

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
AT GOWRIBIDANUR**

Dated this 27th day of May 2024

:: PRESENT ::

SRI. SACHIN P.M.

B.A., L.L.B., (Hons)

***Prl. Civil Judge and JMFC.,
Gowribidanur***

ORIGINAL SUIT NO.111/2024

Plaintiff/s :

- 1. Smt. Lakshamma
Wife of Late. Chinnappaiah @
Chikkappaiah,
Aged about 65 years,***
- 2. Smt. Gangarathnamma
Daughter of Late. Chinnappaiah @
Chikkappaiah,
Aged about 45 years,***
- 3. Sri. K.C.Venkatesh
Son of Late. Chinnappaiah @
Chikkappaiah,
Aged about 40 years,***

***All are residing at
Railway Station,
Thondebhavi,
Gowribidanur Taluk,
Chikkaballapura District***

***(Represented by Sri. S.M.,
Advocate for plaintiffs)***

// VERSUS //

Defendant/s : Smt. Aswathamma
Wife of Late. Venakteshappa,
Aged about 66 years,
Residing at Railway Station,
Thondebhavi,
Gowribidanur Taluk,
Chikkaballapura District.
***(Represented by Sri. R.R.,
Advocate for defendant)***

PARTIES TO THE I.A.NO.I

APPLICANT/S: Smt. Lakshamma and others
(Plaintiffs)

-Vs-

OPPONENT/S: Smt. Aswathamma
(Defendant)

**ORDER ON I.A NO.I FILED BY PLAINTIFFS UNDER
ORDER XXXIX RULE 1 & 2 READ WITH SECTION
151 OF C.P.C.**

The plaintiffs have filed this I.A No.1 under Order
XXXIX Rule 1 & 2 read with Section 151 of C.P.C,
praying for a temporary injunction restraining the

defendant from alienating or encumbering the suit schedule property, till the disposal of this suit.

2. As per the plaint averments and affidavit annexed to the I.A the case of the plaintiffs/applicant in brief is as under:

That the suit schedule property is the ancestral and joint family property of the plaintiffs and the defendant and that they constitute an undivided Hindu joint family. That their ancestor by name Venkatappa and his wife Buchamma had two sons namely Venkateshappa (i.e., the husband of the defendant) and Chinnappaiah @ Chikkappaiah (i.e., the husband of the plaintiff No.1 and the father of the plaintiffs No.2 and 3). That after their death, the plaintiffs and the defendant have succeeded to the suit schedule property and are in continuous joint possession and enjoyment of the same as coparceners.

2.1) *That after the death of Venkateshappa, the defendant has become the manager of the joint family*

and is managing the joint family appears. The revenue documents were standing jointly in the name of Venkateshappa and Chinnappaiah and after their death, the defendant has obtained the khatha jointly with Chinnappaiah without the knowledge and consent of the plaintiffs. That there has been no partition between the plaintiffs and the defendant till date and that the defendant is trying to alienate the suit schedule property in favor of third parties with an intention to deprive the legitimate share of the plaintiffs. That the plaintiffs demanded their legitimate share but the defendant has not divided the suit schedule property even though the plaintiffs are unwilling to be in joint possession and enjoyment of the same. That, in spite of several panchayaths being held, all the efforts went in vain and hence, this suit.

3. *The plaintiff No.3 has sworn to an affidavit accompanying the I.A No.1 reiterating the averments*

contained in the plaint and stating that the prima facie case and balance of convenience lies in favor of the plaintiffs and that the plaintiffs would be put to great hardship and injury if the application is not allowed. On all these grounds, it is prayed that the application may be allowed and the temporary injunction be granted.

4. *The defendant has adopted his written statement as objections to this application. In his written statement, the defendant has admitted the entire averments contained in paragraphs No.2 and 3 of the plaint and has stated that the suit schedule property is in joint possession of the plaintiffs and the defendant and that the defendant is entitled to ½ share therein. That the defiant has no objections to the suit being decreed and to the allotment of ½ share in the suit schedule property to the plaintiffs and the defendant.*

5. On considering the I.A No.1, its accompanying affidavit and the written statement cum objections to I.A, the points that would arise for consideration are as under:

POINTS

1. Whether the plaintiffs/applicant has made out a prima-facie case for the grant of temporary injunction?
2. Whether the balance of convenience/inconvenience lies in favor of the plaintiffs/applicant?
3. Whether irreparable loss and injury would be caused to the plaintiffs/applicant if the temporary injunction is refused?
4. What order?

