

KACD420004342023



IN THE COURT OF THE PRL. CIVIL JUDGE

AT HOLALKERE

Present: Sri.UMESHA, M.P., B.A.L., LL.B.
PRL. CIVIL JUDGE & JMFC,
HOLALKERE

DATED: ON THIS THE 01st DAY OF AUGUST - 2023

ORIGINAL SUIT No. 111 / 2023

PLAINTIFF:

SMT.A.LAKSHMI W/o M.Deepak,
Aged about 31years, Occ:House maker,
R/o Ganapathi Temple Road,
Holalkere Town, Chitradurga District.
(BY PLEADER SRI.S.C.R)

-V/s-

DEFENDANTS:

1. **R. MANJUNATHA** S/o Ramappa,
Aged about 60 years,
Occ: LIC Main Advisor & Land lord.
2. **SMT. SAROJA** W/o R.Manjunatha,
Aged about 55 years, Occ:Housewife,
3. **SMT. M. DIVYASHREE** W/o Chandrashekar,
Aged about 32 years,
Occ:Owner of Jeevan Bangle Store.
4. **T.CHANDRASHEKAR** S/o Thippeswamy,
Aged about 38 years,
Occ:Leader of JDS Party,
5. **M.DEEPAK** S/o R.Manjunatha,
Occ:LIC Agent & Land lord,
The Defendant No.1 to 5 are R/o Kallihalu Village,
Bhadravathi Taluk, Shimoga District.

6. **RAJU** S/o Late.Girithimmappa,
Aged about 50 years,Occ:Owner of
Raviraj Hair Dresses.
7. **SMT. RUKMINI** W/o Raju,
Aged about 48 years, Occ:Housewife,
The Defendant No.6 &7 are
R/o Ganapathi Temple Raod,
Holalkere Town.
(BY PLEADER SRI.KNS FOR DEFENDANTS)

PARTIES TO I. A. NO. I

APPLICANT/ PLAINTIFF: **SMT.A.LAKSHMI** W/o M.Deepak,
Aged about 31 years, Occ:House maker,
R/o Ganapathi Temple Road,
Holalkere Town, Chitradurga District.
(BY PLEADER SRI.S.C.R)

-V/s-

- OPPONENTS/DEFENDANTS:**
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Aged about 60 years,
Occ: LIC Main Advisor & Land lord.
 2. **SMT. SAROJA** W/o R.Manjunatha,
Aged about 55 years, Occ:Housewife,
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Occ:Owner of Jeevan Bangle Store.
 4. **T.CHANDRASHEKAR** S/o Thippeswamy,
Aged about 38 years,
Occ:Leader of JDS Party,
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The Defendant No.1 to 5 are R/o Kallihalu Village,
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 6. **RAJU** S/o Late.Girithimmappa,
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Raviraj Hair Dresses.
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The Defendant No.6 &7 are
R/o Ganapthi Temple Raod,
Holalkere Town.

(BY PLEADER SRI.KNS FOR DEFENDANTS)

ORDERS ON I. A. NO. I

The Applicant / plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 R/w Sec.151 of Civil Procedure Code praying to grant temporary injunction restraining the defendant No.5 from performing the 2nd marriage with any other lady/woman, till the pending disposal of the suit.

2. According to plaintiff, she is the legally wedded wife of the defendant No.5. It is further stated that, the marriage of the plaintiff with the defendant No.5 was solemnized on 13.12.2017 at Basaveswara Sabha Bhavana, Siddarood Nagara, Bhadravathi, Shimoga District, in the presence of well wishers, elders, relatives grandly as per the terms and customs prevailed in their community. It is further stated that, after her marriage with the defendant No.5, she went to the house of the defendant No.5 to lead happy marital life. It is further stated that, the defendants started to give mental and physical harassment to the plaintiff. It is further stated that, the defendants have forced her to give consent to celebrate the another marriage to the defendant No.5. It is further stated that, the plaintiff had filed a petition U/Sec.9 of Hindu Marriage Act, against the defendant No.5 before the Hon'ble Senior Civil Judge, Holalkere which is pending for consideration. It is further stated that, during the subsistence of the first marriage with her, the defendant No.5 with the support of the other defendants are colluded with

each other made hectic efforts to contract to 2nd marriage to the defendant with another lady. It is further stated that, the plaintiff has issued the legal notice to the defendants in this regard. So it is just and necessary to restrain the defendant No.5 from performing the 2nd marriage with any other lady/woman in any manner till the rights of the parties to the suit is to be adjudicated. If the defendant No.5 is succeeding in his act, the plaintiff will put into great loss and injustice. Hence prayed to allow the application.

