

**IN THE COURT OF THE III ADDL. DISTRICT AND
SESSIONS JUDGE, RAMANAGARA**

:Present:

Sri.Gopal Krishna Rai T., B.A.(Law), LL.B.,
III Addl. District and Sessions Judge,
Ramanagara.

Dated this the 25th day of January 2018

M.A.1/2018

APPELLANTS:

1) Prakash,
S/o. M.Muniyappa,
Aged about 46 years,
Shyanumangala Village,
Bidadi Hobli,
Ramanagara Taluk,
Ramanagara District.

2) Mohan,
S/o. M.Muniyappa,
Aged about 44 years,
Shyanumangala Village,
Bidadi Hobli,
Ramanagara Taluk,
Ramanagara District.

(Rep. by Smt.M.T.M., Adv.)

.Vs.

RESPONDENTS:

1) M.Muniyappa,
S/o. Late Muniswamappa,
Aged about 80 years,
Shyanumangala Village,
Bidadi Hobli,
Ramanagara Taluk,
Ramanagara District.

2) Smt.Vijaya,
D/o. Late Muniswamappa,
Aged about 50 years,
Shyanumangala Village,
Bidadi Hobli,
Ramanagara Taluk,
Ramanagara District.

3) Smt. Meenakshi,
D/o. Late Muniswamappa,
Aged about 48 years,
Shyanumangala Village,
Bidadi Hobli,
Ramanagara Taluk,
Ramanagara District.

4) Smt. Bhagyamma,
W/o. Late Venkatappa,
Aged about 75 years,
Hanumappa Building,
Bhadrappa Layout,
Thindlu Road,
Bengaluru.

5) Shivalingaiah,
S/o. Late Channegowda,
Dead by Lrs

5.a) Mangalesh,
S/o. Late Shivalingaiah,
Aged about 45 years,

5.b) Suma,
S/o. Late Shivalingaiah,
Aged about 35 years,

5.a) and 5.b) are
R/at No.97, In front of
Kodandarama, Uppinakere,
Maddur Town, Mandya Dist.

6) M/s. Bisleri International
Pvt. Ltd., represented by
Raghavendra Rao,
S/o. Bhagawantharao Kulakarni,
Aged about 58 years,
R/at. Advaith No.80,

4th main road, Hoysalanagar,
Ramamurthynagar,
Bengaluru-16.

7) K.Lokesh,
S/o. G.Krishnappa,
Aged about 58 years,
Shyanumangala Village,
Bidadadi Hobli,
Ramanagara Taluk,
Ramanagara District.

(R6 by Smt.Anitha, Adv.)

JUDGMENT

The plaintiffs being aggrieved by the orders of Addl. Senior Civil Judge, Ramanagara dated 16.12.2017 in OS No.58/2011 on IA.I has filed the present appeal u/O XLIII Rule 1(3) of CPC.

2. The parties to the appeal are referred in the same rank as referred before the trial court for the sake of convenience and to avoid confusion.

3. The brief facts of the case of the plaintiffs before the trial court are as follows:

Before the trial court, the plaintiffs have filed an application u/O XXXIX Rules 1 and 2 R/w Sec.151 of CPC to restrain the 6th defendant, its agents not to put up any construction over the suit schedule properties by means of temporary injunction till the disposal of the suit.

In support of IA.I, the plaintiff No.1 has filed the affidavit wherein he has contended that, they have filed the suit for partition and separate possession of their share over the suit schedule properties. The suit schedule properties are joint family properties of plaintiffs and defendants. The 6th defendant without taking consent of the plaintiffs has purchased the suit schedule properties and now trying to put up construction over the same. The 6th defendant is trying to interfere with the plaintiffs joint possession and enjoyment of suit schedule properties. The plaintiffs have made out prima-facie case, balance of

convenience lies in their favour, if temporary injunction is not granted, they will be put to irreparable loss and injury, which cannot be compensated in terms of money.

