

**IN THE COURT OF THE PRL., CIVIL JUDGE & JMFC.,
AT CHINTHAMANI**

PRESENT:

SRI. SHIVAKUMARA G.J, B.A.L.L.B.
Prl. Civil Judge & J.M.F.C.,
Chinthamani.

O.S. No 109/2020

Dated on this the 11th day of March 2022.

PLAINTIFFS:-

- 1. Smt. Byamma,**
W/o Late Chikka Marappa,
D/o Venkataramanna,
Aged about 65 years,
- 2. Sri. Venkatareddy,**
S/o Chikka Marappa,
Aged about 42 years,

Both are residing at
Yandahalli Village,
Mindigal Post,
Munganahalli Hobli,
Chintamani Taluk.

(By Sri. KSH/MSC. Advocate)

V/s

DEFENDANTS:-

- 1. Sri. Muni Narayanappa,**
S/o Late Venkataramanna,
Aged about 60 years,
- 2. Smt. Rathnamma,**
W/o Muninarayanappa,
Aged about 50 years,
- 3. Sri. M. Venkataramareddy,**
S/o Muninarayanappa,
Aged about 30 years,
- 4. Sri. M. Harish,**
S/o Muninarayanappa,
Aged about 28 years,

The defendants 1 to 4 are
R/at Gopalapura Village,
N. Kothuru Post,
Ambajidurga Hobli,
Chintamani Taluk.

5. **Smt. Lakshamma,**
W/o Late Munishami Reddy,
Aged about 81 years,
6. **Smt. Chowdamma,**
W/o Late M. Shivananda Reddy,
Aged about 56 years,
7. **Sri. V. Shankar,**
S/o Late M. Shivananda Reddy,
Aged about 42 years,
8. **Smt. Manjula,**
D/o Late M. Shivananda Reddy,
Aged about 36 years,
9. **Sri. Muniraju,**
S/o Late S. Munishamireddy,
Aged about 56 years,
10. **Sri. M. Dashamurthy,**
S/o Late S. Munishamireddy,
Aged about 53 years,

Defendants 5 to 10 are
R/at Veerapalli Village,
Kotagal Post,
Ambajidurga Hobli,
Chintamani Taluk.

11. **Sri. M. Sudharshan,**
S/o Late M. Ramachandraiah,
Aged about 49 years,
R/at Anjani Badavane,
Chintamani Town.

(By Sri. K.A.S. Advocate for D1 to D4)
(By Sri. T.N.S. Advocate for D6 to D10)

ORDERS ON IA. NO.I

The plaintiffs have filed the application U/o. XXXIX Rule 1 & 2 of CPC seeking temporary injunction to restrain the defendant No.9 and 10 from not to alienating the suit by way of sale, agreement of sale, lease, mortgage, gift and any kind of alienation and encumbrance and etc., to 3rd parties till disposal of the suit.

2. Brief case of the plaintiff is as under:-

The plaintiffs have filed suit against defendants for the relief of Partition and separate possession over the suit properties. The suit properties are situated at Gopalapura village, AmbajiDurga Hobli, Chintamani Taluk. It is further stated that the plaintiffs and defendants are the members of the joint family and suit properties are the joint family properties of the plaintiffs and defendants. The defendant no. 1 to 4 are alienated the the suit item No.1 to Munishamireddy under registered sale deed dated:28.01.2010. Further the defendant 1 to 4 are alienated the the suit item No.2 to

the 11th defendant under registered sale deed dated:06.05.2008, thereafter the 11th defendant alienated the suit item No.2 in favour of S.Munishamireddy, he is no more, the defendant No.5 to 10 are the wife and children of Munishamireddy, The plaintiffs have legitimate right over the suit properties and the defendant No.9 and 10 are trying to alienate suit property to 3rd parties in order to knock off plaintiffs legitimate share in suit properties. If the defendants have alienated the suit properties it will leads to multiplicity of the proceedings. The Plaintiffs further stated that the balance of convenience is in favour of the plaintiffs, if the Temporary Injunction is order granted no hardship will be caused to defendants. Hence, therefore the plaintiffs have filed the suit and sought for temporary injunction till disposal of the suit.

3. The defendant No. 6 to 10 have filed the written statement and filed the objections to IA No. I. In the written statement the defendant No.1 have denied the plaint averment made by the plaintiffs. The defendant

No.6 to 10 have claimed absolute title over the suit schedule property and denied a rights of the plaintiffs.

