

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

MISCELLANEOUS FIRST APPEAL NO.6434/2024 (CPC)

BETWEEN:

1. MR. PARTH GHORPADE
S/O INDRAJEET D. GHORPADE,
AGED ABOUT 29 YEARS.
2. MR. SARVAJEET GHORPADE,
S/O INDRAJEET D. GHORPADE,
AGED ABOUT 33 YEARS.

BOTH ARE RESIDING AT NO.314,
7TH B MAIN, 4TH BLOCK,
KORAMANGALA,
BENGALURU - 560 034.

... APPELLANTS

(BY SRI D.L.JAGADEESH, SENIOR COUNSEL FOR
SMT. MURTUZA ALI BAIG, ADVOCATE)

AND:

1. MR. INDRAJEET D. GHORPADE,
S/O LATE D.B.GHORPADE,
AGED ABOUT 71 YEARS,
R/AT NO.314, 7TH B MAIN,
4TH BLOCK, KORAMANGALA,
BENGALURU-560 034.

ALSO AT: GROUND FLOOR IN SY.NO.33,
K. NARAYANAPURA CROSS, GEDDALAHALLI,
HENNUR MAIN ROAD, KOTTANUR POST,
BENGALURU - 560 077.

2. M/S. METROCORP,
A REGISTERED PARTNERSHIP FIRM,
HAVING OFFICE AT NO.76,
LEVEL-II, BRIGADE ROAD,
ASHOKNAGAR,
BENGALURU-560025.
REPRESENTED BY PARTNER,
MR. P. VELUSWAMY,
S/O LATE PALANISWAMY,
AGED ABOUT 56 YEARS,
R/AT NO.4/21, 5TH CROSS,
GANESHA BLOCK, R.T.NAGAR,
BENGALURU-560 032.
3. M/S. VDB INFRA AND REALTY PRIVATE LIMITED,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING REGISTERED OFFICE
AT NO.842/A, 100 FEET ROAD,
INDIRANAGAR, BENGALURU-560038.
REPRESENTED BY ITS
AUTHORIZED SIGNATORY,
MR. M. ABHINAV REDDY.
4. MR. ANAND PRAMODH,
S/O MR. ANAND RAO P,
AGED ABOUT 42 YEARS,
R/AT NO.E-3, VINAYAKA RESIDENCY,
5TH BLOCK, R.T. NAGAR,
BENGALURU-560 032.
5. MR. PRADEEP R.A.,
S/O MR. R. AMBIKAPATHY,
AGED ABOUT 42 YEARS,
R/AT NO.3/8, 2ND CROSS,
GANESHA BLOCK, R.T.NAGAR,
BENGALURU-560 032.
6. MR. P. VELUSWAMY,
S/O LATE PALANISWAMY,
AGED ABOUT 56 YEARS,

R/AT NO.4/21, 5TH CROSS,
GANESHA BLOCK, R.T.NAGAR,
BENGALURU-560032.

... RESPONDENTS

(BY SRI K.R.KRISHNAMURTHY, ADVOCATE FOR R3, R4 TO R6)

THIS M.F.A. IS FILED UNDER ORDER 43 RULE 1(r) R/W SECTION 151 OF CPC, AGAINST THE ORDER DATED 20.07.2024 PASSED ON I.A.NO.1 TO 3 IN O.S.NO.905/2021 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE I.A.NOS.1 TO 3 FILED UNDER ORDER 39 RULE 1 AND 2 OF CPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.12.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard the learned counsel for the appellants and the learned counsel for respondent Nos.3 to 6.

2. This appeal is filed against the order dated 20.07.2024 passed on I.A.Nos.1 to 3 in O.S.No.905/2021 rejecting the applications, wherein the relief is sought to restrain defendant Nos.2 to 6 from interfering, alienating and putting up of construction over the application schedule property.

