

KABG600008362023



IN THE COURT OF THE SENIOR CIVIL JUDGE, HUKKERI.

Before: **Sri K.S.Rotter**, B.Com. LL.B (Spl),
Senior Civil Judge, Hukkeri.

Dated this 23rd day of September 2024.

O S No.348/2023

Plaintiff: Smt. Pooja W/o Sudhir Obannavar

V/s

Defendants: Shri Mallappa Satappa Mutnali and others.

PARTIES TO IA-II

Applicant/Plaintiff:

1. **Smt. Pooja W/o Sudhir Obannavar**,
Age: 28 years, Occ: Agriculture / Household work,
C/o. Sudhir Obannavar,
R/o: 52A, Patil Galli, Tarihal Road,
Shaganmatti, Tal : Dist : Belagavi.
(By Shri K.R. Kamble, Advocate)

-Versus -

Opponents/Defendant No.1:

1. **Shri Mallappa Satappa Mutnali**,
Age: 50 years, Occ: Agriculture,
R/o: Shiragaon, Tal : Hukkeri,
Dist: Belagavi and others.
(By Shri R. B. Doddalingannavar, Advocate)

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i).Provisioned under which
the application is filed : U/Order 39 Rule 1 and 2 R/w section 151
of CPC.

ii). Relief sought for : Temporary injunction.

iii). The date on which the
Application is filed : on 10.11.2023

iv). Number of the application : IA No.II

v). The date on which the objections
are filed by the different opponent : on 20.12.2023

vi). The date on which orders were
Passed on the said application : 23.09.2024

Stage of the suit: For W.S. of defendant No.1

-Sd/-
(K.S.Rotter)
Senior Civil Judge, Hukkeri.

ORDERS ON I.A. No.II

The plaintiff has filed IA No.II under Order XXXIX Rules 1 & 2 R/w Sec.151 of Civil Procedure Code, praying therein for granting temporary injunction restraining the defendant No.1 from alienating the suit 'A' schedule properties in any manner pending disposal of the suit.

2. In support of IA No.II, the plaintiff has filed her sworn affidavit explaining the reasons for granting the temporary injunction against the defendant No.1 and prayed for allowing IA.
3. On the other hand, the defendant No.1 has filed his objections to IA No.II and prayed for rejection of IA No.II.
4. Heard both the sides.
5. The points which arise for my consideration are as below:-
 1. *Whether the plaintiff has made out prima-facie case as per IA No.II?*
 2. *Whether balance of convenience leans in favour of the plaintiff?*
 3. *Whether the plaintiff will be put to irreparable loss and injury if TI order is not granted?*

4. *What order?*

6. My findings on the above points are as under:-

1. In the affirmative
2. In the affirmative
3. In the affirmative
4. As per final order for the following:-

REASONS

7. **Points No.1 to 3:** I take these points for common considerations, because they are inter-linked with each other.

8. This is a suit filed by the plaintiff for the relief of partition and separate possession in respect of the suit 'A' schedule property bearing R.S.No.695, measuring 04Acres 10 Gunta out of total measuring 19 Acres 36 gunta and RCC Building constructed in the said land of Shiragaon Village in Hukkeri taluk. It is the case of the plaintiff that, defendant No.1 – Mallappa is the propositus of joint family of plaintiff and defendants. The defendant No.2 is the wife of propositus and plaintiff and defendant No.3 and deceased Sunil are the children of defendant No.1. The son of propositus by name Sunil died leaving behind the present defendants No.4 to 6 as his legal heirs.

Further the plaintiff stated that, suit schedule properties are joint family ancestral properties of plaintiff and defendants and they are in joint possession and enjoyment of the suit properties without partition by metes and bounds. Even though the name of defendant No.1 is appearing in the revenue documents of suit properties, but the plaintiff and defendants are jointly cultivating the suit properties in joint possession and enjoyment. The plaintiff and defendants are having 1/5th share each in the suit properties. However, now the defendants in order to dupe the share of plaintiff in the suit properties are trying to cause obstruction to her joint possession and enjoyment of the suit properties. Further it is alleged that, now the defendant No.1 taking disadvantage of his name appearing in the suit properties trying to alienate the same without allotting her legitimate share. Hence, plaintiff contended that, she has got a prima-facie case and balance of convenience leans in her favour and if temporary injunction is not granted, she will be put to irreparable loss and hardship. Hence, she prayed for allowing the I.A.No.II.

9. On the other hand, after service of summons, defendants No.1 to 3 appeared through their advocates but they have not filed any

written statement. However, defendant No.1, against whom the present I.A.No.II filed, has resisted this application by filing his objections. In his objections, the defendant No.1 stated that, the I.A.No.II and an affidavit filed in support of the I.A.No.II are false, frivolous and not maintainable under law. It is stated that, there is no prima-facie case made out by the plaintiff and IA No.II is not based on equity principle, hence, the plaintiff is not entitled the order of temporary injunction against the defendant No.1. Further defendant No.1 denied that, plaintiff is in joint possession and enjoyment of the suit properties along with defendants as stated in the plaint. Further it is denied that, plaintiff is having 1/5th share in the suit properties and defendants are trying to cause obstruction to her joint possession in order to dupe her share as stated in the application. Further the defendant denied that, plaintiff has asked her share in the suit properties and he stated that no cause of action arose to the plaintiff by filing the present suit. Further the defendant No.1 denied that, he is trying to alienate the suit property in order dupe the share of plaintiff in the suit properties as alleged by the plaintiff. The defendant No.1 stated that, plaintiff is not in possession and

enjoyment of the suit properties. After her marriage, plaintiff is residing with her husband and she is doing job in different cities as such, plaintiff is never in possession and enjoyment of the suit properties. Further defendant No.1 stated that, at the time of marriage of plaintiff, they have given sufficient money, ornaments and performed her marriage by spending huge amount. Therefore, plaintiff has no share in the present suit properties. Further defendant No.1 stated that, he has developed the suit properties by spending huge amount and he is in exclusive possession and enjoyment of the suit properties. Therefore, defendant No.1 contended that, the plaintiff has neither prima-facie case, nor balance of convenience lies in her favour and plaintiff has not approached this Court with clean hands and she has suppressed real facts and filed present I.A.No.II. Accordingly, defendant No.1 prayed for dismissing the I.A.No.II.