3. Per contra, the defendant has opposed the same by filing objections to IA No.1 by denying the entire plaint averments. It is admitted by the defendants that, the plaintiff and defendant No.5 are the wife and husband. It is further admitted by the defendants that, the marriage was solemnized on 13.12.2017 at Basaveshwar Saba Bhavan, Bhadravathi. It is further contended that, due their wedlock, the plaintiff had pregnant and she went to Holalkere on 17.06.2021. It is further contended that, she had neglected the defendants and also the defendant No.5. It is further contended that, the plaintiff had filed a M.C.No.4/2023 before the Senior Civil Judge at Holalkere. It is further contended that, the plaintiff had narrated false allegation against the defendant No.5. It is further contended that, the fact stated in M.C.No.4/2023 and also facts stated in the above case are totally different. It is further contended that, the defendant No.5 is not trying to marriage with other lady till today except the plaintiff. It is further contended that, the plaintiff has illegally filed this suit without any basis. It is further contended that, there is no cause of action

for the suit. It is further contended that, the defendant No.1 and 4, 6 and 7 are not necessary parties to the suit. It is further contended that, the defendants are not making hectic efforts to second marriage to the defendant No.5. It is further contended that, the suit filed by the plaintiff is baseless and also not maintainable in law. It is further contended that, the plaintiff is not entitled any relief from this Hon'ble court. Hence, prayed to dismiss the suit of the plaintiff with exemplary cost, in the interest of justice.

4. I have heard the arguments of learned counsel for the plaintiff and defendants on IA No.I. Perused the documents on record.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arise for my consideration:

1. ***Whether the plaintiff has established prima-facie case?***
2. ***Whether the balance of convenience lies in favour of plaintiff?***
3. ***Whether irreparable loss or hardship will be caused to the plaintiff if injunction is not granted?***
5. ***What order?***

6. My answer for the above points are as under because of my below-discussed reasons:

Point No.1 - In the AFFIRMATIVE.

Point No.2 - In the AFFIRMATIVE.

Point No.3 - In the AFFIRMATIVE.

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

REASONS

POINT NO.1:

7. The plaintiff has filed the suit against the defendants seeking relief of Perpetual injunction. The plaintiff has filed this present application seeking restraining the defendant No.5 from performing the 2nd marriage with any other lady/woman.

8. The Applicant / plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 R/w Sec.151 of Civil Procedure Code praying to grant temporary injunction restraining the defendant No.5 from performing the 2nd marriage with any other lady/woman, till the pending disposal of the suit.

9. As per the provisions of Order 39 Rule 1 of CPC, where in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

10. Admittedly, granting or refusing injunction is a discretionary in nature. It is well settled position of law that the following preposition are to be established in order to invoke the jurisdiction of the Court to get an order of injunction under the provisions of Order 39 Rule 1 and 2 of CPC. (1) the plaintiff has to establish the prima-facie case, (2) the balance of inconvenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable loss and injury if injunction is refused.

11. Therefore the ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima-facie case in favour of the party seeking order. It is no part of Court's duty or function at this stage of litigation to try to resolve difficult questions of facts and law which require elaborate evaluation of the evidence to be recorded at the trial. Now keeping the above said provisions of law and also principles in mind, let us consider as to whether the plaintiff could able to establish prima-facie case for grant of temporary injunction.

