



CNR: KAHC010619292024

NC: 2026:KHC:36814
WP No. 30678 of 2024
C/W WP No. 30243 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 30678 OF 2024 (GM-CPC)

C/W

WRIT PETITION NO. 30243 OF 2024 (GM-CPC)

IN WP No. 30678/2024

BETWEEN:

GANGAPPA,
SINCE DEAD BY LRS

SRI.SHIVASHANKARAPPA.G
SINCE DEAD BY HIS LRS

1. SMT. VIJAYALAKSHMI,
W/O LATE SHIVASHANKARAPPA.G.,
AGED ABOUT 43 YEARS.
2. SMT. BHAVYA SHREE S,
D/O LATE SHIVASHANKARAPPA.G.,
AGED ABOUT 24 YEARS,
3. SRI. GOUTHAM,
S/O LATE SHIVASHANKARAPPA.G.,
AGED ABOUT 22 YEARS,

ALL ARE RESIDING AT
HANUMANTHASAGARA VILLAGE,

Digitally
signed by
SUVARNA T
Location:
HIGH
COURT OF
KARNATAKA



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DASANAPURA HOBLI,
BANGALORE NORTH TALUK - 562 162.

4. SRI. VENKATESH.H.G.,
S/O LATE GANGAPPA,
AGED ABOUT 43 YEARS,
R/AT HANUMANTHASAGARA VILLAGE,
DASANAPURA HOBLI,
NELAMANGALA TALUK.
5. SRI.SIDDAGANGAMMA,
D/O LATE GANGAPPA,
AGED ABOUT 52 YEARS,
R/AT SONDEKOPPA BYPASS ROAD,
SAPTHAPADHI, CHOUTRY BACK SIDE,
NELAMANGALA TALUK.

...PETITIONERS

(BY SRI. VIGNESWARA S SHASTRI, SENIOR COUNSEL FOR
SRI.CHOKKAREDDY., ADVOCATE)

AND:

1. SMT. VENKATAMMA,
W/O VENKATANARASAPPA,
AGED ABOUT 84 YEARS,
MARASANAHALI VILLAGE,
KASABA HOBLI,
NELAMANGALA.
2. SRI.MOODALAIAH.T,
S/O LATE THIMMAIAH,
AGED ABOUT 90 YEARS,
R/AT NO.455/1,
1ST MAIN ROAD,
BEHIND THE METRO STATION,



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T- DASARAHALLI POST,
YESHWANTHAPURA,
BANGALORE - 560 057.

3. SRI. VENKATESH,
S/O KADAMMA,
AGED ABOUT 50 YEARS,

4. SRI.GOVINDARAJU,
S/O KADAMMA,
AGED ABOUT 50 YEARS,

NO.3 & 4 ARE RESIDING AT
HALENAHALLI VILLAGE,
MADURE HOBLI,
DODDABALLAPURA TALUK.

5. SMT. LAKSHMAMMA,
W/O LATE GOVINDAPPA,
AGED ABOUT 80 YEARS,

6. SRI.G.KRISHNAMURTHY,
S/O LATE GOVINDAPPA,
AGED ABOUT 63 YEARS,

7. SRI.G.PUTTARAMU,
S/O LATE GOVINDAPPA,
AGED ABOUT 60 YEARS,

8. SMT. VIJAYAKUMARI,
D/O LATE GOVINDAPPA,
AGED ABOUT 80 YEARS,

9. SMT. VASANTHA KUMARI,
D/O LATE GOVINDAPPA,



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AGED ABOUT 57 YEARS,

10. SMT. ARUN KUMARI,
W/O LATE GOVINDAPPA,
AGED ABOUT 47 YEARS,

SMT. BYRAMMA,
D/O LATE THIMMAIAH,
SINCE DEAD BY HER LRS

- 11 SRI.THIMMEGOWDA,
S/O LATE BYRAMMA,
AGED MAJOR,
R/AT NO.846,
THIMMEGOWDA BUILDING,
11TH "B" MAIN ROAD,
AGB LAYOUT, NEAR MEI
EMPLOYEES COLONY,
HESARAGHATTA MAIN ROAD,
CHIKKABANAVARA,
BANGALORE - 94.

