

KAMS020029492022



IN THE COURT OF
I ADDL SENIOR CIVIL JUDGE AND CJM AT., MYSURU

Presided Over by **Smt. SHILPA A.G.**
B.A., LL.B.,

I Addl. Senior Civil Judge & CJM.,
Mysuru.

Dated :- **2nd day of November, 2023**

O.S./1081/2022

Plaintiff/s :

1. Smt. Rekha. T.,
W/o. Late T.J. Krishna,
Aged about 38 Years,

2. Kum. Sai Sharanya,
D/o. Late. T.J. Krishna,
Aged about 14 Years,

Since minor represented by
Next friend the mother
The first plaintiff.

3. Kum. Sai Likitha,
D/o. Late. T.J. Krishna,
Aged about 14 Years,

Since minor represented by
Next friend the mother
The first plaintiff.

All are R/at No.930/1,
Out house, 1st Cross, 2nd Main,
Vidyaranyapura, Kille Mohalla,
Mysuru-570 008.

(Sri. **Mahadeva Deshak.**, Adv)

V/s

Defendants:

- 1. Smt. T.Padma,**
W/o. Late T.Jaganath,
Aged 72 Years,
R/at No.930, 1st Cross, 2nd Main,
Vidyaranyapura, Kille Mohalla,
Mysuru-570 008.
- 2. Sri. T.J.Srinath,**
S/o. Late T.Jaganath,
Aged about 50 years,
R/at No.905, F-16, 2nd Cross,
4th Main, Vidyaranyapura,
Kille Mohalla,
Mysuru-570 008.

(Def No.1- Sri. **A.C. Nataraj.**, Adv)

(Def No.2- Sri.**K.C. Ravindra.**, Adv)

PARTIES TO I.A.No.I & II

APPLICANT/

PLAINTIFF

::

SMT. REKHA. T.

V/s

OPPONENT/

DECREE HOLDER

::

SMT. T. PADMA & ANOTHER

COMMON ORDERS ON APPLICATION FILED u/O.
XXXII Rule 1 of CPC and XXXIX RULE 1 & 2 OF
CPC (I.A.No.I & II)

An application is filed by the plaintiff No.1 u/Order XXXII Rule 1 of CPC for permission to the 1st plaintiff to sue for and on behalf of 2nd and 3rd plaintiff for the reason they are minors and their interest is involved in the suit schedule properties.

2. Another application is filed by same plaintiff No.1 seeking an order of temporary injunction restraining the defendants, their agents, servants or anybody claiming the right, title and interest from alienating the application schedule properties until pending disposal of the suit.

3. **The contents of the affidavit annexed to No.II is as follows:**

It is submitted that, 2nd defendant at the behest of 1st defendant are trying to alienate the suit schedule property to defeat the rights of plaintiff No.1 and her daughters plaintiff No.2 and 3. hence, this application is filed.

7. The defendant No.1 filed consolidated objections to I.A.No.I and II opposing the affidavit averments, wherein she has submitted that, the plaintiffs have absolutely no right to question the registered gift deed dated: 24.11.2021 executed by her in favour of defendant No.2. In fact, it is the absolute property of 1st defendant, to whom the schedule property was allotted under partition deed dated: 06.12.2017. the plaintiffs have admitted the registered partition and filed this application deliberately to mislead the court. further, the averments of the affidavit are denied as false. Therefore it is prayed to dismiss both the applications.

8. Heard arguments on applications from both side.

7. The points that arise for my consideration is as follows:

Point No.1 : Whether plaintiff No.1 makes out

sufficient cause to act as natural guardian of plaintiff No.2 and 3 u/Order XXXII Rule 1 of CPC ?

Point No.2 : Whether the plaintiffs have made out prima- facie case against the defendants?

Point No.3 : In whose favour the balance of convenience lies?

Point No.4 : Who will be put to irreparable loss and legal injury?

Point No.5 : What Order?

7. My findings on the above points are as follows :-

Point No.1 to 4 : In the Affirmative

Point No.5 : As per final order for the following-

REASONS

8. **Point No.1:** The plaintiff No.2 and 3 are minors and plaintiff No.1 is none other than the mother of the minors. The plaintiff No.1 being the mother qualifies to act as guardian and she does not have any adverse interest against the minors. No prejudice will be caused to the defendant, because appointment of guardian or next friend u/order XXXII Rule 1 of CPC is purely restricted to representing in the above case. Hence, in the interest of justice, application is fit to be allowed. In view of it, I answer point No.1 in the '**Affirmative**'.

9. **Point No.2:** The facts of the plaintiffs' case is that, Sri. T. Jaganath married one Smt. T.Padma, who is defendant No.1 herein and out of their wedlock both got 2 sons by name T.J. Shrinath, the 2nd defendant and T.J. Krishna. The Plaintiff

No.1 is the wife of T.J.Krishna. Plaintiff and No.2 and 3 are the children of plaintiff No.1 and T.J. Krishna. Therefore, the plaintiffs are related to 1st defendant as daughter-in-law and grandchildren respectively.

