

**IN THE COURT OF THE XXX ADDL.CITY CIVIL
JUDGE, BANGALORE CITY**

DATED THIS THE 11th DAY OF AUGUST 2015

**PRESENT: SRI. K.H.MALLAPPA, B.A., LL.B.,
C/c. XXX Addl.City Civil Judge,
Bangalore.**

O.S.NO.7723/2012

PLAINTIFF/S. C.Raghavendra,
S/o Chandrashekar Reddy,
No.50, Appareddy Palya,
Indiranagar, Bengaluru-38.

/VS/

DEFENDANT/S. 1. Sri.Krishna Reddy.A,
S/o Late Abbaiah Reddy,
No.27/A, Vivekananda
Layout, Behind Bharath's
Restaurant, Opp.to
Multiplex, CKB Road,
Marathalli Outer Ring
Road, Bengaluru-37
And Others.

ORDERS ON I.A.NO.26

1. This is an application filed by the plaintiff under
Order 39 Rule 1 and 2 r/w Sec.151 of CPC praying

to pass an interim order restraining the defendants 16 to 18 from putting up further construction over the suit item No.3 of the suit schedule property till pending disposal of the case in the interest of justice and equity.

2. The plaintiff has sworn to the affidavit filed in support of the application contending that the averments made in the plaint may be read as part and parcel of the affidavit to avoid repetition of the facts of the case. The suit schedule properties are ancestral and joint family properties of plaintiff and the defendants 1 to 11. The 1st defendant had two wives namely Late Ramakka and Late Yellamma. The defendant No.1 colluded with the children of 2nd wife i.e. defendants 4 to 11 by producing the false genealogical tree without

mentioning the first wife's name late Ramakka and her legal heirs, i.e. the plaintiff and defendant No.2 and 3. the defendants 1 and 4 to 11 have sold the suit item No.3 in favour of defendant No.12 i.e. B.M.Karunesh and in turn the defendant No.12 has sold the property to the defendants 16 to 18 wherein the defendant No.12 Karunesh is the Director of defendants 16 to 18 company. Defendant No.1 and 4 to 11 with an intention to defraud the legitimate share of the plaintiff sold the property in favour of defendant no.12 and in turn the defendant no.12 has alienated the property with an intention to cause the multiplicity of proceedings constituted the company in the name of defendants 16 to 18 company for which 12th defendant was acting as Director to the said defendants 16 to 18

companies. The fact of alienation came to his knowledge only when the defendant No.12 filed the written statement. The specific assertion made by 12th defendant that the suit item No.3 was alienated in favour of defendants 16 to 18 companies. And thereupon the plaintiff applied for certified copies of the alleged Sale Deeds and makes the necessary applications before this Hon'ble Court to bring them on record for proper and effective adjudication. Subsequently, the Hon'ble Court was pleased to allow the application and directed him to amend the plaint. After amendment of the plaint the present application is necessitated to file to protect his interest from the hands of Hon'ble Court in order to get the injunctive relief. The plaintiff and the defendants 2 and 3 are the children of first wife of defendant No.1 and

he is entitled for legitimate share. He has not executed any documents what so ever in any manner n favour of 1st defendant to alienate the suit items. At any point of time, he has not relinquished his share in any manner in favour of anybody else much less first defendant. Hence, defendants 16 to 18 company do not derive any legal title over the suit item No.3. Since the title over the suit item No.3 is defective title, and the constructions put up by the defendants 16 to 18 are all illegal construction with an intention to defraud his legitimate share. Defendants 16 to 18 companies are powerful and their high handed act cannot resisted by him without an interim order from this Hon'ble Court. The defendants 16 to 18 companies are having men and material and politically motivated persons and their illegal acts

by putting up construction cannot be resisted without there being any interim order by this Court. He is a poor and law abiding person do not having any means of support to resist the illegal acts of the defendants 16 to 18 companies. defendants 16 to 18 companies are putting up the construction over the suit item No.3 knowingly fully well about each and every stage and status of the pendency of the case as the 12th defendant himself being the Director of defendants 16 to 18 companies and now to deprive the legal rights of the first wife's legal heirs who are the plaintiff and defendants 2 and 3 have been putting up the illegal construction in suit item No.3 during the pendency of the case. There is an interim order passed by this court on 2-11-2012 not to alienate the suit items 1 to 10 against the defendants 1 to

