

**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT SANDUR.**

Present : Sri. Devaraddy B.A., LL.B, LL.M.
Civil Judge & JMFC., Sandur.

Dated this the 13th day of March, 2024.

O.S. No. 92/2023.

Plaintiffs : Huligemma and Others.

V/S

Defendants : Mallamma and Others.

I.A. No. II

**Applicants/
Plaintiffs** : Huligemma and Others.

(By Sri. H.K. Advocate)

V/S

**Opponents/
Defendants** : Mallamma and Others.

**(D-3 to 6, 10 to 13 by Sri. A.H.S. Advocate,
D-15 by Sri. A.V.K. Advocate,
D-1, 2, 7 to 9, 11 & 14 placed exparte)**

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ORDERS ON I.A. No. II

The plaintiff No.2/applicant has filed this application under Order XXXIX Rule 1 and 2 R/w Sec. 151 of C.P.C. and prays to pass temporary injunction order to restrain the defendants, their men, agents, assignees,

representatives, nominees, relatives, servants or any other persons claiming through them from alienating the “B” schedule properties in favour of third parties till disposal of the suit.

2. The said application filed by accompanying affidavit and in the affidavit it is stated that “B” schedule properties are ancestral and joint family properties of themselves and defendant No.1 to 14, 16 and 17 and they are entitled equal share in the said properties. Further stated that the defendants by suppressing the material facts they have got mutation of the said properties and also made illegal transaction. Further stated that the defendant No.3 to 10, 12 to 15 have got mutation in respect of item No.1 to 7 of “B” schedule properties by suppressing the real facts.

3. Further stated that they have requested the defendants to allot their shares in the suit schedule properties but they postponed the same on one or other

grounds and refused to allot their share in the suit schedule properties. Further stated that the defendants by taking undue advantage of standing the revenue records in their name are trying to alienate the suit schedule properties in favour of third parties in order to deprive their legitimate share.

4. Further stated that they have made out prima-facie case and balance of convenience also lies in their favour. If the application is not allowed then they will be caused irreparable loss and injury. On the other hand, if the application is allowed no injustice will be caused other side. Hence prays to allow the application.

5. The defendant No.3 to 6, 10 to 13 and 15 appeared through their counsel but they have not filed objection even though sufficient time provided. The defendant No.1, 2, 7 to 9, 11 and 14 placed exparte.

6. Heard hearing on IA No.II.

7. On the basis of above contention, the following points arise for consideration.

1. *Whether the plaintiffs/applicants prove that they have made out a prima facie case?*
2. *Whether the plaintiffs/applicants prove that the balance of convenience lies in their favour?*
3. *Whether the plaintiffs/applicants prove that they would suffer irreparable injury if temporary injunction is not granted in their favour?*
4. *What order?*

8. Based on the materials, the above said points are answered as under;

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

REASONS**Point No.1 :**

9. The plaintiffs have filed the present suit against the defendants for the relief of partition and separate possession in respect of suit schedule properties. The plaintiffs also filed this application to restrain the defendants, their men, agents, assignees, representatives, nominees, relatives, servants or any other persons claiming through them from alienating the suit schedule properties in favour of third parties till disposal of the suit.

10. It is the contention of the plaintiffs that “B” schedule properties are ancestral and joint family properties of themselves and defendant No.1 to 14, 16 and 17. Further contended that the defendants are intending to alienate the “B” schedule properties in favour of third parties in order to deprive their rights. Further contended that they have made out prima-facie case and also balance of convenience lies in their favour. If the application is not

allowed then they will be put irreparable loss and injury. Hence prays to allow the application.

11. It is the plaintiffs to prove that they have made out prima-facie case, for which, they have produced the documents, such as, Certified copy of handwritten RTC's, Computerized RTC's, Computerized mutation register, Encumbrance certificate, Certified copy of handwritten mutation register, DCB register and Katha extract. On perusal of computerized RTC's and DCB registers which are produced by the plaintiffs, at this stage, they reveal that "B" and "C" schedule properties are standing in the name of defendant No.3 to 10 and 12 to 16.

12. It is the specific contention of the plaintiffs that themselves and defendant No.1 to 14 are the legal heirs of deceased Basappa and they are having equal share over the said properties. But the defendants by taking undue advantage of the records standing in their name are trying to alienate the "B" schedule properties in favour of third

parties. Admittedly the “B” schedule properties are standing in the name of defendants.

13. As already stated above that even though the defendants appeared before the court but not filed objection on this application and they have not questioned and challenged the contention of the plaintiffs taken in the suit and application. By considering the materials available on record, it reveals that at this stage it is just and necessary to preserve the “B” schedule properties till disposal of the suit to adjudicate the matter in dispute between the parties.

14. From going through above said discussion and grounds and also materials available on record, at this stage, it reveals that plaintiffs have made out prima-facie case. Hence, Point No.1 is answered in the **Affirmative.**

Point No.2:

15. The plaintiffs have produced the documents in

respect of “B” schedule properties to show that, they have made out prima-facie case. Based on documents adduced by the plaintiffs, it shows that, the balance of convenience also lies in favour of the plaintiffs. Hence, in view of the above discussion, the Point No.2 is answered in the **Affirmative.**

Point No.3 :

16. On the basis of contention has taken by the plaintiffs and defendants, also based on the documents produced by the parties, as the plaintiffs / applicant have made out prima-facie case and also balance of convenience lies in their favour, it is very clearly show that, if the temporary injunction order is not granted it is the plaintiffs who will be caused great hardship and irreparable loss than the defendants. Hence, the Point No.3 is answered in the **Affirmative.**

Point No.4 :

17. In view of discussion of Point No.1 to 3, this

court proceed to pass the following;

ORDER

I.A. No.II filed by the plaintiff No.2 Under Order 39 Rule 1 and 2 R/W/S 151 of C.P.C., is hereby allowed.

The defendants, their men, agents, assignees, representatives, nominees, relatives, servants or any other persons claiming through them are hereby restrained from alienating the “B” schedule properties in favour of third parties till disposal of the suit.

No order as to costs.

[Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in the open court on this day of **13th day of March, 2024**]

(Devaraddy)

Civil Judge and J.M.F.C.,
Sandur.