

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC AT
HIRIYUR**

Dated on this 28th day of February 2023

**Present: SRI MOHAMMED MOINUDDIN,
B.A., LL.B., (Spl.)**

**Senior Civil Judge & JMFC,
Hiriyur**

OS No.3/2014

PARTIES TO I.A.NO.18

Applicant : Smt. Byamma

Vs.

Opponents: Smt. Siddamma & others

**ORDERS ON I.A.No.18 FILED BY THE PLAINTIFF U/O.
XXXIX RULE 1 & 2 R/W SEC. 151 OF CPC**

The plaintiff has filed this application to pass temporary injunction order against the defendants No.2 and 3 to restraining them from causing obstruction to the peaceful possession and enjoyment of plaintiff over suit schedule property till disposal of the suit.

2. The plaintiff has submitted that, after passing of order by this court on IA No.1 dated 07.09.2017 the defendant No.2 & 3 in collusion with each other has been making efforts to disturb the joint and constructive possession of plaintiff over suit

property with mala fide intention. Hence the plaintiff has prayed to allow the application.

3. The defendants No.2 & 3 have filed objections stating that, the suit schedule properties as per partition deed dated 10.06.1959 has been allotted towards the share of father of defendant No.2. The father of defendant No.2 was in exclusive possession and enjoyment of his property till his death, after his demise the defendant No.2 & 3 are in exclusive possession and enjoyment of the suit properties. But the plaintiff by suppressing all these facts has filed this frivolous suit and instant application also. There exists no prima facie case for grant of temporary injunction order if the application is allowed then they will be put to great loss. As such they have prayed to dismiss the application with heavy cost.

4. The following points arise for determination:

1. Whether the plaintiff has made out prima facie case for issue of temporary injunction order?
2. In whose favour the balance of convenience lies?
3. Who will be put to irreparable loss or injury?
4. What order?

5. I have heard the learned advocates and perused the available materials. My finding to the above points is as under:

Point No.1 : Negative

Point No.2 & 3 : Do not survive for consideration

Point No.4 : The IA No.18 is rejected

for the following:

REASONS

6. **Point No.1:-**The instant suit is filed for partition and separate possession against the defendants stating that, the plaintiff is entitled for $\frac{1}{2}$ share in suit schedule property. The records suggest that, this court by order dated 07.09.2017 has already directed the defendants not to put up any construction over the suit schedule property till disposal of the suit. The case was set down for arguments but the plaintiff after completion of evidence from both sides instead of addressing arguments has filed this application stating that, the defendant have interfered with her joint possession over the suit property.

7. The suit schedule is consisting of a land bearing Sy.No.8/3 measuring 2 acres 7 gunta situated at Doddaghatta village. The court has to adjudicate the claim of the plaintiff whether she is

really entitled for $\frac{1}{2}$ share in schedule property. No doubt she has pleaded that, she is in joint and constructive possession of suit schedule property, but the fact of the matter is that, till conclusion of the trial, in a suit of this nature, no one can definitely said he or she is in exclusive possession of particular property. It is well settled law that, in a suit for partition and separate possession all sharers prima facie deemed to be in joint and constructive possession and enjoyment of every inch of the land.

8. The plaintiff has not produced any iota of evidence to show her exclusive possession over the suit property when she is claiming to be in joint possession of the suit property then the question of granting temporary injunction order against the defendants No.2 and 3 does not arise because such an order will adversely affects the interest of the defendants. Under such circumstances no prohibitory temporary injunction order can be issued against the defendants who are her siblings. Therefore, I am of the opinion that, the plaintiff has failed to make out prima facie case for grant of temporary injunction order. As such I answer the above point in negative.

9. **Point No.2 & 3:** It is well settled law that, if there is no prima facie case then the court need not discuss the other two cardinal principles of temporary injunction i.e., the balance of convenience and comparative hardship. Accordingly I hold that these two points do not survive for consideration.

10. **Point No.4:-**For the discussion made above I proceed to pass the following;

ORDER

The IA No.18 filed by the plaintiff
U/O.XXXIX rule 1 & 2 of CPC is rejected.

I direct the parties to bear their own
cost.

(Dictated directly to the steno, he typed on lap top, corrected by me and then pronounced in the open court on this the 28th day of February 2023)

(MOHAMMED MOINUDDIN)
Senior Civil Judge & JMFC,
Hiriyur