12. SRI.NARAYANAPPA,
S/O LATE THIMMAIAH,
AGED ABOUT 82 YEARS,

13. SMT. GANGALAKSHMAMMA,
W/O LATE RAMAIAH,
AGED ABOUT 74 YEARS,

14. SRI.R.SRINIVAS,
S/O LATE RAMAIAH,
AGED ABOUT 50 YEARS,



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15. SRI.LOKESH,
S/O LATE RAMAIAH,
AGED ABOUT 46 YEARS,
16. SMT. PREMA KUMARI,
D/O LATE RAMAIAH,
AGED ABOUT 42 YEARS,
NO.5 TO 16 ARE
R/AT HANUMANTHASAGARA VILLAGE,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK.
17. SMT. JAYAMMA,
S/O LATE THIMMAIAH,
AGED ABOUT 70 YEARS,
VIDYARANYAPURA,
BANGALORE - 560 097.
18. SRI.B.RAMAKRISHNAIAH,
S/O BORAIAH,
AGED ABOUT 45 YEARS,
R/AT HANUMANTHASAGARA
VILLAGE, DASANAPURA HOBLI,
BANGALORE NORTH TALUK.
19. SMT. SHYLAJA,
W/O H.C.SRINIVAS,
AGED ABOUT 35 YEARS,
R/AT HANUMANTHASAGARA
VILLAGE, DASANAPURA HOBLI,
BANGALORE NORTH TALUK.
20. M/S NANDI INFRASTRUCTURE
CORRIDOR ENTERPRISES LTD.,



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(REGISTERED UNDER THE
COMPANIES ACT)
REPRESENTED BY ITS DIRECTORS,
OFFICE AT MADHANAYAKANAHALI VILLAGE,
SY.NO.29, DASANAPURA HOBLI,
BANGALORE NORTH TALUK.

21. SMT. ANITHA,
W/O K.N.BALASUBRAMANYAM,
AGED MAJOR,
R/AT SY.NO.29/1,
HANUMAN THE GOWDANAPALYA,
NEAR OM SHAKTHI TEMPLE ROAD,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK.

...RESPONDENTS

(BY SRI.K.VIJAYA KUMAR, ADVOCATE FOR R2, R6, R7
AND R15;
NOTICE TO R1, R3, R4, R5, R8, R9, R10, R11, R13,
R14 AND R16 TO R21 ARE DISPENSED WITH VIDE
ORDER DATED 09.12.2024;
R11(D), R12(A), R12(B), R12(C), AND R12(D) ARE
SERVED)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH ANNEXURE-
A ORDER DATED 13.08.2024 PASSED BY THE 2ND ADDITIONAL
DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE,
BENGALURU RURAL DISTRICT AT BENGALURU IN
M.A.NO.71/2022 AND ETC.,



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3. SRI. GOUTHAM,
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ALL ARE RESIDING AT
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R/AT HANUMANTHASAGARA VILLAGE,
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SAPTHAPADHI, CHOUTRY BACK SIDE,
NELAMANGALA TALUK - 562 123.

...PETITIONERS

(BY SRI. VIGNESWARA S SHASTRI, SENIOR COUNSEL FOR
SRI.CHOKKAREDDY., ADVOCATE)

AND:

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1ST MAIN ROAD,
BEHIND THE METRO STATION,
T- DASARAHALLI POST,
YESHWANTHAPURA,
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5. SMT. LAKSHMAMMA,
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AGED ABOUT 80 YEARS,
6. SRI.G.KRISHNAMURTHY,
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AGED ABOUT 63 YEARS,
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AGED ABOUT 60 YEARS,
8. SMT. VIJAYAKUMARI,
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AGED ABOUT 80 YEARS,
9. SMT. VASANTHA KUMARI,
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AGED ABOUT 57 YEARS,
10. SMT. ARUN KUMARI,
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14. SRI.R.SRINIVAS,
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AGED ABOUT 50 YEARS,
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VILLAGE, DASANAPURA HOBLI,
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VILLAGE, DASANAPURA HOBLI,
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20. M/S NANDI INFRASTRUCTURE
CORRIDOR ENTERPRISES LTD.,
REPRESENTED BY ITS DIRECTORS,
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NEAR OM SHAKTHI TEMPLE ROAD,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK.

...RESPONDENTS

(BY SRI.K.VIJAYA KUMAR, ADVOCATE FOR C/R7 AND R15)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO A) QUASH ANNEXURE-A
ORDER DATED 13.08.2024, PASSED BY 2ND ADDITIONAL



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DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE,
BENGALURU RURAL DISTRICT AT BENGALURU IN
M.A.NO.70/2022 AND ETC .,

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

COMMON ORAL ORDER

These two writ petitions arise out of orders passed in MA No.71/2022 and MA No.70/2022 dated 13.08.2024 by the II Additional District and Sessions Judge and Special Judge, Bangalore Rural District, Bangalore, whereby the Appellate Court has confirmed the orders that were passed in OS No.172/2020 on IA No.3 dated 02.09.2022 and IA No.1 dated 16.09.2022. Hence, this Court is disposing of the writ petitions by way of a common order.

