

KACD420019202024



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 02nd DAY OF DECEMBER - 2024

ORIGINAL SUIT No. 329 / 2024

PLAINTIFFS :

1. **ASHWATH KUMAR K.M** S/o Late. Manachari,
Aged about 56 years, Occ: Head Master,
R/o Dummi Village
Now residing at Nittuvalli Extn, Davanagere.
2. **PRABHAKAR D** S/o Devendrachari,
Aged about 45 years, Occ: Business,
3. **SMT. SOWJANYA D** D/o Devendrachari,
Aged about 30 years, Occ: Homemaker,
4. **SMT. LAVANYA D** D/o Devendrachari,
Aged about 28 years, Occ: Homemaker,
The plaintiff No.2 to 4 are R/o Dasara Kallahally Village,
Bhadravathi Taluk, Shimoga District,
5. **SMT. VANAIAKSHAMMA** W/o Manjunathachari,
Aged about 70 years, Occ: Homemaker,
R/o Chikkabennur Pst, Chitradurga Taluk,
6. **SMT. PUSHPAVATHI** W/o Late.Krupaanandachar KM,
Aged about 59 years, Occ: D Group Employee,
7. **YOGI PRASAD** S/o Late.Krupaanandachar KM,
Aged about 30 years, Occ: Teacher,
8. **SHAKTHI PRASAD** S/o Late.Krupaanandachar KM,
Aged about 28 years, Occ: Student,



The plaintiff No.6 to 8 are R/o Mouneshwara Badavane,
Behind Chinchana School, Davanagere City,

9. **SMT. SAROJAMMA W/o T.S.Krishnamurthy,**
Aged about 63 years, Occ: Homemaker,
R/o Achar Beedi, Tarikere City,
Tarikere Tq, Chikkamangaluru District,

10. **VISHWA VIJETHA S/o Prasanna Kumar,**
Aged about 25 years, Occ: Business,
R/o 1st Main, Mouneshwara Badavane,
Davanagere City
(BY PLEADERS Sri.VCV / Sri.GER)

-V/s-

DEFENDANTS:

1. **LOHITH KUMAR KM S/o Late.Manachari,**
Aged about 54 years, Occ: Agriculturist,
2. **Smt.PUSHPALATHA D/o Late.Manachari,**
Aged about 45 years, Occ: Homemaker,
Both are R/o Dummi Village,
Holalkere Taluk, Chitradurga Dist .
(BY PLEADER Sri.RMO)

PARTIES TO I. A. NO. I

APPLICANTS/ PLAINTIFFS:

1. **ASHWATH KUMAR K.M S/o Late. Manachari,**
Aged about 56 years, Occ: Head Master,
R/o Dummi Village
Now residing at Nittuvalli Extn, Davanagere.
2. **PRABHAKAR D S/o Devendrachari,**
Aged about 45 years, Occ: Business,
3. **SMT. SOWJANYA D D/o Devendrachari,**
Aged about 30 years, Occ: Homemaker,
4. **SMT. LAVANYA D D/o Devendrachari,**
Aged about 28 years, Occ: Homemaker,



The plaintiff No.2 to 4 are R/o Dasara Kallahally Village,
Bhadravathi Taluk, Shimoga District,

5. **SMT. VANAIAKSHAMMA** W/o Manjunathachari,
Aged about 70 years, Occ: Homemaker,
R/o Chikkabennur Pst, Chitradurga Taluk,
6. **SMT. PUSHPAVATHI** W/o Late.Krupaanandachar KM,
Aged about 59 years, Occ: D Group Employee,
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Aged about 25 years, Occ: Business,
R/o 1st Main, Mouneshwara Badavane,
Davanagere City
(BY PLEADERS Sri.VCV / Sri.GER)

