

PLAINTIFFS : SRI.M.NARAYANASWAMY & OTHERS

-Vs-

DEFENDANTS : SRI.MUNISANJEEVAPPA & OTHERS.

ORDER IA NO. 31

The stage of the suit; The cross examination of Pw-1 by 18 and 19th defendants in view of they were subsequently got impleaded.

2. The suit is for; Partition of 1/4th share and also non binding of sale deeds executed by power of attorney holder by defendant number one said to have been executed by Late Chikapillaiah.

3. The interim application number 31 has been filed by plaintiffs under order 39 rules one and 2 of CPC seeking temporary injunction against defendants 18 and 19 changing the nature of plaint schedule properties/applications schedule properties (that is schedule A to E) pending disposal of suit.

4. The defendants 18 and 19 have filed statement of objections to interim application by contending that they purchased the schedule C property on 26 2 2020 from second defendant, since then they are in peaceful possession and enjoyment by putting up structures as the property has been brought into nest plus properties. After obtaining necessary approvals commenced the construction of a residential

hostel building, the plaintiffs are neither entitle nor are in possession of the property in any manner at any stretch of imagination, accordingly they have failed to show prima facie case, the balance of convenience lies in their favour, accordingly they seek for rejection of application with exemplary costs.

5. Heard on both sides.

6. From the above materials, the following points are arisen for my consideration.

- i. **Whether plaintiffs make out a prima-facie case to restraining the defendants from not to changing the nature of schedule property, till disposal of the suit, as sought in the IA.No.I ?**
- ii. **In whose favour, the balance of convenience lies ?**
- iii. **Who would be put to hardship, if an temporary injunction is granted or otherwise refused?**

7. My answers to the above point is :

Point No.i : **Plaintiffs have not made out prima-facie case**

Point No.ii : **The balance of convenience lies in favour of defendants.**

Point No.iii : **It is the defendants who will be put to hardship, if the injunction is granted,**

for the following :

REASONS

8. **Point No.i** The suit is for partition of 1/4th share and also non binding of sale deeds executed by power of attorney holder by defendant number one said to have been executed by Late Chikapillaiah.

9. **The say of the plaintiffs is** that; Since 1992-93 plaintiffs are residing separately from first defendant who failed to allot their legitimate share. The suit schedule properties are in joint possession, enjoyment of plaintiffs and first defendant. But defendant no.2 to 4 by creating concocted documents in their favour are trying to dispossess the plaintiffs from the lands in question and they are interfering with plaintiffs possession, enjoyment over the suit schedule properties, but they have no right, title, interest in any manner. The defendant No.2 to 4 alleged to have purchased suit properties for business purpose, may at any time alienate them to third parties and is proper to restrain them from doing so. The properties still retain/ remain agriculture in character. Thus they have may out prima facie case balance of convenience lies in their favour.

10. **The defendants filed common objections stating** that written statement be treated as objections to avoid the repetition. In

the written statement defendants mainly contend that plaintiffs seek a declaration that sale deeds executed by GPA holder of first defendant and Chikkapillai are not furnished/ provided details of sale deeds nor paid proper court fee in this regard. The plaintiffs have not inherited the agriculture and other properties of their ancestors and G.Tree is denied. The plaintiffs do not have any manner of right, title, interest or claim in the plaint schedule properties and neither they had any right in the past. When the plaint schedule properties were alienated the plaintiff No.1 & 2 were virtual consenting witnesses to the said transactions and have executed series of document in this regard along with first defendant and late. Chikkapillai. Thus alienations/ transfers of plaint schedule properties were made with consent, express or implied, of plaintiffs. The alieness (D.2 to 4) of properties have acted in good faith and have taken reasonable care to ascertain that the transferors had power to make the transfer and are protected under Sec.41 of Transfer of Property Act. The defendants are bonafide purchasers of value and they are in possession and enjoyment. On these and among other grounds the defendants pray for rejection of the applications.

11. Discussion; When the stage was for further cross examination cross examination of Pw one in view of defendants 18 and 19 were subsequently impleaded who filed written statement and they sought for reopen the stage from further cross examination of Dw-1 to the stage of cross examination of pw one. So when such was the situation, this instant application was filed.

12. **The reason for delaying of suit is;** Initially there were only 5 defendants now it reached to the stage of 19 defendants keep on adding subsequent purchasers.

