



IN THE COURT OF THE SENIOR CIVIL JUDGE
AND J.M.F.C., AT MUDIGERE

: PRESENT :

SRI. JAYAPRAKASH V., B.A., L.L.B.,
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE

O.S. 49/2022

DATED THIS THE 15th DAY OF APRIL 2023

PLAINTIFF: Smt. Alice Pinto,
W/o Late Buthis Dcuhna,
House wife, Aged about 74 years
Residing at Jannapura,
Chinniga village,
Mudigere Taluk,
Chikkamagaluru District.
(By Sri. D.S., Advocate)

V/s.

DEFENDANT: 1. Smt. Juliana Pinto,
W/o Late Lawrence Pinto,
Aged about 67 years,
R/at Jannapura, Chinniga village,
Mudigere Taluk,
Chikkamagaluru District.

2. Miss. Cleeta Pinto,
D/o Late Lawrence Pinto,
Aged about 47 years,
R/at Jannapura, Chinniga village,



Mudigere Taluk,
Chikkamagaluru District.

3. Smt. Shanthi Pinto,
W/o Sunil D'Souza,
D/o Late Lawrence Pinto,
Aged about 45 years,
R/at Holy Cross road,
Neerumarga, Pedamale Post,
Mangalore Taluk,
Dakshina Kannada District.

4. Smt. Linda Pinto,
W/o Dennis D'Souza,
D/o Late Lawrence Pinto,
Aged about 43 years,
R/at Badriyanagar,
Mallur vilalge and Post,
Mangalore Taluk,
Dakshina Kannada District.

5. Smt. Reshma Pinto,
W/o Alosiyous Gerald Fernandes,
Aged about 40 years,
R/at Kankanady Bye Pass Road,
Behind Sequeira Engineering works,
Kankanday, Mangalore,
Mangalore Taluk,
Dakshina Kannada District.

6. Mrs. Serpin Pinto,



W/o Late Dennis Pinto,
Aged about 76 years,
R/o Janatha Colony,
Katapadi at and post,
Udupi Taluk and District.

7. Lancy Pinto,
S/o Late Dennis Pinto,
Aged about 50 years,
R/o Janatha Colony,
Katapadi at and post,
Udupi Taluk and District.

8. Pricilla Pinto,
D/o Dennis Pinto,
Aged about 40 years,
R/o Janatha Colony,
Katapadi at and post,
Udupi Taluk and District.

9. Smt. Jelly Pinto,
D/o Late John Pinto,
Aged about 60 years,
R/o Jannapura,
Mudigere Taluk,
Chikkamagaluru District.

10. Mr. H.M. Dugggowda,
S/o H.B. Manjappagowda,
Aged about 60 years,
R/o College road, Jannapura,



Chinniga village,
Mudigere Taluk,
Chikkamagaluru District.

(D1 by Sri. G.D., Advocate)
(D10 by Sri. D.K.P., Advocate)
(D2 to 4 and 6 to 9 Exparte)

I.A.NO.I

Applicant :- Smt. Alice Pinto,
V/s.

Opponents:- Smt. Juliana Pinto and others.

**ORDER ON I.A.NO. I FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF C.P.C.**

The plaintiff has filed I.A.No.I for grant of ad-interim order of temporary injunction restraining the defendant No.10 or any one claiming under him from alienating the suit schedule property.

2. In the affidavit annexed to the application plaintiff stated that he has filed a suit before Prl. Civil Judge and JMFC, Mudigere in O.S. No. 11/2012 against his brother Lorence Pinto i.e., the husband and father of defendant No.1 and 2 to 5 respectively and against defendant No.6 to 9 and the said suit



came to be decreed for partition of the property in Sy.No. 18/P2 of Chinniga Village, Gonibeedu Hobli, Mudigere Taluk.

3. The plaint schedule property is Inam land and the father of the plaintiff was the cultivator of the said land and he was in occupation and accordingly his name is entered in the RTC as cultivator of the said land. The father of the plaintiff was recognized under the Inam Abolition Act and accordingly he was considered as the owner of the plaint schedule property.

