

IN THE COURT OF SENIOR CIVIL JUDGE,
AT:HUNGUND.

PRESENT: **Sri. Devaraju H.M.**
B.A., LL.B.,
Senior Civil Judge, Hungund.

Dated: 21st day of AUGUST-2018.

M.A. No. 01/2018.

Appellants:

1. Sri. Shivaputrappa
S/o. Bamalingappa Chalami,
Aged about 50 Years.,
Occ: Agriculture.
2. Sri. Sharanappa
S/o. Bamalingappa Chalami,
Aged about 46 Years.,
Occ: Agriculture.
3. Sri. Basappa
S/o. Bamalingappa Chalami,
Aged about 42 Years.,
Occ: Agriculture.

All are R/o. Bisanalkoppa.
Tq: Hungund,
Dist: Baglakot

(By Sri. S.M.D., Adv.,)

V/s.

Respondents:

1. Sri. Parasappa
S/o. Sangappa Kamaladinni.
Aged about 34 Years.,
Occ: Agriculture.
2. Sri. Muttappa
S/o. Sangappa Kamaladinni.
Aged about 30 Years.,

Occ: Agriculture.

3. Sri. Amaresh
S/o. Sangappa Kamaladinni.
Aged about 26 Years.,
Occ: Agriculture.
4. Sri. Yamanappa
S/o. Sangappa Kamaladinni.
Aged about 22 Years.,
Occ: Agriculture.
5. Sri. Sangappa
S/o. Muttappa Kamaladinni.
Aged about 22 Years.,
Occ: Agriculture.

All are R/o. Bisanalkoppa.
Tq: Hungund,
Dist: Baglakot,
Now At : Hosagabbur,
Sharana Nagar,
Hubli,
Dist: Dharwad.

(By Sri. S.S.T., Adv., for R.3)

(R.1, 2, 4 & 5 are absent)

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Date & Nature of order : Order on I.A. No.1 passed
appealed against by A.C.J. & JMFC, Hungund
in O.S.No.334/2014, dt:15.12.17.

Date of institution of appeal : 27.01.2018.

Order pronounced on : 21.08.2018.

Total Duration : Year/s Month/s Day/s
00 06 24

SR. C.J. Hungund.

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:- ORDER :-

This is an appeal filed U/o. XLIII rule 1 of CPC, by the defendant No.2 to 4 of O.S. No. 334/2014 on the file of Addl. Civil Judge & JMFC, Hungund, challenging the granting an ad-interim order of temporary injunction restraining the defendant no.2 to 4 from receiving compensation amount, by way of order of temporary injunction by impugned order dated 15-12-2017 on I.A.No.I.

2. The appellants were defendant no.2 to 4, respondent no.1 to 5 were plaintiffs and defendant no.1 respectively before the trial court.

3. For purpose of convenience, parties will be referred to as their rank before the trial court.

4. The brief facts of plaintiffs case is that,

Suit property is the ancestral property of plaintiffs and defendant no.1. The defendant no.1 had sold the said property behind the back of the plaintiffs. The said fact came to their notice in the year 2014. They are having 4/5th share in the suit property. The property in dispute is acquired by Government and awarded compensation. The defendant no.2 to 4 are making

attempt to receive the compensation. With these reasons, filed the suit for the relief of decree for partition and separate possession of their 4/5th share and for declaration that the sale deed executed by defendant no.1 in favour of defendant no.2 to 4 is not binding on their share.

5. Plaintiffs have filed I.A.No.I U/o XXXIX Rule 1 and 2 of CPC, praying to grant an order of temporary injunction, restraining the defendant no.2 to 4 from receiving compensation, accrued out of acquisition of suit property.

6. In support of application, applicant/plaintiff No.1 sworn to an affidavit that suit property is the ancestral property of themselves and defendant no.1. The said property was acquired by Government under Upper Krishna Project. The Government has issued notice to the defendant no.2 to 4, as to acquisition of suit property. The defendant no.1 being their father sold the said property to the defendant no.2 to 4, without their notice. The defendant no.2 to 4 are making attempt to receive the compensation awarded, due to acquisition of said property. If the defendant no.2 to 4 receive the said amount, they will be put to great loss and hardship. With these reasons, prays to allow the application.

