

KABK710013452023



O.S./178/2023
{CASE_CAUSE_TITLE}

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &
JMFC, JAMKHANDI, AT: JAMKHANDI**

PRESENT :
SHRI.ARASHAD ANSARI,
B.Com, L.L.M.,
Addl. Civil Judge & JMFC,
Jamkhandi.

Dated this 22nd day of January – 2024

O.S. No.178/2023

1. Smt.Gangawwa W/o Hanamant Madar,
Age: 80 years, Occ: Household work,
R/o. Mugalkhod,
Tq: Raibag, Dist: Belagavi.

..... Plaintiff.

(By Shri.V.Y.D., Advocate)

Vs.

1. Smt.Rukmawwa S/o Madappa Madar,
Age: 55 years, Occ: Household work,
R/o Madarkhandi,
Tq: Jamkhandi, Dist: Bagalkot

..... Defendant.

(By Shri.M.G.G., Advocate)

I. A. No.I

1. Smt.Gangawwa W/o Hanamant Madar,

..... Applicant/Original Plaintiff.

Vs.

1. Smt.Rukmawwa S/o Madappa Madar,

.....Opponent/Original Defendant.

* * *

ORDERS ON I.A. No.I FILED BY
PLAINTIFF/APPLICANT UNDER ORDER
39 RULE 1 AND 2 OF C.P.C.

This application is filed by plaintiff/applicant seeking order of temporary injunction against the defendant, restraining him from alienating suit schedule property to anybody else in any manner till disposal of the suit.

2. In support of application, the plaintiff has sworn to an affidavit, wherein she stated that suit schedule property is joint family property of plaintiff and defendant. Defendant illegally got entered her name in the records and trying to alienate the suit property in favour of 3rd persons. There is no partition taken place till today and the suit property is the only property left for

his livelihood and if the same is alienated plaintiff will be put to untold hardship. On these grounds prayed to allow the application.

3. After issuance of suit summons defendant appeared through his counsel and filed written statement and submitted to treat the written statement as objections to this application and contended that defendant is the absolute owner and in possession of suit property. Originally suit land was belongs to grandfather of defendant. The plaintiff is noway concerned to the suit land. The plaintiff has filed this application by suppressing the material facts, hence the application deserves to be rejected with heavy costs.

4. Heard the arguments of both the learned counsels. Also perused the records placed before the court.

5. The points that arose for my consideration is as under:

- 1) Whether plaintiff has made out prima-facie case to grant the temporary injunction in his favour?
 - 2) Whether the balance of convenience lies in favour of plaintiff?
 - 3) Whether plaintiff proves that irreparable loss will be caused to them if TI is not granted?
 - 4) What Order?
6. My findings to the above points is 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 final order for the following:

: R E A S O N S :

7. **POINT No.1 AND 2:-** For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

8. Suit schedule property is joint family property of plaintiff and defendant. Defendant illegally got entered her name in the records and trying to alienate the suit property in favour of 3rd persons. There is no partition

taken place till today and the suit property is the only property left for his livelihood and if the same is alienated plaintiff will be put to untold hardship. Per contra defendant is the absolute owner and in possession of suit property. Originally suit land was belongs to grandfather of defendant. The plaintiff is noway concerned to the suit land. The plaintiff has filed this application by suppressing the material facts.

9. The object of granting an interlocutory injunction is to preserve the matter pending the trial. It is well settled that the grant or refusal of a temporary injunction is covered by three well established principles viz., (1) Whether the petitioners have made out a prima-facie case (2) Whether the balance of convenience is in their favor i.e., whether it could cause greater inconvenience to them if the injunction is not granted than the inconvenience which the opposite party or persons claiming through the opposite party would be put to if the temporary injunction is granted and (3)

Whether the petitioners would suffer irreparable injury with the first condition as sine qua non at least two conditions should be satisfied by the petitioner conjunctively and a mere proof of one of the three conditions does not entitle the petitioners to obtain a temporary injunction in their favor. If the suit schedule property is alienated during the pendency of the suit, it would lead to multiplicity of proceedings and suit schedule property may not be available at the time of final disposal of the case to enjoy the fruits of the decree. Since the contentions taken by the parties needs full fledged trial and mini trial cannot be held at this stage and plaintiff has made out prima-facie case, balance of convenience also lies in his favour. If temporary injunction as prayed by plaintiff is not granted, it would cause irreparable loss and injury to plaintiff, rather than defendant. Hence for the above said reasons, I answer Point No.1 and Point No.2 in the '**Affirmative**'.

10. **Point No.3:-** As irreparable loss and injury would be caused to the plaintiff in case of refusing of grant of temporary injunction. I answer Point No.3 in the '**Affirmative**'.

11. **Point No.4:-** For the reasons and findings given to Point No.1 to 3, I proceed to pass the following :

: O R D E R :

The I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

Defendant is hereby restrained by an order of temporary injunction from alienating or creating charge over the suit schedule property to anybody else in any manner till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the 22nd day of January - 2024)

Sd/-
(Arashad Ansari),
Addl. Civil Judge & JMFC,
Jamkhandi.