4. Plaintiff further stated that his father John Pinto died intestate and he has been survived by plaintiff, late Lawrence Pinto who is demised and defendant No.1 to 5 are his legal heirs. Defendant No.6 to 8 are legal heirs of late Denis Pinto. It is further submitted that during the life time of plaintiff's father he has not made any will or not bequeath the property to anybody and he has not made any arrangements regarding the inheritance of



the property. Plaintiff further stated that when the Sl.No. 1 of the application schedule property was in position of late John Pinto the same having Sy.No. PR No.66/2 measuring 2.08 acres. After the death of plaintiff's father the Sl.No. 1 of the application schedule property is mutated in the name of Lorence Pinto jointly with late Dennis Pinto under INH proceedings No. 1/84-85. MR No. 47/84-85. The property in Sl.No. 2 stands in the joint name of Lorance Pinto and Joseph Pinto. The Mutation of the Sl.No. 1 of the application schedule property in the name of two sons of late John Pinto i.e., Lorence Pinto and Deniss Pinto is illegal and in contravention of rules and regulations. The Revenue authorities have mutated the Katha has stated above the leaving behind plaintiff and defendant No.9 without enquiring about the legal heirs of John Pinto. The application schedule property is ancestral property and plaintiff has share in the application schedule property.



5. Plaintiff further stated that the revenue authorities have re numbered the properties Sl.No. 1 in survey number as per the order of the Deputy Commissioner of Chikkamagaluru district and accordingly correlation work was done and new number has been given. At present the application schedule property Sl.No. 1 is having new Sy.No. 126. Plaintiff having $\frac{1}{4}$ share in the application schedule property but the defendant No.1 to 5 have sold the item No.1 of the application schedule property to defendant No.10 under the registered sale deed bearing No.MGE-1-02312/2021-22, dated 09/02/2022 in the office of the Sub-registrar Mudigere and same is not valid under law and the plaintiff and other defendants have right over the application schedule property. On verification of the RTC recently plaintiff came to know that the sale of application schedule property to defendant No.10. The defendant No.1 to 5 have no right to sell the application schedule property. The defendant No.10 is now making arrived attempts to sell the application schedule property in



Sl.No.1 and if he succeed in its attempts to dispose of the same the plaintiff will be put to untold hardship and it will also cause inconvenience to the plaintiff and his right over the said property will be deprived. Hence the plaintiff prayed to allow the application.

6. On the other hand defendant No.1 and defendant No.10 filed their written statement but not filed objection to I.A.No.I.

7. In the written statement defendant No.1 and 10 admitted that defendant No.1 to 5 are executed registered sale deed dated. 09/02/2022 pertaining to Sl.No.1 of the plaint schedule property in favour of defendant No.10. The defendant No.10 further stated that he is the bonafide purchaser of Item No.1 of the suit schedule property. It is further stated that plaintiff has given consent to the defendant No.10 for purchasing the plaint schedule property. It is further stated that John Pinto died long back and even in the O.S.11/2012 no relief for partition pertaining to the plaint schedule property have been filed. Defendants



contended that the suit is barred by limitation. Hence defendant No.1 and 10 prays to dismiss the suit.

8. From the above rival contention, the following points arise for my consideration.

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction?
2. Whether the plaintiff proves that the balance of convenience lies in his favour?
3. Whether the plaintiff proves that irreparable injury and hardship will be caused to him if temporary injunction is not granted?
4. What order?

