

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

PRESENT

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

Dated this day of 08th August, 2023.

O.S.No.495/2020

Smt. Narayanamma : **Plaintiffs**

(Plt. - By Sri. B.A.A.,
Advocate)

- V/s. -

Smt. Muniyamma & Others : **Defendants**

(Def.1 &2 - By Sri. K.S.,
Advocate)
Def.3 to 5 - Exparte

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Orders On I.A. No.1 Filed By The Plaintiffs
U/o.XXXIX Rule 1 & 2 of C.P.C.

The instant application has been filed by the counsel for plaintiff seeking ad-interim order of Temporary Injunction against the defendants No.1 to 5 by restraining them from alienating the suit schedule properties till disposal of suit.

2. In the affidavit it is stated that, the plaintiff has filed the present suit for the relief for partition and separate possession. The suit properties are ancestral and joint family properties of the plaintiffs and the defendants. The item No.2 of the suit properties is standing in the name defendant No.1. The defendants No 1 and 2 executed registered Sale agreement in favour of defendants No.6 and 7 and now trying to create 3rd party right. In spite of the demands made by the plaintiff, the defendants have not partitioned the properties. The plaintiff has got prima facie case and balance in convenience tilts in her favour. Hence prayed to allow the application.

3. In response to suit summons the defendants No.1 and 2 and defendant No.6 have appeared through their counsel and filed written statement. The written statements are adopted as objection to I.A.No.1. In the written

statement the defendants have contended that the suit item No.2 property is a self acquired property of defendant No.1. The said property has been granted in favour of defendant No.1 as per saguvali chit dated 24-03-2005. The said grant was made during the life time of Byrappa @ Halu Byrappa, who is the husband of the defendant No.1. The said Byrappa was alive till 03-07-2007. The plaintiff has been residing some where else and she is now aged about 50 years. The plaintiff was residing in her husband's house at the time of grant of the land in favour of defendant No.1. Insofar as item No.1, 3 and 4 of suit schedule properties are concerned, the defendant No.1 has got one share as a Widow of Byrappa @ Halu Byrappa. The application is not maintainable under law and the plaintiff has no prima facie case in her favour. Hence prayed to reject the application.

4. Heard both sides.

5. **The following points would arise for my consideration:**

1. Whether the applicant proves that she has got prima-facie case and the balance of convenience tilts in her favour to pass an order of ad-interim injunction on I.A. No.1 , ?

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.1 ?
3. What order or decree ?

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

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

Point No.3 : **As per final Order**

for the following :

REASONS

7. **Point No.1:** The plaintiff has contended that, the suit properties are the ancestral and joint family properties of the plaintiffs and the defendants No.1 to 5. The defendants No.1 to 5 have executed agreement of sale in favour of defendants No.6 and 7 and now trying to alienate the item No.2 property. If the suit properties are alienated in favour of 3rd party, the same will lead to multiplicity of the proceedings. On the other hand the defendants No.1 and 2 have contended that, the suit item No.2 property is a absolute property of the defendant No.1 and she has every right to alienate the same. Accordingly, she has executed the agreement of sale in favour of the defendants No.6 and

7. The suit item No.2 property has been granted in the name of defendant No.1 during the life time of Byrappa @ Halu Byrappa, the father of the plaintiff. The said Byrappa died on 03-07-2007. The Saguavli Chit has been issued exclusively in the name of defendant No.1.

8. In view of the rival contention, on going through the averments of the plaint it is clearly appearing that the plaintiff has not pleaded that how exactly the suit properties have been acquired by the joint family. It is not disclosed in the plaint that the suit item No.2 property has been granted in the name of the defendant No.1. It amounts to suppression of material facts by the plaintiff at the time of filing of the suit along with the present application.

9. On going through the documents produced by the defendants No.1 and 2, it is clearly appearing that the suit item No.2 property has been granted in the name of the defendant No.1. It was granted on 24-03-2005. It is also pleaded that T. Byrappa died on 03-07-2007. The same is also appearing in the documents produced by the plaintiff. It shows that, the suit item No.2 property was granted in the name of defendant No.1 during the life time of T.Byrappa. The leaned counsel for the plaintiff has relied upon the decision reported in **ILR2015 KAR 3583**,

Wherein it is held that “**grant of land in favour of eldest member of the family enure to the benefit of entire family**”. I have gone through the above decision. The above decision is pertaining to the land reforms Act . Moreover, T.Byrappa being the eldest member of the family was very much alive at the time of the grant and no grant has been made in his name on behalf of the joint family. It is clearly appearing that the grant has been made individually in the name of the defendant No.1 in respect of item No.2 property.

10. Insofar as other suit schedule properties are concerned, the defendants have not raised any dispute. Under such circumstances, the plaintiff has made out prima facie case in respect of suit schedule properties except item No.2 property. Accordingly, the balance of convenience tilts in favour of plaintiff in respect of the remaining properties. Hence, I answer **Point No.1 Partly in the Affirmative.**

11. **Point No.2** : The plaintiff has proved prima facie case in respect of the joint family properties except item No.2 property. If the Temporary Injunction is not granted in respect of those properties, the plaintiff will suffer irreparable harm and injury. At the same time if the Temporary Injunction has been granted in respect of item No.2 property, it is the defendant No.1 who would suffer irreparable harm

and injury. Hence, I answer **Point No.2 Partly in the Affirmative.**

12. **Point No.3** : In view of the above findings, this court proceeds to pass the following.

ORDER

I.A. No.1 is allowed in part.

The defendants, their agents, servants or anybody claiming through them are hereby restrained from alienating the suit item No.1, 3 and 4 properties in favour of 3rd party till disposal of suit.

No orders 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 08th Day of August, 2023).

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