7. Defendant no.2 to 4 have appeared through counsel and they have filed written statement. The defendant no.2 to 4 have adopted the written statement, as objection to I.A.No.I. It is contended in the written statement that the suit is not maintainable either in law or on facts. The suit property was sold in the year 1989. The defendant no.2 to 4 have been in possession and enjoyment of the suit property from the date of purchase i.e, 28.6.1989. The possession of the suit property was delivered in their favour on the said date itself. The defendant no.1 sold the said property for his family and legal necessity. The plaintiffs and defendant no.1 have no right, title or interest, whatsoever over the suit property. The defendant no.1 had sold so many properties of his family, subsequent to the sale of suit property. The suit is barred by law of limitation. With these reasons, prays to dismiss the suit with cost.

8. The learned trial judge, heard the learned counsels for both side. He considered the pleadings and materials placed on record. He answered all the points in the affirmative and granted an order of temporary injunction, restraining the defendant no.2 to 4 from receiving compensation amount, till disposal of the suit, by an impugned order dated 15-12-2017.

9. Aggrieved by the findings of learned trial judge, defendant no.2 to 4 have come up with this appeal on the grounds mentioned in the appeal memo.

10. In response to the notice of appeal, respondent no.3 has appeared through counsel. Other respondents are remained absent, in spite of service of notice.

11. Trial court records were called for and received.

12. Heard the learned counsels for both side.

13. Perused the pleadings, materials and also impugned order.

14. The following points emerge for consideration.

1. Whether the learned trial Judge erred in holding that plaintiffs have made out a prima-facie case, balance of convenience lies in their favour, as well as they will be put to great injustice and hardship, if the order of temporary injunction is not granted ?
2. Whether the findings of learned trial Judge requires interference by this court ?
3. What order?

15. My findings to the above points are as under:-

Point No.1: In the affirmative.

Point No.2: In the affirmative.

Point No.3: As per final order for the following:

∴ R E A S O N S ∴

16. **POINT No.1 & 2**: These two points are interlinked with each other. Hence, they are taken together for common discussion, in order to avoid repetition of facts.

17. It is the case of the plaintiffs that suit property is the suit property. It was sold by defendant no.1 in favour of defendant No.2 to 4 behind their back. The said property is acquired by the Government and compensation is awarded. The defendant no.2 to 4 are making attempt to receive the compensation amount.

18. The learned counsel for defendant no.2 to 4 vehemently argued that the defendant no.2 to 4 have purchased the suit property from defendant no.1 in the year 1989 through a registered sale deed. The said fact is not disputed by plaintiffs and defendant no.1. The said property is acquired by the Government and compensation was awarded. On coming to know the fact of acquisition of property and compensation was awarded, plaintiffs eyes become red and they made attempt to grab the compensation amount by filing false suit. The suit for

challenging alienation of coparcenary property, should have been filed within 12 years of the sale deed or within 3 years from the date of attaining majority. The suit property was sold in the year 1989. This suit was filed in the year 2014. It means that this suit is filed after laps of 25 years. According to the age of plaintiffs mentioned in the plaint cause title, the plaintiffs were aged about 34, 30, 26 and 22 years respectively, as on the date of suit. The suit is also not filed within 3 years from the date of attaining majority. Therefore, suit is barred by law of limitation. The plaintiffs have not made out a prima-facie case, which includes maintainability of suit. In support of his argument, he referred to the decision reported in **(2006) 5 SCC 353 (PREM SINGH AND OTHERS V/S. BIRBAL AND OTHERS)** and **ILR 1992 Kar 3772 (M/s Patel Enterprises V/s. M.P. Ahuja)**. In the above decisions, it held as under;

A. **(2006) 5 SCC 353 (PREM SINGH AND OTHERS V/S. BIRBAL AND OTHERS)** wherein, it is held as under:

A. Specific Relief Act, 1963 – S.31 – Void deed of sale of immovable property – Interest of minor purportedly conveyed by – Course open to minor on attaining majority – Limitation period

applicable – Held, such minor would have two options in filing a suit to get the property purportedly conveyed under such a deed of sale – He could either file the suit within 12 years of the deed or within 3 years of attaining majority – Limitation Act, 1963 – Arts. 60 and 65 – Applicability.

B. ILR 1992 Kar 3772 (M/s Patel Enterprises V/s.

M.P. Ahuja) wherein, it is held as under:

ORDER 39 RULES 1 & 2 – Prima facie case includes nature of suit and maintainability – No temporary injunction, if suit not maintainable.

19. On the other hand learned counsel for plaintiffs vehemently argued that admittedly suit property is ancestral property. The same was sold by defendant no.1 in favour of defendant no.2 to 4, without notice and consent of plaintiffs. The plaintiffs are having share in the said property, as coparceners. The period of limitation is a question of law and fact. Therefore, the same is to be considered on merits of the matter. The learned trial judge has considered the matter in a right perspective manner and in accordance with law. Therefore, there

is no necessity to interfere in the findings of learned trial judge and prays to dismiss the appeal.