13. It is true as argued by learned counsel for defendants 18 and 19 this court on 30th day of October 2008 rejected interim application number one and 2 filed by plaintiffs seeking restrain of defendants 2 to 4 from selling or creating any 3rd party rights. Now during the pendency of the suit, the second defendant based on ownership, she is sold application schedule C property in favour of defendants 18 and 19.

14. **Delay in approaching the court;** As per cause title address, the plaintiffs are the resident of Ramagondanahalli where schedule property is situated, even as per the plaintiffs, the defendants 18 and 19 started to put up constructions in schedule C property which was purchased by them in the year 2020 unfortunately, the plaintiffs willfully misled the court by making a mention of schedule (A) to (E). It shows, the plaintiffs have not filed the application with true intention, they wanted to get blanket order on all the suit items and harass the defendants.

15. As per the photographs produced by plaintiffs themselves, the stage of the buildings is except supporting walls, cement plastering and paintings rest have been done. But as per the photographs

produced by defendants 18 and 19, even painting also carried out only the interior work is due the building structure is seller ground plus 3 story building. Admittedly the instant application was filed on 18 10 2022. on 13 12 2022, the statement of objections and photographs were produced by defendants 18 and 19, it means, within span of 67 days, it is not possible to complete the work.

16. Further as argued by learning counsel for defendants 18 and 19 when the plaintiffs are the resident of where the schedule property is situated they are expected to observe and see the topography of the schedule C property and even as per their photographs already the above named structure was built, only the walls, cement plastering and painting work were due. Tall building is built by defendants 18 and 19, it is not possible to conceal the construction,

17. Admittedly in the year 2020 itself, the plaintiffs had the chance to object the construction, because based on the registered sale dated 26 2 2020, the defendants 18 and 19 came to the possession of said property, even in the month of July 2022, the plaintiffs got impleaded these defendants, but they failed, but, after lapse of 3 months, they come up with the application, it shows delay and latches on the part of plaintiffs in approaching the court. Hence they are not supposed to come and go according to their sweet time.

18. Mere excuse of pandemic, as pleaded in the application for delay is concerned. Even during pandemic also, the court proceedings were

held both sides of the parties had participated in this case. Also partial works of court were done and courts were not completely shut down especially for urgent matters are concerned.

19. Moreover, the hon'ble apex court directed the entire judiciary in suo moto petition number 3 of 2020 for condoning the delay from 15th March 2020 till 28 February 2022 if issue arises. Therefore, court holds that, the reason is absolutely false only to overcome the delay it has been agitated by plaintiffs. **Hence court answers Plaintiffs have not made out prima-facie case.**

20. Point nos.ii and iii ; Both points are interlinked each other taken together for common discussion and for brevity. In view of answer given to points no.1, the court holds, at this stage there is no necessity to restrain defendants 18 and 19 from putting up further construction or changing topography in view of they have already built buildings in suit C property. Moreover the plaintiffs have not come to court with clean hands, the main reason is delay and latches. The case has been pending since 2003 this is a partition suit which indicates the slack nature of plaintiffs they would have persuaded the court for early disposal, even the court is ready to take up the matters day by day basis by considering the direction issued by honour High Court of Karnataka for early disposal of 10 plus old cases.

21. Further, the development done by the defendants will enure the benefits to the plaintiffs in case they succeed in the suit they would

get even built structure, because the defendants are not supposed to seek equity as already hit by law of lis pendency as per section 52 of Transfer of Property Act.

22. Regarding delay and latches on the part of plaintiffs and wasting of time of court as well as litigant is concerned, the plaintiffs should be hammered with iron rod by imposing cost of rupees 5000. Hence, court holds that, the balance of convenience lies in favour of defendants. It is the defendants who will be put to hardship, if the injunction is granted, Accordingly application is to be rejected and I proceed to pass the following ;

ORDER.

The IA No.31 filed by plaintiffs u/o 39 rules 1 and 2 of CPC is rejected with cost of rupees 5000.

The cost to be paid to defendants 18 and 19.

**Cross of Pw-1 by defendants 18 and 19 by
02.01. 2023.**

(Dictated to the Stenographer, computerized by her, corrected and then pronounced by me in the open court this the 16th day of December 2022)

16.12.2022.

(K.M.Ananda)

IV Addl. Senior Civil Judge,
Bengaluru Rural District, Bengaluru.

(vide separate order pronounced in the open court)

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