3. The factual matrix of the case of the plaintiffs before the Trial Court is that the plaintiffs filed the suit for the relief of partition and separate possession and also for the relief of

declaration to declare that the sale deed executed by defendant No.1 in favour of defendant Nos.3 to 6 is not binding on the share of the plaintiffs. It is contended that defendant No.1 has suppressed the fact with a malafide intention to deprive the legitimate rights of the plaintiffs over the suit schedule property and has illegally executed the sale deed and by virtue of sale deed, defendant Nos.2 to 6 have started not only to carry out construction but have also indulged in sale of flats to third parties with a view to make huge profits. Since the suit schedule property is a vacant land and as the same so called sale deed holders are wrongly claiming that they have purchased portion of the suit schedule property under the registered sale deeds, the plaintiffs have come up with these applications contending that the defendants are financially sound and have close connection with local politicians and anti social elements. The defendants may go to any extent to deny the plaintiffs lawful right and share. Hence, apart from filing the suit for partition, the plaintiffs also filed the I.As. to restrain defendant Nos.2 to 6 from interfering, alienating and putting up of construction over the suit schedule property.

4. The defendants in pursuance of the suit summons appeared and filed common objections and contended that the suit schedule property is part and parcel of larger extent of 7 acres 31 guntas of land sold by the plaintiffs father i.e., defendant No.1, uncles and aunts of the plaintiffs. The plaintiffs were very much aware of the sale in the year 2016 itself. The plaintiffs are also aware of the fact that after purchase of the property, defendant No.4 has undertaken construction project of Villas and multi storied building in the purchased property and the project is almost at the completion stage. The plaintiffs are very much aware of the fact that the land is not vacant as on the date of suit. The defendants also produced the photographs to show that the construction is coming up and contend that defendant No.4 has already invested more than 100 Crores in the project and several members of public have purchased Villas and apartments and defendant No.4 has also taken financial assistance from Bank and even the customers who have opted to purchase Villa have invested their hard earned money and borrowed money from the Bank and hence injunction cannot be granted. It is contended that the property is not at all joint

family property or ancestral property at the hands of the plaintiffs.

5. The Trial Court taking note of the pleadings of both the parties, formulated the points for consideration for granting of temporary injunction and answered all the points in the negative in coming to the conclusion that admittedly defendant No.1, who is none other the father of the plaintiffs, has sold the suit schedule property in favour of the defendants and the property sold in favour of the defendants also involve the share of defendant No.1 and there is no demarcation of the property pertaining to defendant No.1 i.e., in which part these defendants have purchased, this Court at this initial stage cannot come to a conclusion that the defendants should be restrained from interfering with the possession of the plaintiffs. The Trial Court also discussed with regard to the relief of putting up of construction and comes to the conclusion that already the defendants have built up the villas and multi storied building and photographs are also produced and the same is not disputed by the plaintiffs and the schedule property is not a vacant land. The Trial Court also comes to the conclusion with regard to the

contention of concept of coparcenary properties and the same has to be adjudicated and whether the suit schedule property is a coparcenary property is a matter of trial. Since the devolution of interest is involved and as defendant No.1 has acquired the suit schedule property by virtue of Will executed by his father, at this stage, it is dicey for the Court to decide as to the nature of the property in the hands of the plaintiffs and also for their entitlement and it requires full-fledged trial and if injunction is granted, comparative hardship and injury is caused more to the defendants rather to the plaintiffs and rejected the I.As.

6. Being aggrieved by the order of rejection of I.As., the present appeal is filed before this Court.

7. The learned counsel for the appellants would vehemently contend that the Trial Court failed to take note of the fact that the suit is filed for the relief of partition and separate possession. The learned counsel contend that the property was purchased by the great grandfather and grandfather of the plaintiffs on 21.03.1956 and no doubt, the sale deed is jointly in the name of great grandfather and grandfather of the plaintiffs. It is contended that the great

grandfather passed away on 03.06.1966, without executing any testamentary document and contend that the grandfather had executed a Will on 28.01.2008. The learned counsel contend that when the great grandfather passed away without executing any document and when the plaintiffs are born as on the date of dispossession of the property by the grandfather, both of them become coparceners and the grandfather does not have any right to execute the Will as the said property originally belongs to the great grandfather. The learned counsel contend that defendant No.1 sold the property on 10.02.2016 along with others and when the property is an ancestral property, the Trial Court committed an error in rejecting the applications. The learned counsel contend that when the Trial Court comes to the conclusion that it is a matter of trial with regard to the nature of the property is concerned, the Trial Court committed an error in not granting the relief of temporary injunction.