10. It is further submitted that, before partition suit schedule 'A' properties are the joint family properties of plaintiffs and defendants. On 28.02.2017, husband of plaintiff No.1 died due to ill-health. After that, plaintiff No.1 is re-married and living in Bengaluru. In these conditions, the father of deceased Krishna intended to apportion the schedule properties amongst his legitimate heirs and same was resulted in execution of partition deed dated: 06.12.2017. Accordingly, schedule 'B' property was apportioned in favour of Sri. Jagannath, schedule 'C' property was apportioned in favour of 1st defendant, schedule 'D' property was apportioned in favour of 2nd defendant and schedule 'E' property was apportioned in favour of plaintiffs jointly.

11. As per clause 6 of the partition deed, the properties will be re-allotted to the husband of defendant No.1, in case of the death of defendant No.1 without executing any indenture. As per clause No.7 of the partition deed, in case the husband of defendant No.1 died without executing any indenture to 'G' schedule property of the plaint, to be allotted to the plaintiffs and defendant No.2 in equal proportion.

12. It is submitted that, the father-in-law of plaintiff No.1 died on 28.01.2021 intestate leaving behind schedule 'G & F' property, that was allotted to him at the time of partition.

Further, in the partition deed, by virtue of clause No.7, the husband having predeceased 1st defendant and legally becomes divisible between the plaintiffs and 2nd defendant.

13. It is submitted that, after the demise of Late T.J. Jaganath, by taking the advantage of old age of defendant No.1, defendant No.2 slowly gained confidence of defendant No.1 and with an intention to usurp the schedule 'G' property, got executed a gift deed dated: 24.11.2021.

14. It is submitted that, the 2nd defendant at the behest of 1st defendant is trying to alienate the suit schedule properties in order to deprive the right of the plaintiffs.

15. The defendant No.1 and 2 claim that, suit schedule properties especially described in schedule 'C' and 'G' are the absolute properties of 1st defendant under the registered deed of partition dt: 06.12.2017 and khata is mutated in her name and she executed a registered gift deed dt: 24.11.2021 in favour of 2nd defendant out of her own volition and love & affection.

16. It is further submitted that, the 2nd defendant got the khata mutated in his name. Ever-since, the death of husband of 1st defendant, the 1st defendant is always ready and willing to part with plaintiffs legitimate 1/3rd share in plaint B/F schedule properties. Therefore, it is prayed to dismiss the application in respect to plaint 'C' and 'G' schedule properties.

17. From the pleadings, it is admitted fact that, the suit schedule properties are the family properties. Prior to partition, the family consisted of the parents, children and grandchildren.

The husband of plaintiff No.1 died on 28.02.2017. Be that as it may, the minor 2nd and 3rd plaintiffs are entitled for legal rights in the schedule properties. Further, a registered partition deed dt: 06.12.2017 is also an admitted fact.

18. The deceased Jagannath retained to himself 'B' schedule properties, 1st defendant 'C' schedule properties, 2nd defendant 'D' schedule properties and plaintiffs jointly 'E' schedule properties.

19. I have gone through the partition deed dt: 06.12.2017. By virtue of Clause No.7, the plaintiffs claim legal right in 'F' schedule property by way of partition and 'G' schedule property by way of specific performance of contract.

20. Therefore I am of the considered view that the plaintiffs claiming legitimate share and right in the application schedule property are entitled to maintain this application for temporary injunction restraining the defendant No.1 and 2 from alienating the application schedule property. Thus prima-facie case is made out. Hence I answer point No.1 in the **'Affirmative'**.

21. **Point No.3 and 4:** In view of above discussion, as the plaintiffs have shown prima-facie case against the defendants No.1 and 2, the balance of convenience lies in favour of plaintiffs because if the order of temporary injunction is not granted then the plaintiffs may put to loss and legal right may be effected. Under these circumstances if the relief sought for in the application is not granted during pending disposal of the suit, then the plaintiffs will be deprived of their rights in the suit

schedule property causing them irreparable loss and legal injury. Hence I answer these two points in the **Affirmative**.

22. **Point No.5:** In view of above discussion, I proceed to pass the following:

ORDER

The I.A.No.I filed by the plaintiff u/Order XXXII Rule 1 of CPC is hereby **allowed**.

The 1st plaintiff is appointed as next friend to sue for and on behalf of minor 2nd and 3rd plaintiffs in the above case.

The IA.No.II filed by the plaintiffs Under Order XXXIX Rule 1 and 2 of CPC is hereby **allowed**.

The defendant No.1 and 2, their agents, servants or anybody claiming the right, title and interest, whatsoever are restrained by an order of temporary injunction from alienating the application schedule properties in any form or manner.

In view of suit pending for determination, no order as to cost.

(Dictated to the Stenographer directly on computer, computerized by her, corrected by me and then pronounced in the open Court to this day on **2nd day of November, 2023**)

Sd/-

(Shilpa.A.G.)

**I Addl. Sr. Civil Judge & CJM,
Mysuru**