

Karnataka High Court
Smt. Ramya H R vs Smt. Hemavathi on 25 May, 2023
Bench: H.P.Sandesh

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MFA No. 8468 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

MISCELLANEOUS FIRST APPEAL NO.8468 OF 2022 (CPC)

BETWEEN:

1. SMT. RAMYA H R
W/O LATE MANJUNATHASWAMY
AGED ABOUT 29 YEARS
2. MOHITH GOWDA M
S/O LATE MANJUNATHASWAMY
AGED ABOUT 8 YEARS
3. YAJATH GOWDA M
S/O LATE MANJUNATHASWAMY
AGED ABOUT 8 YEARS
R/AT HAROKOPPA VILLAGE
VIRUPAKSHAPURA HOBLI
CHANNAPATNA TALUK

Digitally signed
by SHARANYA T
Location: HIGH

COURT OF
KARNATAKA

RAMANAGARA DISTRICT

APPELLANTS No.2 AND 3 ARE MINORS
REP BY THEIR MOTHER AND
NATURAL GUARDIAN, NEXT FRIEND
SMT RAMYA, APPELLANT NO 1
W/O LATE MANJUNATHASWAMY

APPELLANTS ARE R/AT HAROKOPPA VILLAGE,
VIRUPAKSHAPURA HOBLI
CHANNAPATNA TALUK
RAMANAGARA DISTRICT

... APPELLANTS

(BY SRI RAJA L, ADVOCATE)

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AND :

1. SMT. HEMAVATHI
D/O PUTTARAMU
W/O KESHAVAMURTHY
AGED ABOUT 33 YEARS
R/AT AGSANAPURA VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT 571401

NOW R/O BEHIND MAHADESWARA CHOULTRY
KANAKPURA ROAD, MALAVALLI TOWN
MALAVALLI TALUK,
MANDYA DIST.-577401

2. SRI PUTTARAMU
S/O LATE BASAVEGOWDA
AGED ABOUT 55 YEARS
3. SMT. KEMPAMMA @ BEBAMMA
W/O PUTTARAMU
AGED ABOUT 50 YEARS.

RESPONDENTS No.2 & 3 ARE
R/AT AGASANAPURA VILLAGE
KASABA HOBLI
MALAVALLI TALUK
MANDYA DISTRICT 571401

...RESPONDENTS

THIS M.F.A IS FILED UNDER ORDER 43 RULE 1(R) OF
CPC AGAINST THE ORDER DATED 26.09.2022 PASSED IN
O.S.No.34/2022 ON I.A.NO.III ON THE FILE OF THE SENIOR
CIVIL JUDGE AND JMFC, MALAVALLI AND ETC.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY,
THE COURT DELIVERED THE FOLLOWING:

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MFA No. 8468 of 2022

JUDGMENT

This appeal is filed by the appellants/defendant Nos.3 to 5 challenging the order dated 26.09.2022 passed in O.S.No.34/2022 on I.A.No.III on the file of the Senior Civil Judge and JMFC, Malavalli.

2. Heard the learned counsel appearing for the appellants.

3. The appellants are the defendant Nos.3 to 5 who have suffered the order of injunction wherein they have been restrained from alienating the suit schedule properties in favour of third party and also creating encumbrance on the said properties till the disposal of the suit.

4. The claim of the plaintiff before the Trial Court is that the suit is filed for the relief of partition and the defendants are making efforts to create a third party right. It is also contended that the suit schedule properties are the ancestral and joint family properties and the plaintiff MFA No. 8468 of 2022 and defendant Nos.1 to 5 are in joint possession and enjoyment of the said properties and they are in undivided Hindu joint family. It is also contended that some of the suit schedule properties are standing in the name of defendant No.1 and some of the suit schedule properties and vehicles are purchased out of the joint family income and the same are registered in the name of Manjunathaswamy i.e., the brother of plaintiff. The katha and RC of the vehicle are standing in his name. After the death of said Manjunathaswamy, the katha has been changed in the name of defendant No.3 by way of pouthi katha and all the revenue documents are standing in the name of defendant Nos.1 and 3 and they have are making an attempt to dispose of the property and there is no partition among the family members in respect of the suit schedule properties. Hence, prayed this Court to restrain them from alienating the suit schedule properties.

5. Per contra, defendant Nos.1 and 2 have filed the written statement supporting the application filed by MFA No. 8468 of 2022 the plaintiff and they have also admitted that the suit schedule properties are the ancestral and joint family properties. The defendant Nos.3 to 5 also filed a memo and prayed to treat the written statement as objection to I.A.No.3. The Trial Court having considered the pleadings of both the parties, considered the material available on record, particularly item Nos.1 to 3 which are standing in the name of defendant No.1, who is father of the plaintiff and deceased Manjunathaswamy. The Trial Court also taken note of the denial made by defendant Nos.3 to 5 regarding acquisition of suit item Nos.4 to 17 out of the joint family income and also taken note of those properties are not self-acquired properties of the deceased and in order to ascertain whether the suit item Nos.4 to 17 are joint family properties or self-acquired properties of deceased Manjunathaswamy, it requires full-pledged trial. Having considered the material on record, the Trial Court comes to the conclusion that if injunction is not granted, it leads to multiplicity of proceedings and hence comes to the conclusion that prima facie case has been made out.

MFA No. 8468 of 2022 The Trial Court also taken note of item Nos.9 to 13 are the vehicles and if they are sold to third parties, it will be very difficult to secure those vehicles. Hence, answered point Nos.1 to 3 as affirmative in coming to the conclusion that a prima facie case is made out and there is a balance of convenience and if injunction is not granted, the plaintiff will be put to irreparable loss. Being aggrieved by the order, the present appeal is filed.

6. The learned counsel for the appellants would contend that the Trial Court has committed an error in passing the impugned order without taking into consideration the very contention of defendant Nos.3 to 5 and suit item Nos.4 to 17 are the self-acquired properties and there was absolutely no material before the Court that they are available for partition. The learned counsel would contend that in view of the granting of injunction order, possession of the vehicles is taken which is shown in item Nos.9 to 13 in the plaint and the very passing of an order restraining them from alienating and changing the nature MFA No. 8468 of 2022 of the property is erroneous and hence it requires interference of this Court.

7. Having heard the learned counsel for the appellants and also on perusal of the material available on record, particularly taking note of the relief sought for in a suit filed for partition, admittedly item Nos.1 to 3 are the properties belonging to the father and it is their case that all the properties are acquired out of joint family nucleus. Whether it is acquired out of joint family nucleus or not has to be considered only during the course of trial. The Trial Court also taken note of the said fact into consideration and comes to the conclusion that it leads to multiplicity of proceedings if the properties are alienated during the pendency of the suit. Having considered the reasoning given by the Trial Court, I do not find any error committed by the Trial Court in granting an order of injunction restraining them from alienating the suit schedule properties in favour of any third parties and creating any encumbrance. The learned counsel would MFA No. 8468 of 2022 contend that in view of the order passed by the Trial Court, item Nos.9 to 13 are taken to their custody forcibly. This Court in this appeal cannot decide the same and it is left to the appellants to take proper course of action with regard to the said submission.

8. In view of the discussions made above, I pass the following:

ORDER The appeal is dismissed.

Sd/-

JUDGE SN/MD