

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

Dated on this 09th day of February 2024

**Present: SRI MOHAMMED MOINUDDIN,
B.A., LL.B., (Spl.)
Senior Civil Judge & JMFC,
Hiriyur
OS No.114/2023**

PARTIES TO I.A.NO.I

**Applicant : Kum. M. Meghana and another
Rep. By their guardian H.K Devika**

[Rep. By Smt. M.M Advocate]

Vs.

Opponents: H.M Shivalingamurthy & others

[D.1 to 6 Rep. By Sri.SJ

D.7 is Rep. By Sri.CM Advocates]

PARTIES TO I.A.NO.III

Applicant : H.M Shivalingamurthy

[D.1 to 6 Rep. By Sri.SJ

D.7 is Rep. By Sri.CM Advocates]

Vs.

**Opponents: Kum. M. Meghana and another
Rep. By their guardian H.K Devika**

[Rep. By Smt. M.M Advocate]

COMMON ORDERS ON I.A.No.1 & 3

The plaintiffs have filed IA No.I U/O XXXIX Rule 1 & 2 of
CPC thereby prayed to issue temporary injunction order against

defendants restraining them from alienating the suit schedule property in any manner in favor of anybody till disposal of the suit. The defendants have filed IA NO.III U/S 151 of CPC to permit them to divide the suit schedule item No.2, 4, 7 and 8 between them in the interest of justice.

2. The plaintiffs are minors and they are represented by their mother Smt. Devika and said guardian has sworn to the effect that, the defendant No.1 is natural father of defendant No.2 to 6, the defendant No.2 is his daughter, plaintiff No.1 and 2 are children of defendant No.3 all of them constituted Hindu Undivided Family in short HUF and they are governed by Hindu Mitakshara school of law.

3. She further submitted that, her marriage with defendant No.3 was solemnized on 07.05.2008 and out of their happy wedlock plaintiffs were born to her. But the defendant No.3 did not take care of either plaintiffs or their mother. As such she has filed a case in Cril.Mis.No.35/2023 before the learned PCJ, Hiriya under the provisions of Protection of Women from Domestic Violence Act. The suit schedule properties are the ancestral and joint family assets of plaintiffs and defendant No.1 to 6 and they are having equal rights since they are in joint and constructive

possession of the same. But the defendant No.1 to 6 in collusion with each other to defeat the rights of minor plaintiffs have illegally sold the suit item No.6 property to defendant No.7 through a registered sale deed dated:08.12.2021, but said sale deed is not binding on rights of the plaintiffs.

4. Since the defendants have refused to give share of minor plaintiffs, at the same time they are alienating the family property to third person if they continued in doing so the plaintiffs will be put to great loss and untold hardship which cannot be compensated in terms of money. Thereby they have argued that, prima facie case exists in their favor the balance of convenience lies in their and comparative hardship is more to them. Hence, they have prayed to allow the application in the interest of justice.

5. The defendants by filing a memo have adopted written statement averments as objections to this application. The gist of it as under:

6. The defendant No.1 to 6 have admitted relationship with plaintiffs and their guardian besides, they have admitted that, the suit schedule properties are ancestral properties of parties to the suit. But they have denied the allegations of cruelty and neglect by defendant No.3 to his wife and children.

Since the wife of defendant No.3 after leaving his company in order to give trouble to him has filed a maintenance petition before the learned PCJ and JMFC, Hiriya and has taken several adverse orders against the defendants.

7. The defendants have further submitted that, the plaintiffs are not entitled for any share, since they are the children of defendant No.3 if at all they have got any right that is only in share of their father. As such they have submitted that, the plaintiffs have no cause of action to file the suit and they are not entitled for any relief thereby prayed to reject the application.

8. Further the defendants by filing IA No.III have sought permission to divide the suit item No.2, 4, 7 and 8 properties i.e., application schedule properties, since it is convenient for them to divide since it is practically not possible for them to cultivate jointly. Hence, the defendants have prayed to allow the application.

9. The plaintiffs have filed objections stating that, the application is not maintainable either in law or on facts. They have submitted that, this court has granted ex-parte temporary injunction order and the same is operating against them as such they have no right to deal with application schedule properties.