10. The advocate for the plaintiff argued and submitted that, the suit schedule properties are inherited by the joint family of plaintiff and defendants and they are in joint possession and enjoyment of the suit property without partition by metes and bonds. However, the

defendant No.1 taking the advantage of his name appearing in suit property and in order to defeat the share of the plaintiff He is trying to alienate the same. The advocate for plaintiff contended that plaintiff has not transferred her right, interest and title in the suit property in favour of the defendants. Now the defendant No.1 is threatening to sell the suit land to gulp the share of the plaintiffs. Hence, he prayed for TI.

11. On the other hand, the advocate for defendant No.1 submitted that, after her marriage, plaintiff is residing along with her husband and she is not in possession and enjoyment of the suit properties at any point of time. Further it is contended that, at the time of marriage the plaintiff has received her share by way of cash and gold and she has no right and share in the suit properties and hence, the suit for partition in the suit property is not maintainable. Accordingly, he prayed for dismissal of IA-II. In support of his arguments, the advocate for defendant No.1 relied upon the judgment of our Hon'ble High Court of Karnataka reported in **2017(5) KCCR 225**, in between **Syed Yusuf and Another V/s. Syed Noorulla and Others**, wherein

it is held as follows: “ *A. Civil Procedure Code, 1908 – Order 39, Rule 1 – Temporary Injunction – Relief – Partition suit – Plaintiff claiming properties as a member of joint family – Once a partition had occurred the said fact suppressed – Whether the plaintiff is entitled to the relief – No.*”

12. I have perused the pleadings and documents produced in this case. In this case, plaintiff claiming that, she along with defendants are members of the joint Hindu family and the suit schedule properties are their joint family ancestral properties. On the other hand defendant No.1 admitted the relationship of the plaintiff. Further it is admitted that, the suit schedule properties now standing in the name of defendant No.1. However now defendant No.1 contended that, after her marriage plaintiff is residing in her husband's house and she is not in possession and enjoyment of the suit properties at any point of time and at the time of her marriage, she has received cash and gold towards her share in the suit properties. Therefore plaintiff is not having any kind of right or share in the suit properties. However to substantiate these contentions, at this stage defendant No.1 has not

produced any documents before this court. Except filing of his objections to IA-II, the defendant No.1 has not produced any documents for showing that, the plaintiff has taken her share in the suit properties by way of cash and gold. Further I have perused the ratio laid down by the Hon'ble High Court in the above decision referred by advocate for defendant No.1 at the time of arguments. There is no dispute in respect of the ratio laid down in the above referred decision, but, with great respect to the Hon'ble High Court, the fact and circumstances of the present case and the facts of the above referred cases are entirely different, because in this case defendant No.1 has not produced any material for showing any proof of previous partition in the joint family of plaintiff and defendants at this stage. Hence, the said decision is in no way helps to the advocate for defendant No.1 in disproving the case of plaintiff. Therefore, in the absence of such material documents, no importance can be attached to these contentions of the defendant No.1. Apart from that, mere giving cash and gold to the plaintiff; it will not take away her share or coparcenary right in the suit schedule properties. In this case plaintiff claiming the suit property is belonging to the joint family of

plaintiff and defendants and she is also having share. Therefore, whether the plaintiff is having share in the suit properties or not? and whether in between plaintiff and defendants already partition effected or not? and whether the plaintiff is entitled partition and separate possession in suit properties or not? are some of the substantial questions to be determined at later stage. For deciding the said questions evidence of both sides is necessary. At this stage, the plaintiff apprehends that, the defendant No.1 is illegally trying to alienate the suit property. Hence, if during the pendency of the suit, suit properties are alienated, it will defeats the valuable right of plaintiff and she will be put to irreparable loss and injury. If the defendant No.1 is restrained from alienating the suit properties, his right to use and enjoyment of the suit properties will not be curtailed. The only right to be curtailed is that of alienation. However, in order to protect the right of the plaintiff, this right of the defendant No.1 has to be curtailed. The inconvenience and hardship which will be caused to the plaintiff are greater. Hence, for all these reasons, I am of the opinion that the plaintiff has made out prima-facie case, balance of convenience leans in favour of the plaintiff and the plaintiff will be

put to irreparable loss and injury if TI is not granted. Therefore, I answer points No.1 to 3 in affirmative.

13. **Point No.4** : For the foregoing reasons, I proceed to pass the following :-

ORDER

The I.A. No.II filed by the plaintiff under Order XXXIX Rules 1 & 2 of Civil Procedure Code is hereby allowed.

The defendant No.1, his men, agents, anybody acting on his behalf are hereby restrained by way of temporary injunction from alienating the suit A schedule property bearing RS No.695, measuring 04 Acres, 10 Gunta, out of total measuring 19 Acre, 36 Gunta including kharab land 06-guntas and RCC Building situated in the said R.S.No.695 of Shiragaon village in Hukkeri Taluk in any manner pending disposal of the suit.

No order as to costs.

(Dictated to stenographer directly on computer, corrected by me by and then pronounced in open court on this 23rd day of September 2024)

-Sd/-
(K.S.Rotter)
Senior Civil Judge, Hukkeri.