

OS 36/2022.

05.03.2022

For order on I.A

I.A.No.I is filed along with affidavit and documents. On perusal of the check slip there is no caveat filed in this case. The suit is for partition and separate possession.

IA. No.I is filed U/o. XXXIX Rules 1 & 2 R/w 151 of CPC., for the relief of T.I. against the defendants restraining them, their servants, henchmen or anybody acting on their behalf from alienating the suit properties till the disposal of this suit.

It is the case of the plaintiffs that originally the suit properties were belonging to one Basappa Irabasappa Channangi, the same are inherited by Gurusiddappa Basappa Channangi. This Gurusiddappa had 4 children by names Basappa, Rudrappa, Paravatevva & Tayavva. Parvatevva and Tayavva have died without wedding and issueless. The plaintiff No.1 is the wife of Rudrappa and the plaintiff No.2 is the daughter of Rudrappa. The defendant No.1 & 2 are the sons of Basappa. Both these Basappa and Rudrappa have

died, Basappa has died leaving behind the defendants and Rudrappa has died leaving behind the plaintiffs as their Lrs.

I have carefully perused the available materials on record and also I have heard the Id. Counsel for the plaintiffs.

It is pleaded that the defendants have already alienated one of the suit properties i.e. RS. No.90/3 to one Malashree daughter of Babu Gouri and they have made an agreement of sale with regard to another suit property i.e. RS. No.92/2 to one Shankar Neelakant Chennangi.

Since it is pleaded that the suit properties were originally belonging to Basappa Irabasappa Chennangi, it prima facie appears that the plaintiffs will also have shares in the suit schedule properties.

This is suit for partition and separate possession, if the properties are alienated, it will certainly cause hardship to the plaintiffs and also for the subsequent purchasers.

This Court is conscious that, granting of injunction after issuing notice to the other side is a rule and granting of injunction without issuing the notice is an exception, however in the present

case on hand I am of the considered opinion that if at all if the exparte temporary injunction is not granted, the purpose of granting injunction may well be defeated by delay and if the defendants succeed in alienating the suit properties as aforementioned it will cause hardship not only to the plaintiffs but also to the subsequent purchasers. Since it is specifically pleaded that one of the suit properties i.e. RS No.90/3 has already been alienated and the subsequent purchaser is not made as a party, I am not inclined to grant injunction with regard to this property. Upon perusal of the case papers I am of the opinion that the plaintiffs have made out the prima facie case, therefore I proceed to pass the following;

ORDER

The defendants, their agents or anybody acting on their behalf are hereby restrained from alienating the suit schedule properties RS No.92/2 & 80/1 in any manner till this IA is disposed on merits.

Since exparte injunction is granted, the plaintiffs shall comply the following

conditions as per Order XXXIX Rule 3 (a) of CPC, they are

- 1) The plaintiffs shall send
 - a) The copy of the interlocutory application along with affidavit.
 - b) The copy of the plaint.
 - c) The copies of the documents on which the plaintiffs had relied to get this injunction. to the concerned defendants by way of registered post.
- 2) The plaintiffs shall file an affidavit to the office regarding the compliance of the same on this very same day or on the day immediately following this day.

Needless to say, non compliance of any of the aforesaid conditions, the exparte injunction granted will be vacated.

Issue suit summons to all the defendants if the PF and necessary copies of the plaints are furnished. R/by 01.04.2021.

05.03.2022
Civil Judge & JMFC.,
Kittur.