



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 9218 OF 2018 (GM-CPC)

BETWEEN:

SRI. C. SURESH REDDY
AGED ABOUT 44 YEARS,
S/O LATE CHINNAPPA REDDY @ MUNI REDDY
R/AT DOMMASANDRA ROAD,
MUTHANALLUR VILLAGE & POST,
SARJAPURA HOBLI
VIA BOMMANSANDRA INDUSTRIAL AREA,
ANEKAL TALUK
BENGALURU URBAN DISTRICT-560 099

...PETITIONER

(BY SRI. K.K VASANTH, ADVOCATE)

AND:

1. SMT. JAYAMMA,
AGED ABOUT 80 YEARS,
W/O LATE CHINNAPPA REDDY @ MUNI REDDY
2. SRI. C. PRAKASH REDDY,
AGED ABOUT 60 YEARS,
S/O LATE CHINNAPPA REDDY @ MUNI REDDY



THE RESPONDENTS 1 & 2 ARE
R/AT BOMMANSANDRA ROAD,
MUTHANALLUR VILLAGE & POST,
SARJAPURA HOBLI,
BOMMASANDRA INDUSTRIAL AREA,
ANEKAL TALUK,
BENGALURU URBAN DISTRICT
BENGALURU -560 099.



3. SMT. P. PREMA,
AGED ABOUT 33 YEARS,
W/O SRINIVAS REDDY,
R/AT MANJUNATHA REDDY BUILDING,
TELECOM LAYOUT,
KITHAGANAHALLI VILLAGE,
BOMMASANDRA POST,
BOMMASANDRA INDUSTRIAL AREA,
ANEKAL TALUK,
BENGALURU URBAN DISTRICT,
BENGALURU-560 099.
4. SMT. SUNANDA,
AGED ABOUT 50 YEARS,
W/O LATE C. SHIVARAMA REDDY,
5. SMT. S. BRUNDHA,
AGED ABOUT 32 YEARS,
W/O RAMESH REDDY

THE RESPONDENTS 4 & 5 ARE
R/AT CHIKKANIKKUNDI BADAVANE,
MUTHASANDRA ROAD,
CHIKKANNEKKUNDI,
MUTHASANDRA POST,
SARJAPURA HOBLI, VARTHUR,
BENGALURU-560 087.

6. SMT GOWRAMMA @ PARVATHI
AGED ABOUT 53 YEARS,
W/O RAMACHANDRA REDDY
R/AT BINNAMANGALA VILLAGE,
DEVAGANAPALLI POST,
THALI, DENKANIKOTE TALUK,
KRISHNAGIRI DISTRICT,
TAMIL NADU-635 118.
7. SRI. C. SRINIVASA REDDY
AGED ABOUT 51 YEARS,
S/O LATE CHINNAPPA REDDY @
MUNI REDDY



8. SMT. N. MAMATHA @
N. MATHA SRINIVASA REDDY,
AGED ABOUT 44 YEARS,
W/O SRI. SRINIVASA REDDY
9. SMT. CHAITHRA
AGED ABOUT 22 YEARS,
D/O C. SRINIVASA REDDY
10. KUM. S CHANDANA
AGED ABOUT 19 YEARS,
D/O C. SRINIVASA REDDY

THE RESPONDENTS 7 TO 10 ARE
R/AT MUTHNALLUR VILAGE & POST
GOPASANDRA ROAD,
SARJAPURA HOBLI,
BOMMASANDRA INDUSTRIAL AREA,
ANEKAL TALUK,
BENGALURU URBAN,
DISTRICT-560 099.

11. SMT. PRABHA,
AGED ABOUT 49 YEARS,
W/O MUNISWAMY REDDY
R/AT HAROHALLI VILLAGE,
HUSKUR POST,
SARJAPURA HOBLI,
BOMMASANDRA INDUSTRIAL AREA,
ANEKAL TALUK,
BENGALURU URBAN DISTRICT,
BENGALURU-560 099.
12. SMT. MANJULA,
AGED ABOUT 42 YEARS,
W/O KONDA REDDY
R/AT V. KALLAHALLI VILLAGE,
SARJAPURA POST & HOBLI,
ANEKAL TALUK,
BENGALURU URBAN
DISTRICT-562 125.



