

**IN THE COURT OF THE ADDL. SENIOR CIVIL
JUDGE AT JAMKHANDI.**

Present

Sri.A.SAMIULLA

B.Sc., LL.B.,

Addl. Sr. Civil Judge, Jamkhandi.

Dated: 12th Day of July 2021

OS.No.88 of 2020

Smt.Bourawwa w/o Channayya Math @ Ganachari,
& Another.

..... Plaintiffs

V/s

Smt.Mahadevi w/o Sidramayya Hiremath,
& Others.

..... Defendants

IA.No.I

Smt.Shobha w/o Sangayya Hiremath.

..... Applicant/D2

V/s

Smt.Bourawwa w/o Channayya Math @ Ganachari,
& Another.

..... Opponents/Plts

Order on IA-I; u/O 39 Rule 1 & 2 r/w Sec. 151 of CPC:

Defendant-2 moved this application seeking to issue temporary injunction to restrain the plaintiffs from alienating suit properties in any manner pending

disposal of suit.

2. Plaintiffs filed memo dated 04.01.21 stating that they will not alienate the suit properties except the suit land bearing RS.No.447/1 measuring 9As 20Gs of Gothe village.

3. Heard arguments from both side.

4. Following points arise for consideration:

1. *Whether defendant-2 proves that she has got a prima facie case?*
2. *In whose favour the balance of convenience lies?*
3. *To whom the irreparable loss will be caused?*
4. *What order?*

5. Findings to the above points are as under;

Point-1: Affirmative.

Point-2: In favour of defendant-2.

Point-3: To the defendant-2.

Point-4: As per below for the following;

REASONS

6. Points-1 to 3: These points are taken together for common discussion to avoid repetition of facts.

7. At the outset; suit is filed for partition and separate possession of plaintiffs 1/5th share each in the suit properties by asserting that; the propositus Channayya died on 29.07.20 leaving behind wife Bourawwa (P1) and daughters Mahadevi (D1), Sushila (P2), Shobha (D2) and Neelabai (D3). They constituted joint family, they are in joint possession and there is no severance of joint family status. Suit properties are ancestral joint family properties of propositus, as such they got 1/5th share each. Defendant-4 is son of plaintiff-2. Suit properties are in the name of propositus except the land bearing RS.No.447/2/1 (9As 29Gs) of Gothe village, which is in the name of plaintiff-1, as it is purchased by the propositus in her name. Propositus was running provisional shop in VPC.No.192 of Gothe village, the defendant-4 behind the back of plaintiffs and other defendants got the license of provisional shop in his name, as such he is

arrayed as a party to the suit. Said shop belongs to the plaintiffs and defendants-1 to 3. They demanded partition but to no use, hence suit is filed.

8. Defendant-2 resisted the suit by filing written statement seeking counter claim. Defendant-3 adopts the written statement of defendant-2. They admits the genealogy shown in the plaint and also the nature of suit properties. But contended that the family is having other properties, which are not included in the suit. They contended that; though in the presence of plaintiff-2 her son defendant-4 is not a necessary party to the proceedings but he being the anchor of fraud played in the joint family his presence is also necessary in the suit. After filing of suit they came to know about the license of provision shop obtained by the defendant-4 behind the back of plaintiffs & other defendants, as such his (D4) presence is necessary for

effective adjudication. Denying other averments they contended that; the husband of plaintiff-2 being addicted to bad vices had suffered huge loss in business, due to this the defendants-2 & 3 advised their father to allow the family of plaintiff-2 to reside in the parental home, as such they are in parental home from the past 22 years. After the death of propositus; the plaintiff-2 and her son (D4) colluding together and without disclosing the particulars of family properties, income of provision shop, agricultural income and fixed deposit of Rs.One Crore, they hurriedly got prepared partition deed (Apsath Watni) to defraud the legitimate share of defendants-1 to 3. Apart from this they also obtained signatures of defendants-2 & 3 on blank stamp paper of Rs.200/-. Notice was issued calling upon them to disclose the purpose for which signatures were obtained on blank stamp paper. Till this day they have not replied the notice. Propositus

used to keep cash amount of Rs.50 lakhs in the house. Plaintiff-2 and defendant-4 have taken said amount. Among these grounds they prayed to dismiss the suit.

9. Defendant-2 filed the application at hand for the relief stated supra by stating that the plaintiffs on the instigation of defendant-4 are attempting to alienate the suit properties.

10. Plaintiffs not objected the application but they filed memo dated 04.01.21, wherein they have undertaken that they will not alienate the suit properties except the land bearing RS.No.447/1 of Gothe village.

