

**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE & JMFC,
AT CHITRADURGA.**

**Presided Over by Smt. CHAITRA.A.M
B.Sc. LL.B**

**I Addl. Senior Civil Judge and JMFC.,
Chitradurga.**

Dated: 15th Day of September, 2023

O.S. No.43/2022

Plaintiffs: 1) **Sri. Danappa**
S/o Late Basappa
Aged about 62 years,
2) **Smt. Sunandamma**
W/o Late. Gurusiddappa
Aged about 62 years,
3) **Sri. K.G. Nagaraja**
S/o Late Gurusiddappa
Aged about 36 years,
All are agriculturists
R/o Nellikatte Village,
Bharamasagara Hobli,
Chitradurga Taluk & District

(Plaintiffs: By Sri. G.B.S., Adv)

V/s

Defendants: 1) **Smt. Mallamma**
W/o Late Kallingappa
Aged about 60 years,
2) **Sri. N.K. Kallesh**
S/o Late Kallingappa
Aged about 36 years,

***Both are agriculturists
R/o Nellikatte Village,
Bharamasagara Hobli,
Chitradurga Taluk & District***

(D-1 & 2 : By Sri. M.M., Adv)

**ORDER ON APPLICATION U/O 39 RULE 1 &
2 OF CPC FILED BY THE PLAINTIFFS
(LA.No.I)**

1. The plaintiffs have filed the application seeking for an order of temporary injunction restraining the defendant No.1 from alienating or creating any charge over the suit schedule property pending disposal of the suit, in the interest of justice and equity.

2. **The brief facts of the case:-**

The plaintiff No.1 has filed the affidavit. In the affidavit, it is stated that the plaintiffs have filed the suit seeking for a relief of declaration and permanent injunction. The plaintiff No.1 has stated that the defendant No.1 and the plaintiffs have partitioned their ancestral and joint family properties under the unregistered partition deed dated 17.03.1996 in presence of panchas but the revenue entries did not change in the respective persons name because the

partition deed is unregistered one. Further as per the unregistered partition deed the suit A schedule properties was allotted to the share of plaintiff No.1, suit B schedule properties was allotted to the share of plaintiff No.2 and 3 and the suit C schedule properties was allotted to the share of defendants. Since the date of partition, the plaintiffs are enjoying the properties which are allotted to their respective shares without anybody obstruction. After partition the plaintiffs have planted arecanut plants in item No.2 of A and B schedule properties the defendants have no manner of right, title or possession over the suit A and B schedule properties. The plaintiffs have approached the defendants and requested to get the partition deed registered as per unregistered partition deed but they did not come forward to get register the same. The defendants by taking undue advantage of the katha of the application schedule property standing in the name of defendant No.1 trying to alienate some portion of the said property to third person. Unless the partition deed is registered the defendants cannot alienate the property standing in the name of defendant No.1. Thus the plaintiffs now it is learnt that the defendant No.1 is making hectic preparation to alienate the suit schedule

properties to defraud the interest over the said properties. Thus the defendant No.1 is restrained from alienating the suit schedule properties. Therefore the plaintiff No.1 has filed the application. Thus the plaintiffs have shown prima facie case and balance of convenience is in favor of plaintiffs. If the application is allowed no loss will be caused to other side. If the application is not allowed the plaintiffs will be put to irreparable loss and legal injury. On these allegations the plaintiffs have filed the application seeking to allow the application by granting a relief of temporary injunction.

3. *On the other hand the defendants have filed written statement admitting the relationship and stated that the allegations made in the plaint para No.3 to 12 are denied as false but taken as specific contention that the plaintiffs, defendants and their forefathers belongs to Hindu Religion and the plaintiffs and defendants are undivided members of Hindu Joint Family. The A schedule property mentioned in the counter claim is ancestral and joint family properties of plaintiffs and defendants. The B schedule property mentioned in the counter claim is the self acquired property of defendant No.1 and her husband as the said property was*

purchased from Sharadamma W/o Shivamurthaiah under the registered sale deed dated 15.05.1984 for valuable consideration of Rs.10,000/- and they are the lawful owners of the said property and after the death of husband of defendant No.1, the defendant No.1 and her son are in possession and occupation over the same. Further contended that the unregistered partition deed is concocted, created and fabricated by the plaintiffs with an intention to knock of the counter claim B schedule property from the hands of defendants and as such the alleged unregistered partition deed is liable to be cancelled. Thus the defendants are legitimate co-parceners share to the extent of 1/3rd in the counter claim A schedule properties. But the plaintiffs filed this false suit with an intention to knock of the counter claim B schedule property. On these contentions sought for dismissal of the suit.