2. The petitioners before this Court are the plaintiffs in the suit. They have filed the suit seeking the relief of declaration that the plaintiffs are entitled to 1/2 (half) share in



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the suit schedule property by metes and bounds and to declaration that the compromise decree in OS. No. 384/2011 passed by the I Additional Senior Civil Judge, Bangalore Rural District, and the compromise decree in OS. No. 191/2012, passed by the Senior Civil Judge and JMFC, Nelamangala, is fraudulent, collusive, and not binding on the plaintiffs.

3. It is the specific case of the plaintiffs before the Trial Court that the grandfather of the plaintiffs by name Moodalaiah had two sons by name Venkatappa and Thimmaiah. The plaintiffs' father-Gangappa is the son of Venkatappa. Thimmaiah had five sons and three daughters. Defendant No.1 is the wife of Venkatanarasappa - the first son of Thimmaiah. Defendants Nos.3 and 4 are the children of another daughter-Kadamma and defendant Nos.5 to 10 are the legal heirs of Govindappa i.e. one of the son of Thimmaiah, defendant Nos.13 to 16 are the legal heirs of Ramaiah i.e. another son of Thimmaiah. Defendant Nos.11, 12 and 17 are children of Thimmaiah. It is stated that defendants No. 18 to 21 are the subsequent purchasers but not the family members.



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4. It is the plaintiffs' case that the grandfather, Moodalaiah, had acquired the suit properties by way of inheritance, succession and self-acquisition. His name was entered into the index of the land record of rights and in the RTC extracts. After the death of Moodalaiah, Venkatappa and Thimmaiah are the only legal heirs who have succeeded to the suit schedule property by way of inheritance/succession. Moodalaiah has not executed any mode of registered or unregistered instruments in favour of any of his sons. He died leaving behind the properties to his sons and the sons have acquired the right and title to the property and they have been cultivating the properties personally without any partition and they have been in possession and enjoyment of the property.

5. It is the case that after the death of Moodalaiah, the revenue entries were transferred in the name of Thimmaiah with consent of Venkatappa by reason that Thimmaiah had knowledge regarding the payment of revenue and maintaining the revenue records in respect of the properties. It is stated that after the death of Thimmaiah, all the properties were transferred in the names of his wife and children without the



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knowledge of the plaintiff. One property has been transferred by mutation in favour of the plaintiff, bearing Survey No. 7, measuring 30 guntas. However, the plaintiff has no knowledge about the mutation proceedings and states that the compromise decree was obtained collusively by the members of the family. It is the case that the properties are the Hindu undivided joint family properties, and as such, they are entitled to a share in the said properties.

6. In the said suit, two applications were filed. IA No.1 is filed not to alienate the property and IA No.3 is filed not to change the physical features of the property. That came to be dismissed by the trial Court by orders dated 16.09.2022 and 02.09.2022 respectively, wherein the Court has observed that there is no dispute with respect to relationship between the parties and it cannot be inferred that they are the members of the joint family and for that reason at this stage, it cannot be decided that the suit scheduled properties are the joint family properties or self-acquired properties of individual in whose name khata or sale deed is standing and for that reason, the same requires recording of evidence. But, it is pertinent to note



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that, until joint family properties are partitioned by metes and bounds, no coparcener or individual member of the joint family can claim exclusive possession over any property, and it is a fundamental rule of law that no injunction can be granted against a coparcener so as to exclude him from enjoying the portion of the property in his possession. Unless it is shown that said person is attempting to dispossess the possession of another coparcener or is interfering with the possession of another coparcener, which is clearly an obstruction to such coparcener for peaceful enjoyment of the property, and regarding the case on hand, it is clear that the defendants are in possession over the same. Further, the sale deed produced by the defendants shows that some of the properties have been sold in favour of third parties and they are in possession of the same and they are not parties to the suit and accordingly, the Court has come to the conclusion that the plaintiffs/petitioners are not entitled to the relief as sought for and accordingly dismissed the applications. Aggrieved thereby, two appeals are filed i.e., MA No.70/2022 and MA No.71/2022, which are also



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dismissed by confirming the order of the Trial Court by Order dated 13.08.2024.