13. SRI. C. HARISH BABU
AGED ABOUT 40 YEARS,
S/O CHINNAPA REDDY @
MUNI REDDY

14. SMT. GEETHA,
AGED ABOUT 30 YEARS,
W/O C. HARISH BABU

THE RESPONDENTS 13 & 14 ARE
R/O SOMANAHALLI ROAD,
MUTHANALLUR VILLAGE & POST,
SARJAPURA HOBLI,
BOMMASANDRA INDUSTRIAL AREA,
ANEKAL TAUKE,
BENGALURU URBAN
DISTRICT-560 099.

15. SRI. MUNI REDDY,
AGED ABOUT 61 YEARS,
S/O LATE OBALA REDDY,
R/AT DOOR NO.51
KABISANAHALLI (KADABISANA HALLI)
PANATHUR POST,
BENGALURU-560 103.

16. SRI. JAGADISH .G,
AGED ABOUT 38 YEARS,
S/O LATE GUNDAPPA
R/AT CHIKKANAGAMANGALA VILLAGE,
HUSKUR POST,
SARJAPURA HOBLI,
BOMMASANDRA INDUSTRIAL AREA,
ANEKAL TALUK,
BENGALURU URBAN,
DISTRICT-560 099.

...RESPONDENTS

(BY SRI. DAYALU K.N FOR C/R7 TO R8, ADVOCATE
VIDE ORDER DATED 28/6/2018 NOTICE TO
R1-R6 AND R9-R16 ARE DISPENSED WITH)



THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO-CALL FOR RECORDS IN OS NO.114/2013 ON THE FILE OF THE COURT OF SENIOR CIVIL JUDGE & JMFC, AT ANEKAL AND IN MA NO.5022/2017 ON THE FILE OF THE COURT OF III ADDL. DISTRICT & SESSIONS JUDGE, BENGALURU RURAL DISTRICT, SIT AT ANEKAL AND HEAR THE PARTIES AND; QUASH THE ORDERS DATED 8.11.2017 PASSED ON IA NO.3 IN OS NO.114/2013 BY THE COURT OF THE SENIOR CIVIL JUDGE & JMFC AT ANEKAL VIDE ANNEXURE-J AND ALSO THE JUDGMENT DATED 1.2.2018 IN MA NO.5022/2017 PASSED BY THE COURT OF III ADDL. DISTRICT & SESSIONS JUDGE, BENGALURU RURAL DISTRICT, SIT AT ANEKAL VIDE ANNEXURE-K.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Aggrieved by the order passed in I.A.No.3 in O.S.No.114/2013 by the Senior Civil Judge and JMFC at Anekal, which is confirmed by the III Additional District and Sessions Judge, Bengaluru Rural District in M.A.No.5022/2017 dated 01.02.2018, the present writ petition is filed.

2. The brief facts of the case are that:

The petitioner-plaintiff has filed a suit seeking the relief of partition and separate possession of the plaintiff's 1/10th share in 'A', 'B', 'C', 'D', 'E', 'F' and 'G' schedule properties and also for consequential relief to declare that the registered gift settlement deed dated 19.11.2012 executed by defendant No.8 in favour of defendant No.9 is not binding on the plaintiff and



also another registered sale deed dated 25.08.2011 executed by defendant No.1 in favour of defendant No.17 is null and void and not binding on the plaintiff.

3. In the said suit, the petitioner-plaintiff had filed an application under Order 39 Rules 1 and 2 of CPC seeking temporary injunction. It is the case of the plaintiff that the plaint 'A' schedule properties are ancestral properties, which are in joint possession and enjoyment of the plaintiff and all the defendants. The father of the plaintiff died on 04.06.1990 and till his death, he was acting as a Kartha of the joint family. Out of the income derived from the ancestral properties, the house property described as item No.1 of 'B' schedule properties was purchased. Even after the death of the plaintiff's father, no partition was effected between the plaintiff and the defendants. After the death of the plaintiff's father, third son i.e., defendant No.8, who is worldly wise man and highly qualified and educated person, took up the management with the consent of defendant Nos.2, 8 and 14 and managed the joint family affairs as a Kartha. It is his case that out of the income derived from the joint family properties, except item No.1 of 'B' schedule properties, defendant No.8 has purchased item Nos.2 to 9 of 'B'



to 'G' schedule properties. Now, it is his case that certain documents were executed by defendant No.8 and to declare that the same were not binding on him. It is the apprehension of the plaintiff that the encumbrance may be created in respect of other suit schedule properties. As such, he has sought temporary injunction.