-V/s-

- OPPONENTS/DEFENDANTS:**
1. **LOHITH KUMAR KM** S/o Late.Manachari,
Aged about 54 years, Occ: Agriculturist,
 2. **Smt.PUSHPALATHA** D/o Late.Manachari,
Aged about 45 years, Occ: Homemaker,
Both are R/o Dummi Village,
Holalkere Taluk, Chitradurga Dist .
(BY PLEADER Sri.RMO)



ORDERS ON I. A. NO. I

The Applicants / plaintiffs have filed IA No.1 under order XXXIX Rule 1 and 2 R/w Sec.151 of Civil Procedure Code praying to order to restraining the defendant No.1&2 from alienating the suit properties to any others, in any manner, till disposal of the suit by allowing this application in the ends of justice and equity.

2. According to the plaintiffs, they have filed this suit against the defendants for partition and separate possession of their respective share in the suit properties and other reliefs. It is further stated that, the suit properties are the ancestral and Hindu undivided joint family of the plaintiffs and defendants. It is further stated that, the plaintiffs and the defendants are the members of the undivided Hindu joint family governed by Mithakshara School of law. It is further stated that, the plaintiffs have demanded their legitimate share in the suit schedule properties. Then, the defendants have refused to give the share of plaintiffs in the suit schedule properties and also denied the share of the plaintiffs in the suit schedule properties. It is further stated that, the defendants are trying to sell the suit properties. It is further stated that, the defendants have no absolute right, title and interest over the suit properties. So it is just and necessary to restrain the defendants from alienating the Suit properties in any manner till the rights of the parties to the suit is to be adjudicated. It is stated that if the present interim application is



not allowed, the plaintiffs 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, they prayed to allow the present interim application and grant temporary injunction as prayed.

3. After the institution of the suit, this court issued suit summons to the defendants. The defendant No.1 & 2 have appeared before this court through their counsel, but they have not chosen to contest the suit by filing their written statement and hence, the written statement of the defendants and the objections to the IA No.1 is taken as Nil.

4. I have heard the arguments of learned counsel for the plaintiffs on IA No.1. 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 plaintiffs have established prima-facie case?***
2. ***Whether the balance of convenience lies in favour of plaintiffs?***
3. ***Whether irreparable loss or hardship will be caused to the plaintiffs 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 plaintiffs have filed the suit against the defendants seeking relief of partition and separate possession with respect to the suit properties.

8. The Applicants / plaintiff has filed IA No.1 under order XXXIX Rule 1 and 2 R/w Sec.151 of Civil Procedure Code praying to order to restraining the defendant No.1&2 from alienating the suit properties to any others, in any manner, till disposal of the suit by allowing this application in the ends of justice and equity.

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 defendants threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff No.1 in relation to any properties 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 plaintiffs could able to establish prima-facie case for grant of temporary injunction.



12. It is specific case of the plaintiffs that, they have filed this suit against the defendants for partition and separate possession of their respective share in the suit properties and other reliefs. It is further stated that, the suit properties are the ancestral and Hindu undivided joint family of the plaintiffs and defendants. It is further stated that, the plaintiffs and the defendants are the members of the undivided Hindu joint family governed by Mithakshara School of law. It is further stated that, the plaintiffs have demanded their legitimate share in the suit schedule properties. Then, the defendants have refused to give the share of plaintiffs in the suit schedule properties and also denied the share of the plaintiffs in the suit schedule properties. It is further stated that, the defendants are trying to sell the suit properties. It is further stated that, the defendants have no absolute right, title and interest over the suit properties. So it is just and necessary to restrain the defendants from alienating the Suit properties in any manner till the rights of the parties to the suit is to be adjudicated. It is stated that if the present interim application is not allowed, the plaintiffs 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, they prayed to allow the present interim application and grant temporary injunction as prayed.