4. *Heard arguments on application.*

5. *The points that arise for my consideration is as follows:-*

Point No.1 Whether the plaintiffs have made out prima facie case against the defendants?

Point No.2 In whose favour the balance of convenience lies?

Point No.3 Who will be put to irreparable loss and legal injury?

Point No.4 What order?

6. My findings on the above points are as follows:-

Point No.1 : In the Affirmative

Point No.2 : In favour of plaintiffs

Point No.3 : In favour of plaintiffs

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

REASONS

7. **Point No.1:** The plaintiffs have filed the application seeking for an order of temporary injunction restraining the defendant No.1 from alienating the application schedule property by stating that the plaintiffs have filed the suit for the relief of declaration and permanent injunction and now it is learnt that the defendant No.1 is trying to alienate the application schedule property and if the same is attempted then the plaintiffs may suffer and sought for allowing the application. On the other hand the defendants have taken a specific contention that the application schedule property was purchased by the defendant No.1 and her husband from Sharadamma under the registered sale deed dated 15.05.1984 and

as such it is their self acquired property and the plaintiffs are not having any right over the said property and sought for dismissal of the application.

8. *As the plaintiff No.1 has filed the application seeking for an order of temporary injunction, the plaintiffs have to show prima-facie case against the defendants. The counsel for the plaintiffs has produced the unregistered the partition deed dated 17.03.1996, xerox copy of registered sale deed dated 15.05.1984, six RTCs, office copy of legal notice, two postal receipts, acknowledgments, xerox copy Encumbrance certificate in respective of application schedule property and xerox copy of registered sale deed dated 09.01.1991 to show that the property bearing Sy.No.80/1 measuring 10 acres was purchased in the name of defendant No.1 and her husband. The counsel for defendants have produced certified copy of order passed by Assistant Commissioner in RA No.134/2005-06, Certified copy of Order passed in RRT-CR No.9/2010-11 passed by Tahasildar, Chitradurga and xerox copy of sale deed dated 15.05.1984. The counsel for plaintiff has argued that it is learnt that the defendants are trying to alienate the application schedule property. But the counsel for defendants have argued that the defendant No.1 and*

her husband purchased the application schedule property and they are the owners of the same and the plaintiffs are not having any right in or over the application schedule property and even in order to substantiate their case they have relied upon the sale deed to show that they have purchased the property. No doubt as per defendants the application schedule property may be purchased by defendant No.1 and her husband and it is their self acquired property but as the suit is filed and as the defendants have filed counter claim and sought a relief to declare the application schedule property as their self acquired property and as the issue No.6 is also framed placing burden upon the defendants to prove as to whether the application schedule property is their self acquired property or not. Under these circumstances at this stage in view of filing counter claim seeking to declare the B schedule property as self acquired property of defendants, in view of pleadings at this stage if the temporary injunction is granted then no loss will be caused to anyone and if the temporary injunction is not granted and if the defendants tries to alienate the property during the pendency of the suit by stating that they are the owners of the property as it is their self acquired property then loss will be caused to plaintiffs and even multiplicity of

*proceedings may occurs and as such in order to avoid from the multiplicity of proceedings if an order of temporary injunction with respect to alienation of the suit schedule property is granted then no loss will be caused to other side. Thus at this stage the plaintiffs have made out prima-facie case against the defendants and the arguments canvassed by the counsel for the plaintiffs is acceptable and in view of above discussion, I answer this point in the **Affirmative**.*

9. Point No.2 and 3 : *In view of above discussion, as the plaintiffs have made out prima-facie case against the defendants, the balance of convenience lies in favour of plaintiffs and if the order of temporary injunction is not granted then the plaintiffs will be put to heavy irreparable loss and legal injury. Hence I answer these two points in the **Affirmative**.*

10. Point No.4: *In view of above discussion, I proceed to pass the following:*

ORDER

**The application i.e.,
IA.No.1 filed by the plaintiffs
under Order 39 Rule 1 and 2 of
CPC is hereby allowed.**

The defendants are hereby restrained from alienating the application schedule property till disposal of the suit.

No order as to costs.

*(Dictated to the Stenographer directly on computer, computerized by her, corrected by me and then pronounced in the open Court to this day on **15th day of September, 2023**)*

**(Chaitra A.M)
I Addl. Senior Civil Judge,
Chitradurga.**