

IN THE COURT OF THE SENIOR CIVIL JUDGE, KUNIGAL

Presented by:
Sri. RAGHAVENDRA.R.
B.A.L, L.L.B.
Senior Civil Judge and JMFC,
Kunigal.

DATED THIS THE 0F 19TH DAY OF APRIL 2021

OS No.52/2021

Plaintiffs:	Thimmaraju & others
	V/s
Defendants:	Rukkamma and others

IA No. I

Applicant/plaintiff No.3:	Sathyanarayana Raju (By Sri. A.R.R. Advocate)
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V/s

Respondents/Defendants:	Rukkamma and others (By Sri. S.R. Advocate)
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ORDERS ON IA No. I

This order arises out of interlocutory application filed by the applicant/plaintiff No.3 under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendant No.2C, 10 and his agents, henchmen, servants, supporters or any other person or persons claiming any right under or through him from alienating or creating

any encumbrance over the suit schedule properties till disposal of the suit.

2. The brief facts of the affidavit annexed to application is that, the defendant No.2C had filed an application under Order 7 rule 11 (D) of CPC for reject the plaint for want of pecuniary jurisdiction. After due contest the said application is partly allowed and order to return the plaint by invoking the provision of order 7 rule 10 of CPC. The defendant No.2C has taking undue advantage of returning of plaint the trying to alienate the suit schedule properties to third parties. Hence, the plaintiffs have filed this application.

3. The defendant No.2C has filed the detailed objections by contending that, originally the property in survey No.17 of Kunigal Kasab measures 10 Acres 35 Guntas, which stands in the name of he one Hanumatnathaia who is the grand father of defendant No.11, who purchased the property from on Byatamma on 27.09.31922 through sale deed. Said property is split in to two items viz. Survey No.17/1 measures 1 acres 30 Guntas and Survey No.17/2 measuring 9 Acres 05 Guntas (Subject matter of this Suit). After the death of Hanumanthaiah his wife Huchhamma and her minor son

Honnaiah has sold the property to one K.Venkataraju through a registered sale deed dated 10.02.1936. The Katha was changed in the name of the K.V. Dasarjau, who is the grandson of K.Venkataraju and he was in the possession of the said property but the title is not transferred in his name. The property in dispute was transferred to defendant No.2C name on 27.12.2014 and he has approached Taluka office for conversion of land for residential and commercial purpose. After Verification, Assistant commissioner has issued NOC for conversion of Land on 19.09.2014, the Deputy Commissioner, Tumakuru District out of 9 acres 05 guntas was converted for residential purpose and 30 Guntas of land was converted for commercial purpose and he remaining one Gunta of land remains as Karab land. The defendant No.11 has filed OS No.180-1990 before the Civil Judge, Tumakuru for permanent injunction restraining the applicant father, which came to be dismissed for non prosecution on 25.01.1993. The defendant No.11 filed another suit in OS no. 651-1993 for declaration, which came to be dismissed on 06.02.2009. Against the judgment and decrees, the defendant No.11 has filed the appeal before this Court in RA No.22/2009. The plaintiffs had filed an application for impleading in this Appeal, which came to be dismissed. Being aggrieved by the same

the plaintiffs have filed the present suit for partition and separate possession. The defendant No.2C further submitted that, K.Venkataraju S/o Dasaraju had purchased the suit schedule property. Accordingly k.Venkataraju was in peaceful possession and enjoyment of the suit schedule property. The said Venkataraju was married on Nanjamma, they have no children. Accordingly, they have taken their younger brother son in adoption. During the life time of K.Venkataraju and his brother Ramaraju had made a partition deed dated 21.05.1960. Hence, he prayed for dismissal of the application.

4. I have heard the counsel for the parties and perused the materials on record. The following points are for my consideration.

- 1. Whether the plaintiffs have made out a prime facie case in his favour?
- 2. Whether balance of convenience lies in favour of the plaintiffs?
- 3. Whether the plaintiffs would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by him?
- 4. What order?

