

KAKL030012462022



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC, AT,
KOLAR**

PRESENT:- SRI.VIVEK GRAMOPADHYE., B.S.L., LL.B.

Prl. Civil Judge & JMFC, Kolar

Dated this the **22nd November 2022**

O.S. No.356/2022

Plaintiff/s

: R.Naresh
S/o.Ramabadrachari,
Aged about 50 years,
R/o.Kyalanur Village,
Vemgal Hobli, Kolar Taluk.

(Rep. by Sri.N.A. Advocate)

-V/s-

Defendant/s

- : 1. Manjula.B
W/o.late.Hemasundarachari,
Aged about 53 years,
2. Madushree.M
D/o. late.Hemasundarachari,
Aged about 28 years,
3. Pavan Kumar
S/o. late.Hemasundarachari,
Aged about 25 years,

All are R/o.No.158/8, 3rd Cross,
Nanjappa Block,
Kempegowdanagara,
Bengalore – 560 018.

4. B.M.Usha
W/o. late.Hemasundarachari,
Aged about 47 years,
5. Eshwarachari
S/o. Ramabadrachari,
Aged about 58 years,
6. Annapurna
D/o. Ramabadrachari,
Aged about 55 years,

The D.4 to 6 are
R/o.Kyalanur Village,
Vemgal Hobli, Kolar Taluk.

**(Rep. by Sri.R.S.A Adv. for D.1 to D.3
Sri.G.N. Adv. For D.4 to D.6)**

ORDERS ON IA NO.I

**APPLICANT/S : R.NARESH
V/S
RESPONDENT/S : MANJULA.B & OTHERS**

ORDERS ON IA NO.III

**APPLICANT/S : MANJULA.B & OTHERS
V/S
RESPONDENT/S : R.NARESH**

ORDERS ON I.A.NO.I & III

The learned counsel for the plaintiff has filed I.A.No.I U/O.XXXIX Rule 1 and 2 of C.P.C., seeking to restrain the defendants from alienating the suit schedule property till disposal of the suit.

2. In the affidavit accompanying the application, it is stated the suit schedule property is the ancestral and joint family property of the plaintiff and the defendants. It is further averred that the suit schedule property originally belongs to Ramabadrachari and after his death, the defendant No.1 got his name mutated into revenue records and the plaintiff and the defendants have succeeded to the suit schedule property. The plaintiff and the defendants continued in joint possession and enjoyment of the suit schedule property as owners there of. It is further stated that the suit schedule property consists totally of four houses and on ground floor two houses and first floor there are two houses and the plaintiff is residing in one of the house, with respect to other houses the defendant No.4 to 6 are also residing.

3. It is further stated that, however, the defendant No.1 is trying to change the khata of the suit schedule

property in her name with an intention to alienate the suit schedule property behind the back of the plaintiff in order to deprive the plaintiff from his legitimate share in the suit schedule property and dispossess the plaintiff from the house property. The defendant No.1 is also using the income of the suit schedule property as per her whims and fancies and neglected the welfare of the plaintiff. Therefore, the plaintiff questioned the illegal acts of the defendant No.1 but she gave evasive reply and behind the back of the plaintiff got her name mutated in the revenue records. It is further stated that the defendants have colluded with each other and they are trying to deprive the plaintiff from his legitimate share in the suit schedule property and making hectic attempts to encumber and alienate the suit schedule property in favour of others without his consent.

4. Therefore, the plaintiff requested the defendants to allot 1/5th share in the suit schedule property, but the defendants instead of complying with the legitimate request of the plaintiff continued with their illegal act of trying to alienate or encumber the suit schedule property. Though several panchayath were held in the locality, the panchayath was not successful but the defendants have refused to allot the plaintiff's legitimate share in the suit

schedule property. Hence, the plaintiff has filed this suit seeking for the relief of partition and separate possession and by way of interim application, he is seeking to restrain the defendants from alienating or encumber or create charge over the suit schedule property.

5. On issuance of suit summons, the defendants have appeared through their respective counsel and defendants have filed memo on 15.09.2022 adopting the written statement as objections to IA No.I. In the written statement, the plaint averments with respect to the suit schedule property being joint family property of plaintiff and defendants is denied and further it is also denied that the defendant No.4 is the second wife of deceased Hemasundarachari as the concept of second wife itself is against the basic tenets of law. It is further stated that the plaintiff is only claiming the suit schedule property as the joint family property whereas in the plaint itself, the plaintiff has clearly averred that there are other joint family properties and without including other alleged joint family properties, the suit of the plaintiff is also not maintainable.