4. Objections of the 6th defendant:

The 6th defendant is in possession and enjoyment of suit schedule properties and hence, he cannot be restrained by an order of temporary injunction. By an order of temporary injunction, owner of the property cannot be restrained from putting up construction. The 6th defendant is a bonafide purchaser of the suit schedule properties under sale deed dated 23.12.2010. The 6th defendant has purchased 9 acres 32.02 guntas of land in various survey numbers from 5th defendant and his son under sale deed dated 23.12.2010 for the purpose of installation of package drinking water which is called Bisleri. The 6th defendant has obtained conversion order from the Deputy Commissioner to an extent of 9 acres 10 guntas. The suit schedule properties have been left out from putting up any

construction for the time being. However, for the development of the properties, there cannot be any impediment. The present suit is the out come of blackmail tactics adopted by the plaintiffs and defendant Nos.1 to 5. The defendant No.1 and father of plaintiffs earlier filed a similar suit against the 6th defendant seeking injunction relief, which was ended in a compromise and they were paid with Rs.3,60,000/- in addition to Rs.15,000/-. Similarly, the 5th defendant had filed another suit, again it ended in compromise. The vendors of 6th defendant paid a sum of Rs.1,60,000/- to the 3rd defendant. The 6th defendant is not going to put up any structure. However, he should be permitted to improve his lands which are purchased by him. Hence, prayed to dismiss the application.

5. The learned trial Judge after hearing the arguments and perusing written arguments filed by the plaintiffs, has formulated the following points for consideration:

- 1) Whether the plaintiffs prove prima-facie case lie in their favour?
- 2) Whether the balance of convenience lie in favour of the plaintiffs?
- 3) Whether the plaintiffs would suffer irreparable loss and injury if temporary injunction order is not granted in their favour?
- 4) What order?

6. The learned trial Judge has answered the point Nos.1 to 3 in the negative and consequently, dismissed IA.I filed by the plaintiffs.

7. It is that order of the trial court is challenged by the appellants/plaintiffs on the following grounds:

The act of illegal construction of structure by 6th defendant has not been considered by the trial court. If status-quo of the suit schedule properties is not maintained, 6th defendant may put up construction.

The plaintiffs and defendant Nos.1 to 3 are in joint possession and enjoyment of the schedule properties, that aspect of the matter has not been considered by the trial court. The contention of the 6th defendant that, suit is filed only to make wrongful gain is cannot be accepted. That observation of the trial court is not proper. Though the 6th defendant has submitted that, he will not put up any construction over the schedule properties, he has not stopped the construction. If temporary injunction is not granted, the property right of the plaintiffs will be defeated. The 6th defendant is a powerful person and he has stored readymade constructed houses in the schedule properties. The documents produced before the trial court has not been considered. The 6th defendant during the pendency of the suit has taken order from BMICAPA Department illegally. The intention of the 6th defendant is to oust the plaintiffs from the suit schedule properties. Hence, prayed to set aside the order.

8. Heard the arguments of Sri.S.R, advocate for the appellants and Sri.T.N.R., advocate for the 6th defendant.

9. Now the points that are arisen for the due consideration of this court are:

1. Whether the trial court is justified in rejecting the application filed by the plaintiffs u/O XXXIX Rules 1 and 2 R/w Sec.151 of CPC?

2. What Order?

10. My findings to the above points are:

Point No.1: In the Affirmative,

Point No.2: As per final order below

for the following

REASONS

11. **Point No.1:** It is well settled principle of law as per the decisions reported in AIR 1984 Karnataka.page 74, 1983(2) KLJ page 289, 1996(2) KLJ page 109, 1968(1) Mys.L.J.page 552 that even if on the pleadings

and documents produced by the parties it is possible to come to a different conclusion than the one arrived by the trial court is not a ground to interfere with the discretionary order of the trial court. In other words this court can interfere with the order of the trial court only if the order of the trial court is perverse, vexatious or capricious and not on the mere ground that another view is possible on the basis of the pleadings and the documents of the parties. In this background, I would like to discuss whether the order of the trial court is liable to be interfered with or not.

