

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., AT DEVANAHALLI.**

PRESENT

SRI. PRAVEEN NAYAK, LLM.,
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 02nd November, 2023.

O.S.No.1067/2006 C/w
O.S.No.1120/2006

Smt. Munikempamma, : **Plaintiff**

(Plt. - By Sri. V.K.S.,
Advocate)

- V/s. -

Sri.Munikrishnappa ,H. & Other, : **Defendants**

(Def.1 to 4 - By
Sri.N.S., Advocate)
P/Des.- Absent

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ORDERS ON I.A.No.XIII FILED U/o.XXXIX RULE 1 & 2
R/w.Sec.151 of C.P.C.

The instant application has been filed by the counsel for the plaintiff seeking to grant ad-interim order of Temporary

Injunction by restraining the 5th defendant from alienating the suit schedule property till disposal of suit.

2. In the affidavit accompanying application, the plaintiff has stated that she has filed O.S.No.1067/2006 for the relief of Partition and Separate Possession and O.S.No.1120/2006 for the relief of declaration during the pendency of the suit the defendants No.1 to 4 sold the suit schedule property in favour of 5th defendant through registered Sale Deed dated 31-05-2019. The 5th defendant being the necessary party has been impleaded in this suit. The defendants No.1 to 3 had no exclusive right over the suit schedule properties and at the instigation of their mother-defendant No.4, they have illegally executed registered Sale Deed in favour of 5th defendant. Now , 5th defendant is trying the alienate the suit schedule property in favour of 3rd parties. The plaintiff has got prima facie case and balance of convenience tilts in her favour. If the 5th defendant able to sell the suit schedule property in favour of 3rd party, the plaintiff will suffer irreparable harm and injury. Hence prayed to allow the application.

3. The counsel for 5th defendant filed objection by stating that the application is not maintainable under law. It is stated that the Principal Senior Civil Judge, Devanahalli allowed I.A. No.12 on 28-02-2020 and immediately after filing of amended plaint interim order was passed by restraining the

defendant No.5 from alienating the suit property. The said order is not proper. The defendant No.5 purchased the suit schedule property from defendants No.1 to 4 as per registered Sale Deed dated 31-05-2019 for valuable sale consideration of Rs.45,75,000/- and he has been in possession and enjoyment of the same. The revenue documents have been changed in his name on the basis of the Sale Deed. One Hanumatharayappa never executed the will in favour of the plaintiff on 31-08-1991 and the same is a created document. Hence, prayed to reject the application with cost.

4. Heard both sides.

5. The following points would arise for my consideration:

1. Whether the applicants prove that they have got prima-facie case and the balance of convenience tilts in their favour to pass an order of ad-interim injunction on I.A. No.XIII ?
2. Whether the applicants prove that they will suffer irreparable loss and hardship if temporary injunction order has not been passed on I.A. No.XIII ?

3. What order or decree ?

6. **My answer to the above points are as follows:**

Points No.1 & 2 : **In the Affirmative**

Point No.3 : **As per final Order
for the following:**

REASONS

7. **Point No.1:** In order to prove the prima facie case, the plaintiff must establish her prima facie rights over the suit schedule property. In the instant case the plaintiff has filed O.S.No.1067/2006 for the relief partition and separate possession. O.S.No.1120/2006 came to be filed by the very same plaintiff for the relief of declaration. The entire suit of the plaintiff is based on the alleged will dated 31-08-1991, executed by one Hanumantharayappa. In O.S.No.1120/2006, the plaintiff has sought for the relief of declaration that she is the absolute owner of the suit schedule property on the basis of the alleged will and also sought for consequential relief of Permanent Injunction. It is admitted by both sides that the defendant No.1 to 4 have executed Sale Deed dated 31-05-2019 in favour of defendant No.5 in respect of the suit schedule property during the pendency of the suit. The said transaction is hit by lis-pendency. The defendant No.5 has clearly admitted about purchase of the suit schedule property by him on the

basis of the Sale Deed of the year 2019. But he has denied the execution of alleged will dated 31-08-1991 by late Hanumanthrayappa in favour of the plaintiff and contented that the said will is a created and fabricated document. It is pertinent to note that the question as to right over the suit property by virtue of the alleged will is a matter of trial. As observed supra, the entire suit is based on the will and it can only be decided by recording the evidence of both sides. It is clearly admitted that the defendant No.5 has purchased the suit schedule property during the pendency of the suit. Now, the defendant No.5 is contending that he has become the absolute owner of the suit schedule property by acquiring the possession of the same and also by changing the revenue entries in his name. It is to be noted that the defendant No.5 is claiming his right through the defendants No.1 to 4. The plaintiff has filed the present suit initially against the defendants No.1 to 4 by contending that she has got absolute right over the suit schedule property. Under such circumstances, the defendant No.5 cannot independently claim his right over the suit schedule property. This court cannot hold a mini trial in this application to see whether the alleged will dated 31-08-1991 is a created or fabricated document or to see whether the defendant No.5 has acquired the absolute right over the suit schedule property by virtue of the registered Sale Deed of the year 2019. At this stage, there is a clear prima facie case in favour of the plaintiff and the balance of convenience tilts her favour. Hence, I answer **Point No.1 in the Affirmative.**

8. **Point No.2** : While answering Point No.1 it is already held that the plaintiff has made out prima facie case and the balance of convenience tilts in her favour. It is observed that the sale transaction in favour of defendant No.5 has taken place during the pendency of the suit. If the Temporary Injunction is not granted, the plaintiff will suffer irreparable harm and injury. The granting of Temporary Injunction will protect the suit schedule property in the present form and no injustice will be caused to the defendant No.5. In view of this, the plaintiff has made out grounds to pass Temporary Injunction as sought in I.A. No.13. Hence, I answer **Point No.2 in the Affirmative.**

9. **Point No.3** : In view of the findings on Point No.1 and 2, this court proceed to pass the following:

ORDER

I.A. No.XIII filed by the plaintiff is hereby allowed.

The defendant No.5, his agents or anybody claiming through him are hereby restrained from alienating the suit schedule property till disposal of suit.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 02nd Day of November, 2023).

(SRI. PRAVEEN NAYAK)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.