6. Further, the defendants have taken up contention that after the death of Ramabadrachari, the husband of

defendant No.1, Hemasundarachari proposed to buy the share of successors in the title and with respect to the same, an agreement of sale was entered into on 14.11.1990 and late.Sharadamma and defendant No.5 and 6 and plaintiff have entered into sale deed with the husband of defendant No.1 on 07.02.1991 vide registered document bearing No.1954/1990-91. It is further stated that rectification deed was also executed on 14.09.2017 by the plaintiff and the defendant No.5 and 6 in pursuance of the said sale deed.

7. It is further stated that in view of the sale deed, the name of the husband of defendant came to be mutated into revenue records. Further, Hemasundarachari sought for licence to construct the house in the suit schedule property and accordingly the licence was given for construction of the house in the name of husband of defendant No.1. It is further stated that the husband of defendant No.1 executed a registered Will on 19.12.2016 and later Hemasundarachari revoked the said Will vide document dated 01.10.2020 and the said fact is cleverly concealed by the plaintiff and concealing of the said fact clearly shows the ill-intention of the plaintiff as he was one of the beneficiary of the Will. Keeping grudge with respect to

cancellation of Will, the plaintiff has filed this false and frivolous suit. It is further stated that late. Hemasundarachari had borrowed loan on the suit schedule property for construction of building and it is the defendant No.1 who has repaid the entire loan and the copy of the sanction memorandum in favour of the husband of the defendant No.1 is produced and also latest statement of account is produced by the defendant to substantiate the same.

8. It is further stated that it is the defendant No.1 and defendant No.2 and 3 who are in possession and enjoyment of the suit schedule property and during his life time, Hemasundarachari had entered into lease agreement on 30.10.2019 and 19.03.2020 with the tenants. After the death of Hemasundarachari, the defendant No.1 has also let one of the portion of the suit schedule premises on lease dated 03.02.2021. It is further stated that the defendant No.4 has filed a suit bearing O.S.No.216/2022 before the Hon'ble III Addl. Civil Judge & JMFC, Kolar seeking for the relief of injunction stating that she is the second wife of Hemasundarachari and she is in possession of the said property. She is also claiming that she has rented the premises to the plaintiff on 08.03.2022 and the rental

agreement is also produced by the defendant No.4 in that suit by claiming that she is the landlord and the plaintiff herein is shown as tenant, this clearly shows the collusion between the plaintiff and defendant No.4. It is further stated that the plaintiff has not locus-standi to file the suit in view of execution of sale deed dated 07.02.1991 and only by taking disadvantage of death of husband of defendant No.1, the plaintiff in order to harass the defendant No.1 to 3 has filed this false and frivolous suit. Hence, the defendant No.1 to 3 seeks for dismissal of the application.

9. The learned counsel for the defendant No.1 to 3 has filed IA No.III U/O.XXXIX Rule 4 of CPC seeking for setting aside the ex-parte interim order passed in favour of the plaintiff on 16.07.2022.

10. In the affidavit accompanying the application, the deponent has taken up similar contentions as taken in the written statement and further it is deposed that in view of the sale deed dated 07.02.1991 executed by the plaintiff in favour of husband of defendant No.1, the plaintiff has no locus-standi to file the suit and he has failed to explain as to why the defendant No.4 is a necessary or proper party to the suit and why she is entitled for share in the suit

schedule property. Further, it is stated that it is the defendants 1 to 3 who are in peaceful possession and enjoyment of the suit schedule property and therefore, in view of the interim order passed on 16.07.2022, the defendant No.1 to 3 are adversely affected and the plaintiff is trying to deprive the defendant No.1 to 3 from enjoying the property owned by them. Hence, the deponent seeks for allowing of the application by vacating the interim order passed on 16.07.2022 against the defendant No.1 to 3.

11. The learned Advocate for the plaintiff has filed his objections to the said application and in the objections, it is stated that the suit schedule property is the joint family property of the plaintiff and the defendants and the plaintiff and defendants are in joint possession and enjoyment of the same. It is further stated the sale deed relied upon by the defendant No.1 to 3 is entirely different property than the suit schedule property and as the suit schedule property is the joint family property of the plaintiff and the defendants, if the defendant No.1 alienates the suit schedule property during pendency of the suit, it will lead to multiplicity of proceedings and hence, he seeks for dismissal of the application filed under Order XXXIX Rule 4 of C.P.C.

