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**IN THE COURT OF THE SENIOR CIVIL JUDGE
BAILHONGAL, AT: BAILHOINGAL**

Dated this the 3rd Day of November 2023

PRESENT:

Smt. Usharani. R. B.A.L., LL.M.,
Senior Civil Judge, Bailhongal.

Original Suit No.187/ 2023

1) Smt. Girija W/o Shankar Badiger,
Age: 55 years, Occ: Household,
R/o: # 673/m/9, Basavanagar 1st Cross,
Bolashetti Chawl, Bailhongal – 591 102.

2) Sri. Iranna S/o Shankar Badiger,
Age: 30 years, Occ: Private Job,
R/o: # 673/m/9, Basavanagar 1st Cross,
Bolashetti Chawl, Bailhongal – 591 102.

..... Plaintiffs

(By Sri. M.S.M., Adv.)

- V/s -

Sri. Shankar Veerabhadrappe Badiger @ Kambar,
Age: 63 years, Occ: Retired Army,
R/o: Mekalmaradi, Tq: Bailhongal – 591 121.
Dist: Belagavi.

.....Defendant

(By Sri. S.T.M., Adv.)

PARTIES TO IA No.I

1) Smt. Girija W/o Shankar Badiger,
Age: 55 years, Occ: Household,
R/o: # 673/m/9, Basavanagar 1st Cross,
Bolashetti Chawl, Bailhongal - 591 102.

2) Sri. Iranna S/o Shankar Badiger,
Age: 30 years, Occ: Private Job,
R/o: # 673/m/9, Basavanagar 1st Cross,
Bolashetti Chawl, Bailhongal - 591 102.

..... Applicants/plaintiffs

(By Sri. M.S.M., Adv.)

V/s

Sri. Shankar Veerabhadrapa Badiger @ Kambar,
Age: 63 years, Occ: Retired Army,
R/o: Mekalmaradi, Tq: Bailhongal - 591 121.
Dist: Belagavi.

.....Opponent/Defendant

(By Sri. S.T.M., Adv.)

ORDER ON I.A.No.I

I.A. No.I is filed by the plaintiffs under Order 39 Rules 1 and 2 read with section 151 of CPC seeking temporary injunction against the defendant from alienating or creating charge or mortgage over the suit properties.

2. In the accompanying affidavit plaintiff No.2 Sri.

Iranna Shankar Badiger has sworn to the facts that the suit is filed for partition and separate possession. The plaintiffs are having share in the suit properties and defendant is trying to alienate the suit properties. If the properties are alienated to third parties then their right will be prejudiced. Hence it is necessary to grant injunction.

3. Defendant has filed the written statement and also filed a memo adopting the written statement as objections to IA No.1.

4. According to defendant the suit landed 'A' Schedule properties are fallen to the share of defendant in the family arrangement in between the defendant and his brothers Jeevappa and Basappa. There was mutual partition and it is acted upon. After the death of propositus Veerabhadrapa partition was effected and the suit "A" schedule properties were allotted to the share of defendant. At the time of death of propositus Veerabhadrapa Badiger on 01.06.1979 plaintiff No.2 was not yet born and there was no marriage between the plaintiff No.1 and defendant. Suit 'A' Schedule properties are the personal properties of defendant and plaintiffs are not the members of joint family.

5. It is admitted that the defendant was serving in Indian Army. After the marriage he found that his wife plaintiff No.1 was adamant and quarrelsome and due to his wedlock with Girija the plaintiff No.2 and another son Rajesh were born. Rajesh died in childhood. Defendant has admitted the relationship. Defendant shifted to Bailhongal for higher education of plaintiff No.2 and he got him well educated. Plaintiff No.2 is now in a high position in Ujjivan Bank Sector, Bailhongal and he is having handsome salary. 'B' Schedule property is self acquired property of defendant and therefore during his life time plaintiffs cannot claim for any share.

6. Defendant has categorically denied the plaint averments. Further defendant contends that he is leading peaceful retired life, but the plaintiffs have snatched all his Pass book and is causing interference and trying to snatch his properties. Since the suit properties are not joint family properties plaintiff cannot claim share. On these grounds defendant prays for dismissing the IA No. I.

7. Heard the arguments canvassed by the learned counsel for the plaintiffs and defendant. Perused documents on record.

8. The following points arise for consideration:

- 1) Whether the plaintiffs have made out prima facie case in their favour ?
- 2) Whether the balance of convenience lies in favour of the plaintiffs ?
- 3) Whether the plaintiffs will be put to irreparable loss or injury if the T.I as sought in I.A.No.I is refused?
- 4) What Order or direction ?

9. My answer to the above points are as under:

- Point No.1: In the negative
Point No.2: In the negative
Point No.3: In the negative
Point No.4: As per final order for the following;

:: REASONS ::

10. **Point No.1:-** Law relating to grant or refusal to grant temporary injunction has been enunciated by the Honble Supreme Court of India and Honble High Court of Karnataka in a plethora of cases. The court while

exercising its discretion applies the following tests-(i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory in injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence.

11. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

12. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in these decisions, the factual aspects of the case has to be embarked upon.