4. It is the case of defendant No.8 that he is having income of an amount of Rs.7,00,000/- per month, he is an income tax assessee and he also have other source of income. He has purchased properties out of his own income and it is nothing to do with the joint family properties. According to him, the ancestral properties are plaint 'A' and item No.1 of 'B' schedule properties and the same are smaller extent. Out of the same, he is not deriving any income and it is not possible to purchase number of properties i.e., item Nos.2 to 9 of 'B' to 'G' schedule properties.

5. The Trial Court, by an order dated 08.11.2017, has dismissed I.A.No.3 wherein, the Court had observed that defendant Nos.1, 4 to 7, 12 and 15 have filed the written statement. They have supported the stand taken by defendant No.8. They have stated that defendant No.8 had alone



purchased the properties mentioned in schedule 'C' to 'G'. Defendant No.8 has produced the sale deed under which the properties have purchased and all the sale deed stands in the name of defendant No.8 alone. Further, the Court has observed that no income is deriving from item No.1 of B schedule properties. The burden of proving that defendant No.8 invested joint family funds to purchase the remaining items of B schedule properties except item No.1 and 'C' to 'G' is on the plaintiff. Unless the plaintiff discharges his burden, it is not possible to say at this juncture that all the properties are the joint family properties and if an order of injunction is granted, it takes away the right of defendant No.8 in enjoying the properties, which he has purchased in accordance with law. Further, the Court below felt that the plaintiff has failed to make out a *prima facie* case and accordingly, dismissed I.A.No.3 and the same is confirmed by the Appellate Court in M.A.No.5022/2017 dated 01.02.2018.

6. Learned counsel appearing for the petitioner submits that both the Courts below have failed to appreciate the contention and the issues involved in the case. It is submitted that during the pendency of the suit, if defendant



No.8 creates encumbrance on the properties and if he creates third party rights, it would give rise to multiplicity of proceedings and this aspect was not appreciated by the Courts below. It is submitted that whether the said properties are joint family properties or it is self-acquired properties of defendant No.8 can only be decided during the course of trial, but not at this stage. He submits that the Trial Court has gone beyond the scope and dismissed the application. The Appellate Court also, without appreciating the contention, confirmed the order of the Trial Court and it is submitted that unless injunction is granted it would cause lots of prejudice to the plaintiff.

7. Learned counsel appearing for defendant No.8 i.e., respondent No.7 in this writ petition submits that both the Courts have concurrently held against the plaintiff and held that he is not entitled for injunction as he has failed to make out the *prima facie* case. He further submits that there is no question of law involved in this writ petition and the writ petition is liable to the dismissed.

8. Having heard the learned counsel for the parties, perused the entire material on record. Admittedly, it is the case of the plaintiff that 'A' schedule properties and item No.1 of 'B'



schedule properties are ancestral properties and item Nos.2 to 9 of 'B' schedule properties to 'G' properties are standing the name of defendant No.8. But according to the plaintiff, they are purchased from the income derived from the plaint 'A' and item No.1 of 'B' of the schedule properties. When the application for injunction is filed by the plaintiff/petitioner, the burden lies on him to prove that there is a *prima facie* case, the balance of convenience and irreparable loss in his favour. When the plaint 'A' schedule properties are lands which are small extent and item No.1 of 'B' schedule properties is house property, no income could be derived from item No.1 of 'B' schedule properties. Further, compare to other properties, plaint 'A' and item No.1 of 'B' of the schedule properties are very smaller extent of the properties. On the face of it, the Court has felt that apart from just making a peculiar stand, the plaintiff, by adducing some more evidence or by placing some more material on record, has to establish that the properties are ancestral properties. The other defendants have supported the case of defendant No.8. If all the schedule properties are held to be ancestral properties, all the other defendants would also have a share in the properties. The Court had considered financial capacity of defendant No.8 and the fact that he is an



income tax assessee and he is also earning an amount of Rs.7,00,000/- per month. Considering all these facts, the Court felt that there is no *prima facie* case. In the considered opinion of this Court, both the Courts below have rightly appreciated the facts and law and refused to grant injunction to the plaintiff. This Court finds no reason to interference with the impugned order.

9. Accordingly, the petition is ***dismissed***.

All pending IA's if any shall stand closed.

**SD/-
JUDGE**

VM

List No.: 1 SI No.: 17