12. In-spite of sufficient opportunities, the learned counsel for the defendant No.4 to 6 has failed to file objections to IA No.I. Hence, the objections to IA No.I by learned counsel for defendant No.4 to 6 is taken as not filed vide order dated 04.11.2022.

13. Heard the learned counsel for the plaintiffs and learned counsel for the defendant No.1 to 3. The arguments of learned counsel for defendant No.4 to 6 is taken as Nil.

14. The following points arise for my consideration.

1. Whether the plaintiff proves that he has prima-facie case in his favour?
2. Whether the plaintiff proves that balance of convenience leans in his favour?
3. Whether the plaintiff proves that he will suffer irreparable loss and injury if temporary injunction is not granted?
4. Whether the IA No.III filed U/O.XXXIX Rule 4 of CPC filed by defendant No.1 to 3 deserves to be allowed?
5. What order?

15. My answer to the above points are as under:

Point No.1 : In the Negative;
 Point No.2 : In the Negative;
 Point No.3 : In the Negative;
 Point No.4 : In the Affirmative;
 Point No.5 : As per the final order,
 for the following:

REASONS

16. **Point No.1**:- The learned counsel for the plaintiff submits that the suit schedule property is the ancestral and joint family property of the plaintiff and the defendants and the plaintiff is able to substantiate that the suit schedule property is the ancestral property of the plaintiff and the plaintiff is entitled for his legitimate share in the suit schedule property. He further submits that the plaintiff is seeking for interim relief restraining the defendants from alienating the suit schedule property and if it is not allowed and if the defendant No.1 to 3 alienates or creates charge over the suit schedule property, it is the plaintiff who will be put to irreparable loss and injury and the defendants by taking disadvantage of the khata entries may alienate the suit schedule property and thereby create rights of third parties in the suit schedule property and putting hurdles to the plaintiff in enjoying the fruits of the decree. Hence, he seeks for allowing of the application.

17. He further submits that though several documents are produced by the defendants, all the documents are with respect to other properties and in the sale deed, the khata is different and property sold to the defendants is khata No.46 whereas the suit schedule property is bearing khata No.41. Further, the said aspect is not at all clarified by the defendants and as the properties are different, the defendant No.1 to 3 cannot rely upon the said document. He further submits that as far as second wife is concerned, the said claim is clarified on perusal of third paragraph of the Will, which is executed by Hemasundarachari. Hence, he seeks for allowing of the application filed by him U/O.XXXIX Rule 1 of C.P.C. and dismiss the I.A. filed by the defendant U/O.XXXIX Rule 4 of C.P.C.

18. In support of his contention, he draws my attention to the genealogical tree and also two tax paid register extract with respect to property bearing No.41.

19. On the other hand, the learned counsel for the defendant No.1 to 3 submits that the plaintiff by any stretch of imagination cannot claim the defendant No.4 as second wife and allot her share in any property belonging to the joint family as the concept of second wife itself is barred by law in view of bigamy being prohibited amongst

Hindus. Further, he submits that no documents are produced to show that the suit schedule property is the joint family property and there are no proper pleadings made with respect to how the suit schedule property is the joint family property and how the plaintiff is entitled for any share in the suit schedule property. He further submits that though it is stated that there are other properties, what happened to the other joint family properties is not at all clarified by the plaintiff and they are not made as suit schedule property in this suit. He further submits that there are no documents produced by the plaintiff to show his possession or threat of dispossession or threat of alienation. In view of the same, any interim order passed in favour of the plaintiff will cause irreparable loss and injury to the defendants.