20. I have carefully gone through the pleadings, materials and impugned order.

21. The plaintiffs have produced the tax assessment extract of suit property for the year 1986-87, which was standing in the name of defendant no.1. The name of defendant no.1 was rounded off and the name of defendant no.2 to 4 were mutated. The plaintiffs have produced another tax assessment extract of suit property for the year 2000-2001, it is standing in the name of defendant no.2 to 4. The plaintiffs have produced certified copy of sale deed dated 28.6.1989 executed by defendant no.1 in favour of defendant no.2 to 4 in respect of suit property. Except the above documents, there is no material is placed by the plaintiffs to establish that this property was inherited by defendant no.1 from his ancestor.

22. It is the case of the plaintiffs that the suit property is their ancestral property. According to the Hindu Law, ancestral property is a property, which must have been inherited or succeeded from ancestor. The documents produced by the plaintiffs referred to above, which do not establish that the defendant no.1 had inherited the suit property from his

ancestor. Such being the case, the said property cannot become the ancestral property of plaintiffs.

23. The certified copy of sale deed produced by the plaintiffs reveals that the same was executed on 28.6.1989. This suit was filed on 17.12.2014. It means after 25 years from the date of execution of sale deed, this suit was filed. According to the age of plaintiffs mentioned in plaint cause title, they were aged about 34, 30, 26 and 22 years respectively, as on the date of suit.

24. According to the dictum of Hon'ble Apex Court in the decision reported in (2006) 5 SCC 353 referred to supra, the suit challenging the alienation of coparcenary property, ought to have been filed within 12 years from the date of sale deed or within 3 years from the date of attaining the age of majority. Here in this case, both period is over i.e., 12 years from the date of sale as well as 3 years from the date of attaining the age of majority.

25. It is specific case of the plaintiffs that suit property is ancestral property. Such being the case, it is burden on them to establish the same. Prima-facie case means, the materials placed on record prima-facie establish that the suit property is ancestral property and plaintiffs are having right in the suit

property. As already stated above, the plaintiffs have not placed any materials to establish that the suit property was inherited by defendant no.1 from his ancestor.

26. According to the dictum of our Hon'ble High Court in the decision reported in ILR 1992 Kar 3772 prima-facie includes nature of suit and maintainability. Since the suit is filed beyond the period of limitation, it is not at all maintainable. Such being the case, the order of temporary injunction cannot be granted.

27. It is the case of the plaintiffs that in the event order of temporary injunction is not granted, they will be put to great loss and hardship. What is the purpose of granting the order of temporary injunction is that in the event order is not granted, the nature of property will be changed and the same cannot be compensated in terms of money. In the case on hand, the property in question was acquired by the Government and compensation was awarded. If really, plaintiffs succeeded in the suit, they are entitled to get the same from the person with whom, the said amount is available or who received the compensation amount. If the order of temporary injunction is not granted, the plaintiffs will not be put to any sort of hardship and loss, as the nature of property is not going to be changed or

the property not going to be wasted. By the impugned order, the defendant no.2 to 4 are put to much loss and hardship, as they being the owners in possession of the same restrained from receiving the compensation. Considering the pleadings and materials, the learned trial judge has ignored the fact that plaintiffs have not placed any material to establish that this property was inherited by defendant no.1 from his ancestor. The plaintiffs have not made out a prima-facie case that the suit property is ancestral property of themselves and defendant no.1. In view of the above, interference of this court is warranted in the impugned order. Accordingly, both the points are answered in the **affirmative**.

28. **POINT NO.3-** In view of findings on the above point, I proceed to pass the following:

:- O R D E R :-

Miscellaneous appeal filed by the appellants/defendant no.2 to 4 U/o. XLIII rule 1 of CPC is hereby allowed on cost of Rs. 3,000/-.

The impugned order dated 15-12-2017 passed on I.A. No.I in O.S.No. 334/2014 by the learned Addl. Civil Judge and JMFC Hungund is hereby set-aside.

Consequently, the I.A.No.I filed by the plaintiffs U/o XXXIX Rule 1 and 2 of CPC in O.S.No.334/2014 is dismissed.

Send back LCR along with a copy of this order to the trial court.

(Dictated to the Stenographer, transcript revised, corrected and then pronounced by me in the open court on 21st day of August-2018)

(Sri. DEVARAJU H.M.)
Senior Civil Judge & JMFC, Hungund.