8. The learned counsel for the appellants relied upon the judgment of the Apex Court in the case of **DHARMA SHAMRAO AGALAWA v. PANDURANG MIRAGU AGALAWA AND OTHERS** reported in **(1988) 2 SCC 126** and brought to the notice of this Court the discussions made in paragraph No.9.

9. The learned counsel also relied upon the judgment of the Apex Court in the case of **ROHIT CHAUHAN v. SURINDER SINGH AND OTHERS** reported in **(2013) 9 SCC 419** and brought to the notice of this Court that paragraph Nos.11 and 14 are relevant for considering regarding inheriting the property by the family members.

10. The learned counsel also relied upon the judgment of the Apex Court in the case of **SHYAM NARAYAN PRASAD v. KRISHNA PRASAD AND OTHERS** reported in **(2018) 7 SCC 646** and brought to the notice of this Court paragraph Nos.12, 15 and 16.

11. The learned counsel referring these judgments would contend that the principles laid down in the judgments referred supra are very clear that the plaintiffs are the coparceners of the family of defendant No.1 and the properties belong to the great grandfather of the plaintiffs and the Trial Court committed an error in not granting the relief of temporary injunction.

12. Per contra, the learned counsel for respondent Nos.3 to 6 would vehemently contend that the suit itself is misconceived. The learned counsel contend that the grandfather

of the plaintiffs succeeded to the property of his father and the same becomes the separate property of the grandfather of the plaintiffs. The learned counsel contend that Section 8 of the Hindu Succession Act, 1956 ('the Act' for short) applies and not Section 6. The learned counsel contend that when the property became the separate property of the grandfather of the plaintiffs, he had executed a Will as he was the absolute owner and the plaintiffs have no right in respect of the suit schedule property.

13. The learned counsel for the respondents in support of his arguments relied upon the judgment of this Court in the case of **SMT. SHAKUNTALA AND OTHERS v. BASAVARAJ AND OTHERS** reported in **ILR 2016 KAR 3604** and brought to the notice of this Court paragraph No.9, wherein it is discussed with regard to after coming into force of the Hindu Succession Act, 1956, self-acquired or separate property of a male Hindu, when devolved on his heirs, would assume the character of 'self acquired property' in their hands and they hold it as their individual and separate property. The learned counsel also brought to the notice of this Court paragraph No.10 of the judgment and contend that after coming into force of the said

Act, self acquired or separate property of a male Hindu, on his dying intestate, devolves on his heirs in their individual capacity and not as coparcenaries property, and in such a case, their children will not acquire any right by birth in such property.

14. The learned counsel also relied upon the judgment of the Apex Court in the case of **UTTAM v. SAUBHAG SINGH AND OTHERS** reported in **(2016) 4 SCC 68** and brought to the notice of this Court paragraph No.15 of the judgment, wherein paragraph Nos.21 and 22 of the judgment in the case of **CWT v. Chander Sen** reported in **(1986) 3 SCC 567** was discussed. It is held therein that it is not possible when schedule indicates heirs in Class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8, he takes it as karta of his own undivided family. The learned counsel also brought to the notice of this Court paragraph Nos.16 and 17, wherein discussion was made with regard to Section 8 of the Act lays down the general rules of succession that the property of a male dying intestate devolves according to the provisions of the Chapter as specified in Class I of the schedule.

15. The learned counsel referring these judgments would contend that the very suit itself is misconceived and the plaintiffs are not entitled for any share and are not having any right over the suit schedule property.

16. In reply to the arguments of the learned counsel for the respondents, the learned counsel for the appellants would contend that as on the date of Will, father of the plaintiffs was not having any exclusive right since all grandsons were alive and great grandsons of the original purchaser were also alive and hence Section 8 of the Act not applies and Section 6 applies.

17. Having heard the learned counsel for the appellants and the learned counsel for the respondents and also having considered the factual aspects of the case, the suit is for the relief of partition and the points that arise for the consideration of this Court are:

- (i) Whether the Trial Court committed an error in dismissing I.A.Nos.1 to 3 and whether it requires interference of this Court?
- (ii) What order?