However, the defendants behind the back of plaintiffs illegally got divided the suit item No.2, 4, 7 and 8 under registered partition deed dated: 12.07.2022 but said partition is not binding on plaintiffs. The acts of the defendants cannot be regularized since during pendency of suit they have no rights to deal with any of the suit schedule properties. As such the plaintiffs have prayed to dismiss the application with cost.

10. 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 in hardship?
4. Whether the defendants satisfied that, the IA.No.3 deserved to be allowed.
5. What order?

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

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|----------------|---|---|
| Point No.1 | : | Affirmative |
| Point No.2 & 3 | : | In favour of the plaintiffs |
| Point No.4 | : | Negative |
| Point No.5 | : | The IA No.1 is allowed and IA.No.3 is rejected for the following: |

REASONS

12. Point No.1 to 4:- As mentioned above there is no dispute regarding relationship between the plaintiff and defendants, since, the plaintiffs are minor daughters of defendant No.3 who is the son of defendant No.1 and 2, the defendant No.4 to 6 are his siblings and children of defendant No.1 and 2, the defendant No.7 is purchaser of suit item No.6 property. On perusal of the sale deed it appears that, the defendant No.1 to 6 have sold out item No.6 property to defendant No.7 on 08.12.2021.

13. Of course, the suit has been filed after execution of said sale deed, but the fact of the matter is that, the defendant No.3 and his wife are living separately and it has much effected on plaintiffs also. The plaintiffs being children of defendant No.3 and he being the son of defendant No.1 and 2 he is manager in the family of plaintiffs. When the defendants have admitted that, the suit properties are all the ancestral properties then why they did not think of consulting the guardian of minors because by that time the husband and wife already separated from each other. Since the sale deed has been executed without permission of the guardian of minor plaintiffs as such it cannot be now considered as a valid document till conclusion of trial.

14. It is most relevant to mention here that, the defendant No.1 to 6 have executed registered partition deed between themselves on 04.07.2023 and said transaction has been done by them among themselves without caring to the court order and also the rights of minor plaintiffs. Further the defendants adamantly filed an application seeking permission to divide the properties item No.2, 4, 7 and 8. The conduct of the defendants No.1 to 6 is not proper condemnable because after dividing the properties they have filed an application.

15. Be that as it may the records prima facie suggest that, the plaintiffs are having rights over the suit schedule properties and till adjudication of their rights it is just and proper to keep the schedule properties intact. It is the duty of the court to see that, they are available at the conclusion of trial. Already the defendants have alienated one of the plaint schedule property to defendant No.7 besides they have divided the remaining properties under registered document therefore it can be inferred that, they are in hurry to alienate the suit properties to defeat the valuable rights of minor plaintiffs.

16. Since the suit schedule properties based on inheritance, partition deed and sale deed are standing in names of defendants

if they alienated the same to the strangers then it will lead to multiplicity of proceedings which is unwarranted and should be avoided. Hence, for the discussion made above I am of the opinion that, the plaintiffs have made out prima facie case for grant of temporary injunction order against the defendants. Further the records suggest that, the scale of balance of convenience tilt towards the plaintiffs and comparative hardship is more to them.

17. As regard IA NO.III is concerned as mentioned above this court has already passed interim injunction order against the defendants restraining them from alienating the suit schedule properties in any manner yet they have dealt with them by means of registered partition deed between themselves in respect of suit item No.2, 4, 7 and 8. But their acts cannot be justified or ratified since they will adversely affects the interest of minor plaintiffs over the suit properties. As such the application filed by them at IA NO.III is liable to be rejected which is against to the spirit of inherent powers of the civil court.

18. Thus for the discussion made above I answer the point No.1 in affirmative, point No,2 and 3 in favor of plaintiffs and point No.4 in Negative.

19. Point No.5:-For the discussion made above I proceed to pass the following;

O R D E R

The I.A. No.1 filed by the plaintiffs
U/O. XXXIX Rule 1 and 2 of CPC is allowed.

Consequently, the defendant No.1 to 7
and all persons claiming through them is
hereby restrained by order of temporary
injunction from alienating the suit schedule
properties in any manner in favour of
anybody till disposal of suit.

The IA.No.3 filed by the defendants
U.Sec.151 of CPC is rejected.

No order as to cost.

(Dictated directly to the steno, she typed on lap top, corrected by me and then pronounced in the open court on this the 09th day of February 2024)

(MOHAMMED MOINUDDIN)
Senior Civil Judge & JMFC,
Hiriyur.