

**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 18<sup>th</sup> January, 2024.**

**O.S.No.861/2022**

Smt. Ramakka & Others : **Plaintiffs**

(Plt. - By Sri. V.S.N.  
Advocate)

- V/s. -

Sri. Dodda Munishamappa & Another : **Defendants**

Def.1 - By Sri. G.C.R.  
Advocate)  
(Def.2 - ex-parte.)  
(Def.3 - By Sri. H.M.P.  
Advocate)

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**Common Order I.A.No.III & IV**

I.A. No.I has been filed by the plaintiffs U/o.XXXIX Rule 1 & 2 R/W.Sec.151 of C.P.C for issue of ad-interim order of Temporary Injunction against the defendant No.3 by restraining him from alienating the suit schedule properties in favour of 3<sup>rd</sup> party till disposal of suit.

2. I.A. No.IV has been filed by the plaintiffs U/o.XXXIX Rule 1 & 2 R/W.Sec.151 of C.P.C for issue of ad-interim order of Temporary Injunction against the defendant No.3 by restraining him from putting up any construction over the suit schedule properties till disposal of suit.

3. In the affidavits accompanying I.A. No.III and IV, the plaintiffs have stated that, they have filed the suit for partition and separate possession. The plaintiffs and defendant No.1 together constitute a Joint Hindu Family and the suit properties are the ancestral and joint family properties of the plaintiffs and the defendant No.1. Till today there is no partition. The defendant No.1 got entered his name in the revenue documents and alienated the suit schedule properties behind the back of the plaintiffs in favour of defendant No.2. The defendant No.2 in turn alienated the same in favour of defendant No.3. The defendant No.3 got entered his name in the revenue records and by taking advantage of the same he is trying to alienate the suit schedule properties and to put up construction over the same. The plaintiffs have got prima-

facie case and balance of convenience tilts in their favour. If the defendant No.3 is successful in his illegal acts, the plaintiffs will be put to irreparable loss and injury. Hence, prayed to allow the applications.

4. The defendant No.3 appeared through his counsel and filed written statement and also filed separate objections to I.A. No.III and IV. In his objections the defendant No.3 has denied the case of the plaintiffs. It is stated that, the plaintiffs slept over their right over a period of 29 years from the date of alienation of suit schedule properties and came up with present suit only to defraud the rights of defendant No.3. The suit is clearly barred by limitation. The defendant No.1 being absolute owner of the suit schedule properties has alienated the same in favour of defendant No.2. The sale deed was executed on 02-09-1993 and the defendant No.2 sold the same in favour of defendant No.3. There is no cause of action to file the suit and the suit is not maintainable under law. The suit schedule properties are not the ancestral or joint family properties of the plaintiffs. The plaintiffs have no coparcenary right over the same. Hence, prayed to reject the applications with cost.

5. Heard both sides.

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

1. Whether the plaintiffs prove that, they have got prima facie case and the balance of convenience tilts in their favour to pass ad-interim order in respect of I.A. No.III and IV?
  2. Whether the plaintiffs prove that, they will suffer irreparable loss and hardship in case of non granting of temporary injunction in respect of I.A. No.III and IV?
  3. What order?
7. **My answer to the above points are as follows:**  
Point No.1 & 2 : **Partly In the Affirmative**  
Point No.3 : **As per final Order**  
**for the following :**

### **REASONS**

8. **Point No.1:** The plaintiffs have contended that, they are the children of defendant No.1. The suit schedule properties originally belonged to the father of the defendant No.1 by name Muniramu @ Muniyappa. He died by leaving behind the suit schedule properties in favour of the defendant No.1 and the plaintiffs. After his death, the defendant No.1 colluded with revenue officials and got entered his name in the revenue documents. The defendant No.1 sold the suit schedule properties in favour of defendant No.2 behind the back of

the plaintiffs. The transaction between the defendant No.1 and 2 is illegal. The defendant No.2 sold the suit schedule properties in favour of defendant No.3. The defendant No.3 by taking advantage of Khatha standing in his name is trying to alienate the suit schedule properties and also putting up illegal construction over the same. If the defendant No.3 succeeds in his illegal acts, the plaintiffs will be put to great hardship as they will be deprived of their share in the suit schedule properties.

