of the family persuaded the defendants to enter into a partition deed dated 24-09-2018, and other than that, these defendants have no say for the plaintiff to enjoy all the benefits as a family member. Unfortunately,

the plaintiff stands first only to derive benefit and withers away in performing obligation as a family member. The defendants hope at least henceforth the plaintiff would make up his mind to consider himself as dutiful & responsible family member and renders his role accordingly.

11. That the plaintiff has not included all the properties of the family. The description of jewelleries is also not correct. The plaintiff being the custodian of locker with key, along with ancestral jewelleries & valuable articles have not been described part of the suit schedule property. Further the said locker also contains jewellery belonging to the 1st defendant. The plaintiff has also not described the measurement & number of items in the schedule Y property even though it does not belong to the joint family property. Certain jewelleries mentioned in schedule Y are also in the custody of the plaintiff, as such for non disclosure of proper facts, the plaintiff is not

entitled for any relief in the suit.

12. That the plaintiff has volitionally consented for sale of schedule B property. The plaintiff has received his respective portion of the sale price derived out of the sale transaction of the schedule B property. There was no force or pressure in any manner whatsoever, either by these defendants or the other defendants herein for accomplishment of the sale proceedings with respect to schedule B properties. Under these circumstances, the plaintiff cannot question the sale deed dated 06-08-2020, that too, without paying proper court fee, when the plaintiff is an executant of the said sale deed, he cannot seek declaration of the same as null & void, without there being compliance of Order 6 Rule 4, and on this count also the suit of the plaintiff is liable to be dismissed.

13. That the description of property as schedule A to Y at para No. 5 is not fully correct. The measurements are wrongly mentioned in this para instead of 2040. The

description of schedule Y is not admitted & seriously disputed. Averments regarding the relationship & genealogical tree are duly admitted & accepted.

14. The defendant Nos.1 & 5 have already explained the reasons for execution of the registered partition deed. These defendants have no objection if the plaintiff comes forward, and renders his obligations as a son, and derives all the benefits of the family property including his respective share.

15. That they have not played any fraud and the plaintiff is fully aware of all the facts & circumstances under which the partition deed was drawn & executed. At no point of time have these defendants played any fraud as alleged by the plaintiff in para 9 of the plaint.

16. That at no point of time these defendants had any malafides or intention to grab the share of the plaintiff. If at all such intention persisted, the defendants

would have sold the property on the basis of partition deed and realized the entire sale price. The plaintiff also joined along with these defendants in conveying schedule B property and realized the plaintiffs sale price also. This aspect of the matter makes it clear that these defendants did not want to usurp the share of the plaintiff, as such, such statements on the part of the plaintiff at paras 10, 11, 12, 13 & 14 are seriously disputed and plaintiff is put to strict proof of the same.

17. Due to the conduct of the plaintiff, the schedule A, property which is located in prime area of Malleshwaram / Sampige road, is left waste without being subjected to appropriate economic usage. The entire family would have been benefited by doing necessary construction in the schedule A property. Due to the disinterest & inaction on the part of the plaintiff, the entire property is not subjected to realization of the benefits to the present market value. The same is

attributed to the conduct of the plaintiff and he should solely take responsibility for the same.

18. That due to the non cooperation on the part of the plaintiff, the entire family is subjected to unnecessary suffering. It is the plaintiff who has to take all such steps to resolve the present differences amongst them. Instead of resolving the issues relating to partition by mutual deliberation & discussion, the plaintiff has approached this court. When there is no demand & initiative for partition, question of refusing itself is imaginary. As such there is no cause of action as alleged by the plaintiff in instituting the suit. With these and other contentions seeks to dismiss the application.

19. Heard the arguments and perused the records.

20. Now, the point for my consideration is:

Whether I.A.No.1 is deserves to be allowed?

21. My answer to the above point is in the

'Affirmative' for the following:

REASONS

22. The plaintiff has filed the I.A.No.1 under Order 39 Rule 1 & 2 of CPC to restrain the defendants from alienating and/or creating any third party interest over the suit schedule properties pending disposal of the suit.

23. In order to obtain the order of temporary injunction, the plaintiff must establish the primary ingredients of prima facie case, balance of convenience and irreparable injury.

24. The plaintiff is before the court for the relief of partition and separate possession of his 1/6th share in the suit schedule properties.

25. There is no any dispute with regard to relationship of the parties. The defendants No.6 & 7 are the purchasers of the item B schedule property. partition deed dated 24.9.2018 by and between the defendants No.1 to 5, and at the same time execution of the sale

deed dated 13.8.2020 in favor of defendant No.6 & 7 is admitted by the defendants No.1 to 5, but whereas the plaintiff is disputing the same and his contention is that the same is executed by him under the force.

26. On perusal of the partition deed dated 24.9.2018, it appears that the same has been executed by and between the defendants No.1 to 5, when the plaintiff is also one of the coparcener he is also entitle for the share in the properties covered under the said partition deed. Prima facie it shows that, the plaintiff has been left out by the other family members while effecting the partition.

27. The plaintiff is also one of the signatory to the sale deed executed in favor of the defendant No. 6 & 7 in respect of the schedule B property, though the plaintiff has stated that his signature has been obtained by force, which is to be adjudicated in the full fledged trial. As of now the sale deed is registered and it has got its own

sanctity.

28. When the plaintiff is able to establish that, the defendants No.1 to 5 has effected the partition without the plaintiff, we cannot rule out that they will not sell the property, in such situation the plaintiff has to indulge in the multiplicity of proceeding, hence in order to protect the right, title and interest of the plaintiff, it is just and necessary allow the application partly, when the plaintiff is able to prove the prima facie case and balance of convenience and irreparable injury. Hence the following;

ORDER

I.A.No.1 filed by the plaintiff under Order 39 Rule 1 & 2 of CPC is hereby partly allowed, the defendants No.1 to 5 are hereby temporarily restrained from alienating/creating third party interest over the suit schedule properties, except suit B and Y schedule properties till the disposal of the suit.

I.A.No.1 is dismissed as against the defendant No.6
& 7.

(Dictated to the Stenographer, transcript thereof corrected, signed and then pronounced by me, in open Court, on this the **3rd day of January, 2022.**)

(SATHISHA L.P.)
XII ADDL.CITY CIVIL & SESSIONS JUDGE
BENGALURU CITY