

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
HOSAKOTE.**

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 23rd day of September 2024

O.S.No.937/2022 (Old No.363/2021)

Plaintiff/s : Smt.Lakshamma & Anr.

- V/s -

Defendant/s : Sri.D.M.Jayaramaiah & Ors.

i.	Provision under which the application is filed.	U/o 39 Rule 1 and 2 of CPC. U/o 39 Rule 1 and 2 of CPC
ii.	Relief sought for	Temporary injunction
iii	The date in which the applications are filed	15-02-2021
iv	Number of the application	IA No.1 and 2
v	The date on which the objections are filed by different opponents	07-08-2021
vi	The date on which the orders were passed on the said application.	23-09-2024

Orders on I.A.No.1 and 2

The plaintiffs have filed I.A.No.1 under Order 39 Rule 1 and 2 R/w Section 151 of CPC seeking an order of temporary injunction restraining the defendants No.1, 3 and 9 from alienating or creating any charge or encumbrance over the suit schedule properties pending disposal of the suit.

2. The plaintiffs have also filed I.A.No.2 under Order 39 Rule 1 and 2 R/w Section 151 of CPC seeking an order of temporary injunction restraining the defendants from putting up compound wall or any sort of constructions over the suit item No.4 property pending disposal of the suit.

3. In the annexed affidavits it is stated that, the plaintiffs and defendants are the Hindu undivided joint family members and the suit schedule properties are the joint family properties of themselves having acquired by their father under the family partition. The plaintiffs and defendants are in joint possession and enjoyment of the suit schedule properties and there was no partition was effected among themselves.

When such being the case, the defendants by colluding with each other in order to deprive the right of the plaintiffs

have entered into partition deed dated 30-01-2018 with respect to suit schedule properties without the knowledge and consent of the plaintiffs. When the plaintiffs demanded for partition, the defendants refused to do so. Thereafter, the plaintiffs came to know that the defendants are trying to alienate the suit properties in favour of third parties and also they are trying to put up compound wall and constructions over the suit schedule properties. Hence, prays to allow the applications.

4. The defendants filed objections to I.A.No.1 and 2 and contended that there is no existence of Hindu undivided joint family as pleaded by the plaintiffs and the properties were not a joint family properties at any point of time. The father of the defendant No.1 and Appajappa did not constitute any Hindu undivided family. Likewise, Munishamappa also did not constitute any joint family. They were holding the item No.1 to 3 properties as heirs-in-successors and there was only succession and they did not arise any Hindu undivided joint family as contended by the plaintiffs. Further, the plaintiffs have eloped, left the house, abandoned the family and did not return to the family at all. Recently came to know that they have

invested huge sums of money for development of the property. In the said circumstances the registered deed of partition becomes unquestionable. Therefore the document of partition substantial, appropriately to consider that it is held to be family property and the plaintiffs not having legitimate share. Hence, on other grounds defendants pray for rejection of the applications with costs.

5. Both the parties in their favour have relied upon the copies of documents.

6. Based upon the above contentions of the plaintiffs and defendants, following points arise for consideration:

1. Whether the plaintiffs have made out prima facie case in their favour?
2. Whether the balance of convenience lies in their favour?
3. If temporary injunction is not granted who will suffer great hardship and injustice?
4. What order?

7. Heard the arguments of both the sides and on due perusal of the records, the court findings on the above points as under:

Point No.1 to 3 : In the Affirmative,

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

REASONS

8. **Point No. 1 to 3 :-** These points are inter-linked with each other. Therefore, in order to avoid the repetition of facts and circumstances, they are taken together at one stretch for common discussion.

The plaintiffs have filed the above suit against the defendants for partition and separate possession in respect of suit schedule properties. Through the above applications the plaintiffs are seeking an ad interim order of temporary injunction against the defendants from not to alienate the said properties and to restrain them from construction over the suit properties.

9. In the affidavit it is stated that the suit schedule properties are belongs to joint family and they are in joint

possession and enjoyment over the same. The defendants through his written statement taken a contention that there is no existence of joint family between parties. Further, the father of the defendant No.1 and Appajappa were not constitutes any joint family. They were holding the suit item No.1 to 3 properties as heirs and successors. The defendants have partitioned the suit schedule properties among themselves through registered partition deed dated 30-1-2018.

10. The counsel for the plaintiff argued that the suit schedule properties are in the name of defendant No.3 and 9 and in order to deprive the rights of the plaintiffs, they are trying to alienate the suit schedule properties and also trying to construct the compound. The plaintiffs are also the children of defendant No.1. Being the legal heirs of defendant No.1 they are entitled to an equal share. Hence, prays to allow the applications.

11. The plaintiffs in support of their case, they have produced the genealogical tree, RTC extracts in respect of the suit schedule properties and the copy of partition deed dated

30-1-2018 through which the defendants have partitioned their Hindu undivided joint family properties among themselves as schedule 'A' to 'I' properties. Further, they have produced RTC and mutation register extracts, assessment extracts, panchayath partition and also the photographs to show that the defendants are trying to put up compound over the suit properties. The defendants in support of their defense, they have produced the RTC extracts.

12. On perusal of the above records clearly goes to show that the suit schedule properties are belongs to defendant No.1 and one Appajappa and they have partitioned their family properties under MR.No.1/2000-01. Further, as per recitals made in the registered partition deed dated 30-1-2018, the defendants have partitioned all their joint family and ancestral properties among themselves. To the said partition, the plaintiffs are not parties.

13. Furthermore, the defendants through their written statement have not denied the relationship between the parties. Whether the plaintiffs are having equal share over the suit

schedule properties or not, it requires a full fledged trial. Furthermore, in this suit the court has already rejected the applications filed by the plaintiffs and defendant No.4 seeking permission to construct the building over the suit schedule properties.

14. At this stage, if the defendants are permitted to put up any construction or compound wall, the very purpose of filing the suit will be defeated and the plaintiffs may put to great loss and injustice. Hence, the plaintiffs have made out a prima facie case and the balance of convenience is also lies on their favour. If, the application is not allowed, the plaintiffs will be put to great loss and injustice rather than the defendants. Hence, on the above reasons, I answered point No. 1 to 3 in the **“Affirmative”**.

15. **Point No.4** :- In view of the aforesaid findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.1 and 2 filed by the plaintiffs under Order 39 Rule 1 and 2 R/w Section 151 of CPC are hereby allowed.

Further, the defendants No.1, 3 and 9 are hereby restrained from alienating or creating any charge or encumbrance over the suit schedule properties pending disposal of the suit.

Further, the defendants are hereby restrained from putting up compound wall or any sort of constructions over the suit item No.4 property pending disposal of the suit.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 23rd day of September 2024.)

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

Order pronounced in the open court vide separate :

ORDER

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For compliance u/Sec 89 of CPC and for Issues, Call on:27-11-2024.

Senior Civil Judge & JMFC,
Hosakote.