12 and the same was extended until further orders by this Court on 24-2-2014. The I.A. No.21 which was filed by the plaintiff on 21-11-2013 to implead the defendants No.13 to 18 came to be allowed by this Court on 30-4-2015. I.A.No.22 filed by the plaintiff to implead the suit items No.11 to 28 came to be allowed by this Court on 20-2-2015. Knowing the defendant No.12, 16 to 18 who is none other than one B.M.Karunesh who himself being the Director of the defendants 16 to 18. Intentionally and dishonestly in order to deprive his share and without effecting his share the alleged sale transaction has taken place. After will knowing the above said facts, the defendants 16 to 18 and now during the pendency of the suit are putting up the illegal construction only to deprive his rights. Defendants 16 to 18 companies are

making hectic attempts to alienate the property to the third parties after completion of the construction and the third parties also frequently visiting the construction place making the negotiations to commit themselves to purchase the property. Such being the facts, if the defendants 16 to 18 companies are allowed to complete the construction over the suit item No.3, the plaintiff and defendants 2 and 3 will be put to greater hardship, irreparable injury which cannot be compensated by any means. He has made out a prima-facie and balance of convenience in his favour and hence, he has prayed to allow the application.

3. The defendants 16 to 18 have filed objections to I.A.No.26 contending that the application seeking

interim order restraining these defendants from putting up construction is not maintainable either in law or on facts. Defendants 16 to 18 through registered documents became the owners of the item No.3 of the suit schedule property prior to that the defendant No.12 had purchased the said property vide Sale Deed dtd.26-2-2003. After such purchase, the defendant No.12 developed the said property and later vide registered sale deed transferred in the name of these defendants. In a portion of the said item No.3 of the suit schedule property already structures is in existence and the defendants herein developed the said land and using the said structure for their office purpose. These defendants are not at all further constructing in the item no.3 of the suit schedule property thus the alleged further constructions is

an afterthought. Further, the plaintiff relying upon photographs of some other property, thereby to harass the defendants herein for the reasons best known to him and to cause unnecessary hurdle to these defendants in respect of their right over the item No.3 of the suit schedule property have come up with this application. Plaintiff have no manner of right or locus standi to claim partition in respect of the suit schedule property and it is not an ancestral property of the plaintiff as alleged. Such being the case, the averments made in the affidavit in support of the application for temporary injunction is against the realities. There is no prima-facie case on the part of the plaintiff to seek the relief of injunction as the contents of the affidavit is nothing more than an allegation about the purchase of the property

which does not give any right to seek injunction by the plaintiffs. On the other hand, the defendants herein acquired title through valid registered documents. Thus, the contents of the affidavit is against the facts and the registered documents through which the item no.3 of suit schedule property was transferred and thereafter these defendants have developed by investing huge money. Hence, it is prayed to dismiss the application with exemplary cost.

4. During the court of the arguments, the learned counsel for the plaintiff filed a memo restricting his claim in I.A.No.16 against defendants 16 and 18.
5. I have heard the arguments of the learned counsel for the plaintiff as well as defendants.

5. The points those arises for my consideration are as under:

1. Whether the plaintiff has made out a prima-facie case in his favour?
2. Whether the balance of convenience leans in favour of plaintiff?
3. Whether plaintiff will be put to loss if temporary injunction is not granted?

6. My answers to the above points are as follows:

Point Nos.1 to 3: In the negative,
for the following:

REASONS

6. **POINT NOS.1 TO 3:** Plaintiff has filed this suit seeking the relief of partition by meets and bounds by allotting 1/3rd share out of half share in the suit schedule properties and for declaration that the alleged partition deed registered in the office of the Sub-Registrar, Bengaluru South taluk vide

document No.VRT-1-4058/2007-2008 stored in CD No.VRTD 14 dtd.5-11-2007 is not binding on the plaintiff share and to declare that the Sale Deeds executed by the defendants 1,4, 9 and 11 in favour of the 12th defendant in respect of suit item No.1 and 3 vide document No.4727/2001-2002 registered in the office of Sub-Registrar, Bengaluru South Taluk dated 16-8-2001 and another Sale Deed dtd.12-5-2003 registered as document No.3041/2003-2004 in the office of the Sub-Registrar, Bengaluru South Taluk is not binding on the plaintiff share and to declare that the Sale Deeds executed by the 12th defendant in favour of the defendants 16 to 18 in Documents No.BAS 1-20220/2004-05 stored in CD No.BASD110 dtd.10-11-2004 registered in the office of the Sub-Registrar, Bengaluru south

