

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

PRESENT

Sri. MADHUSUDHANA D.K., B.A. LL.B.
Prl. Senior Civil Judge & J.M.F.C.
Devanahalli.

Dated this the 2nd Day of September, 2022

O.S.No.443/2020

1. Sri. Krishnappa and Others : **Plaintiffs**

(By Sri. N.R.
Raghavendra,
Advocate)

V/s.

2. Sri. Sonnappa and Others : **Defendants**

(D1 - By Sri.
R.T. Nanjegowda,
Advocate)
(D2 - By Sri.
Ravi .B.M., Advocate)
(D3 - Exparte)

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**ORDERS ON I.A.No.1**

The plaintiffs have filed the above I.A.No.1 under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. and they pray for Temporary Injunction to restrain the defendant No.1 from alienating the Items No.1 to 5 of the suit schedule properties.

2. The plaintiff No.5 has filed affidavit in support of the I.A.No.1 for herself and also for other plaintiffs by deposing on oath. The plaintiff No.5 has contended in her affidavit that, the grandfather of plaintiffs by name late Papanna was the absolute owner in possession of Items No.1 to 5 for having acquired them by inheritance. The plaintiffs and defendants No.1 to 3 have constituted Hindu Undivided joint family and they are in possession of the suit schedule properties. The defendant No.1 is the only male member of the joint family and therefore, the properties are standing in the name of the first defendant. During the lifetime of plaintiffs mother Smt. Gowramma, she had demanded for partition with her father and the defendant No.1. But, the said persons have postponed the partition. The plaintiffs mother was died before 15 years by leaving behind the plaintiffs as her legal heirs. Before 3 months from filing of the suit, the plaintiffs have demanded the defendant No.1 to effect partition and the defendant No.1 has once again postponed the partition. Thereafter, the plaintiffs have once again demanded for partition and the same has been refused by the defendant No.1 and therefore, the plaintiffs have obtained documents pertaining to the properties and they have found that, as per IHR Proceedings, the first defendant has obtained khatha of Items No.1 to 5 by way of inheritance and this was without the knowledge of the plaintiffs and therefore, the plaintiffs have filed the suit for partition and they have also prayed for Temporary Injunction to restrain the defendant No.1 from alienating the suit schedule properties in favour of third parties.

3. The defendant No.1 has filed his written statement and memo of adoption to treat the same as his objections to the I.A.No.1.

4. In his written statement, the defendant No.1 has denied the plaintiffs case from Para Nos.1 to 12 of his written statement. Thereafter, he has submitted that, the suit schedule properties are his self-acquired properties and the defendants No.2 and 3 -who are the sisters of defendant No.1 were married and they are residing in their respective husband's house. The defendants No.2 and 3 have also received their share during their marriages by way of cash and Jewelery from their father. The above suit is filed after lapse of 30 years and the plaintiffs did not file the suit within 3 years from attaining the age of majority and therefore, the plaintiffs are not entitled for any relieves. Therefore, the defendant No.1 has prayed for the dismissal of the I.A.No.1.

5. The plaintiffs counsel has filed the written arguments by reiterating same averments. Heard arguments of defendant No.1 and perused the documents. The points that arise for consideration are as follows:

**POINTS**

- 1. Whether the plaintiffs have made out a prima-facie case for grant of an order of***

***equitable relief of temporary injunction against the defendant No.1?***

***2. Whether the balance of convenience lies in favour of the plaintiffs?***

***3. Whether the plaintiffs will be put to irreparable injury and hardship, in case an order of temporary injunction were refused against the defendant No.1?***

***4. What Order?***

6. Now, the Court answer the above points as follows;

***Point No.1: In the Affirmative***

***Point No.2: In the Affirmative***

***Point No.3: In the Affirmative***

***Point No.4: As per the final order for the following;***

### **REASONS**

7. **Point No.1:-** The plaintiffs have filed the suit for partition by contending that, plaintiffs and defendants No.1 to 3 are members of Hindu joint family and the suit schedule Items No.1 to 5 properties are their ancestral properties acquired by the Propositus by name Papanna by way of inheritance. It is also contended by the plaintiffs that, the defendant No.1 is the only

male member of the family and therefore, the properties are standing in his name.

8. The defendant No.1 has contended that, his sisters-the defendants No.2 and 3 have already obtained share by way of money and jewelry from their father during their marriages. The defendant No.1 has also contended that, plaintiffs have filed the suit after lapse of 30 years and plaintiffs did not file the suit within 3 years from attaining the age of majority. The said contentions indirectly suggest that, the defendant No.1 is not denying the fact that, the plaintiffs are daughters of his sister late Gowramma. Though the defendant No.1 has contended that, all the suit schedule properties are his self-acquired properties, he did not produce any documents showing acquisition of properties by him either under any sale deed or by way of grant made in his individual name.

9. On the other hand, the R.T.C. Extracts and Mutation Register Extracts show that, on the death of Propositus late Papanna, the khatha of the properties was changed by inheritance in the name of the defendant No.1. Therefore, the plaintiffs have made out a prima-facie case by showing that, the properties are acquired by their grandfather and therefore, the **Point No.1 is answered in the Affirmative.**

10. **Points No.2 and 3:-** These two points are interlinked and therefore, to avoid repetition of discussion, they are considered together.

11. The defendant No.1 is claiming that, the properties are his self-acquired properties and the defendants No.2 and 3 have already obtained their share by way of cash and ornaments. But, the defendant No.1 did not produce any documents either to show his self-acquisition or regarding obtaining of share by the defendants No.2 and 3 as contended by him. Since the properties are standing in the name of first defendant, there are chances of alienation of property by him to defeat the claim of the plaintiffs. Therefore, the plaintiffs have made out balance of convenience in their favour.

12. The plaintiffs and defendants No.2 and 3 being women, they are needed protection of injunction Order against the defendant No.1 from alienation and if the Injunction Order is refused to the plaintiffs, the defendant No.1 may create third party rights and in such an event it will be very difficult for the plaintiffs to get the fruits of the decree if they are successful in proving their case. Therefore, when compared to the hardship that would be caused to the plaintiffs in refusing injunction with the hardship that will be caused to the defendant No.1 in granting the same, the hardship suffered by the plaintiffs will be more. Therefore, the plaintiffs have proved that, they will suffer irreparable loss and injury in refusing the Temporary Injunction Order and hence, the **Points No.2 and 3 are answered in the Affirmative.**

13. **Point No.4:-** For the above discussion the Court proceed to pass the following:

**ORDER**

**The I.A.No.1 filed by the plaintiffs under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. is hereby allowed.**

**The defendant No.1 is restrained by way of ad-interim Temporary Injunction from alienating the suit schedule properties till disposal of the suit.**

(Dictated to the Stenographer directly on computer, same is corrected and then pronounced by me in the open court on this the 2<sup>nd</sup> day of September, 2022).

**(MADHUSUDHANA D.K.)  
Prl. Senior Civil Judge & JMFC.,  
Devanahalli.**