5. My findings to 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.2: As per final order for the following

REASONS

6. **Point No.1 to 3:** The present suit filed by the plaintiff is for the partition and separate possession. On careful perusal of the plaint, written statement and objections, it is relevant to note that one Dasaraju is the propositus of plaintiffs and defendants; he had two children namely Venkataraju and Ramaraju. Venkataraju got married to one Nanjamma and they had no issues in their wed lock. Another son by name Ramaraju had three children by name K.V. Raju, K.R. Venkataraju and K.R. Govindaraju. The defendant No.1 to 9 are children of K.V. Raju. The plaintiff No.1 to 3 are children of K.R. Venkataraju and plaintiff No.4 to 6 are the children of K.R.Govindaraju. The suit schedule property had purchased by the first son of Dasaraju i.e., Venkataraju from its lawful owner by name Huchamma under registered sale deed dated 10.02.1936. The plaintiffs have

contended that as Venkatraju S/o Dasaraju was died intestate. The applicant has contended that Venkarajau had adopted the K.V.Raju S/o Ramaraju, it is apparently appeared in registered partition deed dated 21.05.1960. The plaintiffs have totally denied contention of the applicant in respect to adoption. Further, the Hon'ble Apex Court further held in a decision reported in ¹(1983) 1 SCC 35 that “ **For a valid adoption, the ceremony of giving and taking is an essential requisite in all adoptions, whatever the caste. This requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exist an expression of consent or an executed deed of adoption. In some cases, to complete the adoption a datta homam has been considered necessary. But in the case of the twice born classes, no such ceremony is needed if the adopted boy belongs to the same gotra as the adoptive father**”. In the present case on hand, the defendant No.2C has not specifically pleaded when the adoption has been taken place and what were all the ceremonies have been performed. And further, it is relevant to note that the partition deed relied by the applicant is clearly discloses that K.V.Raju is the son of Venkataraju not the adopted son. So, the applicant ought

¹Madhusudan Das Vs narayanibai

to have prove the contention by way of cogent evidence. Further the Hon'ble Supreme Court of India has held in decision reported in ²(2018) 9 SCC 663 that **“Factum of adoption and its validity has to be duly proved. Though formal ceremony of giving and taking is essential ingredient for valid adoption, long duration of time during which a person is treated as adopted cannot be ignored. Such fact by itself may carry a presumption in favour of adoption.”**. In the present case on hand and as I mentioned above the partition deed does not discloses K.V. Raju is the adopted son of Venkataraju.

7. It is worth to note that after institution of OS No. 27-2012, the defendant No.10 has converted land in to non-agricultrual purpose. It is the case of he plaintiffs that the defendant No.2C and 10 with the above said document attempted to dispose the suit schedule property. It is appears to Court that the defendant No.2C and 10 have created third party interest in the suit schedule property. It is well settled principle of Law that, the discretion of the Court is exercised to grant a temporary injunction only when the plaintiffs have made out existence of prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary

². Kamala Rani V/s Ram lalit Rai

injunction; when the need for protection of the defendant's right is compared with or weighed against the need for protection of the defendants rights, the balance of convenience tilting in favour of the plaintiffs and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction order is not granted. The facility to Principles Governing Grant of Injunction is at the discretion from the Court. This foresight, however, should be exercised reasonably, judiciously as well as on sound lawful principles. Injunction must not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his right in a suit or any other proceeding. Therefore, the Court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunction restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. The provisions of temporary injunction as well as ad interim temporary injunction is

contained in Rule 1 of Order 39 of the Civil Procedure Code. As I mentioned ago, the defendants ought to have prove the alleged adoption by way of cogent evidence. Under these circumstances, the Court find that it is necessary to restrain the defendant No.2C and 10 from alienating the suit schedule property. Otherwise, the plaintiffs would be put to more hardship and injury rather than the defendants and it would leads to multiplicity of proceedings between the parties. Therefore, I answer point No.1 in the negative

8. Point No.4: As per following

ORDER

Interlocutory Application No. I filed by the plaintiff No.3 under Order XXXIX rules 1 and 2 of Code of Civil Procedure is here by allowed.

The defendant No.2C and 10, their henchmen, agents and servants or anybody claiming on their behalf are hereby restrained from alienating or creating any encumbrance over the suit

schedule property till disposal of the suit.

(Directly typed and computerized by me in All-in-one PC and corrected, signed
and then pronounced by me in Open Court on this the 19th day of April 2021)

(Raghavendra. R)
Senior Civil Judge and JMFC,
Kunigal.