

**IN THE COURT OF THE ADDL.CIVIL JUDGE & J.M.F.C.,
GAURIBIDANUR.**

Dated this the 23rd day of April 2015

**Sri.SANDEEP PATIL, B.A., L.L.B,
Addl. Civil Judge & JMFC., Gowribidanur**

O.S.NO.178/2008

Plaintiff : Gangamma, W/o.late Yarrathippaiah, 70 yrs,
R/at Chikkahosahalli village,
Thondebhavi Hobli,
Gauribidanur Taluk.

(Advocate by Sri.H.L.V)

Defendant: Raghupathy, S/o.late Veerathippaiah,
40 yrs, R/at Chikkahosahalli village,
Thondebhavi Hobli,
Gauribidanur Taluk.

(Advocate by Sri.M.R.)

**ORDERS ON IA NO.1 FILED UNDER ORDER 39 RULE 1
AND 2 OF C.P.C.**

This is a suit filed by the plaintiff for the relief of permanent injunction against the defendant over the suit schedule property and now the matter posted for hearing on I.A. U/o.1 rule 10(2) CPC. At this juncture, the plaintiff has moved this application for seeking interim order and prayed to allow the application by granting order of temporary injunction restraining the defendants from alienating the suit schedule property till disposal of the suit.

2. In support of this application the plaintiff has filed his affidavit along with documents.

3. On the other hand, the defendant has not filed any objection.

4. Heard. Perused the materials placed on record.

5. The points that would arise for my consideration are:

1. Whether the plaintiff has made out a prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable injury if the prayer for interim injunction is disallowed?
4. What Order?

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

Point No.1 to 3: In the Negative

Point NO.4: As per final order

for the following:

REASONS

7. **Point No.1 to 3:-** All these points are taken together for common discussion to avoid repetitions.

8. This is a suit filed by the plaintiff for the relief of permanent injunction against the defendant over the suit schedule property. In the affidavit annexed to the said application, she has taken contention that, the plaintiff is the

absolute owner and enjoyment over the suit schedule property and the said property is her ancestral property. After death of plaintiff's mother-in-law Smt.Narasamma wife of Gundappa the plaintiff acquired the same by inheritance as per MR No.5/2004-05 and all the revenue records are standing in her name and she is in possession by paying kadayam and the defendant is the stranger, without having any manner of right, title he illegally interfered with the peaceful possession. For the above reason she has filed this suit, during the pendency of the suit the first defendant has sold the suit schedule property to one Syayad Hameedul Hussan through a registered sale deed dtd.21.8.2013 and now both are again trying to alienate the suit schedule property to third parties. Accordingly he has filed this suit and moved this application for seeking interim order.

9. On the other hand the defendant has not filed his objection to the application. During the course of arguments the defendant counsel submits that, the defendant is already sold the property to one Syayad Hameedul Hussan in the year 2008 itself and now the plaintiff has filed the application U/O.1 rule 10(2) of CPC to bring the purchaser to the suit

and that is pending before the court. at this juncture the plaintiff is not entitled any order against the proposed party. Hence, on these ground alone he is seeking dismissal of the application.

10. On going through the documents produced by the both parties, it is seen that, the first defendant already sold the suit schedule property to Syayad Hameedul Hussan through a registered sale deed on 21.8.2013 itself and the plaintiff has filed the application U/O.1 rule 10(2) of CPC to bring the purchaser as a party to the suit and the same is pending before the court for consideration. At this juncture, it is clearly admitted by the defendant in his argument as he was sold the same to the Syayad Hameedul Hussan in the year 2013 itself, but the said Syayad Hameedul Hussan is not a party to the suit. Before made as a party to the suit, it is not proper to allow the application by resisting the proposed party. The plaintiff is seeking T.I. order against the first defendant and proposed defendant. But, the first defendant already sold the same. Hence, the application is not maintainable against the first defendant and the proposed defendant is not a party to the suit. Hence, against him also

the application is not maintainable. After considering the I.A. U/O.1 rule 10(2) CPC, the defendant may at liberty to file another application to seek the relief as sought in the application. Until then, it is not proper to grant interim order against the proposed party. Accordingly, all these grounds are shows there is no prima facie case in favour of the plaintiff and accordingly the balance of convenience is not lies on her favour, in this situation if T.I. granted it will definitely cause hardship to the proposed party. In this situation if T.I. is not granted there will be no such loss or injury would be caused to the plaintiff. On these grounds alone I answered point No. 1 to 3 in the negative.

11. POINT NO.4: In the result, I proceed to pass the following....

ORDER

IA No.1 filed by the plaintiff under Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C. is hereby dismissed.

(Dictated to the typist directly on the computer typed by her, revised, corrected and then pronounced by me in the open court on this the 23rd day of April 2015).

(SANDEEP PATIL)

Addl. Civil Judge and JMFC,
Gauribidanur.

ORDER

**IA No.1 filed by the plaintiff under Order
39 Rule 1 and 2 R/w Sec.151 of C.P.C. is
hereby dismissed.**

Vide separate order

(SANDEEP PATIL)

Addl. Civil Judge and JMFC,
Gauribidanur.