

**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC
AT CHIKKANAYAKANAHALLI**

Present : Smt.APARNA.R, B.Com, LLB
Addl. Civil Judge & JMFC

Dated this 20th Day of November, 2023

O. S . No. 326/2022

PLAINTIFF : Lakshmikantha H.P.
S/o Puttanagappa
Aged about 22 years,
R/o : Indiranagara,
B.H. Road, Near Balaji Theater,
Huliyar Town, Huliyar Hobli,
Chikkanayakanahalli Taluk,
Tumkur District.

(By Sri.H.S.A., Adv)

- VS -

DEFENDANTS :

1. **Smt. D. Kamalamma**
W/o Puttanaiah
D/o Durgaiah H.R.
Aged about 68 years,
R/o : "Chitra Nilaya", 9th A,
1st Cross, Nimishamba Nagara,
Kuvempu Nagar,
Mysore District.
2. **Smt. D. Sharada**
W/o Gurumurthy
D/o Durgaiah H.R.
Aged about 62 years,
R/o : Gandhinagara,
Handanakere Hobli,
Chikkanayakanahalli Taluk,
Tumkur District.

3. **Smt. D. Kempadevamma**
W/o Somashekharaiiah
D/o Durgaiah H.R.
Aged about 60 years,
R/o : Gubbi Layout, Behind KSRTC Depot,
Tiptur Town, Tumkur District.
4. **Smt. Shanthamma**
W/o V.K. Eeranna
D/o Durgaiah H.R.
Aged about 58 years,
R/o : Govindapura, 3rd Main,
Near Power Station,
Tiptur Town,
Tumkur District.
5. **Smt. D. Nagarathna**
W/o Narasimhamurthy,
D/o Durgaiah H.R.
Aged about 56 years,
R/o : Shettikere Village,
Settikere Hobli,
Chikkanayakanahalli Taluk,
Tumkur District.
6. **Smt. D. Savithri**
W/o Parashuram
D/o Durgaiah H.R.
Aged about 54 years
R/o : Near Govt. Primary School,
Y.T. Road, Albur, at post,
Nonavinakere Hobli,
Tiptur Taluk,
Tumkur District.
7. **Smt. D. Vijayakumari**
W/o Nataraju
Aged about 52 years,

R/o : Teacher, Govt. Primary School,
Honiskere, Kora Hobli,
Tumkur Taluk, Tumkur District.

(Defendant No.1 to 7 by Sri.C.R., Adv)

ORDERS ON PRELIMINARY ISSUES

The plaintiff has filed the present suit against the defendants for the relief of Permanent Injunction restraining the defendants or anybody on their behalf from interfering with the plaintiff's peaceful possession and enjoyment over the suit schedule properties.

BRIEF FACTS

1. It is contented by the Plaintiff that the suit schedule properties originally belonged to one Durgaiah S/o Ramanaika and same were acquired by him out of his earnings as a Government Teacher. That the plaintiff herein is the Grandson of said Durgaiah and the defendants are the daughters of said Durgaiah. That during the life time of said Durgaiah, he executed a Registered Will dated 18.05.2011 in favour of the plaintiff herein thereby bequeathing the suit schedule properties in favour of the plaintiff. That the said Durgaiah died on 12.05.2016 and subsequent to his death all funeral ceremonies were performed by the

plaintiff herein. It is the further case of the plaintiff that as per the aforesaid Will the plaintiff is in possession and enjoyment of the suit schedule properties and has improved the same by spending huge money and labour and subsequently got the khata changed in his name. In spite having knowledge of the said fact, the defendants who have no right, title, interest and possession over the suit schedule properties, are said to have made attempts to interfere with the plaintiff's peaceful possession and enjoyment over the suit schedule properties and attempted to evict the plaintiff from the suit schedule properties. Left with no alternative, the Plaintiff has filed this instant suit against the defendants.