13. In the supporting affidavit, the plaintiff No.1 sworn to an affidavit that, they have filed this suit against the defendants for partition and separate possession of their respective share in the suit properties and other reliefs. It is further stated that, the suit properties are the ancestral and Hindu undivided joint family of the plaintiffs and defendants. It is further stated that, the plaintiffs and the defendants are the members of the undivided Hindu joint family governed by Mithakshara School of law. It is further stated that, the plaintiffs have demanded their legitimate share in the suit schedule properties. Then, the defendants have refused to give the share of plaintiffs in the suit schedule properties and also denied the share of the plaintiffs in the suit schedule properties. It is further stated that, the defendants are trying to sell the suit properties. It is further stated that, the defendants have no absolute right, title and interest over the suit properties. So it is just and necessary to restrain the defendants from alienating the Suit properties in any manner till the rights of the parties to the suit is to be adjudicated. It is stated that if the present interim application is not allowed, the plaintiffs 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. They have made out prima-facie case and balance of convenience lies in their favour. Therefore, they prayed to allow the present interim application and grant temporary injunction as prayed.



14. The Plaintiff has placed the G-tree of the family of the plaintiffs and the defendants, RTC bearing Sy.No.72/5 of Dummi Village, Ramagiri Hobli, Holalkere Tq, for the year 2024-2025, which is standing in the name of one Smt. Jayamma W/o Manachari, RTC bearing Sy.No.72/7 of Dummi Village, Ramagiri Hobli, Holalkere Tq, for the year 2024-2025, which is standing in the name of one Smt. Jayamma W/o Manachari, copy of MR No.H51/2015-2016 with respect to the suit properties, copy of MR No.2/2004-2005 with respect to the suit properties, copy of Sale deed dated: 27.05.1968, copy of Sale deed dated:28.11.1979, copy of Sale deed dated:10.07.1983, copy of Sale deed dated:14.06.1989.

15. Even though the defendant No.1 & 2 have appeared before this court through their counsel, but they have not chosen to contest the suit by filing their written statement and they have not put-forth their say. The defendants have not placed any materials at this stage of litigations, to prove of their claim. Therefore, it seems that, the defendants have no grievance if the Temporary Injunction is granted. Whether the plaintiffs have got right or not is a matter of trial. Under these circumstance, the balance of convenience is lies in favour of the plaintiffs and not in favour of the defendants. Under these circumstance, there is every likely would of causing injury to the plaintiffs in relation to the property in question.

16. *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.

17. It is to be noted that, the right of parties in suit properties to be decided after conclusion of trial. If during pendency of suit any subject properties of suit alienated by the defendants that will leads to un-necessary complications and multiplicity of suit. Hence it is shown that, balance of convenience lies in favour of plaintiffs. Taking in consideration of nature of suit and rights of parties to be decided in present suit in respect of suit properties, if ad-interim temporary injunction as prayed for not granted, the plaintiffs 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 plaintiffs have got prima-facie case for grant of temporary injunction. Hence I answer point No.1 in the affirmative.



POINTS NO. 2 & 3:

18. 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 plaintiffs 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 plaintiffs.

19. Even though the defendant No.1 & 2 have appeared before this court through their counsel, but they have not chosen to contest the suit by filing their written statement and they have not put-forth their say. The defendants have not placed any materials at this stage of litigations, to prove of their claim. Therefore, it seems that, the defendants have no grievance if the Temporary Injunction is granted. Whether the plaintiffs have got right or not is a matter of trial. Under these circumstance, the balance of convenience is lies in favour of the plaintiffs and not in favour of the defendants. Under these circumstance, there is every likely would of causing injury to the plaintiffs in relation to the property in question. 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 plaintiffs. Therefore if the injunction is refused, it is who the plaintiffs 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 plaintiffs and irreparable loss and injury would be caused to plaintiffs if a temporary injunction is refused. Hence I answer points No.2 and 3 in the affirmative.

POINT NO. 4

20. 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 plaintiffs under order 39 rule 1 and 2 of CPC is hereby allowed.

The defendant No.1&2 are hereby restrained by way of temporary injunction from alienating the suit properties, 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 02nd day of DECEMBER -2024)

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