

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

Dated this the 6th day of April 2016

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

O.S.NO.256/2012

- Plaintiff : 1. Smt.Usha W/o Somasundar Reddy,
D/o Late.Nanjunda Reddy, 32 yrs,
R/at Uchhadanahalli village,
Kasaba Hobli, Gauribidanur Taluk,
Chikkaballapur Dist.
2. Smt. Arunamma W/o Sanjeeva Reddy,
D/o Late.Nanjunda Reddy, 27 yrs,
R/at Thingalore village,
Kalidevapur Post,
Kodigenahalli Hobli,
Madhugiri [Tq], Tumkur Dist.

(Advocate by Sri.Ramachandra)

VS

- Defendant: 1. Smt.Anusuyamma
W/o Late.Nanjunda Reddy, 50 yrs,
R/at Uchhadanahalli village,
Kasaba Hobli,
Gauribidanur Taluk.
2. Ramachandra Reddy,
S/o Late Nanjunda Reddy, 50 yrs,
R/at Uchhadanahalli village,
Kasaba Hobli,
Gauribidanur Taluk.
3. Sri.S.Govindaraju
S/o Late Sanjeevappa, 46 yrs,
R/at Venkatagirikote village,

Vijayapur Hobli,
Devanahalli Taluk,
Bangalore Rural Dist.

4. Sri.Ramakrishnappa
S/o Ramaiah, 57 yrs,
R/at Dandiganagahalli village,
Harohalli Hobli,
Devanahalli Taluk,
Bangalore Rural Dist.

5. Sri.B.Rajagopal
S/o Late Bairappa, 50 yrs,
R/at House No.6,
B.Nagasandra,
Yamalur Post,
Bangalore Urban Dist.

(D.1 and D.2 – Exparty
Sri.N.Venkateshappa, Advocate for D.3 & D.4
Sri.T.S.Mallikarjuna, Advocate for D.5)

**ORDERS ON IA NO.1 FILED UNDER ORDER 39 RULE
1 AND 2 R/W SEC.151 OF C.P.C**

This is a suit filed by the plaintiff for the relief of partition and separate possession against the defendants over the suit schedule properties and 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 No.5 from alienating the suit schedule property item No.1 and 2 pending disposal of the suit.

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

3. On the other hand, the defendants have filed their written statement and as well as also filed the memo to treat written statement as objections to the said application.

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 will 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 partition and separate possession against the defendants over the suit schedule properties. In the affidavit annexed to the said application, they have taken contention that, themselves and defendant No.1 and 2 are the members of joint family and the suit schedule properties are the ancestral and joint family properties. The alleged transaction with respect to suit schedule properties are against the interest of plaintiffs and the said transaction will not convey any right, title or interest in favour of 3rd and 4th defendant. The defendant No.1 and 2 are taking undue advantage of their possession, 3rd and 4th defendant have grabbed the most valuable properties by getting registered in their favour. Moreover, after registering the sale deeds, several years the defendants are kept quiet and now they are starting to interfere with the peaceful possession. In the first week of July 2012 they came to know about the sale of suit schedule property item No.1 and 2, and accordingly they claim their legitimate share. But the defendants have refused the same. Later they obtained the certified copy of the RTC and came to know that, the 4th defendant has executed sale deed in favour of 5th defendant

on 16.8.2012. Now the 5th defendant taking undue advantage of the same has tried to alienate the suit schedule properties to 3rd parties. Hence, it is just and necessary to grant temporary injunction restraining the defendant No.5 from alienating the suit schedule properties. Hence moved this application.

9. But on going through the records and documents, it discloses that, previously the plaintiff has filed same application against the defendant No.5, but the said application was dismissed by this court on 2.8.2013 on the ground that, the properties are not at all standing in the name of defendant No.5. Without there being any documents transferred in the name of defendant No.5, it is not possible to grant T.I. order against the defendant No.5. Further, it must be noted that, after dismissing the said application, again the same application filed by the plaintiff against the defendant No.5 for seeking same relief.

10. In the present case the defendant has not filed any objection to the application. But, non filing of objection is not a ground for granting of T.I. order. As the plaintiff must have prima facie case in his favour and balance of convenience also

lies in his favour. But, in the present case to show his prima facie case, the plaintiff has not produced any cogent materials. Further, as discussion made in the previous order, the documents pertaining to the suit schedule property are not at all standing in the name of 5th defendant. At this juncture, it is not possible to alienate the suit schedule property to the third parties by the defendant No.5. Hence, it will not cause any hardship to the plaintiff. The plaintiff has failed to prove prima facie case. It is pre mature stage, at this juncture, in the absence of prima facie materials, it is not possible to come to right conclusion, as it is required full fledged trial from both sides. Hence, the application filed by the plaintiff is not maintainable either in law or on facts. Accordingly on the basis of above discussion its clearly shows that there is no prima facie case and balance of convenience in favour of plaintiff and if T.I. is not granted there will be no such loss or injury would be caused to the plaintiff. Accordingly, I answer **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 plaintiffs under
Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C.
is hereby dismissed.**

(Dictated to the Stenographer directly on the computer typed by her, revised, corrected and then pronounced by me in the open court on this the 6th day of April 2016).

(SANDEEP PATIL)
Addl. Civil Judge and JMFC,
Gauribidanur.

ORDER

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

Vide separate order

(SANDEEP PATIL)

Add. Civil Judge and JMFC,
Gauribidanur.