13. According to the plaintiffs they are wife and son

of defendant Shankar. The propositus of family was one Veerabhadrapa who had 03 sons. Suit "A" schedule properties are stated to have fallen to the share of defendant. Now the plaintiffs and defendant are the members of the joint family. According to the plaintiffs, defendant is quarrel some and he is trying to alienate the suit properties for his bad habits like consumption of alcohol. He has also maintained the income of the suit properties in fixed deposits. Share is denied and therefore the suit is filed for partition and separate possession.

14. In order to prove prima facie case plaintiffs have produced RTC extract of 'A' Schedule property which is standing in the name of defendant. Even according to the plaintiffs, suit properties fell to the share of defendant in the family partition. The mutation register extract MR No.1864 is produced which shows that there was partition between defendant Shankar and his brothers and 'A' Schedule properties were allotted to the share of defendant. Photostat copy of Bank Pass book and F.D. receipts are also produced. Aadhar card and bank account details are also produced by the plaintiffs.

15. The learned counsel for the plaintiffs has relied on the bank account extract of defendant which shows that defendant is having balance amount.

16. According to the plaintiffs they are wife and son of the defendant and they are having shares in the suit properties and defendant is trying to alienate the suit properties.

17. According to defendant the suit properties are his personal properties and there is no share to the plaintiffs during his life time. Defendant contends that he is leading peaceful retired life, but the plaintiffs have snatched all his Pass book and is causing interference and trying to snatch his properties. Since the suit properties are not joint family properties plaintiff cannot claim share.

18. Thus on perusal of the records it is apparent that the suit properties fell to the share of the defendant in partition and at present the suit properties are standing in the name of the defendant. So also bank account and FD is in the name of the defendant. The very nature of the suit schedule properties being joint family properties is denied by the defendant. Admittedly the defendant was serving in the army and he is now retired.

19. It is trite to note that while granting temporary injunction the court must also ascertain prima facie case nature of the case. On perusal of documents at this stage it is apparent that the plaintiffs have sought for

share in the suit properties. According to the plaintiffs they and defendant are the members of the joint family and suit properties are belonging to their family. The status of the plaintiffs is not in dispute. But specific defense is taken by the defendant that the properties are his personal properties

20. This is a pre trial stage and when the case is in the infant stage when the court is considering the question of temporary injunction, the court cannot venture into a mini trial.

21. It is the argument of the defendant that the wife cannot claim a share and suit itself is not maintainable. The plaintiffs have ill treated the defendant and he is an old man left without any food. Even the car purchased is snatched by the plaintiffs.

22. At this stage it is not permissible for the court to marshal the entire documents on record in the light of pleadings and to discuss about the right of the plaintiffs and whether the share is available or not. The fact whether the suit properties are self acquired or joint can be ascertained only after full fledged trial. Thus trial is necessary. For consideration of the facts in issue a full fledged trial is necessary. Therefore this court is of the opinion that it is necessary to proceed with the trial of the

case to enable both the parties to prove their case by leading cogent evidence in support of their pleadings.

23. Further plaintiffs have not pleaded from whom they learnt that defendant was trying to alienate the suit properties and what efforts were made by the defendant to sell the suit properties. Mere apprehension that defendant will alienate the suit properties is not sufficient. There must be an actual efforts made towards alienation. When and through whom the plaintiffs learnt about alienation is not whispered. More over the present suit is filed for partition of the share of the plaintiffs. If the plaintiffs succeeds in proving that the suit properties are the joint family properties, they will be held entitled for share and the alienation if any made by the defendants will not bind their rights. Moreover the defendant being a karta as per the pleadings of the plaint has power of alienation for legal necessities.

24. Even otherwise any alienation during the pendency of any suit attracts the provisions of section 52 of Transfer of property Act. Such alienation will be bound by the decree passed in the said proceedings. Under the said circumstances even if some of the suit lands are alienated the subsequent purchasers will step into the shoes of defendant and they would be bound by any decree passed in this suit.

25. As such the plaintiffs failed to make out any prima facie case for granting the relief of injunction as prayed in I.A-I. Therefore the plaintiffs failed to prove that there is a prima facie case in their favour. Hence, the point No- 1 is answered in the Negative.

26. **Point Nos.2 and 3:-** The plaintiffs have not made out any prima facie case at this stage to be entitled for injunction as claimed in I.A.No.I. Plaintiffs failed to prove that there is a prima facie case in their favour. Since the suit is filed for partition of the share of the plaintiffs even if the plaintiffs succeeds in proving that the suit properties are the joint family properties, they will be held entitled for share and alienation if any made by the defendants, will not bind their rights. As already observed alienation during the pendency of any suit attracts the provisions of section 52 of Transfer of property Act. Thus there is no balance of convenience also. No irreparable injury would be caused if injunction is refused. Thus points no 2 and 3 are answered in the negative.

27. **Point No.4:-** In view of my above discussions I proceed to pass the following;

ORDER

The I.A.No.I filed by the plaintiffs
under Order 39 Rule 1 and 2 read with

section 151 of CPC is hereby dismissed
with costs.

(Dictated to the stenographer, transcribed and computerized by him on computer system and corrected by me, then pronounced by me in the Open Court, on this the 3rd day of November 2023)

(Smt.Usharani.R.)
Senior Civil Judge Bailhongal