4. Heard arguments. Perused the records.

5. The following points arise for the consideration of this court:-

P O I N T S

1. Whether the plaintiffs have made out a prima- facie case for granting temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will suffer irreparable loss, if injunction is not granted?
4. Whether the plaintiffs are entitled for the relief of Injunction as prayed for?
5. What order?

6. My answer to the above points is as under:-

- | | |
|------------|------------------------------|
| Point No.1 | - In the Affirmative, |
| Point No.2 | - In the Affirmative, |
| Point No.3 | - In the Affirmative, |
| Point No.4 | - In the Affirmative, |
| Point No.5 | - As per final order, |

for the following:-

REASONS

07. POINTS NO.1 to 4:- These points are interconnected to each other, hence to avoid repetition of facts these issues are taken up for discussion together.

08. The plaintiffs claimed partition over the suit schedule properties. The relationship between the plaintiffs and the defendant No.1 to 4 is also not disputed by the defendants. The plaintiffs and defendants are the members of the Hindu undivided joint family and are governed in the Hindu mithakshara school of Law is also not in dispute. As per the pahani of Item No.1 and 2 properties are stood in the name of father of the defendant No.6 to 10. On the other hand the defendant No.6 to 10 contended that the defendant No 1 to 4 are sold the suit item No.1 and 2 for their legal necessity and family needs and to discharge their debts made for performing the marriages of the female members of the family. Therefore, the serious question is to be decided during the trial about the the properties

are joint family properties and the defendant No.1 to 4 are sold the properties for the purpose of legal necessity or not is to be decided after full fledged trial. Moreover, the defendant No. 6 to 10 counsel has filed the memo for undertakes that they will not alienate the suit schedule properties to any third parties till pending disposal of the suit. Therefore, at this prima-facie stage, it is necessary to preserve from alienation to the third parties and creation interest over the suit schedule property so as to avoid multiplicity of proceedings. During pendency of the suit, if defendants alienate the suit schedule property to 3rd parties it will create 3rd party interest over the suit property and it will give raise for multiplicity of proceedings. In such alienation will certainly affect rights of the plaintiffs over the suit schedule property. Therefore, this courts holds that the plaintiff has made out prima facie case for grant of temporary injunction. Hence, I answer the point No.1 in the **Affirmative.**

8. Point No.2 and 3:- While, answering the point No.1 this court is already held that the plaintiffs have

made out prima-facie case. Coming into the question of balance of convenience and inconvenience to the parties, if the defendant No.6 to 10 are able to sell the suit schedule property to the third parties it will create third party interest and it is the cause for further litigation. On the other hand if the defendant No.6 to 10 are restrained from alienating from the suit schedule properties no prejudice will cause to the defendants. Therefore, the balance of inconvenience is more to the plaintiffs if the injunction is not granted. The plaintiffs will also suffer irreparable loss if the defendants succeeded in alienating the suit properties. Therefore, this court is of the considered view that the balance of convenience is in favour of the plaintiffs and he will suffer irreparable loss. Hence, I answer points No.2 and 3 in the **Affirmative.**

9. Point No.4:- In view of answers to the points No.1 to 3, the plaintiffs are entitled for the relief claimed in the application. Hence, I answered the point no.4 in the **Affirmative.**

10. Point No.5:- In view of the answers to point No.1 to 4, I will proceed to pass the following:-

ORDER

The application filed by the plaintiffs
U/o.39 rule 1 & 2 of CPC hereby Allowed .

The defendants, their men, agents,
servants or any persons claiming under
them are hereby restrained from alienating
the suit schedule property or creating third
party interest over the suit schedule
property till disposal of the suit.

No order as to cost.

(Typed by me and corrected and initialed by me and then,
pronounced in the open court on this 11th day of March 2022)

(SHIVAKUMARA G.J)

**Prl. Civil Judge & JMFC.,
Chintamani.**

**ORDER PRONOUNCED IN THE OPEN COURT
(Vide Separate Order)**

ORDER

The application filed by the plaintiffs U/o.39 rule 1 & 2 of CPC hereby Allowed .

The defendants, their men, agents, servants or any persons claiming under them are hereby restrained from alienating the suit schedule property or creating third party interest over the suit schedule property till disposal of the suit.

No order as to cost.

**(SHIVAKUMARA G.J)
Prl. Civil Judge & JMFC.,
Chintamani.**

