Karnataka High Court

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Mr B P Mahendra vs Smt Leela Ramachandra on 12 October, 2009
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Author: B.Sreenivase Gowda
IN THE HIGH COURI' OF' KARNATAKA AT BANGALORE
DATED THIS THE 12TH DAY OF OCTOBER,
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THE HONBLE MR. JUSTICE B.sREENn.r.zxsjEL*§:)\n(L\$.{x T.

Miscellaneous First Appeal Nd. 104953

BETWEEN:

BEFORE t'"

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Mr. B. P. Mahendra,
Aged about 46 years, V '
S/0. Late B.M. Puttaswainy,'-_ 2;] 1 '
Resident at No.32.
Laxman Mudaliar Street; -- if *
Cantonment, 2; "
Bangalore __
APPELLANT
[By sry. C. J.'"}.'.*.vCVif/'v.)
1.
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V Smt. i}ceV1aVRarIAiae tndra, .. about .66 years, " "Dr. Rarnéchandra, ' = T T No.9 Links Drive, erg:-:; Myers FL 33913, U.S.A., g "-Vt'Reptki., by her P.A.Ho1der, M_r.~I?32i;iakrishna. B. L., Aged about 66 years, S'/.o". Late B.M. Iakshman, ~ ' "~._R/a No.1O5, 3rd Main, am Cross, * HIG Layout, R.M.V. 2nd Stage, Bangiaore -- 560 094.

\$73 TO

2. Smt. Prerna Venkatesh Hegde, Aged about 61 years, W/o. Venkatesh Hegde.

Resident at No.32, Laxman Mudaiiar Street, Cantonment, Bangalore -- 560 001.

RE§PONDEI"§TS'4 [By Sri. S.R. Shiva Prakash, Adv. for R1 ' R2 served) 1i=*=€t*\$;

This MFA \square ed U/Sec. Q4 R',<.W'-9rder,'4,3'A. R~u1§*:.1'[1']'of, CPC, against the order 'dated 30.10.2OQ8'~«,__'passed in.' O.S.No.9271 / 2007 on {A NO,"ii...gon the file" of V';:Additional City Civil Judge, Bangalore,------SCCi*I;18, "aJ.I.Qw1'ng the IA No.1 \square ed U/ order 39'.'fft \square BS Ti ~-for T.I. apfieai::_eoir1_ing"A011.,for,iAdmission, this day, the Court,,'deiiVer.e»d the 'foi1oyving:_' ef§\$hGMENT ffhigs the first defendant against the triad dddd "Court dated 30--10--08 in aliowing 1 the piaintiff and granting an order of teniporaryv 'injunction, restraining the defendant from galirertatirig the suit 'A' schedule property to. the extent of 1w,V/V315' share of the piajntiff. 6%

- 2.. For the sake of convenience, parties are referred to as they are referred to in the suit before the trial Court.
- 3. it is the case of the plaintiff jféisfffthe daughter of BM. Puttaswarny. The first defe_ndanti' brother. The second defendantis'he'r7«.sister';f«._VShit in';/~\' scheduie property was owned fath,e'r.'A' " death of her father, the \substactive{\textraction}rst"i'rdefendafitV_ Became the 'kartha' and rnanage:r"'i~i_of is "not effecting partition and giving share in suit 'A' scheduie propevrtyffn'1"Ther'efore,%she has brought this suit for partition possession of her 1/353 share in the suit gpschfedniewproperty. Along with the suit, she made than vapfpileatvien und'erfOrder 39 Rules 1 and 2, seeking an A'ordergfoffi?ernp~orary injunction restraining the defendant from a].ie11-ating the suit property. The trial Court by :_"impngn'ed order ailowed the application and granted r.-t'ernpora1'y injunction restraining the first defendant from alienating the suit 'A' schedule property and against which, the first defendant has come in appeal.
- 4. Sri. Nagabhushan, learned for the first defendant submits, Suit.._"A'. 1 originally belonged to one B.M.PuttasWamy, the fat1{eg'--~.,,Qf "arid the defendants as executvorgto carrjgr. During his life time, Puttaswarny' the desire of Rangarnma.:Ther'efor§e: first defendant to carry outflthe. subinission that when the pla.inti.gtff"isV that the suit property belonged she has right over the same, question of kind of injunction including the 'one'i'gran:'ted thelutrial Court does not arise. By virtue of granted by the trial Court, the first defendant unable to ful □l and carry out the desire of Therefore, he prays for allowing the appeal l setting aside the impugned order. □ €g.
- 5. The second defendant, who is the sister of the plaintiff, supported the case of the first defendant.
- 6. The learned Counsel appearing forpptllielglpflaintiff submits. in a suit for partition and separate'Vpgossessioriglif the first defendant who is a rnalev'Jrnlernb._eii._ ori.At_he_V¢:l_eath'l'of 7 the father of the plaintiff, oeci/ipies'.th'e_ position "of and manager if he is not relstrained lfrorln -"alienating the suit property and if alI_'o'\iI:eVd'lte..'do.he Certainly alienate the suitVproperty'l'and.lin:» 'a_'n_leVent it will Eead to multiplicity" .lanld--l'the..:purpose of □ing of this trial has rightly granted temporary "injunction" restraining the defendant from alienating property and therefore he prays for l disrriilssalg ofthe appeal.

the learned Counsef for the parties and "4«..per_u'sed the impugned order. There is no dispute Jbetweer1~-- "the parties that they are the children of g.'lB_;'M.{-luttaswainy and the suit property belonged to 43% Rangamma. She executed a will appointing B.1\/E. Puttaswamy as executor to carry out certain. in respect of suit 'A' property. Rangamma died.___ to the first defendant, I-3.i\/i. Puttaswamy couid» the acts as desired by "Rangamrna dur.ixngu"hi's..'1ife therefore he nominated thertirst defendant * It is not in dispute that gangainma, revenue records canvied op he in the name of Puttaswamy after: of the plaintiff and defendants The plaintiff had eXecuted_..G_I5Afiniifavo defendant in respect of suit and later she withdrew the same. has not stated what are those pp acts'-he: requiited vecarry out immediately and how the in.terest.__of Rtaiigainma will be affected if he is restrained from of suit 'A' schedule property till the 'V._pdispos.a:i=:ofV the suit on merits. Considering the nature of A ":ff"thVef"'s_uit that it is one for partition, the triad Court is judstified in granting temporary injunction, restraining the (Lg.

first defendant from alienating to the extent of the plaintiffs 1/ I351 share in suit 'A' schedule propVer.tuy';...V As such, I do not \Box hd any illegality or irregulaiityfin' of the trial Court. The order of the trial proper and does not call for interference or ::;_}%.t it this stage the learned courisel 1;de.fendant appellant herein submits that___a"-direction' issued to the trial Court to disposé' ofthes1,ii't.Ve§tpeditiously.

8. Hence I pass thefoll:oWing._ord.er;" it it _{.i} 44 ,is:fj disniissed and the trial 3' .3 "__,Cou1*tisfjdirectedg to dispose of the suit on ' 'merits' and? in.@.Qt:ordance with law Within one year' from the date of receipt of a V l * order, and 'o{iii}_ Theipartgies to the suit are directed to co-" 'operatewith the trial Court to dispose of ,, 1..th_e__As.uit as directed by this Court. No order as to costs.

Sd/-

JUDGE