12. It is specific case of the plaintiff that, she is the legally wedded wife of the defendant No.5. It is further stated that, the marriage of the plaintiff with the defendant No.5 was solemnized on 13.12.2017 at Basaveswara Sabha Bhavana, Siddarood Nagara, Bhadravathi, Shimoga District, in the presence of well wishers, elders, relatives grandly as per the terms and customs

prevailed in their community. It is further stated that, after her marriage with the defendant No.5, she went to the house of the defendant No.5 to lead happy marital life. It is further stated that, the defendants started to give mental and physical harassment to the plaintiff. It is further stated that, the defendants have forced her to give consent to celebrate the another marriage to the defendant No.5. It is further stated that, the plaintiff had filed a petition U/Sec.9 of Hindu Marriage Act, against the defendant No.5 before the Hon'ble Senior Civil Judge, Holalkere which is pending for consideration. It is further stated that, during the subsistence of the first marriage with her, the defendant No.5 with the support of the other defendants are colluded with each other made hectic efforts to contract to 2nd marriage to the defendant with another lady. It is further stated that, the plaintiff has issued the legal notice to the defendants in this regard. So it is just and necessary to restrain the defendant No.5 from from performing the 2nd marriage with any other lady/woman in any manner till the rights of the parties to the suit is to be adjudicated. If the defendant No.5 is succeeding in his act, the plaintiff will put into great loss and injustice. It is stated that if the present interim application is not allowed, the plaintiff will be put to heavy loss. On the other hand, if the application is allowed, no harm or inconvenience will be caused to the other side. Therefore, prayed to allow the present interim application and grant temporary injunction as prayed.

13. In the supporting affidavit, the plaintiff sworn to an affidavit that, she is the legally wedded wife of the defendant No.5. It is further stated that, the marriage of the plaintiff with the defendant No.5 was solemnized on 13.12.2017 at Basaveswara Sabha Bhavana, Siddarood Nagara, Bhadravathi, Shimoga District, in the presence of well wishers, elders, relatives grandly as per the terms and customs prevailed in their community. It is further stated that, after her marriage with the defendant No.5, she went to the house of the defendant No.5 to lead happy marital life. It is further stated that, the defendants started to give mental and physical harassment to the plaintiff. It is further stated that, the defendants have forced her to give consent to celebrate the another marriage to the defendant No.5. It is further stated that, the plaintiff had filed a petition U/Sec.9 of Hindu Marriage Act, against the defendant No.5 before the Hon'ble Senior Civil Judge, Holalkere which is pending for consideration. It is further stated that, during the subsistence of the first marriage with her, the defendant No.5 with the support of the other defendants are colluded with each other made hectic efforts to contract to 2nd marriage to the defendant with another lady. It is further stated that, the plaintiff has issued the legal notice to the defendants in this regard. So it is just and necessary to restrain the defendant No.5 from performing the 2nd marriage with any other lady/woman in any manner till the rights of the parties to the suit is to be adjudicated. If the defendant No.5 is succeeding in his act, the plaintiff will put into great loss and injustice. It is stated that if the

present interim application is not allowed, the plaintiff will be put to heavy loss. If the application is allowed no injury would cause to the other side, if application is not allowed they would put to untold hardship. She has made prima-facie case and balance of convenience lies in her favour.

14. The Plaintiff has placed the her marriage photographs, certified copy of the order sheet in M.C.No.4/2023 on the file of the Hon'ble Senior Civil Judge and JMFC at Holalkere, along with petition filed by the plaintiff against the defendant No.5U/Sec.9 of H.M. Act, copy of Legal notice dated 02.03.2023, Postal receipt along with courier receipt, RPAD covers and courier, copy of Legal notice issued to the defendant No.6 &7 dated: 13.03.2023, RPAD covers.

15. It is specific case of the defendants that, it is admitted by the defendants that, the plaintiff and defendant No.5 are the wife and husband. It is further admitted by the defendants that, the marriage was solemnized on 13.12.2017 at Basaveshwar Saba Bhavan, Bhadravathi. It is further contended that, due their wedlock, the plaintiff had pregnant and she went to Holalkere on 17.06.2021. It is further contended that, she had neglected the defendants and also the defendant No.5. It is further contended that, the plaintiff had filed a M.C.No.4/2023 before the Senior Civil Judge at Holalkere. It is further contended that, the plaintiff had narrated false allegation against the defendant No.5. It is further contended that, the fact stated in M.C.No.4/2023 and also facts stated in the above case are totally different. It is further contended that,

the defendant No.5 is not trying to marriage with other lady till today except the plaintiff. It is further contended that, the plaintiff has illegally filed this suit without any basis. It is further contended that, there is no cause of action for the suit. It is further contended that, the defendant No.1 and 4, 6 and 7 are not necessary parties to the suit. It is further contended that, the defendants are not making hectic efforts to second marriage to the defendant No.5. It is further contended that, the suit filed by the plaintiff is baseless and also not maintainable in law. It is further contended that, the plaintiff is not entitled any relief from this Hon'ble court. On these grounds, the defendants prayed to dismiss the IA No.1 with costs.