18. Having considered the grounds urged in the appeal memo and also the oral submissions of the learned counsel for

the appellants and the learned counsel for the respondents, it is not in dispute that originally the property was acquired by the great grandfather and the grandfather of the plaintiffs. Both of them have purchased the property jointly in the year 1956 and the sale deed (Annexure-H) is also placed before the Court. The total acquisition of the property in the said sale deed of the year 1956 is to the extent of 30 acres and the parties also not disputes the same that the property comes to the family of the plaintiffs. The appellants have also produced the document of Will executed by the grandfather Sri Dattaji Rao Bhujanga Rao Ghorpade as per Annexure-K, showing the schedule A, B and C properties. Annexure-L is the document of sale deed executed on 10.02.2016 by the father of the plaintiffs i.e., defendant No.1 along with daughter and wife of Sri Dattaji Rao Bhujanga Rao Ghorpade. The very contention of the plaintiffs is that defendant No.1 had no any absolute right to execute the sale deed in respect of their share. The fact that the property was acquired in 1956 by the great grandfather along with the grandfather of the plaintiffs is not in dispute. It is also not in dispute that the great grandfather died intestate and did not execute any testamentary document. The law is also very clear that if a

person dies intestate, the property devolves upon his heirs and the fact is that the grandfather of the plaintiffs succeeded to the estate of the great grandfather.

19. This Court would like to extract the principles laid down in paragraph No.9 of the judgment in the case of **Dharma Shamrao Agalawe** (supra). It reads as follows:

"9. We respectfully agree with the above observations of this Court in Vasant's case (supra). The joint family property does not cease to be joint family property when it passes to the hands of a sole surviving coparcener. If a son is born to the sole surviving coparcener, the said properties become the joint family properties in his hands and in the hands of his son. The only difference between the right of a manager of a joint Hindu family over the joint family properties where there are two or more coparceners and the right of a sole surviving coparcener in respect of the joint family properties is that while the former can alienate the joint family properties only for legal necessity or for family benefit, the latter is entitled to dispose of the coparcenary property as if it were his separate property as long as he remains a sole surviving coparcener and he may sell or mortgage the coparcenary property even though there is no legal necessity or family benefit or may even make a gift of the coparcenary property. If a son is subsequently born

to or adopted by the sole surviving coparcener or a new coparcener is inducted into the family on an adoption made by a widow of a deceased coparcener an alienation made by the sole surviving coparcener before the birth of a new coparcener or the induction of a coparcener by adoption into the family whether by way of sale, mortgage or gift would however stand, for the coparcener who is born or adopted after the alienation cannot object to alienations made before he was begotten or adopted."

20. This Court also would like to extract paragraph Nos.11 and 14 of the judgment of the Apex Court in the case of **Rohit Chauhan** (supra), which reads as follows:

"11. We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr. Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind

that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener."

"14. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which defendant No.2 got on partition was an ancestral property and till the birth of the plaintiff he was sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As

observed earlier, in view of the settled legal position, the property in the hands of defendant No.2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth defendant No.2 could have alienated the property only as karta for legal necessity. It is nobody's case that defendant No.2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds and release deed, the parties can work out their remedies in appropriate proceeding."

21. This Court would also like to extract paragraph Nos.12, 15 and 16 of the judgment of the Apex Court in the case of **Shyam Narayan Prasad** (supra), which reads as follows:

"12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as

regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.

15. In Rohit Chauhan v. Surinder Singh reported in 2013 (9) SCC 419, a contention was raised by the defendant No.1 that after partition of the joint Hindu family property, the land allotted to the share of defendant No.2 became his self-acquired property and he was competent to transfer the property in the manner he desired. It was held that the property which defendant No.2 got by virtue of partition decree amongst his father and brothers was although separate property qua other relations but it attained the characteristics of coparcenary property the moment a son was born to defendant No.2. It was held thus:

"14. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which Defendant 2 got on partition was an ancestral property and till the birth of the plaintiff he was the sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of Defendant 2 allotted to

him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth Defendant 2 could have alienated the property only as karta for legal necessity. It is nobody's case that Defendant 2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds and release deed, the parties can work out their remedies in appropriate proceeding." (emphasis supplied)

16. Therefore, the properties acquired by defendant No.2 in the partition dated 31.07.1987 although are separate property qua other relations but it is a coparcenary property insofar as his sons and grandsons are concerned. In the instant case, there is a clear finding by the trial court that the properties are ancestral properties which have been divided as per the deed of partition dated 31.07.1987. The property which had fallen to the share of defendant No.2 retained the character of a coparcenary property and the plaintiffs being his sons and grandson have a right in the said property. Hence, it cannot be said that the suit filed by the plaintiffs was not maintainable.

