

**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C
AT HOLENARASIPUR**

PRESENT : Sri RANGEGOWDA.C.

B.A.L., LL.B.

Senior Civil Judge and J.M.F.C.,
HOLENARASIPUR

Dated: This the 24th day of August 2018

Miscellaneous Appeal No.1/2018

- Appellants:
1. Rangaswamy, aged about 63 years, S/o. Late. Chikkegowda @ Kullegowda,
 2. Sathisha, aged about 30 years, S/o. Rangaswamy

Both are R/o. Ulivala village,
Kasaba Hobli, Holenarasipura
Taluk.

(Rep. by Sri.K.P, advocate)

V/s

Respondent: V.K.Turubegowda, aged about 58 years, S/o. Late Chikkegowda @ Kullegowda, Ulivala Vilalge, Kasaba Hbli, Holenarasipura Taluk.

(Rep. by Sri.K.R.S, advocate)

Date & nature of decree / order

Appealed against: Order passed on IA.No.II in O.S.204/16, dtd:15.12.2017, on the file of Addl. Civil Judge & JMFC, Holenarasipura.

Date of institution of the Appeal: 12.01.2018

Date of Judgement: 24.08.2018

Duration:	<u>Year/s</u>	<u>Month/s</u>	<u>Day/s</u>
	-	7	12

(RANGEGOWDA.C)
Senior Civil Judge,
Holenarasipura.

:: ORDERS ::

This is the miscellaneous Appeal filed by the appellant / defendants U/o 43, R.1 of C.P.C, questioning the order passed by Addl. Civil Judge and J.M.F.C., Holenarasipura, in O.S.204/16, dtd:15.12.2017.

2. The copies of the Trial Court records secured. The plaintiff / respondent has filed I.A.No.II under Order 39 Rule 1 and 2 C.P.C, seeking an order of temporary injunction restraining the defendants from interfering with the peaceful possession of the plaintiff over the suit property. By the impugned order the trial Court has allowed I.A.No.II granting

temporary injunction against the defendants as prayed. For the sake of convenience, the rank of the parties is referred to as referred before the Trial Court.

3. The plaintiff has filed the suit in O.S.No.204/16 seeking declaration of title and also perpetual injunction against the defendants in respect of the suit property. It is the case of the plaintiff that, he has purchased the suit property under the registered sale deed dated 10.08.1987 and thereafter he is in possession of the suit property. The khatha of suit property is also changed in his name. The defendant no.1 is the brother of the plaintiff and defendant no.2 is the son of the 1st defendant. There was a partition of ancestral properties on 03.03.1982. After the said partition the plaintiff has purchased the suit property in the year 1987. Though the defendants have no right or interest in the suit property are interfering with the possession of the plaintiff over the suit property. Though there was panchayath and panchayathdars have advised the defendants, but the defendants have not heeded to the request of the panchayathdars. Therefore, the plaintiff without any alternative has filed this suit seeking declaration of title and injunction against the defendants.

4. After service of summons the defendants appeared through their counsel and filed common written statement. In the written statement the defendants have denied the

averments of para 2 of the plaint as false. The defendants have admitted the relationship as stated in para 3 of the plaint, but the defendants have denied the other averments of the para 3 of the plaint as false. The defendants further contended that, there was no partition of the suit property. In the year 1986 he separated from his joint family and started to reside in Huliwala village and in the year 1987 there was a partition of some of the joint family properties. But the suit property which was the joint family property was not partitioned. The suit property was ancestral property of the family of the plaintiff and defendants and the father of plaintiff and defendant no.1 by name Chikkegowda @ Kullegowda has sold the suit property in favour of his sister Nanjamma on 31.03.1954 with an intention to retain the suit property to his family. At the time of sale deed by imposing condition that the suit property is to be reconveyed to his sons, suit property is sold for nominal amount.