Taluk, Bengaluru to an extent of 12.43 guntas in Sy.No.105 situated at Boganahalli Village, Varthur Hobli, Bengaluru East Taluk and document No.INR-1-00913/2012-13 stored n CD No.INRD 38 dated 2-6-2012 registered in the office of the Sub-Registrar, Indiranagar, Bengaluru to an extent of 21 guntas n Sy.No.23/2 situated at Devarabeesanahalli Village, varthur Hobli, Bengaluru East Taluk, and document No.BAS-1-09402/2006-07 stored in CD No.BASD 255 dtd.12-7-2006 registered in the office of the Registrar, Bengaluru South Taluk, Bengaluru to an extent of 1 acre 25 guntas in Sy.No.105 situated at Boganahalli Village, Varthur Hobli, Bengaluru East Taluk, and documents No.BAS-1-31525/2006-07 stored n CD No.BASD 318 dtd.30-3-2007 registered in the office of the Sub-

Registrar, Bengaluru South taluk, Bengaluru to an extent of 1 acres 30.57 gutnas n Sy.No.105 situated at Boganahalli, Varthur Hobli, B east Taluk and document No.VRT-1-04900-2011-2012 stored n CD No.VRTD 130 dtd.5-9-2011 registered in the office of the Sub-Registrar Vartur, Bengaluru to an extent of 05.57 gutnas in Sy.No.105 situated Boganahalli, Varthur Hobli, Bengaluru east Taluk and document No.VRT-1-04903/2011-2012 stored n CD No.VRTD 130 dated 5-9-2011 registered in the office of the Sub-Registrar, Varthur, Bengaluru to an extent of 1 acre 25 guntas n Sy.No.105 situated at Boganahalli, Varthur Hobli, Bengaluru east Taluk and document No.INR-1- Document 01854/2011-12 stored in CD No.INRD 33 dtd.3-3-2012 registered in the office of the Sub-Registrar,

Indiranagar Bengaluru to an extent of 21 guntas in Sy.No.23/2 situated at Devarabeesanahalli, Varthur hobli, Bengaluru east Taluk are all not binding on the plaintiff's share.

7. So far as the plaintiff's claim that the Sale Deeds executed by the defendants 1, 4, 9 and 11 in favour of 12th defendant in respect of suit item Nos.1 and 3 vide document No.4727/2001-2002 registered in the office of Sub-Registrar, Bengaluru South Taluk dtd.16-8-2001 and another sale deed dtd.12-5-2003 registered as document No.3041/2003-3004 in the office of the Sub-Registrar, Bengaluru south Taluk will be hit by the provisio to Sec-6 of the Hindu Succession Act as plaintiff cannot question the alienations made prior to 20-12-2004 and as per the plaintiff

contention that 12th defendant has sold portion of item No.3 to defendant Nos.16 to 18 under different Sale Deeds, that clearly goes to show that plaintiff cannot question the alienations made by 12th defendant to defendants 16 to 18. He has no right to question the alienations made by 12th defendant to defendants 16 to 18 and the documents produced by the defendants 16 to 18 clearly goes to show that they have already put up construction and the construction was completed as per the endorsement issued by BDA on 17-1-2013. When such being the situation, the contention of the plaintiff that the defendants 16 to 18 proceeded for further construction over the suit item No.3 of the suit schedule property does not hold water and the documents produced by the defendants 12, 16 and 18 clearly goes to show

that how the defendants have acquired the property and how defendants 16 to 18 become the owners of the property and they have already completed the construction and the question of putting up any further construction does not hold any water and the balance of convenience does not leans in favour of the plaintiff. Hence, defendants 16 to 18 will be put to irreparable loss and injury if temporary injunction is granted and hence, I answer point Nos.1 to 3 in the negative and proceed to pass the following:

ORDER

I.A.No.26 is dismissed.

(Dictated to the Judgment Writer, transcribed thereof, corrected, signed and then pronounced by me in the open Court on this **THE 11th DAY OF AUGUST 2015**).

**(K.H.MALLAPPA),
C/c.XXX ADDL.CITY CIVIL JUDGE,
BANGALORE.**

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