

IN THE COURT OF THE CIVIL JUDGE & JMFC, SANDUR

:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B.(Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 20th day of January 2026

O.S. No.74/2024

Plaintiff/s : T. Anjinappa S/o Late T.Balappa,
Aged about 74 years,
Agriculturist,
R/o Agrahara,
Sandur Taluk, Ballari District.

(By Sri. S.P., Advocate)

V/S

Defendant/s : T. Bhimappa S/o Late T.Balappa,
and Others.

(D-1 to 4 By Sri. N.G.K. Advocate)
(D-5 to 7 placed Exparte)

I.A.No.II

Applicant : T. Anjinappa S/o Late T.Balappa
(Plaintiff)

V/S

Opponent : T. Bhimappa S/o Late T.Balappa,
and Others.
(Defendants)

ORDER ON I.A.No.II FILED UNDER ORDER 39

RULE 1 AND 2 R/w SECTION 151 OF C.P.C.

This is an application filed by the plaintiff against the defendant No.1 with a prayer to restrain him from alienating or transferring the suit property in favour of third person, till the disposal of the suit.

2. The plaintiff has filed affidavit in support of his application deposing that, he has instituted suit against the defendants for partition and separate possession in respect of suit properties. The defendant no.1 by taking undue advantage of his name in the revenue records is in hurry to alienate the suit land in favour of third party only with an intention to deprive the legitimate right over the suit lands. If the defendant no.1 sell the suit land, the plaintiff will be put to great loss and hardship. Therefore, the plaintiff seeks to restrain the defendant no.1 from

alienating the suit lands. It is stated that the applicant has established his *prima-facie* case and the balance of convenience lean in his favour. If the injunction is not granted and if the defendant No.1 become successful in alienating the suit property irreparable injury would be caused to the plaintiff. On these grounds he prayed to allow the application.

3. After service of summons in the case, the defendant No.5 to 7 failed to respond to the summons, and they are placed *exparte*. Similarly, defendant No.1 to 4 appeared through their learned counsel but failed to file either written statement or objections to I.A. No.II.

4. I have heard the learned counsel for the plaintiffs. Perused the records.

5. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour?
2. Whether the applicant proves balance of convenience in his favour?

3. Whether the applicant proves that irreparable loss would be caused to him if injunction is not granted?

4. What order?

6. My answer on the above points are as follows:-

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

7. **POINT NO.1 TO 3:-** This is a suit for the relief of partition and separate possession in respect of the suit properties. It is claimed that the plaintiff, defendant no.1 to 4 and Late Gouramma are the children of Late Balappa S/o Talavara Bhimmappa and Lakshmajji. According to plaintiff, the suit properties are ancestral properties of himself and defendants in which he has got 1/6th share. It is submitted that, after the demise of Late Balappa, no partition has taken place in family. It is alleged that the defendant no.1 has illegally got his name

mutated in the revenue records in respect of suit properties, and trying to alienate the same to third person. And therefore, he seeks injunction to restrain the defendant no.1 from alienating the suit lands.

8. The plaintiff has filed the documents in support of his case. The hand written ROR of suit lands filed by the plaintiff are not certified by the concerned authority. Moreover, on perusal of the said documents, the name of defendant no.1 is appearing in the ROR from the year 1980-81. The mode of acquisition of land is shown in Col. No.10, which reveals that in a family partition the land Sy. No. 164/A has fallen to the share of defendant no.1. Similar is the case with land Sy.No. 652/E. Those entries are never challenged by the plaintiff till the filing of this suit. This conduct of the plaintiff shows acquiescence that the defendant no.1 has acquired the suit lands in a partition. The plaintiff has no *prima facie* case in his favour.

9. The Hon'ble High Court of Karnataka in ***Smt. Akhila***

Begum and Others Vs. Nadimulla Khan and Others [MFA No.6218/2025 (CPC)] has observed that in a partition suit, an absolute injunction restraining alienation over the entire property is incorrect when the plaintiffs only claim a fractional share. In the instant case, the plaintiff is claiming 1/6th share in the suit properties. Therefore, an injunction restraining alienation over the entire properties cannot be granted. Moreover, as stated above, no documents are produced to show that the suit properties remain as ancestral properties. The plaintiffs have not shown *prima-facie* case in their favour.

10. The applicant has averred that, the defendant No.1 is trying to sell the suit properties to third party. The source of information is not revealed by the plaintiff. Moreover, in the event of alienation pending *lis*, such transfer is always hit by the doctrine of *lis pendens* under section 52 of T.P.Act. Therefore, it is not apt to grant interim injunction to plaintiff. In the case of *Shri Prakash Gobindram Ahuja vs Shri Ganesh Pandharinath Dhonde and others* reported in 2016 SCC OnLine Bom 8884,

wherein the Division Bench of Hon'ble High Court of Bombay, was to decide the question of law, which essentially pertain to the protection given under Section 52 of T.P. Act against transfer *pendente lite* vis-a-vis protection granted by order of temporary injunction and whether in view of such protection, the party can be entitled to get the relief of interim injunction against such transfer *pendente lite*. The Hon'ble High court after referring to various decisions including that of the Hon'ble Apex Court and while answering to the question posed to itself has ultimately held as under:

“Question No.(III) : Since a plaintiff seeking a temporary injunction is required to show that he would suffer irreparably if temporary injunction is not issued, would it be inappropriate to expect such plaintiff to show that the provisions of Section 52 of the Transfer of Property Act do not afford adequate protection before an injunction to restrain transfer *pendente lite* is issued ?

Answer : Though it may not be inappropriate for the Court to expect the plaintiff to show that the provisions of Section 52 of TP Act do not afford adequate protection, it cannot laid

down as a blanket proposition of law that in each and every case, plaintiff is expected to show it as a condition precedent for grant of injunction order.”

11. Therefore, there is no absolute or blanker bar in granting injunction even when there is protection under Section 54 of T.P.Act. It must be noted that, Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of *lis pendens* as enacted in Section 52 of T.P.Act was regarded to have provided all the panacea against *pendente lite* transfers, the legislature would not have provided in Rule 1 of Order 39 for interim injunction restraining the transfer of the suit property. Rule 1 of Order 39 clearly demonstrates that *notwithstanding* the rule of *lis pendens* in Section 52 of T.P.Act, there can be occasion for the grant of injunction restraining *pendente lite* transfers under the circumstances of each case. In the instant case, the plaintiff apprehends that, the defendant No.1 is making all out efforts to sell the suit property. However, the plaintiffs have not shown that

the provisions of Section 52 of T.P. Act do not afford adequate protection, as observed in *Shri Prakash Gobindram Ahuja's case* (*supra*). The plaintiff failed to substantiate *prima-facie* case in his favour. Therefore, the other two ingredients for grant of injunction need not be gone into. Hence, this Court answers Point No.1 to 3 in the **Negative**.

12. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A. No.II filed by the plaintiff U/O.39 Rule 1 and 2 R/w Sec. 151 of C.P.C., is hereby dismissed.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 20th day of January 2026)

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.