5. The defendants further contended that, even after the execution of sale deed suit property continued in the possession of plaintiff and defendants. The khatha is changed in the name of said Nanjamma, but she was not in possession of suit property at any point of time. The said Nanjamma is only receiving some portion of the yields derived from the suit property. Since the suit property was not yet reconveyed in

favour of the sons of the Chikkegowda @ Kullegowda, the suit property was not included in the partition. After the death of said Chikkegowda @ Kullegowda in the year 1985, the Nanjamma has come forward to reconvey the suit property to the family of plaintiff and defendants, as promised to Chikkegowda. At that time the defendants were not in a financial position to purchase the said property. Therefore, after sometime the plaintiff and defendant no.1 along with another brother by name Ramegowda by contributing equally towards consideration amount, have purchased the suit property from said Nanjamma. However since some properties in the name of mother of the plaintiff and defendant no.1 was not yet divided, hence they decided to get the sale deed registered in favour of the defendant no.1, as he is a wise person in the family. They also decided to divide the said property later along with the property left by her mother. After the registration of the sale deed there was an oral partition of the suit property and plaintiff and defendant no.1 and their brother Ramegowda are in possession of the property fallen to their share. Thereafter the defendant no.1 requested the plaintiff for partition of the suit property. Then the plaintiff postponed the partition on the ground that, during the lifetime of the mother Kalyanamma it is not proper to divide the suit property and he assured that thereafter the properties in the

name of mother Kalyanamma and the suit property shall be partitioned.

6. The defendants further contended that, their mother Kalyanamma died on 21.10.2013 and all the funeral and obsequies ceremonies performed by all the 3 brothers by sharing expenses. When the defendant no.1 demanded for partition of the suit property then the plaintiff dodged the matter by saying one or other reason. The plaintiff has obtained some amount by way of loan by giving a cheque and in order to avoid the payment of the said amount and also to deter the defendant no.1, this false suit is filed. It is further contended by the defendants that, when the plaintiff attempted to sell the suit property to the third parties, the defendant no.1 has filed a suit in O.S.No.318/16 for partition. With the above contentions the defendants prays for dismissal of the suit.

7. In the affidavit filed in support of I.A.No.II the plaintiff has reiterated the averments of the plaint and prays for allowing of the application. The learned counsel for the defendants have filed a memo stating that the averments of the written statement be considered as objection to I.A.No.II and prays for rejection of I.A.No.II.

8. The trial Court after hearing both parties and by considering the materials on record has held that, the plaintiff

has made out prima facie case, that the balance of convenience lies in favour of the plaintiff and that irreparable loss and injury would be caused to the plaintiff if an order of Temporary Injunction is refused. Consequently, the trial Court granted the Temporary Injunction by allowing I.A.No.II. Being aggrieved by the said order, the defendants have preferred this Appeal.

9. Heard learned counsels for the appellant and respondents and perused the materials on record.

10. The following points arise for my consideration:-

- 1. Whether the plaintiff has made out prima facie case in his favour for the grant of Temporary Injunction as sought?**
- 2. Whether the plaintiff has made out sufficient grounds to show that balance of convenience lies in his favour?**
- 3. Whether the plaintiff has made out sufficient grounds to show that the irreparable loss and injury will be caused to him, if the Temporary Injunction is not granted?**
- 4. Whether the impugned order of the Trial Court is contrary to the procedure established by law and the documents placed on record and hence it requires interference?**

5. What order?

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

Point No.1	:	In the affirmative
Point No.2	:	In the affirmative
Point No.3	:	In the affirmative
Point No.4	:	In the negative
Point No.5	:	As per final order For the following:

:: R E A S O N S ::

12. **Point No.1:-** This is the specific case of the plaintiff that, he has purchased the suit property under registered sale deed dated 10.08.1987 and he is in possession of the suit property. The defendant no.1 who is the brother of the plaintiff and defendant no.2 who is the son of defendant no.1, without any right or interest in the suit property are interfering with the possession of the suit property. On the other hand the defendants have specifically contended that, the suit property is jointly purchased by plaintiff and defendant no.1 and another brother by name Ramegowda by contributing equally towards sale consideration amount, but since plaintiff is the wise person in the family sale deed is got registered in the name of plaintiff. It is the specific contention of the defendants

that, suit property is the joint family property and it is not partitioned till today.

13. The plaintiff has produced sale deed and also mutation register extract and RTC extract to show that, he is the owner in possession of the suit property. Though defendants have taken contention that they have contributed for the purchase of the suit property, but at this stage there are no documents produced to substantiate the said contention. Even in the sale deed which is produced by the plaintiff, there is no recital as to the defendant no.1 and another brother contributing to the sale consideration. Even their presence at the time of execution of sale deed is not mentioned. Therefore, at this stage there are no materials to substantiate the said contentions taken by the defendants.

14. The learned counsel for the appellant vehemently argued that, father of the plaintiff and defendant no.1 by name Chikkegowda @ Kullegowda had sold the suit property to his sister Nanjamma for a nominal price with condition to reconvey the suit property to his family. After the partition and after the death of said Chikkegowda @ Kullegowda when the said Nanjamma intended to reconvey the suit property then with an understanding to get the property partitioned later, the suit property was got registered in the name of plaintiff.