11. The settled position of law is that; to seek discretionary relief of temporary injunction plaintiff/defendant must satisfy the Court with respect to the existence of a prima facie case, irreparable injury likely to be suffered by them and balance of convenience lies in their favour.

12. Before adverting to ascertain whether defendant-2 is entitled for the relief claimed; let us first set at rest whether she can maintain an application for temporary injunction against the plaintiffs or not.

13. In a decision reported in **ILR 1993 KAR 161** (*Veerabhadrapa Vs Mayappa*), it is held that;

It is only under sub-class A of Order 39 Rule 1 & 2 that any party to the suit could be restrained by means of an order of temporary injunction, which clearly presupposes that either the plaintiff or the defendant could file the application against other party under this particular sub-class. The other two sub-classes viz., (b) & (c) of Order 39 Rule 1 CPC & also Order 39 Rule 2 CPC enable the Court to grant injunction against the defendant restraining him from committing the several acts mentioned therein. The word any party occurring in sub rule A of Rule 1 does not find a place in these Rules. Therefore, it is clear that it is only the plaintiff that could seek redress under these rules against the defendant. Having regard to the plain language of these Rules, by no means could it be contended that defendant is entitled to obtain an order of injunction against the plaintiff under these very sub-rules.

14. It is worth to note that; the defendant-2 can maintain an application u/O 39 Rule 1(a) CPC and not under other sub-rules. As per Rule-1(a) the injunction can be sought if any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree. In the light of above discussion it can be said that; the case put forth by the defendant-2 to seek interim injunction comes within purview of sub-rule(a).

15. In case of Manoharlal Chopra Vs Rai Bahadur Rao Raja Seth Hiralal, **AIR 1962 SC 527**, the Hon'ble Apex Court held that; *a defendant can in appropriate cases claim interim injunction against the plaintiff in the same suit provided the defendant's claim to relief of injunction arises out of the plaintiff's cause of action or is incidental to it.*

It is worth to note that; here, the relief claimed in temporary injunction by the defendant-2 is incidental to or arises out of the cause of action of plaintiffs.

Because plaintiffs filed suit for partition claiming share in the suit properties whereas defendant-2 also claims share in suit properties and also in the properties shown in her counter claim. Her apprehension is that; plaintiffs at the instigation of defendant-4 are attempting to alienate the suit properties. These facts manifest that; second defendant's claim to relief of injunction arises out of the plaintiffs cause of action or is incidental to it, as such application is sustainable.

16. In the case at hand the pleadings put forth by the parties to lis manifest that there is no dispute whatsoever with respect to their relationship and the nature of suit properties, which shows that the defendant-2 is having right over the suit properties and she is having a share therein. The plaintiffs by filing memo under takes not to alienate the suit properties except the land bearing RS.No.447/1. Why

they want exclusion of said land, which is in the name of plaintiff-1 is not explained. Plaint pleadings viz., the land bearing RS.No.447/1 was purchased by the propositus in the name of plaintiff-1 out of joint family funds itself shows that the said land is also joint family property and the defendant-2 is also having right over the said land. Thus, at the moment the discussion supra manifest that; the defendant-2 demonstrated the existence of a prima facie case.

17. Temporary injunction is a preventive relief and its purpose is to preserve status quo in respect of the subject matter of the suit.

18. In the instant case; defendant-2 sought preventive relief to restrain plaintiffs from alienating suit properties. If they are not restrained from alienating suit properties it will results in multiplicity of proceedings and the same would adversely affect the

rights of the party seeking injunction on ultimately succeeding in the suit. In that event the defendant-2 will be subjected to irreparable injury which cannot be compensated by any means, as such Court interference is necessary to protect the defendant-2 from the injury, which is irreparable. Under these circumstances the comparative mischief or inconvenience likely to be caused from withholding injunction will be greater than by granting it. Thus, the balance of convenience also tilts in favour of defendant-2. Accordingly, these points are answered.

19. Point-4: By virtue of above findings, Court proceeds to pass the following;

ORDER

IA-1; u/O 39 R 1 & 2 r/w Section 151 CPC filed by the defendant-2 is allowed.

Plaintiffs are hereby temporarily restrained from alienating the suit properties or to create any third

party interest over the suit properties in any manner pending disposal of suit.

No order as to costs.

(Dictated to the Stenographer and directly typed by her, corrected and initialed by me and then pronounced in the open Court on 12th Day of July 2021).

Sd/-

(A.SAMIULLA)

Addl. Senior Civil Judge

Jamkhandi.

/skn/