9. The defendant No.3 objected the application by contending that the defendant No.1 being the absolute owner has sold the suit schedule properties in favour of defendant No.2 as per registered Sale Deed dated 02-09-1993 and the defendant No.3 has purchased the same from defendant No.2. The Sale Deed of the year 1993 was executed for the legal necessity of the family. The plaintiffs have filed the present suit after lapse of 29 years and the suit is barred by limitation. The defendant No.1 being the absolute owner has sold the suit properties in favour of the defendant No.2 and the plaintiffs have no right to seek partition of the same.

10. In view of rival contentions, on going through the plaint documents the plaintiffs produced complete Genealogical tree of the alleged joint family. They also produced the records of rights pertaining to the suit properties. It is not in dispute that, the plaintiffs are the children of defendant No.1. It is also not in dispute that, the suit schedule properties originally belonged to the father of the defendant No.1 by name

Muniramu @ Muniyappa. The defendant No.3 has also not disputed that, the defendant No.1 has sold the suit schedule properties in favour of defendant No.2 and the signatures of the plaintiffs were not obtained in the registered Sale Deed. The counsel for the plaintiff argued that there is no recital in the sale deed of the year 1993 to the effect that, the suit schedule properties have been sold for the benefit of the the joint family. The plaintiffs have produced photographs pertaining to the suit schedule properties wherein it is clearly appearing that, defendant No.3 has undertaken development work over the same. In this case, it is clearly appearing that, defendant No.1 has sold the suit schedule properties in favour of defendant No.2. The plaintiffs have been contending that, they have got a share in the suit schedule properties and the defendant No.1 had no absolute right to alienate the suit schedule properties without their consent. On the other hand the defendant No.3 has been contending that, the suit property was sold for legal necessity of the family and the defendant No.1 was the absolute owner of the same at that point of time. However, this Court cannot hold a mini trial at this stage to decide all those aspects. There is a case which requires trial. At this stage, it is clearly appearing that, the plaintiffs have got a prima-facie case in respect of I.A. No.3 as any further alienation of suit schedule properties will lead to multiplicity of proceedings. The balance of convenience in respect of I.A. No.3 also tilts in favour of plaintiffs.

11. In I.A. No.4 the plaintiffs have sought to restrain the defendant No.3 from putting up construction over the suit

schedule properties. It is pertaining to note that, the defendant No.3 has purchased the suit schedule properties through registered Sale Deed. The Sale Deed of the vendor of the defendant No.3 is of the year 1993, allegedly executed by none other than the father of the plaintiffs. There a prima facie right of the defendant No.3 over the suit properties, based on registered sale deeds. If the suit schedule properties have been developed and any permanent structure has been put over the same during the pendency of the suit, it will be at the risk of the defendant No.3. If the plaintiffs succeed in this suit, they will also be entitled for share in the development made by the defendant No.3. Further, on looking into the photographs it is clearly evident that, the defendant No.3 might have invested huge money for dumping of the materials for development work in the suit properties. Accordingly, there is no prima-facie case in favour of the plaintiffs in respect of the I.A. No.IV and balance of convenience does not tilt in their favour. Hence, I answer **Point No.1 partly In the Affirmative.**

12. **Point No.2:** It is already observed that, the plaintiffs have got prima-facie case in respect of I.A. No.III and they have failed to prove their prima facie case in respect of I.A. No.IV and the balance of convenience tilts in their favour in respect of I.A. No.III only. If the Temporary Injunction is not passed as prayed in I.A. No.III, the plaintiffs will suffer irreparable harm and injury, if the defendant No.3 succeeds in further alienation of suit properties. On the other hand the defendant No.3 might have invested huge money for development of property and non granting of temporary injunction in respect

of I.A. No.IV is not going to cause injustice to the plaintiffs. Hence, I answer **Point No.2 partly in the Affirmative.**

13. **Point No.3** : In view of the above findings, I proceed to pass the following.

**ORDER**

I.A. No.III filed by the plaintiffs U/o.XXXIX Rule 1 & 2 R/W.Sec.151 of C.P.C is hereby allowed.

I.A. No.IV filed by the plaintiffs U/o.XXXIX Rule 1 & 2 R/W.Sec.151 of C.P.C is hereby rejected.

Consequentially, the defendant No.3, his agents or anybody acting on his behalf are hereby restrained from alienating the suit schedule properties in favour of 3<sup>rd</sup> party 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 18<sup>th</sup> Day of January, 2024).**

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