

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC.,
AT: SRINIVASAPUR

Dated this the 21st day of January 2021

:PRESENT:

SHRI. NAGESH NAIK. M.A.,LL.B
Addl. Civil Judge & JMFC.,
Srinivasapur

O.S. NO:28/2020

Plaintiffs:

Bharathamma,
W/o Raghavendra,
Aged about 35 years,
R/o Palya Village,
Kasaba Hobli,
Srinivasapur Taluk.

(By Sri.K.S.P., Advocate)

V/s

Defendants: 1.

Jayamma,
W/o Late Venkatarreddy,
Aged about 62 years,

2.

Shivareddy,
S/o Late Venkatarreddy,
Aged about 38 years,

3.

Manjula,
D/o Late Venkatarreddy,
Aged about 37 years,

All are R/o Palya Village,
Kasaba Hobli, Srinivasapur Taluk.

(By Sri.K.P., Advocate)

CAUSE TITLE ON I.A NO.I

Applicant: **Bharathamma**

V/s

Opponents: **Jayamma and others**

ORDER ON I.A.No.I

The plaintiff/applicant has filed this IA.No.1 under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C. with prayer to restrain the defendants from alienating or creating charges over the suit schedule properties in any manner pending disposal of the suit.

2. *In the affidavit annexed to the IA-I, the plaintiff/applicant has prays to consider her plaint as part and parcel of her affidavit. It is stated in the plaint that, plaintiff and defendant No.2 and 3 are the children of 1st defendant through Venkatareddy. They are the members of Hindu undivided joint family. The 1st defendant is the kartha of the joint family. Before 2016, the father of the plaintiff by*

name Venkatareddy was the kartha of the family. The said Venkatareddy died on 10.12.2006, leaving behind the plaintiff and defendants are his successors. The suit schedule properties are ancestral, co-parcener and joint family properties. The said properties were acquired by the Venkatareddy under family partition effected among his brothers about decades back. Those properties were standing in his name till the end of 2019. Thereafter it has been changed in the name of 1st defendant on the basis of succession with the consent of family members. The plaintiff is handicraft woman and her marriage was solemnized with one Raghavendra about 4 years back. He was illutom son in law in the village. After the death of her father, defendant No.1 to 3 have colluded with each other and ousted the plaintiff from native home in humanly. The villagers are protested the ousting of plaintiff, her husband and kids. The plaintiff left arm and left leg are senseless due to the paralysis stroke about decades back. Now she is depending

on her husband Raghavendra. After ousting her, plaintiff leading helpless life with courtesy of the villagers. The plaintiff's father died intestate and she is entitled for 1/4th share in the joint family property. The defendant No.1 to 3 are not interesting to allot the legitimate share of the suit schedule properties. The plaintiff is co-parcener with the 2nd and 3rd defendants, whereas 1st defendant is entitled only husband share as widow. In spite of it defendants are allowed the plaintiff/s husband to participated to agricultural operation on behalf of plaintiff stating that, they will not give any share to her. Therefore plaintiff and her husband have conveyed panchayath in the village and demanded her share in the suit schedule properties. The defendant No.1 to 3 have no right to refuse the share of suit schedule properties. Hence the plaintiff has prays to allow the application.

3. The defendants have filed objections to the IA.No.1. They have also prays to consider their written statement as

part and parcel of their objection. They have admitted the relationship with the plaintiff and denied the remaining case of the plaintiff. They have further contended that, the plaintiff had taken a sum of Rs.4,00,000/- at the time of her marriage and she was agreed to execute relinquishment deed whenever the defendants demands. The defendants have also performed the marriage of the plaintiff and bared the marriage expenses. The defendants have also allotted one house to the plaintiff, which is katha No.152, measuring east-west 15 feet, north-south 30 feet. Now the plaintiff is in possession of the said property. The propositor Venkatareddy had acquired small portion of property under family partition. Property measuring 1½ guntas and 18 guntas in Sy.No.21/2, property measuring 27 gutans in Sy.No.84/E, property measuring 16 guntas in Sy.No.93/1, property measuring 4½ guntas in Sy.No.93/3, property measuring 5 guntas in Sy.No.137/1, property measuring 1 guntas in Sy.No.84/1C came to the share of the

Venkatareddy under family partition. The propositor Venkatareddy and his son 2nd defendant were doing seasonal business of mango, sheep's and goats. Out of the income acquired in the said business, the propositor had purchased the property bearing Sy.No.182/2 through registered sale deed dated 27.10.19 86 and also property measuring 2½ guntas in Sy.No.72 through registered sale deed dated 18.10.1995. 1 gunta in the same survey number was also purchased through registered sale deed dated 17.02.2006. The said properties are self acquired properties of propositor Venkatareddy and his son 2nd defendant. After the death of propositor Venkatareddy, 2nd defendant has continued his business and acquired the 20 gutnas in Sy.No.25/13 through registered sale deed dated 24.11.2018. When the plaintiff had already received money and house property, she has no right over the suit schedule properties. The suit of the plaintiff is also not maintainable for partial partition as she has not included the house property.