2. Upon issuance of summons, the defendants tendered their appearance through their counsel and filed written statement. It is contented that the suit schedule properties are the ancestral and joint family properties of the said Durgaiah and that the defendants are the daughters of said Durgaiah who also had one son by name Puttanagappa, who is the father of the plaintiff herein. That the defendant No.5 herein filed a suit in O.S. No. 492/2008 before the Hon'ble Principle Civil Judge and JMFC., Chikkanayakanahalli for the

relief of partition and separate possession in respect of all the joint family properties including the suit schedule properties herein against the said Durgaiah and her brother Puttanagappa and all other sisters. That the plaintiff herein along with his mother and sisters were also impleaded as defendants No.9 to 12 in the said suit and filed their written statement. After trial, the suit was decreed vide judgment dated 02.09.2013 thereby allotting 1/9th share to the defendant No.5 herein and also decreed that the defendant No.9 to 12 in O.S. No. 492/2008 are also entitled to their share in their father's share. The said judgment and decree was challenged in RA No. 78/2014 before the Senior Civil Judge, Tiptur, and the judgment and decree was modified vide order dated 21.10.2016 declaring that the present defendant No. 1 to 7 herein were entitled to 1/8th equal share in all the properties and also allotted 1/8th share together to the plaintiff herein, his father and his sisters. The said modified judgment was not challenged further and thereby has become absolute. On the basis of the same, the defendant No.5 herein filed final decree proceedings before the Hon'ble Principle Civil Judge, Chikkanayakanahalli in FDP 4/2017 which is pending consideration. In spite of having knowledge of all these facts, the plaintiff has preferred

his frivolous suit and hence the suit is hit by Principle of resjudicata and liable to be rejected under Order VII Rule 11(b) and (d) of CPC. Based on the aforesaid averments the defendants prayed to dismiss the suit.

3. Along with the written statement the defendants also filed application under Order VII Rule 11(b) and (d). After hearing, this Court opined that the issue involved in the suit could be resolved by framing of issues and conducting trial. Therefore, the presiding officer holding concurrent charge of this Court framed the following issues.

I. Whether the plaintiff proves that he is in lawful possession and enjoyment of the suit property?

II. Whether the plaintiff proves alleged interference as alleged in the plaint?

III. Whether the defendants prove that the suit is not maintainable against coparceners?

IV. Whether the defendants prove that the plaintiff has created the Will and without declaration of his ownership, the suit for permanent injunction is not maintainable?

IV. What order ?

4. Out of the aforesaid Issues, Issue No.3 and 4 were treated as Preliminary Issues and the defendants were called upon for adducing evidence.

5. In support of their defence, defendant No.5 examined herself as DW1 and got marked Ex.D1 to Ex.D6 as Ex.D1 : Certified copy of order sheet in FDP No.4/2017, Ex.D2 : Certified copy of petition in FDP No.4/2017, Ex.D3 : Certified copy of plaint in O.S.No.413/2008, Ex.D4 : Certified copy of IA No.2 in O.S.No.413/2008, Ex.D5 : Certified copy of judgment in O.S.No.413/2008, Ex.D6 : Certified copy of decree in O.S.No.413/2008. Despite sufficient opportunity, the plaintiff failed to cross-examine DW1 and hence, the evidence of DW1 remains unchallenged.

6. Upon hearing and perusal of the materials placed on record, this Court answers the aforesaid Preliminary Issues as below:

Issue No.3 : In the Affirmative

Issue No.4 : In the Affirmative

Issue No.5 : As per final order for the following:

REASONS

7. Issue No.3 and 4 : To avoid repetition of facts, both these issues are taken up for common discussion.

8. This is a suit for injunction simplicitor, filed by plaintiff against the defendants praying to restrain the defendants from interfering with his peaceful possession and enjoyment over the suit schedule properties. In Para 2 of the plaint, the plaintiff clearly states that he is the grandson of one Durgaiah and that the defendants are the daughters of said Durgaiah. It is evident that the suit is filed against the family members of said Durgaiah. It is also the case of the Plaintiff that the suit schedule properties are the self acquired properties of said Durgaiah and therefore, executed a Will in his favour bequeathing the suit schedule properties to the Plaintiff. Pertinently, the Plaintiff has not sought any relief of declaration of his title over the suit schedule properties, and has only maintained this suit for injunction simplicitor. On the other hand, on perusal of Ex.D-5 certified copy of the judgment passed in O.S. No. 492/2008, it is clearly evident that the partition suit was preferred by the defendant No.5 herein against the said Durgaiah and his daughters along

with plaintiff herein in respect of all the joint family properties including the suit schedule properties herein which are item No. 1, 4 and 5 in the schedule therein. The said suit has also been decreed in favour of defendant No.5 herein allotting 1/9th share in all the suit schedule properties except in item No. 4 and 5. The said judgment and decree was challenged in an appeal in RA No.78/2014. The said appeal was preferred by the mother of the plaintiff herein along with his sisters and himself. In the said appeal the plaintiff herein was also allotted a share in all the suit schedule properties thereby modifying the judgment and decree passed in O.S. No. 492/2008. It is evident from the oral and documentary evidence that the plaintiff and the defendants herein are the coparceners belonging to the same joint family. The said fact is also forthcoming from the plaint. When such being the case, without there being severance in the joint family properties, the plaintiff is not entitled to maintain the suit for injunction simplicitor against the coparceners.

9. Pertinently, in respect of all the joint family properties, including the suit schedule properties herein, the Defendant No.5 herein has already initiated final decree proceedings in FDP No.4/2017, which is pending consideration. Furthermore, on perusal of Ex.D1 order sheet in

FDP No.4/2017, it is evident that that Plaintiff herein has tendered his appearance in the proceedings and pursuing the petition. However, all these facts have not been disclosed by the Plaintiff in his plaint. It is also apposite to notice that the Plaintiff claims to be the owner in possession of the suit schedule properties herein by virtue of Will dated 18.05.2011 executed by his grandfather Durgaiah. On the other hand, the suit schedule properties are also the subject matter for partition under the said FDP No.4/2017. There is already a finding given by the first Appellate Court in RA No.78/2014 in respect of entitlement of shares of the Plaintiff in all the joint family properties including the suit schedule properties herein, when that being the case, the contention of the plaintiff that he is the owner in possession of the suit schedule properties, without seeking appropriate relief, is not maintainable. The Defendants have, through the oral and documentary evidence, have proved that the suit of the Plaintiff is not maintainable. Hence this Court answers ***Issue No.3 & 4 in the Affirmative.***

10. Issue No.5 : Based on the observations and discussions made in the preceding paragraphs and answers to Issues No.3 and 4, this Court proceeds to pass the following:

ORDER

***The suit of the Plaintiff is hereby
dismissed as not maintainable.***

Draw decree accordingly.

(Dictated to the stenographer, transcribed by her, script thereof revised, corrected and then pronounced by me in open Court this 20th Day of November, 2023)

Sd/-

(Smt.Aparna.R)

Addl. Civil Judge & JMFC,C.N.Halli.

ANNEXURE

List of witnesses examined on behalf of the Plaintiff: NIL

List of exhibits marked on behalf of Plaintiff: NIL

List of witnesses examined on behalf of the Defendants

DW-1 : D. Nagarathna

List of exhibits marked on behalf of Defendants

Ex.D-1 : Certified copy of order sheet in FDP 4/2017

Ex.D-2 : Certified copy of plaint in FDP 4/2017

Ex.D-3 : Certified copy of plaint in O.S. 413/2008

Ex.D-4 : Certified copy of IA No.2 in O.S. 413/2008

Ex.D-5 : Certified copy of judgment in O.S. 413/2008

Ex.D-6 : Certified copy of decree in O.S. 413/2008.

Sd/-

(Smt.Aparna.R)

Addl. Civil Judge & JMFC,C.N.Halli.