16. Admittedly, the plaintiff is the legally wedded wife of the defendant No.5.

17. Admittedly, the marriage of the plaintiff with the defendant No.5 was solemnized on 13.12.2017 at Basaveswara Sabha Bhavana, Siddarood Nagara, Bhadravathi, Shimoga District, in the presence of well wishers, elders, relatives grandly as per the terms and customs prevailed in their community.

18. ***In this connection it is relevant to extract the provisions of Sec.41 of Specific Relief Act, 1963 – Injunction when refused:-***

“An injunction cannot be granted:-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not sub-ordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.

- (i) when the conduct of the plaintiff or his agent has been such as to dis-entitle him to be the assistance of the Court;
- (j) when the plaintiff has no personal interest in the matter.

19. It is to be noted that, the right of parties to the suit is to be decided after conclusion of trial. If during pendency of suit, the defendant No.5 enters contract of 2nd marriage with any lady that will leads to un-necessary complications and multiplicity of suit. By considering the relationship of the plaintiff and defendant No.5. Hence it is shown that, balance of convenience lies in favour of plaintiff. Taking in consideration of nature of suit and rights of parties to be decided in present suit, if ad-interim temporary injunction as prayed for not granted, the plaintiff will be put to hardship and injury. On the other hand no hardship or injury would be caused to defendants if temporary injunction as prayed for is granted. The plaint averments, affidavit annexed to I.A No. 1 is very much consistent and inconformity with documents placed on record. There are no reasons to disbelieve or to doubt the documents produced by the plaintiff at this stage of litigation. Therefore based on these documents, it can be safely held that, the plaintiff has got prima-facie case for grant of temporary injunction. Hence I answer point No.1 in the affirmative.

POINTS NO. 2 & 3:

20. These two points are taken up together for common discussion, for the sake of convenience, clarity and also to avoid repetition of facts. In

considering the question of balance of convenience, the Court has to consider the comparative mischief or inconvenience of both the parties or otherwise it is necessary or proper to maintain the status quo until the disputes are finally decided. Further, in considering the question of irreparable loss and injury, the Court has to see that the plaintiff will sustain such injury which cannot possibly and adequately be remedied by way of damage and the damage would be inadequate in case of success of plaintiff.

21. Whether the plaintiff has got right or not is a matter of trial. Under these circumstance, the balance of convenience is lies in favour of the plaintiff and not in favour of the defendants. Under these circumstance, there is every likely would of causing injury to the plaintiff. In weighing the risk of injustice which granting or refusing injunction would entitled there appearance to me that there is justification in granting order of temporary injunction now sought by the plaintiff. Therefore if the injunction is refused, it is who the plaintiff would be put to irreparable loss and injury and not the defendants. Therefore for the reasons discussed above, this Court is of the considered view that, the balance of convenience also lies in favour of the plaintiff and irreparable loss and injury would be caused to plaintiff if a temporary injunction is refused. Hence I answer points No.2 and 3 in the affirmative.

POINT NO. 4

22. In view of my findings on Points No.1 to 3, I proceed to pass the following order:

ORDER

I.A.No.1 filed by the plaintiff under order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant No.5 is hereby restrained by way of temporary injunction from entering contract to 2nd marriage with any girl / lady/woman, during the subsistence of his first marriage with the plaintiff, in any manner till disposal of the suit.

The cost of this application shall follow the result of the suit.

(Directly dictated to Stenographer on computer, typed by her, corrected by me, signed and then pronounced in open court on the 01st day of AUGUST -2023)

(UMESHA M.P)
Prl.Civil Judge,
Holalkere