7. Before the Appellate Court, the petitioners have filed an application under Order 41 Rule 27 of CPC, and they have placed on record the documents, which are an endorsement dated 12.12.2023, copy of the sale agreement dated 28.06.2023, copy of the order sheet in case No.12/1959 and copy of the Inam Abolition application by way of additional documents. The Appellate Court has observed that late Thimmaiah purchased the properties on different dates between 1931 and 1966. Even his wife purchased some of the suit properties during the said period. These documents *prima facie* prove that the suit schedule properties are the self-acquired properties of late Sri. Thimmaiah and his wife, Smt. Hanumakka. On the other hand, the plaintiffs have not produced any document to show that the khatha of any suit property stands in the name of late Moodalaiah or in the name of late Venkatappa at any point of time. Further, they have not produced any document showing that the late Venkatappa or late Thimmaiah inherited any of the suit properties from his



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father. The Court also observed that though there is a presumption that every Hindu family is joint, such presumption cannot be extended to any property as joint family property. The Court has further held that, at this stage, the defendants have *prima facie* proved that the properties are the self-acquired properties of late Thimmaiah and late Hanumakka, while the plaintiffs have *prima facie* failed to prove that the suit properties are joint family properties. Hence, the Court has held that there is no *prima facie* case, balance of convenience and irreparable loss made out by the plaintiff for grant of injunction.

8. Then, coming to the application that is filed under Order 41 Rule 27, the Court has observed that the documents, i.e., the endorsement dated 12.12.2023 and the sale agreement dated 28.06.2023, are all after filing of the suit. When the plaintiffs have failed to make out a *prima facie* case, there is no question of irreparable loss or hardship. Then, coming to the order sheet in Case No.12/1959 and copy of the Inam Abolition application, these documents show that late Thimmaiah has submitted an application for re-grant of some of the suit properties under the Inam Abolition Act and the Special



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Tahasildar for abolition of Inam granted the lands in favour of late Thimmaiah. These documents have been produced by appellants to show that, Thimmaiah has given a statement before the said Authority that suit properties are his ancestral properties. The appellants have sought to adduce these documents as additional evidence in the appeal to prove that the properties are ancestral joint family property and, as such, they are entitled to a share in the said properties by way of partition and separate possession.

9. The Court observed that these documents are from 1959 and that it is not the case of the appellants that they were unaware of these documents at the time of filing the suit. The Court further observed that these documents could have been produced before the trial Court. No proper explanation has been given by the appellants in this appeal for the non-production of the documents, and the Court held that there are no sufficient grounds to allow the said two documents as additional evidence. Even otherwise, if the two documents are permitted to be adduced as additional evidence, they are not helpful to the plaintiffs. The defendants have produced copies of



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the registered sale deed to show that late Thimmaiah had purchased the properties. Therefore, Thimmaiah has not inherited the suit property from his father, but the said properties are the self-acquired properties. Therefore, the Court has dismissed the appeals and confirmed the order passed by the Trial Court. Aggrieved thereby, the petitioners are before this Court.

10. When this matter came up before a Co-ordinate Bench of this Court, on 09.12.2024, the Court issued an emergent notice, and an order was passed that, till the next date of hearing, the respondents are restrained from alienating or encumbering or transferring any portion of the suit property and it is extended from time to time and is continuing till date.

11. Sri. Vigneswara S Shastri, learned Senior counsel representing Sri.Chokkareddy, learned counsel appearing on behalf of petitioners submits that the grant was in the name of Thimmaiah. As it is stated that it is an ancestral property and in the name of the joint family, such a grant is given to Thimmaiah, in that case, it cannot be considered as a self-



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acquired property or a property belonging to Thimmaiah, but it is a property belonging to the joint family.

12. When the application under Order 41 Rule 27 CPC was filed before the Appellate Court, the Appellate Court failed to consider the said record placed before it pertaining to the proceedings before the Inam Abolition Tahasildar. It is submitted that on the face of it, the proceedings that are placed by the plaintiffs show that it is for the benefit of the joint family. In that case, unless and until the suit is decided and the rights of the parties are determined, if the properties are alienated or any third-party rights are created, it would lead to multiplicity of proceedings, and to preserve the property, it is all the more necessary that the Court ought to have passed the interim injunction as sought for by the petitioners. It is submitted that the Appellate Court had failed to consider the documents that were placed before the Court.