4. *It is further contended that, 3rd defendant oftenly visited the parents house and participated in the agricultural operation. The defendants have demanded the plaintiff's execute the relinquishment deed, instead of executing it she has had filed this false suit. The plaintiff is not in possession of the property for the more than 12 years prior to the date of institution of the suit. The plaintiff has no share in the suit schedule properties and suit of the plaintiff is not maintainable. With these grounds, they have prays to reject the application.*

5. *Heard the learned counsel for plaintiffs and defendants and perused the materials placed on record.*

6. *Now, the Points that would arise for the consideration of this court are as under:-*

- 1. Whether the plaintiff proves that she has prima facie case in her favour?*
- 2. Whether the balance of convenience lies in her favour?*

3. Whether the plaintiff proves that she would be subject to loss and hardship in the event of not allowing the I.A.?
4. What Order?

6. The findings of this court on the above points are as under:-

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

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

:REASONS:

7. POINT NO.1:- The plaintiff has filed this suit for partition and separate possession over the suit schedule properties against the defendants. It is the contention of the plaintiff that, herself and defendant No.2 and 3 are the children of 1st defendant through Venkatareddy. The suit schedule properties are joint family properties. After the death of her father Venkatareddy, the defendants are ousted

her and refuse to allot her legitimate share over the suit schedule properties. The plaintiff has produced genealogical tree, death certificate of her father, RTC extract of suit schedule properties, disability certificate, mutation register extract.

8. *It is the contention of the defendants that, plaintiff has taken Rs.4,00,000/- from them and relinquished her right over the suit schedule property. The defendants have also allotted a house to the plaintiff and said property is not subject matter of the suit and suit is bad for partial partition. The suit schedule properties are self acquired properties of their father Venkatareddy and 2nd defendant Shivarreddy. The plaintiff is not the member of joint family and she is not entitled for any share in the suit schedule properties. They have not produced any documents.*

9. *There is no dispute that, plaintiff and defendant No.2 and 3 are children of 1st defendant through late*

Venkatareddy. It is also not in dispute that, some of the suit schedule properties are stands in the name of late Venkatareddy and some of the suit schedule proprieties stands in the name of 2nd defendant. The defendants have not denied that plaintiff is not member of joint family. The contention of the defendants are, plaintiff has taken money and relinquished her right over the property. The said fact has to be proved during the trial. Whether the suit schedule properties are self acquired properties or joint family properties, will come to know only after trial. At this stage if this court on the basis of said contention of the defendants not restrain the defendants from alienating the suit schedule properties, if defendants have alienated the property, it will create multiplicity of proceedings and plaintiff will be put into irreparable loss and injury. Since the suit schedule properties are stands in the name of family members of the plaintiff, at this stage it appears that she is also having rights over the suit schedule properties. Hence it is

necessary to restrain the defendants from alienating or creating charges over the suit schedule properties till disposal of the suit.

10. *Hence at this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the plaintiff has made out a prima facie case for granting interim relief.*

11. *The power to grant temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.*

12. *The first rule is that the applicant must make out a prima facie case in support of the right claimed by her. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and decision on merits and on the facts before the court there is a probability of the applicants being entitled to the relief claimed by her. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.*

13. *At this point of time, I would like to place reliance on the decisions reported in (2010) 1 SCC 689 – Kashi Mata Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and anther. In the Hon'ble Supreme Court held in para 16 that:*

“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he

has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience of irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.....”.

The ratio laid down in the above decision clarifies that the plaintiff has to made out prima facie case in order to obtain temporary injunction. In view of above discussion and on the basis of pleadings and materials placed by both the parties, I am of the considered opinion that the plaintiff have

*made out prima facie case in her favour. Accordingly, Point No.1 is answered in **Affirmative**.*

14. POINT NOs.2 & 3: *As these points are interconnected with each other, I have taken up together for consideration in order to avoid repetition of facts.*

15. *The object of interlocutory injunction is to protect the applicant against the injury by violation of her right for which she could not be adequately compensated if issues were resolved in her favour at the trial. In the present case, it could be seen that, there is dispute by both the parties in respect of title and possession of the suit schedule properties and in the mean time the applicant/plaintiff has made out prima facie case in her favour. Therefore at this stage, if the prayer of the plaintiff is not allowed it may further make difficult the matter & it also may results in multiplicity of proceedings and irreparable situation may arise.*

16. *The temporary injunction order can be passed on settled principles taking into account, the three basic grounds are prima facie case, balance of convenience and irreparable loss. But, in the case on hand, the plaintiff has made out grounds for prima facie case. Thus, in the present situation, if the prayer of the plaintiff is allowed, no loss or hardship is going to be caused to other side. Therefore, there are sufficient materials on record to hold that the balance of convenience lies in favour of applicant/plaintiff. In view of my above discussion, I answered point Nos.2 and 3 are in the **Affirmative**.*

17. POINT NO.4: *In view of my above discussion under point No.1 to 3, I proceed to pass the following:*

:O R D E R:

**The I.A-I filed by the plaintiff/
applicant under order 39 rule 1 and 2 of
CPC is hereby allowed.**

***The defendants are hereby restrained
from alienating or creating charges over
the suit schedule properties pending
disposal of the suit.***

*(Dictated to the Stenographer, on computer and computerized by her,
corrected by me, and then pronounced in the open court on this the **21st**
day of January, 2021.)*

***(NAGESH NAIK)
Addl. Civil Judge & JMFC,
Srinivasapur.***

