IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C., SIRUGUPPA

Present: Ashok R H
Civil Judge & J.M.F.C.,
Siruguppa.

Dated this the 9th day of March, 2026

O.S.No.27/2026

Plaintiff: Shivaraj M.P.

Vs

Defendants: Sri. Guru Charana Traders by its Pro: K.A.Mallappa and another

PARTIES TO I.A.No.II

Petitioner/Ori.Plaintiff: ... Shivaraj M.P.

Vs

Respondents/Ori.: Defendants ... Sri. Guru Charana Traders by its Pro: K.A.Mallappa and another

ORDERS ON IA.No.II

The Plaintiff has filed this application under Order 39 Rules 1 and 2 R/w Section 94 and 151 of the Code of Civil Procedure, 1908 seeking an order of temporary injunction restraining the defendants from alienating the application schedule properties, pending disposal of the suit.

2. In the accompanying affidavit, the plaintiff has stated that the defendants have purchased the paddy and the defendants have paid a sum of Rs.4,02,000/- and remaining out standing balance of Rs.32,50,000/- is due to the plaintiff and his father. The defendants have issued post dated cheques. The said cheques were dishonored. The plaintiff has acquired details of landed properties which are standing in the name of defendants and the defendants are having sufficient means to pay the outstanding balance amount. The defendants are avoiding to make the payment. The defendants have aggressive attitude to alienate or transfer the petition schedule properties by depriving the claim of the plaintiff and the defendants are fraudulently transferring the suit properties. On these grounds it is prayed to allow the application.

3. The defendant No.1 has filed objections denying the allegations made in the plaint, it is contending that the plaint schedule A property is not the absolute property of the defendant No.1. The said property is already mortgaged with Axis Bank. The plaint schedule B and C property are the ancestral joint family properties. It is further stated that the defendant No.1 and his family members have effected registered family partition under partition deed dated 16.02.2026. After the said partition, no properties are standing in the exclusive name of defendant No.1. Hence, it is prayed to reject the application.

4. Heard the learned counsels for the plaintiff and the defendant No.1. Perused the materials on record.

5. The points that arise for the consideration of this court are as under:

POINTS

1. Whether the plaintiff proves that there exists a prima-facie case?

2. Whether the plaintiff establishes that the balance of convenience lies in his favour?

3. Whether the plaintiff would be put to irreparable loss and injury, if temporary injunction were not to be granted?

4. What order?

6. Based on the available materials on record at this stage and the facts and circumstances of the case, this Court answers the above points 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 the final order
for the following ;-

R E A SO N S

7. **Point No.1:** The three ingredients that are to be considered while granting or rejection of injunction are a) prima facie b) balance of convenience and c) the party who will be put to irreparable loss and injury if temporary injunction is not granted. Prima facie case means that the plaintiff's case is such that it needs adjudication on merits and that there is a bonafide triable issue. Plaintiff's case should not be such that it is liable to be rejected summarily. Further prima facie case does not mean cent percent case. Suffice to satisfy the court the existence of a triable issue.

8. The plaintiff has filed this suit seeking the relief of recovery of money for a sum of Rs.5,00,000/- based on the cheque. The defendant No.1 has entered the appearance. Now that the plaintiff has sought for temporary injunction.

9. It is a restraint on alienating the properties that the plaintiff is seeking against the defendants. The suit is not with regard to the immovable properties but for recovery of money based on cheque. No rights of the parties are crystallized yet. The matter as to the grant of a temporary injunction restraining alienation is governed by the same principles as are applicable to the grant of prayer for temporary injunction of any other nature, such as one restraining waste or damage to the suit property or dispossession of the plaintiff with the only distinction that consideration of the doctrine of lis pendens as affording protection the aggrieved party has also to be kept in view. Extra care and caution has to be adopted by the Court to see that the plaintiff does not intend to achieve something else or is not acting with the ulterior motive in the garb of seeking a temporary injunction. People do not ordinarily alienate their property but for reasons. A temporary injunction granted without care and caution may have the effect of making the situation irreversible and by the time the case comes to be decided, it may become practically impossible to place the person injuncted in the same position in which he would have been if the injuction was not granted. The necessity of a strong prima facie case arises in such cases because the plaintiff must have extra strength for piercing into the umbrella of shelter taken by the defendant Under S. 52 of the Transfer of Property Act. Whether the plaintiff has reasonable prospects of obtaining permanent injunction at the end of the suit and how the plaintiff would suffer irreparable injury in spite of the protection enjoyed by him Under S. 52 of Transfer of Property Act, are the additional questions which must be posed by the Court to itself while considering a prayer for the grant of temporary injunction restraining alienation of the suit property.

10. It is true that the Civil Court does have power to issue a temporary injunction restraining an attempted alienation of the suit property by either party. Merely because S. 52 of the Transfer of Property Act protects the interest of the complaining party by providing that an alienation lis pendens shall be subject to the result of the suit, but, that does not mean that the Civil Court does not have power to issue an injunction. A contention to the contrary, if accepted, would have the effect of rendering part of the provisions contained in Clause (a) of Rule 1 of Order 39, Civil Procedure Code otiose. The power is there but, needless to say, that it is not to be exercised necessarily merely because it has been asked to be exercised. It is a matter of discretion, whether an injunction will or will not be granted. But the manner of exercise of that discretion depends upon the precise nature of the particular right, which is sought to protect and upon all the other material circumstances. An application for an injunction is an appeal to the extraordinary power of the Court and the plaintiff is bound to make out the case showing a clear necessity for its exercise, it being the duty of the Court rather to protect acknowledged rights than to establish new and doubtful ones.