12. The suit schedule properties are agricultural lands bearing Sy.No.49/5 measuring 5 guntas out of 2 acres 1 gunta and land bearing Sy.No.50/3 measuring 4 guntas out of 25 guntas. The perusal of material evidence placed on record would show that, in OS No.72/2006, the 1st defendant herein is the plaintiff in that case. He had entered into a compromise and withdrawn the suit by accepting relinquishment deed and ownership of the 5th defendant. The suit schedule

properties in OS No.72/2006 and the suit schedule properties in the instant suit are one and the same. In OS No.72/2006, the 1st defendant i.e., the father of the present plaintiffs has admitted the ownership of 5th defendant in OS No.72/2006. Therefore, during the lifetime of 1st defendant, the plaintiffs does not have any right in the suit schedule properties. It is made clear from the materials placed on record that, the 5th defendant has secured the schedule properties through exchange deed. That property is purchased by the 6th defendant under the sale deed dated 23.12.2010. Thus the plaintiffs being the children of 1st defendant are estopped from taking any contention contrary to the stand taken by their father in OS No.72/2006.

13. It is relevant to mention that, the plaintiffs have claimed right of pathway over the suit schedule properties. Strangely they have filed the suit for partition, which is prima-facie not maintainable. As per the averments, the suit schedule properties are used as road to approach other properties of the

plaintiffs. Though the plaintiffs have contended that, they have no other alternative road to reach their other properties, they have not produced any sketch before the court. Therefore, there is substance in the contention of the 6th defendant that, present suit is filed as a blackmail tactics. When the plaintiffs have claimed the right of pathway over the suit schedule properties, it is for them to file appropriate suit for the declaration of their right of pathway, but intelligently they have filed the suit for partition, which prima-facie not maintainable.

14. The suit schedule properties are Sy.Nos.49/5 and 50/3. The copy of sketch produced by Sri.T.N.R., advocate would show that, BMICIAPA has not approved for the construction of any structure either in Sy.Nos.49/5 or 50/3. In addition to it, Sri.T.N.R., advocate has submitted that, 6th defendant will not construct any building over Sy.Nos.49/5 or 50/3 for the time being. Under such circumstances, the apprehension of the plaintiffs that the 6th defendant

will proceed further in the line of putting up construction over Sy.Nos.49/5 and 50/3 is cannot be accepted. If 6th defendant violates the terms of the approved plan, definitely the authority will cancel the license. Under such circumstances, the apprehension of the plaintiffs is well founded.

15. Even otherwise, the material evidence placed on record would disclose that the plaintiffs have filed the present suit to get a chance to have wrongful gain in the hands of 6th defendant. The plaint as well as affidavit affixed to application is very much silent as to which are all properties are in the joint possession of plaintiffs and defendant Nos.1 to 3. If the contention of the plaintiffs were to be true, they ought to have filed suit in respect of Sy.Nos.49/5, 49/6, 51/5, 51/9 of Shanumangala Village. Claiming property right and claiming right of pathway altogether different reliefs. Thus on appreciation of material evidence on record, this court is of the opinion that, plaintiffs have not at all made out prima-facie case. The 6th defendant being

the purchaser of the properties have got every right to put up construction. However, the counsel for the 6th defendant has contended that, the 6th defendant is not intended to put up any construction over the suit schedule properties as no license is issued to put up construction over the same. Therefore, on appreciation of material evidence on record, this court is of the opinion that, the apprehension of the plaintiffs is not well founded. On the other hand, it is ill-motivated.

16. The learned trial Judge has appreciated materials placed on record in a proper perspective and has held that, there could not be partition of a road when it is utilised by different persons to reach different survey numbers. Accordingly, it is held that the plaintiffs have failed to show that they have got prima-facie case to go for trial. That observation of the trial court is well founded. Hence, on appreciation of evidence on record, this court is of the opinion that the trial court is justified in rejecting IA.I filed u/O XXXIX Rules 1 and 2

R/w Sec.151 of CPC. Accordingly, point No.1 is answered in the Affirmative.

17. **POINT No.2:** In view of my findings on point No.1 in the Affirmative, I proceed to pass the following

ORDER

The appeal filed by the plaintiff u/O XLIII Rule 1(R) of CPC is hereby dismissed.

Consequently, the order passed on IA.I in OS No.58/2011 dated:16.12.2017 by the Addl. Senior Civil Judge, at Ramanagara is hereby stands confirmed.

Parties to the appeal shall bear their own costs.

Send a copy of this judgment to the trial court forthwith.

(Dictated to the Stenographer, transcribed and computerized by her, corrected, signed and then pronounced by me in the open court on this the 25th day of January 2018)

(Gopal Krishna Rai T)

III Addl. District and Sessions Judge,
Ramanagara.