

**IN THE COURT OF THE PRL CIVIL JUDGE & JUDICIAL  
MAGISTRATE FIRST CLASS AT HIRIYUR**

Present: - Smt. Shilpa G. Timmapur,  
(B.A. LL.B (HONS) LL.M.)  
Prl. Civil Judge & JMFC.,  
Hiriyur, Chitradurga

**Dated:** - This the 21<sup>st</sup> day of June, 2024

**Original Suit No.306/2023**

**PLAINTIFF:-** Smt. Sharadamma and others

**-Versus-**

**DEFENDANTS:-** Smt. Channabasamma and others

**PARTIES TO I.A. No.I**

**Applicant/Plaintiff No.2 :** H.B. Thippeswamy

**V/S**

**Opponents/Defendants :** Smt. Channabasamma  
and others

**ORDER ON I.A. No.I**

The plaintiff No.2 has filed the present I.A No.I, U/O 39 Rule 1 and 2 of C.P.C., praying this court to grant an Ad-interim temporary Injunction against the defendants, in the interest of justice and equity.

**2)** After appearance of defendants, the defendant No.1, 2, 5 and 6 have filed objections to I.A No.I and contend that the

application filed by the plaintiff is not maintainable in law or on facts. Hence, he prayed to reject the I.A. No.I with cost, in the interest of justice and equity.

**3)** Heard both the counsels on I.A. No.I. Perused the I.A. No.I objections and records available before this Court.

**4)** The following points arise for consideration of this Court:-

- 1) Whether the plaintiffs have made out a prima-facie case?
- 2) Whether the plaintiffs have balance of convenience in their favour?
- 3) Whether irreparable loss or injury would be caused to the plaintiffs, if temporary injunction is not granted?
- 4) What order?

**5)** The findings of this Court to the above points are as under:-

Point No.1: In the Negative,

Point No.2: In the Negative,

Point No.3: In the Negative,

Point No.4: As per the final order,

for the following:-

### **REASONS**

**6) Point No.1 to 3 :-** Since these points are interconnected to each other to avoid repetition of facts and reasons they have

been taken together for common discussion and consideration.

**7)** The plaintiff has filed this suit for the relief of Redemption of Registered Mortgage deed executed by them in favour of defendants. Along with the suit plaintiff has filed I.A. No.I. In the affidavit accompanying the I.A. No.I, the plaintiff No.2 states that, her father by name T.C. Basappa, plaintiff No.3 and herself have executed a Mortgage Deed Dtd.27.10.2005 in favour of the husband of defendant No.1 and father of defendant No.2 to 6 namely T.U. Shivanna S/o. Channappa. The Mortgage Deed was executed for a sum of Rs.1,00,000/- by the plaintiffs.

**8)** In the Mortgage Deed the plaintiffs have kept the suit schedule property as security for the loan amount. It was further agreed that, the loan amount shall be paid within 10 years with 2% interest per month. Now, the plaintiffs have paid the principle amount with interest to the defendants and they have to pay Rs.21,000/- remaining balance to the defendants. The defendants are not ready to receive the balance amount and refused for redemption of Mortgage Deed. Hence, the plaintiffs have filed the suit along with application.

**9)** The defendant No.1, 2, 5 and 6 in their objections denies the contents of affidavit and states that, plaintiffs have no prima-facie case. If the T.I., is granted the defendants will be put to great hardship. The plaintiffs without fulfilling the conditions of

the Mortgage Deed have approached this court for redemption of Mortgage Deed. Hence, prays to dismiss the application.

**10)** Along with the suit plaintiff has produced copy of Mortgage Deed, Tax paid receipt, R.T.C., Extract, Mutation Extract and Photographs. On the other hand at this stage defendants have not produced any documents. A Perusal of contents of Mortgage Deed it can be seen that, possession of the suit schedule property has not been delivered to the defendants. Further, a perusal of entire plaint averments and contents of affidavit it can be seen that, there is no single averment about the interference caused by the defendants to he plaintiffs peaceful possession.

**11)** It is no doubt true that, at this stage plaintiffs are in possession of the suit schedule property as per documents available on record. But, what is the interference caused by the defendants has not been brought before this court. A prima-facie case has been made out by the plaintiffs. But, balance of convenience does not lies in favour fo the plaintiffs. If the T.I., is not granted what is the loss cause to the plaintiffs has not been explained before this court. Without a single line about the interference by the defendants and apprehension of interference it is not proper to grant an order of injunction. Hence, this court is of the opinion that, the plaintiffs are not having a prima-facie case in their favour. Hence, the point No.1 to 3 are answered in the "Negative".

**12) Point No.4**:- In view of the above reasons stated and findings to the point No.1 to 3, this court proceed to pass the following:

**ORDER**

The I.A. No.I, filed U/O 39 Rule 1 and 2 of C.P.C, by the plaintiffs is hereby rejected on cost of **Rs.200/-**.

Any observations made above are only with respect to the disposal of this application.

(Directly dictated to Typist in the open court and is corrected and then signed by me and pronounced in open court on this 21<sup>st</sup> day of June, 2024)

Smt. Shilpa G. Timmapur,  
Prl. Civil Judge & J.M.F.C.,  
Hiriyur.