

KABK710017702022



O.S./108/2022
{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 17th day of July - 2023

O.S. No.108/2022

1. Smt.Shakuntala Raosab Khota,
Age: 52 years, Occ: Household work,
R/o Siddewadi, Tq: Athani, Dist: Belagavi.

..... Plaintiff.

(By Shri.B.I.D., Advocate)

Vs.

1. Smt.Manegani Bhimappa Guggari,
Age: 80 years, Occ: Agriculture,
R/o Hire-padasalagi,
Tq: Jamkhandi, Dist: Bagalkot
and Others.

..... Defendants.

(D-1, 2 & 4 - Exparte)

I. A. No.I

1. Smt.Shakuntala Raosab Khota,

..... Applicant/Plaintiff.

Vs.

1. Smt.Manegani Bhimappa Guggari
and Others.

.....Opponents/Defendants.

* * *

ORDERS ON I.A. No.I FILED BY
PLAINTIFFS/APPLICANTS UNDER ORDER 39
RULE 1 AND 2 R/w SECTION 151 OF C.P.C.

This application is filed by plaintiff/applicant seeking order of temporary injunction against the defendant No.3 and 4 restraining them from alienating creating charge over 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 he stated that they have filed this suit for the relief partition and separate possession in respect of suit schedule property. The suit schedule property is joint family property consisting of plaintiff and defendant No.1 to 4. The suit schedule property in joint possession of plaintiff and defendants.

The defendant No.3 and 4 colluding with revenue authorities got executed relinquishment deed in their names and now suit schedule property is standing in the name of defendant No.3 and 4 and no partition has been taken place till today. It is now learnt that defendant No.3 and 4 taking undue advantage of their names appearing in the record of rights are in hurry alienate the suit schedule property in favor of strangers and also trying charge over suit schedule property. If defendant No.3 and 4 succeeds in their illegal acts the very purpose of the suit will be frustrated and he will put to greater hardship and loss. To avoid the multiplicity of proceedings prayed to allow the application.

3. After issuance of suit summons to defendant No.3, appeared through his counsel, but in-spite of granting sufficient opportunities, he has chosen not to file written statement and objections. Hence written statement and objections of defendant No.3 was taken as nil.

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:- 'irreparable loss and injury would be caused to plaintiff,

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. The suit schedule property is joint family property consisting of plaintiff and defendant No.1 to 4. The suit schedule property in joint possession of plaintiff and defendants. The defendant No.3 and 4 colluding with revenue authorities got executed relinquishment deed in their names and now suit schedule property is standing in the name of defendant No.3 and 4 and no partition has been taken place till today, defendant No.3 and 4 taking undue advantage of their names appearing in the record of rights are in hurry alienate the suit schedule property in favor of strangers and also trying charge over suit schedule property.

9. At this stage of the case, there is no rebuttal from the side of defendant No.3. Prima-facie on perusal of suit schedule property, it reveals that suit schedule property is standing in the name defendant No. 3 and 4. The entire contention of plaintiff at this stage of the case has remained unchallenged and unrebutted, as defendant No.3 though appeared through his counsel,

but chosen not file any written statement and objections to the application.

10. 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 (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 there being no rebuttal from the side of defendant and as 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 in the '**Affirmative**' and point No.2 as 'irreparable loss and injury would be caused to plaintiff in case of refusing to grant temporary injunction'.

11. **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**'.

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

: ORDER :

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

Defendant No.3. and 4 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 17th day of July - 2023)

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