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

Point No.1 : In the *Affirmative*;

Point No.2 : In the *Affirmative*;

Point No.3 : In the *Affirmative*;

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

REASONS

7. POINT NO.1: *The case of the plaintiffs has already been set out in brief. The learned Counsel for plaintiffs has argued that the plaintiffs have made out a prima-facie case and the balance of convenience lies in favor of the plaintiffs. If temporary injunction is not granted, the plaintiffs would be put to hardship as the defendant would create third party interest over the suit schedule property which would lead to multiplicity of proceedings and defeat the right and share of the plaintiffs in the suit schedule property. Therefore, the temporary injunction may be granted in favor of the plaintiffs.*

8. *It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the Court to grant an interlocutory order of injunction under Order XXXIX Rule 1 and 2 of C.P.C. (1) prima facie case, (2) balance of*

convenience/inconvenience and (3) irreparable loss or injury which cannot be compensated in terms of money if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favor. The grant of injunction is a discretionary relief and the party should come to Court with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima facie case in favor of the party seeking the order.

9. *This Court has considered the documentary evidence produced by the plaintiff and the defendant. The plaintiffs have produced a family tree affidavit and two computerized R.T.Cs pertaining to the suit schedule property. On the other hand, the defendant has not produced any document at this stage.*

10. *On perusal of the documents produced by the plaintiff, it prima-facie appears that the plaintiffs and the defendants are members of the same family and it also*

appears that the R.T.C pertaining to the suit schedule property standing jointly in the name of the defendant and the father of the plaintiffs No.2 to 4.

11. *While dealing with the applications of this nature, the only function of the Court is to see whether the applicants have made out a prima-facie case, the party in whose favor the balance of convenience/inconvenience lies and which side would suffer a greater loss and hardship in case of temporary injunction being refused.*

12. *The defendant in this case has admitted the averments contained in the plaint and the defendant has not produced any document for the perusal of this Court. Since the R.T.C pertaining to the suit schedule property is standing jointly in the name of the defendant, the father of the plaintiffs No.2 to 4, the possibility of the defendant alienating a part of the suit schedule property cannot ruled out. The alienation, if any, of the suit schedule*

*property by the defendant during the pendency of this suit is hit by the principle of lis-pendens and Section 52 of the Transfer of Property Act, but it would definitely lead to multiplicity of proceedings. Under such circumstances, it can be opined that the plaintiffs have made out an arguable case and therefore, whenever there is an arguable case, it can be said that the plaintiffs have made out a prima-facie case. For these reasons, this Court has answered the **Point No.1** in the **Affirmative**.*

13. POINTS NO.2 AND 3*- Both these points are taken up together for common discussion to avoid repetition of facts. The Court has to see whether the applicants will sustain such injuries or loss which cannot possibly and adequately remedied by way of damage and the said damage would be inadequate in case of the success of the applicant. As far as the question of balance of convenience/inconvenience is concerned, the*

Court has to see the mischief or inconvenience which may be caused to either of the parties and see whether it is necessary or proper to maintain status quo till the adjudication of dispute finally decided. The ingredients are to be established by the party who seeks injunction in her favor. The grant of injunction is a discretionary relief and the party who claims such a relief should come to the Court with clean hands and place all the materials before the Court so that Court will satisfy about the case in favor of the party seeking the order.

14. *It is to be noted here that the plaintiffs have sought for temporary injunction restraining the defendant from alienating the suit schedule property. If the defendant is not prevented from alienating the suit schedule property, it would invariably lead to multiplicity of proceedings and the plaintiffs would be forced to implead every subsequent purchaser of the suit schedule property. Therefore, if an injunction restraining alienation*

*is granted, the defendant will not be put to any loss or damage as she is open to the partition of the suit schedule property. Therefore, this Court is of the opinion that the balance of convenience/inconvenience lies in favor of the plaintiff and not in favor of the defendant as the plaintiffs would be constrained to file multiple suits or resort to other procedures under law if the suit schedule property is alienated during the pendency of this suit and that if the I.A is not allowed, the plaintiff would be put to irreparable loss and injury. Hence, this Court has answered **Points No.2 and 3** in the **Affirmative**.*

15. POINT NO.4:- *In view of the findings on Points No.1 to 3, the plaintiffs are entitled to the relief of temporary injunction as sought for. Hence, this Court proceeds to pass the following:*

ORDER

*The I.A.No.1 filed by the plaintiff
under Order XXXIX Rule 1 & 2 read with
Section 151 of C.P.C is hereby allowed.*

*The defendant is hereby
restrained, by an order of temporary
injunction, from alienating the suit
schedule property till the disposal of this
suit.*

*The cost of this application will
follow the result of this suit.*

*(Typed by me, corrected and then pronounced by me in
the Open Court on this 27th day of May 2024).*

**(SACHIN P.M.)
Prl. Civil Judge and JMFC,
Gowribidanur**