22. Having perused the principles laid down in the judgments referred supra, it is clear that if a person who succeeds the property disposes the property as a sole surviving coparcener and if he does not sell the property and if a son is

born to the sole surviving coparcener, the said properties become the joint family properties in his hands and in the hands of his son. The only difference between the right of a manager of a joint Hindu family over the joint family properties where there are two or more coparceners and the right of a sole surviving coparcener in respect of the joint family properties is that while the former can alienate the joint family properties only for legal necessity or for family benefit, the latter is entitled to dispose of the coparcenary property as if it were his separate property as long as he remains a sole surviving coparcener and he may sell or mortgage the coparcenary property even though there is no legal necessity or family benefit or may even make a gift of the coparcenary property. The principles laid down in the judgments referred supra is very clear that the surviving sole coparcener can dispose of, but when the sons and grandsons are born, they become coparceners and they cannot sell it.

23. The learned counsel for the respondents relied upon the judgment of this Court in the case of **Shakuntala** (supra), wherein discussion was made with regard to Section 8 of the Act, disposal of the property and also general succession applies, if the property belongs to a male person. The Apex Court in the

case of **Uttam** (supra), held that Section 8 of the Act applies when he is the sole surviving coparcener. But when the sons and grandchildren are born to the family, then automatically by birth they acquire the right over the ancestral and joint family property and cannot dispose of the same.

24. The learned counsel for the respondents contend that grandfather had executed a Will in favour of his son i.e., defendant No.1 and the same cannot be accepted, since the great grandfather of the plaintiffs died intestate and the same will not become the absolute property of the grandfather to Will away the property. No doubt, he was also one of the purchaser, but again the question arises with regard to the nature of the property and acquisition of the property, whether it includes the joint income of the family or whether it has been purchased out of his own income or whether his father had purchased the property along with son. These are the aspects that to be tried. The Trial Court comes to the conclusion that the matter requires to be tried regarding nature of the property and entitlement of share. When the pleadings are very clear that the property belongs to the great grandfather and grandfather of the plaintiffs and also no disposition as a sole coparcener, but subsequent to

the birth of the plaintiffs, the principles laid down by the Apex Court in the judgments referred supra by the learned counsel for the appellants comes to the aid of the plaintiffs. The Trial Court failed to take note of the material on record, particularly the facts of the case and acquisition of the property by the great grandfather i.e., Sri Bhujanga Rao Yeshwanth Rao Ghorpade. The Trial Court ought to have granted the relief of temporary injunction not to alienate the suit schedule property, since the defendants have categorically admitted that they have taken up construction and it is in completion stage. Even though the plaintiffs are not entitled for the relief as sought in I.A.Nos.1 and 3, the Trial Court ought to have granted the relief of temporary injunction as sought in I.A.No.2 restraining defendant Nos.2 to 6 from alienating the suit schedule property. If such an interim relief is not granted, it leads to multiplicity of proceedings. The Trial Court rightly comes to the conclusion that the matter requires full fledged trial, but fails to exercise the discretion by allowing I.A.No.2 restraining defendant Nos.2 to 6 or anybody claiming under them from alienating the application schedule property. Hence, it requires interference of this Court.

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

ORDER

- (i) The appeal is partly allowed.
- (ii) The order of the Trial Court dated 20.07.2024 passed on I.A.No.2 is set aside and consequently granted the relief of temporary injunction restraining defendant Nos.2 to 6 from alienating the suit schedule property, till the disposal of the suit.
- (iii) The order of the Trial Court in respect of I.A.Nos.1 and 3 are confirmed.

Sd/-
(H.P. SANDESH)
JUDGE

MD