13. Learned Senior Counsel has relied on the judgments passed by the Hon'ble Apex Court in the case of **K.V.Sudharshan A.Ramakrishnappa & others**¹ and has

¹ (2008) 13 S.C.R.465



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specifically drawn the attention of this Court to paragraph No.15 of the said judgment, which read as under:

"15. Apart from this, it is wrong on the part of the respon-dent no. 1 to say that his father, even if he had been alive, would not have been granted occupancy rights because the lands at that time were cultivated by the tenants. For grant of occupancy rights, personal cultivation is just one condition. The other con-ditions include that if a person is managing the properties, which his father was doing, would also be entitled to the grant of occu-pancy rights. We are, therefore, clearly of the view that the re-spondent no. 1 was made archak after the death of his father because he was the eldest member of the family. Being the archak, he cultivated the lands and obtained occupancy rights. In such circumstances, it would be highly unjust to deprive the other members of the family from getting their share in Sched-ule 'C' properties by relying only on Section 6A. Therefore, we are also of the opinion that the granted lands are also available for partition. In our view, grant of occupancy to one member will not disentitle the other members. This principle can also be found in the case of Appi Belchadthi & Ors. vs. Sheshi Belchadthi & Ors. (1982) 2 Karnataka Law Journal 565."



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14. Further he has relied on the judgment of Allahabad High Court in the case of ***Km.Sunita vs. Smt. Manju and others***² and has drawn the attention of this Court to Paragraph No.9 of the said judgment, which reads as under.

9. He also submitted that interim injunction against the co-sharers cannot be granted and further, while granting the interim injunction conduct of the party, balance of convenience and irreparable loss is required to be seen. He next submitted that in present case, undisputedly, conduct of the party is not fair and further, interim injunction cannot be granted against the co-sharers, therefore, there is no prima facie case, balance of convenience and irreparable loss of the appellant-plaintiff.

15. Relying on these judgments, it is submitted that the Court ought to have allowed these applications and both the Appellate Court and the Trial Court have failed to consider the case of the petitioners/ plaintiffs in its proper perspective and in the light of the settled law.

16. Learned counsel appearing for the respondents /defendants submits that both the courts have concurrently held

² (2025) 6 ILRA 69



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that the petitioners/plaintiffs could not make out a *prima facie* case. There is no balance of convenience in his favour and no irreparable loss would be caused if the injunction is not granted. When the two Courts have concurrently held and this Court, while exercising the jurisdiction under Article 227 of the Constitution of India, cannot interfere with the same, it is submitted that the sale deeds are executed from the year 2011. The family has sold the properties since 2011. Now, third-party rights are created. A layout is formed, and in some of the properties, construction has already come up. It is submitted that the defendants have placed before the Court, the documents to show that Thimmaiah and his wife have inherited the properties. Subsequently, as those properties belong to the late Thimmaiah, his family entered into a compromise in the year 2011, it is submitted that the suit was filed in the year 2020.

17. Learned counsel submits that, according to the plaintiffs, they are in joint possession of the property, but the nature of the property and the compromise and the sale deeds



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that have been executed clearly show that the plaintiffs and defendants were never in joint possession of the property.

18. At this stage, based on the said proceedings, if the interim injunction is granted, it would, in fact, cause lot of hardship to the defendants and to the other persons, who are in possession of the property and the Trial Court and the Appellate Court had rightly appreciated the case and rightly refused to grant injunction.

19. Learned counsel has relied on the judgment of the Hon'ble Apex Court in case of ***Wander Ltd. and another Vs. Antox India P.Ltd.***,³ and has drawn the attention of this Court to Paragraph No.14 of the said judgment, which reads thus:

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court

³ 1990 SCC OnLine SC 490



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below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

It is submitted that the Appellate Court shall not interfere with the exercise of discretion of the Court of first instance or substitute its own discretion except where the discretion exercised is arbitrary capricious or perverse.

20. He has relied on the judgment of the Hon'ble Apex Court in case of ***D.S.Lakshmaiah and another Vs.***



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L.Balasubramanyam and another.⁴ and has drawn the attention of this Court to Paragraph No.18 of the said judgment, which reads thus:

"18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

Relying on this judgment, it is submitted that there is no presumption that a property being a joint family property only on account of existence of the joint Hindu family, the one who asserts that it is a joint family property has to prove the same.

21. He has relied on another judgment of the Supreme Court in case of **Kashi Math Samsthan and another Vs. Shrimad Sudhindra Thirtha Swamy and another**⁵ and

⁴ 2003 SCC OnLine SC 915

⁵ 2009 SCC OnLine SC 1856



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has drawn the attention of this Court to Paragraph No.16 of the said judgment, which reads as under:

"16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted. Therefore, keeping this principle in mind, let us now see whether the appellant has been able to prove prima facie case to get an order of injunction during the pendency of the two appeals in the High Court."