15. To show that there was a condition imposed on Nanjamma by said Chikkegowda @ Kullegowda, the sale deed dated 31.03.1954 is not produced by the defendants. In the sale deed produced by the plaintiff it is only mentioned that as follows:

ನಾನು ಕ್ರಯಕ್ಕೆ ಬರೆಸಿಕೊಳ್ಳುವಾಗ್ಗೆ ನಿಮ್ಮ ತಂದೆಯವರಿಗೆ
ವಾಗ್ಧಾನ ಮಾಡಿರುವಂತೆಯೂ ಸಹ ಷೆಡ್ಯೂಲ್ ಜಮೀನನ್ನು ನಿಮಗೆ
ಗೌರ್ಮೆಂಟ್ ಹತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳಿಗೆ ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ
ಕೊಟ್ಟಿರುತ್ತೇನೆ.

It is only mentioned about the promise, it is not clear as to what was the promise obtained by Chikkegowda @ Kullegowda from Nanjamma. Even otherwise if there is any condition in the sale deed, the legality of the said condition is to be decided only after the trial as per law. But, at this stage no findings can be given on that aspect.

16. On perusal of the RTC extracts produced by the plaintiff it could be noticed that, the plaintiff has obtained loan from the bank, which implies that the plaintiff is in possession of the suit property. Though it is contended by the defendants that, they have filed a suit for partition and obtained an order of temporary injunction restraining the plaintiff from alienating the suit property, the said suit is filed after the institution of

this suit in O.S.No.204/16. Moreover filing of the said suit and interim order of the said suit is not in any way prevents the plaintiff from claiming temporary injunction in respect of the suit property through I.A.No.II. On perusal of the plaint and documents produced by the plaintiff and also the written statement and documents produced by the counsel for the appellant in this miscellaneous case, it could be noticed that the plaintiff has made out triable case and the defendants have not brought to the notice of the Court anything to show that the suit of the plaintiffs is frivolous, vexatious or barred by any law. Therefore, this Court has come to the conclusion that, at this stage, the plaintiff has made out prima facie case. Hence, point No.1 is answered in the affirmative.

17. **Point No.2 and 3:-** While answering point No.1, this court has held that, the plaintiff has made out a prima facie case in his favour and also proved his prima facie possession over the suit property at this stage. Therefore, if the temporary injunction is not granted then irreparable loss will be caused to the plaintiff. If the temporary injunction is not granted, the inconvenience caused to the plaintiff will be more when compared with the defendants, if the temporary injunction is granted. Therefore, this Court has come to the conclusion that, balance of convenience lies in favour of plaintiff and irreparable loss and injury will be caused to the

plaintiff if the Temporary Injunction is not granted. Hence, point No.2 and 3 are answered in the affirmative.

18. **Point No.4:-** It is settled preposition of law that, the Appellate Court should be too slow to interfere with an order of Trial Court on an application U/o 39, R.1 and 2 C.P.C. And it is also settled proposition of law that, even if two views are possible, the Appellate Court should not interfere with the order passed by the Trial Court. In this case, based on pleadings and documents on record, no two views are possible. The Trial Court after appreciating the pleadings and documents on record has rightly allowed I.A.No.II by granting temporary injunction in favour of the plaintiff. Therefore, in view of the above discussion and findings on point No.1 to 3, this Court has come to the conclusion that, the defendants / appellants have not made out sufficient grounds to interfere with the discretionary order passed by the Trial Court on I.A.No.II. Hence, the impugned order does not call for interference by this court. Therefore, point No.4 is answered in the negative.

19. **Point No.5:-** For the foregoing reasons and findings on point No.1 to 4, the following order is passed :

:: O R D E R ::

The Appeal filed by the appellants/ defendant U/o 43, R.1 of C.P.C, is hereby dismissed.

The impugned order passed on IA.No.II in OS.No.204/2016 dated 15.12.2017, by the Addl. Civil Judge and J.M.F.C, Holenarasipura is hereby confirmed.

Cost of this Appeal shall follow the result of the suit.

Send copy of this order to the Trial Court forthwith.

(Dictated to the stenographer, typed and transcribed by her, revised by me and after corrections, pronounced in the open Court on this the 24th day of August 2018)

(RANGEGOWDA.C)
Senior Civil Judge,
Holenarasipura.