20. He further submits that there are no pleadings at all with respect to joint possession and enjoyment of the suit schedule property and no documents are produced to show that there was a demand for partition by the defendants. Further, he submits that in view of execution of sale deed by Ramabadrachari's wife and others including the plaintiff in favour of husband of defendant No.1, it is the defendant No.1 to 3 who are in possession and

enjoyment of the suit schedule property as owners there of. Hence, he seeks for dismissal of the application. He further submits that on perusal of Annexure 'C' which is the house tax register extract, it is clear that it is the suit schedule property which was sold vide sale deed in the year 1991 and therefore in view of the title document produced by the defendant No.1 to 3, the plaintiff has no manner of right, title or interest over the suit schedule property and he cannot claim the suit schedule property as the ancestral and joint family property of plaintiff and the defendants. Hence, he seeks for dismissal of the application filed U/O.XXXIX Rule 1 and 2 of CPC and prays to allow the application filed by the defendant No.1 to 3 U/O.XXXIX Rule 4 of C.P.C.

21. In support of his contention he relies upon Xerox copies of sale deed dated 07/02/1991, rectification deed dated 14/09/2017, tax demand register extract, copy of the licence for the construction, copy of will dated 19/12/2016, copy of revocation deed dated 01/10/2020, loan sanction memorandum, pension loan account statement, lease agreements, plaint in O.S.216/2022, copy of the rental agreement between plaintiff and defendant No.4, copy of the encumbrance certificates.

22. It is relevant to note that the plaintiff has filed this suit seeking for the relief of partition and separate possession. The plaintiff claims that the suit schedule property is the ancestral and joint family property of plaintiff and defendants and the defendant No.1 is the first wife of Hemasundarachari and the plaintiff, defendant No.1's husband Hemasundarachari and defendant No.5 and 6 are the legal heirs of Ramabadrachari and Sharadamma. He further claims that the defendant No.4 is the second wife of Hemasundarachari and therefore, she is entitled for her legitimate share in the suit schedule property. To substantiate the case of the plaintiff, the plaintiff has relied upon the genealogical tree and also the property tax register extract. On the other hand, the learned counsel for the defendants has relied upon the sale deed dated 07.02.1991 and on perusal of the said sale deed, it can be clearly seen that the property was sold to Hemasundarachari by Sharadamma, mother of the plaintiff and Hemasundarachari, Eshwaramma – defendant No.5 and Annapoorna – defendant No.6 and the the plaintiff.

23. The main thrust of the arguments by learned counsel for the plaintiff is that the property detailed in the sale deed and the suit schedule property khata number are

different. However, it is relevant to note an immovable property is identified not only by khata number, but also by the boundaries of the said property. In this context, it is relevant to note that the boundaries of the suit schedule property which is mentioned in the plaint schedule reads as under:

“The house property bearing property No.41 measuring east – west 30 feet and north – south 79 feet situated at Kyalanur Village, Vemgal Hobli, Kolar Taluk bounded on east by Rudrachari’s house, west by B.R.Shivarudrappa’s house, north by road and south by Munikadiramma’s property.”

24. On the other hand, it is relevant to note that the boundaries of the property mentioned in the second page of the sale deed which can be seen as under:

“ಇದೇ ಕ್ಯಾಲನೂರು ಗ್ರಾಮದ ಮಂಡಲ ವ್ಯಾಪ್ತಿಗೆ ಸೇರಿದ ಕ್ಯಾಲನೂರು ಗ್ರಾಮದ ಹಳೇ ಡೋರ್ ನಂಬರ್ 108 ಪಂಚಾಯ್ತಿ ಖಾತೆ ನಂಬರ್ 46 ಹೌಸ್ ಲಿಸ್ಟ್ 37 ಎಂದಿದ್ದು ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ ಪೂರ್ವಕ್ಕೆ ರುದ್ರಾಚಾರಿ ವೆಗೈರೆ ರವರ ಮನೆಗಳು, ಪಶ್ಚಿಮಕ್ಕೆ ವಿ.ಆರ್.ಶಿವರುದ್ರಪ್ಪನವರ ಖಾಲಿ ಜಾಗ, ಉತ್ತರಕ್ಕೆ ರಾಜಬೀದಿ, ದಕ್ಷಿಣಕ್ಕೆ ಪಂಚಾಯ್ತಿ ಜಾಗ. ಈ ಚಕ್ಕುಬಂದಿ ಮಧ್ಯೆ ಇರುವ ಪೂರ್ವ - ಪಶ್ಚಿಮವಾಗಿ ಮೂವತ್ತು ವರೆ (30 ½) ಅಡಿಗಳು ಉತ್ತರಾ ದಕ್ಷಿಣವಾಗಿ (81) ಅಡಿಗಳು ವಿಸ್ತೀರ್ಣದಲ್ಲಿರುವ ಪೂರಾ ಜಾಗದಲ್ಲಿ ಶಾರದಮ್ಮ ಆದ ನನ್ನ ಗಂಡನವರೇ ಕಟ್ಟಿಸಿರುವ ಕಲ್ಲು ಮತ್ತು ಇಟ್ಟಿಗೆ ಗೊಡೆಗಳು ”

