

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: 1st day of August 2025

O.S. No.109/2024

Plaintiff/s : Smt. Umadevi W/o late Thippeswamy,
and Another.

(By Sri. H.A., Advocate)

V/S

Defendant/s : Vadakamma S/o late Mareppa,
and Others.

(D-1 to D-4 placed Exparte)

(D-5 By Sri. T.M.S. Advocate)

I.A.No.II

Applicant : Smt. Umadevi W/o late Thippeswamy
(Plaintiff No.1)

V/S

Opponent : Rajendra Kumar S/o Late S.M. Jain
(Defendant No.5)

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 No.1 against the defendant No.5 with a prayer to restrain him and any other person claiming under him from selling, alienating or transferring the suit property till the disposal of the suit.

2. The plaintiff No.1 has filed affidavit in support of her application deposing that, the suit schedule property bearing land Sy. No.49 paiki, measuring 2.33 acres, situated at Devagiri village, Sandur taluk is joint family property of plaintiffs and defendants. The said property is derived from the father-in-law of the applicant. The plaintiffs are in joint possession of the suit property along with defendants. The plaintiffs and defendants are messing separately without taking share in the suit property. Till today there is no severance of joint family status. There is no partition in the family in respect of suit property.

3. It is contended that on 02.05.2024, the plaintiffs

requested defendant No.1 to 4 to allot their legitimate share in the suit property. The defendant No.1 to 4 by postponing for one or the other reason alienated the suit property in favour of defendant No.5 without their knowledge and consent. The applicant came to know about the alienation when she obtained revenue records on 31.05.2024 and after obtaining of certified copy of sale deed on 01.06.2024.

4. It is contended that the applicant has learnt from reliable sources that the defendant No.5 by taking undue advantage of his name being entered in the revenue records trying to alienate the suit property to third person and create third party interest. As such, the applicant filed this instant application to restrain defendant No.5 from alienating the suit property. It is stated that the applicant has established her *prima-facie* case and produced all relevant records which shows that the balance of convenience lean in her favour. If the injunction is not granted and if the defendant No.5 become successful in alienating the suit property irreparable injury would be caused to the plaintiffs.

Amongst other grounds she prayed to the application.

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

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

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

1. Whether the applicant proves that she has *prima-facie* case in her favour?
2. Whether the applicant proves balance of convenience in her favour?
3. Whether the applicant proves that irreparable loss would caused to her if injunction is not granted?

4. What order?

8. 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

9. **POINT NO.1 TO 3:-** This is a suit for the relief of partition and separate possession in respect of the suit property. It is claimed that one Mareppa and Vadakamma i.e., defendant No.1 have three daughters i.e., defendant No.2 to 4, and one son late Thippeswamy. The plaintiff No.1 is the wife and plaintiff No.2 is the son of late Thippeswamy. According to plaintiffs, the suit property was granted to late Mareppa by the office of Tahasildhar, by issuing Form No.2. The plaintiffs have produced the revenue records in respect of land bearing Sy. No. 49 paiki, for the year 2004-05 to 2005-06, which reveals the name of late Mareppa S/o Dodda Siddappa to the extent of 2.33 acres. Thereafter, in the year 2006-07 the property came to be mutated in the name of defendant No.1 on the strength of succession. She sold the said property in favour of defendant No.5.

10. The plaintiffs have suppressed in their plaint and also in the interim application as to when defendant No.1 has alienated the property to defendant No.5. But, the plaintiffs have produced the digital copy of the Registered Sale Deed No. 760/2006-07, Dt. 06.11.2006 executed by defendant No.1 in favour of defendant No.5 in respect of the suit land. As it could be seen from the sale deed it is executed in the year 2006 itself. The plaintiffs have not challenged the sale deed in any forum till date. The plaintiffs have not sought any main relief against the defendant No.5. It is after 18 years of execution of the sale deed this suit is filed for the relief of partition and separate possession questioning the competency of defendant No.1 in alienating the suit property.

11. The plaintiffs in their plaint have claimed that the defendant No.1 is a kartha after the demise of her husband Mareppa. The Hon'ble High Court of Karnataka in **Nagaraju and Others Vs. Ramesh and Others (RSA No. 1837/2017)** has observed that, a suit for partition filed several years after the

property was sold by the kartha or the mother is hit by the doctrine of acquiescence.

12. In the case in hand the plaintiffs not only suppressed the date of execution of the sale deed in favour of defendant No.5 but also gave no reasons as to why the sale deed is not challenged before hand. The plaintiffs have not shown *prima-facie* case in their favour.

13. The applicant has averred that, the defendant No.5 is trying to sell the suit property to third person. The applicant has not mentioned from where she got the said apprehension. 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.”

14. 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 plaintiffs apprehends that, the defendant No.5 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 applicant has not stated the source of her apprehension and to whom the defendant No.5 is intending to sell the suit property. The plaintiffs failed to substantiate *prima-facie* case in their favour. If the defendant No.5 who has purchased the property in the year 2006 itself, is restrained from alienating the suit property abruptly after 18 years, he will be put to untold hardship which cannot be compensated in terms of money. He will suffer irreparable injury. The balance of convenience is not in favour of the plaintiffs. Hence, this Court answers Point No.1 to 3 in the **Negative**.

15. **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 No.1
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 1st day of August 2025)

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