11. The question that whether S. 52 of Transfer of Property Act is applicable in money suits, is to be answered now itself and the answer is in the affirmative. In **Annakkili vs Murugan C.M.S.A.No.30 of 2019 the Hon'ble High Court of Madras** has held thus: Section 52 of TP Act does not say that the doctrine of lis pendens will not apply to any money suit, because this section cannot say so, since the Explanation given in Section 52 is conspicuous and explicit that for the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained. Therefore the true intent of Section 52 with Explanation is vividly clear that the Defendant or Judgment Debtor cannot transfer the suit property from the date of initiation of proceeding for attachment before judgment in a pending money suit and moreover, till the execution proceeding of decree or order obtained is completely satisfied or discharged, the mischief of Section 52 with Explanation and Section 53 will operate against the Defendant, irrespective of the fact whether it is a money suit or suit for immovable property, inasmuch as Section 52 with Explanation does not bar application of the principle of lis pendens to money suit. Law maker of the Transfer of Property Act were careful enough to mention in the Explanation that the pendency of a suit or proceeding shall be deemed to commence from the date of presentation of the plaint or the institution of the proceeding, namely, filing of an Interlocutory Application for Attachment Before Judgment. Moreover, if Section 52 is excluded to money suit, then the money decree obtained after a long contest from a Court of competent jurisdiction will become meaningless, if there is no property available for execution of money decree, as a result, the decree holder of money suit will go remediless. Thus in the case on hand the plaintiff, has the support of S 52 of TP Act.

12. In view of the above principles, the suit being for recovery of money, a defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. A plaintiff should show, prima facie, that his claim is bonafide and valid and also satisfy the court that the defendant is threatening or dispossessing or intending to remove or dispose property with a view to defrauding his creditors (O 39 R (1) (b) CPC). But in the case on hand the plaintiff has though apprehended alienation of properties of the defendants, has not provided the details. The defendant No.1 has produced a partition deed dated 16.02.2026 under which the family members of the defendants have partitioned the properties and the defendants No 1 and 2 herein have not been given any share in the properties but money. The act of defendants and their family members is being noticed by the court and the observations made above specifically cover the circumstances of the case. Suffice to hold that at this stage a case to injunct the defendants from alienating the suit properties is not made out. There cannot be a mini trial at this stage. There cannot be expression on merits of the case at this stage. Under these circumstances, the plaintiff has not made out a case for grant of temporary injunction as against the defendants in respect of suit schedule properties as sought for. For all these reasons, this court is of the opinion that the plaintiff has not made out prima facie case. For these reasons, this Court has answered **point No.1 is in the Negative.**

13. **Points No.2 & 3:-** Balance of convenience means the comparative hardship or inconvenience that is likely to be caused from withholding the order of temporary injunction or granting it. In other words, if it is the plaintiffs who will be put to greater inconvenience if temporary injunction is not granted, the balance of convenience lies in favour of the plaintiff. If greater inconvenience is caused to the defendants if temporary injunction is granted, then the balance of convenience lies in favour of not granting temporary injunction.

14. When the plaintiff has failed to establish prima facie case and discussion on balance of convenience is not warranted. Nevertheless, looking into it, as observed above S. 52 of TP Act 1882 is in aid to the plaintiff. If temporary injunction is rejected, the plaintiff would not be put to inconvenience or irreparable injury.

15. As regards exercise of powers u/s 94 CPC and S 151 CPC is concerned, an owner of a property has unrestricted right of alienation and such power cannot be curtailed unless law provides for putting any such restriction. Section 94 of the Code which is in the substantive part of the Code (as opposed to the procedural part) gives power to the Court to restrict such substantive right of an owner in the circumstances mentioned in the Schedule of the Code (the procedural part of the Code) of which Order 38 and Order 39 are inter alia part. If those circumstances do not exist, the Court in exercise of inherent power cannot pass any order the effect of which would be to interfere with the substantive right of a litigant. In exercise of power under S. 151 of the Code, a Court can pass such order which is not in conflict with substantive right of a party and that such order is necessary for ends of justice provided further that there is no bar in the Code for passing such order which must be procedural in nature. For these reasons, this Court has answered **point No 2 and 3 are in the Negative.**

16. In the light of the peculiar circumstances of the case where plaintiff has filed this summary suit for recovery of money and the defendants have manifestly entered into a partition deed immediately after filing of the suit, under which no properties are allotted to them, which certainly raises concerns, the court cannot let the situation go beyond the limits. Allowing an entry in the Record of Rights, Tenancy, and Crops (RTC) regarding a pending suit which serves as a notice to the public and potential buyers that the suit properties are under dispute in a civil court would protect the interest of both the parties. It would not be a restraint on the alienation but would caution the subsequent purchasers. The Ld Tahasildar Sirugupa shall take appropriate action if the plaintiff approaches seeking such an entry. The powers of the court in exercising such a discretion is vested under S 151 CPC. Civil courts possess inherent powers under S. 151 of the Code of Civil Procedure to pass orders necessary to prevent abuse of the process of law, ensuring justice is served. These powers allow courts to stop fraudulent actions, and dilatory tactics that obstruct justice.

17. Point No.4 : In view of answer to point No.1 to 3 and for the reasons stated above, this court proceeds to pass the following;

O R D E R

I.A.No.II filed by the plaintiff under Order 39 Rule 1 & 2 R/w 94 and Section 151 of C.P.C is hereby rejected. No orders as to costs.

(Dictated to the stenographer, transcribed and typed by him, corrected and then pronounced by me in the Open Court on this 9th day of March-2026).

(Ashok R H)
Civil Judge and JMFC,
Siruguppa.