He relied on this judgment to the effect what are the parameters for the grant of injunction. It is submitted that the writ petition has to be dismissed. It is submitted that the petitioners are enjoying an interim order from 2024 and from the last 2 years, the petitioners are having a benefit of an interim order without any basis.



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22. Having heard the learned Senior counsel for the petitioners and the counsel for the respondents, perused the material on record.

23. The suit is filed seeking partition and a declaration that the compromise decree entered into between the defendants is not binding on the plaintiffs. In the plaint, there is a specific averment that one Moodalaiah, who is the grandfather of the plaintiffs and the defendants, is the owner of the property. His name is mutated in the revenue records and later, the defendants' father, late Thimmaiah has made an application before the Tahasildar under the Inam Abolition Act for grant and it is granted for the purpose of the joint family and in those circumstances it becomes the joint family property. Hence, they are entitled for partition. They have also placed certain documents before the Appellate Court to show the proceedings of the Inam Tahasildar to that effect.

24. The Appellate Court has observed that these documents ought to have been placed before the Trial Court itself and has also found that, even if those documents are considered, the plaintiff is not entitled for an injunction, as he



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has failed to make out a *prima facie* case. While considering an application under Order 39 Rules 1 and 2 of the CPC, the Court will not conduct a roving inquiry or a mini trial, nor will it give any findings regarding the nature of the property and other matters. Any observations of the Court are *prima facie* observations for the specific purpose of determining the dispute between the parties.

25. Later they amended the pleadings, stating that by way of a grant under the Inam Abolition Act, the property is a joint family property. This Court is not inclined to go into these aspects. Inam Abolition proceedings of the year 1956. From that time to the present, the name of Thimmaiah has appeared in all the revenue records. According to the defendants, they have been in exclusive possession of the property. According to the plaintiffs, both are in joint possession of the property. If that is the case, the properties are sold from the year 2011, there are several transactions, structures in the suit schedule property as it was converted into a layout. In that case what the plaintiff was doing from 2011 is not known. He has come before the Court in the year 2020, seeking assertion of his right.



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26. In those circumstances, merely on the basis of the Inam Abolition proceedings, the Court cannot grant an order of injunction restraining the parties from alienating or changing the nature of the suit schedule properties. There is no pleading, and nothing is forthcoming as to what the plaintiff was doing all these years, when the sales took place, and third-party rights accrued. They kept quiet and came to the court in the year 2020.

27. Whether the property is self-acquired or joint family property is to be determined based on the documents placed before the Court. At this juncture, it is difficult for the Court to arrive at a specific *prima facie* finding. The Trial Court and the Appellate Court, based on the sale deeds and subsequent documents, i.e., the revenue records and other materials, have rightly concluded that the plaintiff is not entitled for injunction as prayed for.

28. Learned Counsel appearing for the petitioners has relied on certain judgments regarding the Inam Abolition Act and the preservation of property. There is no dispute about the said proposition. Every precedent must be applied to the facts



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and circumstances of this case. In this case, in the considered opinion of the Court, the plaintiff has failed to prove the balance of convenience and irreparable loss, because the plaintiff has remained silent despite the third-party rights having accrued long time ago.

29. Learned counsel for the defendants has relied on judgments which are referred supra and those judgments will apply to the facts of the case and when both the Courts concurrently have held that the petitioners/plaintiffs are not entitled for grant of injunction and this Court unless comes to a specific conclusion that the discretion that is exercised by the Court is perverse and not a judicial discretion cannot interfere with the same, in that view of the matter, this Court do not find any reasons to interfere with the orders passed by the Courts below. Hence, this Court is passing the following:

ORDER

- i. Accordingly, WP.No.30678/2024 and WP.No.30243/2024 are ***dismissed***.
- ii. It is made clear that this Court has not made any observations on the merits of the matter



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and it is only for the purpose of deciding the interlocutory applications.

- iii. Any of the observations made by this Court shall not be construed as an expression of the Court.
- iv. With regard to Order 41 Rule 27 of CPC, the documents that are filed before the Court and the observations of the Appellate Court will not preclude the plaintiffs from making an appropriate application before the Court to place those documents on record.
- v. Pending I.As if any, in the petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

BH
List No.: 1 Sl No.: 3