9. Heard the arguments by both sides.

10. Upon appreciation of rival contention in the arguments advanced by the both parties, my findings to the above points as follows:-

Point No. 1 : In the Affirmative



Point No. 2 : In the Affirmative

Point No. 3 : In the Affirmative

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

REASONS

12. POINT NO.1 TO 3:- These points are inter-linked hence they are taken for common discussion to avoid repetition.

13. The plaintiff has filed the suit for the relief of partition and declaration that the sale deed dated. 09/02/2022 is null and void and not binding on plaintiff. It is the specific case of plaintiff that the Item No.1 of the suit schedule property is originally belongs to his father Mr. John Pinto and he was cultivating the said land and the same is recognized under Inam Abolition Act and accordingly he was considered as owner of the plaint schedule property. The defendant No.1 to 5 sold the Item No.1 of the suit schedule property to defendant No.10 under the registered sale deed dated. 09/02/2022. The defendant No.1 to 5 are not having absolute right to sell the suit



schedule property to defendant No.10. The plaintiff further contended that he has 1/4th right over the Item No.1 of the plaint schedule property. The defendant No.1 to 5 illegally sold the said property to defendant No.10. It is further alleged by plaintiff that defendant No.10 is making hurried attempt to sell the item No.1 of the suit schedule property. If defendant No.10 succeeded in his attempt to dispose the plaint schedule property plaintiff will be put to untold hardship. Hence plaintiff prayed to allow the application.

14. On the other hand defendant No.1 and 10 admitted that defendant No.1 to 5 are executed registered sale deed dated. 09/02/2022 pertaining to Sl.No.1 of the plaint schedule property in favour of defendant No.10. The defendant No.10 further stated that he is the bonafide purchaser of Item No.1 of the suit schedule property. It is further stated that plaintiff has given consent to the defendant No.10 for purchasing the plaint schedule property. It is further



stated that John Pinto died long back and even in the O.S.11/2012 no relief for partition pertaining to the plaint schedule property have been filed. Defendants contended that the suit is barred by limitation.

15. While deciding the application under Order 39 rule 1 & 2 of CPC, the court must be satisfied about prima-facie case of the plaintiff to grant temporary injunction. It is settled principle of law that even if an unfettered prima-facie case is found established by the plaintiff, still the plaintiff has to establish balance of convenience and irreparable loss or injury, only on completion of 3 formalities the plaintiff will be granted the relief of temporary injunction.

16. The plaintiff in order to substantiate his contention has produced the genealogical tree, copy of Inam register, it appears that the father of plaintiff John Pinto is the Guthedhar (ಗುತ್ತೇದಾರ್) of item No.1 of the plaint schedule property. Plaintiff also produced the copy of mutation register in 47/1984-85, it appears that upon the death of John Pinto the katha has been



mutated in the name of Lawrence Pinto and Denise Pinto jointly. Plaintiff also produce the RTC of Sy.No. 65/4P of Agrahara village, Mudigere Taluk. On perusal of the RTC it appears that as per the order of MR No. 47/1984-85 the name of Denise Pinto and Lawrence Pinto entered in the RTC. Plaintiff also produced the MR No.95/1995-96. It appears that as per the order of Deputy Commissioner, Chikkamagaluru new Sy.No. 126 has been given and it has been entered in the name of Lawrence Pinto pertaining to the item No. 1 of the plaint schedule property. The RTC produced by the plaintiff shows that the Sy.No. 126 measuring 2.08 acres has been mutated in the name of defendant No.1 as per MR No.H27/2021-22. The sale deed dated 09/02/2022 produced by the plaintiff shows that defendant No.1 to 5 sold the item No.1 of the suit schedule property to the defendant No.10 as per MR No. H38 the katha of the item No.1 of the plaint schedule property has been mutated in the name of defendant No.10. The RTC produced by the plaintiff shows that as per the sale



deed executed by defendant No.1 to 5 in favour of defendant No.10, the RTC of item No.1 of the suit schedule property has been mutated in the name of defendant No.10. In this case there is no dispute regarding the execution of sale deed by defendant No.1 to 5 infavour of defendant No.10. The defendant No.10 contended that the plaintiff has given consent to the defendant No.10 to purchase the item No.1 of the suit schedule property. But no such consent deed has been produced by defendant No.10. Plaintiff is not the consenting party to the alleged sale deed.

17. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of prima-facie case. At this stage this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well settled principles of law that at the time of disposing the temporary injunction application, the court cannot go into the prima-facie title and only to consider whether the plaintiff has



made out a prima-facie case for granting interim relief.

18. The primary purpose of granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused; and injury and prejudice likely to be caused to the defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.



19. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima-facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

20. In order to ascertain the prima-facie case, this court has carefully perused the materials on record. The plaintiff has produced the sale agreement it reveals that defendant No.1 to 5 have sold the item No.1 of the suit schedule property to defendant No.10.



The MR No.47/1984-85 produced by plaintiff clearly shows that upon the death of John Pinto the katha has been mutated in the name of Denise Pinto and Lawrence Pinto. It is admitted fact that John Pinto had 4 children by name Denis Pinto, Alies Pinto, Lawrence Pinto and Jelli Pinto. But as per the MR No. 47/19984-85 khatha has been mutated only in the name of Lawrence Pinto and Denis Pinto. The katha has been not mutated in the name of all the legal heirs of Jhon Pinto. It is the specific case of the plaintiff that the defendant No.1 to 5 illegally sold the item No.1 of the suit schedule property to the defendant No.10.

21. In the present application the plaintiff prays to grant temporary injunction restraining the defendant No.10 or any other person claiming under him from alienating or creating charge over the item No.1 of the suit schedule property. The sale deed produced by the plaintiff clearly shows that defendant No.1 to 5 has sold the suit schedule property to the defendant



No.10. Plaintiff has filed the suit for partition and contended that the sale deed executed by defendant No.1 to 5 in favour of defendant No.10 not binding on the plaintiff and the same is null and void. If the defendant No.10 sold the property to any third party it will lead to multiplicity of proceedings and plaintiff will be put to untold hardship. The documents produced by the plaintiff clearly shows that prima-facie case.

22. The second condition for granting interim injunction is that the balance of convenience must be in favour of the plaintiff. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be grater than that which is likely to be caused to the opposite party by granting it. The existence of the prima-facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by



showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which can protect himself from the consequences of apprehended injury. In the application, the plaintiff has sought for the relief of temporary injunction restraining defendant No.10 from alienating the suit schedule property.

23. After considering the materials on record, this court is of the opinion that comparative mischief, hardship or inconvenience will be caused to the plaintiff if equitable relief of temporary injunction is not granted in favour of the plaintiff than the comparative mischief, hardship or inconvenience caused to the defendant if this application is allowed. After considering the materials on record, this court is of the opinion that the plaintiff has made out prima-facie case, the balance convenience leans in favour of the plaintiff and if the equitable relief of temporary injunction is not granted in favour of the plaintiff, then he will be put to irreparable loss and injury. At



this stage while deciding I.A No.I this court cannot decide merits of the case. The aspects of limitation is mixture of law and facts and it requires full fledged trial and it will be decided after full pledged trial only. Based on the documents produced by the plaintiff it is clear that the plaintiff has made out a prima-facie case. Under such circumstances, if the application is not allowed the plaintiff will be put to great loss and hardship.

24. In view of my above discussion, I am of the opinion that the plaintiff has established prima-facie case in its favour. It is the plaintiff who will be put to inconvenience if defendant No.10 is not restrained from alienating / encumbering or creating any charge on the item No.1 of the suit schedule properties. It is the plaintiff who will be put to irreparable loss and injury, if the relief in IA. No. I is not granted. Accordingly, Point No.1 to 3 is answered in **AFFIRMATIVE**.



25. **Point No.4:-** For the aforesaid reason and discussion, I proceed pass the following: -

ORDER

I.A. No. I filed by the plaintiff Under Order 39 Rule 1 & 2 is hereby allowed.

The defendant No.10 or any other persons claiming under him are hereby restrained from in any way alienating the item No.1 of the suit schedule property pending disposal of the suit.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced in the open court on this the 15th day of April 2023.)

B

(JAYAPRAKASH V.)
**SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.**