

**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 22nd day of July - 2024

O.S.No.3393/2022

Plaintiff/s : Sri.Lakshmeesha & Anr.

- V/s -

Defendant/s : Sri.Hanumantharayappa & Ors.

i. Provision under which the application is filed.	U/o 39 Rule 1 (a) R/w Section 151 of CPC.
ii. Relief sought for	Temporary injunction.
iii. The date in which the application is filed	19-04-2024
iv. Number of the application	IA No.1/2024
v. The date on which the objections are filed by different opponents	31-05-2024
vi. The date on which the orders were passed on the said application.	22-07-2024

Orders on I.A.No.1/2024

The defendant No.8 has filed the above application under Order 39 Rule 1 (a) R/w Section 151 of CPC seeking an order of temporary injunction restraining the plaintiffs, defendant No.1 to

7 and 9 to 13 from alienating the suit schedule properties pending disposal of the suit.

2. In the annexed affidavit it is stated that, the plaintiffs and defendants are the joint family members and the suit schedule properties are the ancestral and joint family properties and there is no partition till today. The plaintiffs and defendant No.1 to 7 in order to deprive the right of this defendant have filed a suit in O.S.No.2044/2021 with respect to suit schedule properties. The said suit was ended by compromise decree. Pursuant to the said compromise, the plaintiffs and defendant No.1 to 7 have entered into a partition with respect to suit schedule properties through a registered partition deed dated 17-01-2024. Based on the said partition deed, the plaintiffs and other defendants are trying to alienate the suit schedule properties in favour of third parties. Hence, prays to allow the application.

3. Per contra, the plaintiffs filed objections to the above application by denying the statement made by the defendant No.8 and further contended that the defendant No.8 being one

of the co-sharer cannot seek injunction against the plaintiffs or other defendants from entering into transaction for sale is not maintainable and the same is liable to be rejected. Further, submit that the father of the plaintiffs and other defendants performed the marriage of this defendant and they have also constructed a house by spending huge money. In spite of taking all benefits, now this defendant is falsely claiming her share and also filed this false application in order to drag on the proceedings. Hence, prays to reject the application.

4. Heard arguments. Perused the records.

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

1. Whether the defendant No.8 has made out prima facie case in her favour?
2. Whether the balance of convenience lies in her favour?
3. If temporary injunction is not granted who will suffer great hardship and injustice?
4. What order?

6. The court findings on the above points are as under:

Point No.1 to 3 : In the Affirmative,

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

REASONS

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

The above suit is filed by the plaintiffs against the defendants for partition and separate possession in respect of suit schedule properties. When the case was posted for plaintiff evidence, the defendant No.8 filed the above application seeking an order of temporary injunction restraining the plaintiffs, defendant No.1 to 7 and 9 to 13 from alienating or create any mode of documents in respect of suit properties.

8. In the affidavit it is stated that the plaintiffs and defendants in collusion with themselves have filed O.S.No.2044/2021 and by suppressing the pendency of the suit and without impleading the defendant No.8 have

compromised themselves and by virtue of the said compromise they are trying to alienate the suit properties.

9. The plaintiffs filed objections to the above application by denying the entire statement of the defendant No.8 and further taken a contention that the plaintiffs and defendant NO.1 to 7 have performed the marriage of the defendant No.8 by spending huge money and they have also constructed a house in favour of defendant No.8.

10. On perusal of available records, the plaintiffs No.1 and 2 have filed this suit for partition in the year 2012 claiming that themselves and the defendants are in joint possession and enjoyment of suit properties. On service of suit summons, the defendant No.8 appeared through counsel and filed written statement by admitting the suit claim and also claimed an equal share over the same by way of counter claim.

11. The defendant No.8 in support of her case has produced the certified copy of order sheet, plaint, compromise petition and compromise decree of O.S.No.2044/2021 which

was filed by the defendant No.1 against the plaintiff and others wherein they have compromised themselves in respect of suit properties.

12. On perusal of the said compromise decree clearly goes to show that the defendant No.8 of this suit is not a party in the said O.S.No.2044/2021. Whether the defendant No.8 is having an equal share over the suit properties or not, it requires a full fledged trial. If the plaintiffs and other defendants by virtue of the said compromise decree will alienated the suit properties, the defendant No.8 may put to great loss and injustice and it may create multiplicity of proceedings between the parties. At this stage, the defendant No.8 has made out a prima facie case and balance of convenience is also lies on her favour. If the application is rejected, more hardship would be caused to the defendant No.8 rather than the plaintiffs. Hence, on the above said reasons I, answer point No. 1 to 3 in the “**Affirmative**”.

13. **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.1/2024 filed by the defendant No.8 under Order 39 Rule 1(a) R/w Section 151 of CPC is hereby allowed.

The plaintiffs and defendant No.1 to 7 and 9 to 13 are hereby restrained from alienating or creating any mode of documents in respect of suit schedule properties 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 22nd day of July 2024.)

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

Order pronounced in the open court vide separate :

ORDER

I.A.No.1/2024 filed by the defendant No.8 under Order 39 Rule 1(a) R/w Section 151 of CPC is hereby allowed.

The plaintiff and defendant No.1 to 7 and 9 to 13 are hereby restrained from alienating or create any mode of documents in respect of suit schedule properties pending disposal of the suit.

No order as to costs.

For plaintiff evidence,

Call on: 11-09-2024.

Senior Civil Judge & JMFC,
Hosakote.