25. On perusal of the said sale deed, it can be seen that the boundaries of the property clearly matches and moreover on perusal of demand register extract for the year 1986-87 it

can be clearly seen that the name of Hemasundarachari came to be entered with respect to the property No.37 and the boundaries of the suit schedule property and boundaries of the sale deed property clearly matches. On perusal of the sale deed prima-facie it is clear that the plaintiff is also one of the signatory to the said sale deed.

26. Moreover, it is relevant to note that the plaintiff at paragraph No.3 of the plaint has clearly averred that along with the suit schedule property there are other properties which are the joint family properties of the plaintiff and the defendants. However, nowhere in the plaint he has explained as to how and why other properties are not included as the suit schedule property in this suit.

27. Further, it is relevant to note that the plaintiff is claiming that he is one of the co-sharer of the suit schedule property but with respect to said property, the defendant No.1 to 3 has produced the plaint filed in O.S.No.216/2022 and on perusal of the said plaint, it can be seen that the plaintiff in said suit is defendant No.4 in this suit and she is claiming to be the owner of the suit schedule property. Further, it is relevant to note that along with the said plaint, the defendant No.1 to 3 has also produced alleged rent

agreement which is entered into between the plaintiff and defendant No.4, whereby the plaintiff in this suit has taken the suit schedule premises on rent of Rs.4,000/- per month as a tenant. The said document also prima-facie creates grave doubt with respect to the claim of the plaintiff that the suit schedule property is a joint family property of the plaintiff and the defendants. Therefore, I am of the opinion that in view of the above documents especially in view of the sale deed dated 07.02.1991, I am of the opinion that the plaintiff has failed to substantiate prima-facie case. Hence, I answer point No.1 in the **Negative** against the plaintiff.

28. **Point No.2 & 3:-** As far as balance of convenience and irreparable loss and injury is concerned, it is relevant to note the dictum of Hon'ble Apex Court in the case of **Kashi Math Samsthan and Another V/s.Srimad Sudhindra Thirtha Swamy and Another** reported in **2010(1) SCC 689** wherein the Hon'ble Apex Court has observed as under:

“16.It is well settled principle of law 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 or 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. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court.”

29. On perusal of the said dictum and applying it to the facts and circumstances of the case and in view of the sale deed produced by defendant No.1 to 3, I am of the opinion that as prima-facie plaintiff is one of the signatory to the said sale deed executed in favour of the husband of defendant No.1, the plaintiff has failed to substantiate prima-facie case and if the temporary injunction is granted in favour of the plaintiff, it is the defendants who will be put to great irreparable loss and injury and balance of convenience leans in favour of the defendants. Hence, I answer point No.2 and 3 in the **Negative** against the plaintiff.

30. **Point No.4:-** As far as I.A No.III filed U/O.XXXIX Rule 4 of C.P.C in view of the discussion made at point No.1 to 3 as the plaintiff has failed to substantiate prima-facie case and as the balance of convenience leans in favour of the defendants and as it is the defendants who will suffer irreparable loss and injury if the temporary injunction is granted, I am of the opinion that interim application filed by the learned counsel for the defendants deserves to be allowed. Hence, I answer point No.4 in the **Affirmative** in favour of the defendants.

31. **Point No.5:-** With these above observations, I proceed to pass the following:

ORDER

IA No.I filed U/O.XXXIX Rule 1 and 2 of CPC by the learned counsel of the plaintiff is hereby dismissed.

IA No.III filed U/O.XXXIX Rule 4 of CPC by the learned counsel of the defendant No.1 to 3 seeking for setting aside the ex-parte order passed in favour of the plaintiff is hereby allowed.

The ex-parte order dated 16.07.2022 passed
in favour of the plaintiff hereby stands vacated.

No orders as to cost.

*(Dictated to the Stenographer, transcribed by him, corrected by
me and then pronounced by me in the open Court on this the
22nd day of November 2022)*

(VIVEK GRAMOPADHYE)

Prl. C.J & JMFC, Kolar