

**IN THE COURT OF THE CIVIL JUDGE AND ADDITIONAL
J.M.F.C., AT TARIKERE**

Present : SMT.PAVITHRA.M.D, B.A., LL.B.,
Civil Judge & Addl. JMFC. Tarikere.

O.S.No.305/2016

Dated this 11th day of February 2021

Plaintiff : Nandini.T.H,
D/o B.Harish,
Aged about 9 years.

Plaintiff is minor,
Represented by her N/G
mother of the plaintiff
Smt.Bhavya.B.P,
W/o B.Harish,
Aged about 26 years,
Household Work.

Both are R/o Byrapura Village,
Kasaba Hobli, Tarikere Taluk.

(Reptd. By : Sri.D.Niranjana Murthy-Advocate)

V/s

Defendants: 1) B.Harish S/o A.Basavaraju,
Aged bout 33 years,
Agriculturist,
R/o Station Duglapura Village,
Kasaba Hobli, Tarikere Taluk.

2) Sharadamma,
W/o A.Basavaraju,
Aged bout 68 years,
Agriculturist & Household Work.

3) A.Basavaraju,
S/o Aremallappa,

Aged bout 71 years,
Agriculturist.

Both are R/o Basaveshwara Street,
Tarikere Town & Taluk.

(Reptd. By : D1-Sri.C.B.Vishwanath-Advocate)
D2, 3-Sri.C.S.Shivaprasad-Advocate)

I.A.No.1

Applicant in I.A/: Nandini.T.H
Plaintiff by guardian next friend-mother

-Vs-

Opponents in IA/: B.Haris & Ors.
Defendants

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ORDERS ON IA.No.1

The plaintiff has filed this application U/Or.39 Rule 1 and 2 R/w Sec.151 of CPC seeking for the relief of temporary injunction to restrain the defendants from alienating, mortgaging or encumbering the application schedule properties till disposal of the suit.

2. It is averred in the affidavit annexed to the application that, the plaintiff has filed the present suit for the relief of partition and separate possession against the defendants and at present, the case is posted for the evidence

of the defendants. The khatha of the application schedule properties is standing in the name of defendant No.1 and 2. On the strength of khatha, they are making hurried attempts to sell the application schedule properties without having any independent right over the said properties. The application schedule properties are also the joint family properties of the plaintiff and the defendants. The plaintiff is also entitled for equal share in the said properties. Hence, this application to restrain the defendants from alienating, creating any charge mortgaging in any manner till disposal of the suit.

3. The 1st defendant has resisted the application by filing his objection statement wherein he stated that, the application schedule properties are not stands in the name of this defendant and hence, the question of disposing or alienating does not arise. The plaintiff has no share in the agricultural properties, since the said properties have been disposed by this defendant in order to discharge the loan borrowed from Karnataka Bank, Tarikere for purchase of the property. When no properties stands in the name of this defendant, the question of restraining him from alienating or

disposing does not arise at all. The allegation made by the plaintiff against this defendant are all false and the plaintiff has no prima-facie case. Hence, he prayed to reject the application with exemplary cost.

4. The 3rd defendant has filed his objection statement wherein he stated that, the plaintiff's mother Smt.Bhavya has categorically admitted that, she has no claim over the properties of Sharadamma i.e., the properties allotted to her share. Therefore, the present application which includes the properties of Sharadamma is liable for dismissal. The properties are standing in the name of the 2nd defendant and the 2nd defendant being the owner of the properties cannot be restrained by any order. If the owner is restrained by an order of injunction, more hardship will be caused to the owner of the property and owner of the property will be deprived off from making use of the property. That all the properties are standing in the name of the 2nd defendant and the plaintiff is claiming right through her father i.e., defendant No.1. There is no agricultural lands standing in the name of the 1st defendant. The allegation made by the

plaintiff is totally against the pleading and admission made before this Court in cross-examination. This clearly goes to show that, the plaintiff's mother Smt.Bhavya can stretch her hand to any extent to gain wrongfully. The plaintiff has no share in the agricultural lands, since the same were disposed in order to clear the loan borrowed for purchase of the property. The plaintiff has no prima-facie case. Accordingly, he prayed to dismiss the application.

5. On the strength of application and the memo, the points which arise for consideration of this Court are as follows:-

- 1) Whether the plaintiff has made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff?
- 3) Whether the plaintiff will be put to great hardship and injury in case temporary injunction is not granted?
- 4) What order?

6. Heard the arguments canvassed by the counsel for the plaintiff and the defendants. Perused the materials available on record and now my findings on the above points are 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 the final order
for the following:

REASONS

7. **Points No.1 to 3**: Since these points are inter related to each other they are taken up together in order to avoid repetition of facts.

The plaintiff has filed the present suit to declare that, the suit schedule properties are the joint family properties of the plaintiff and defendant No.1 and also prayed to declared that, the alleged sale deed dated 14.03.2012 executed by the 1st defendant in favour of defendant No.2 pertaining to item No.1 and 2 of suit schedule are not binding on the share of the plaintiff and she also prayed for partition and separate possession of her half share in the schedule properties.

8. It is the claim of the plaintiff that, the khatha of the application schedule properties is standing in the name of defendant No.1 and 2 and on the strength of khatha, they are making hurried attempts to sell the application schedule

properties and hence, it is necessary to restrain defendant No.1 and 2 from alienating the application schedule properties. Per-contra, defendant No.1 and 2 contended that, the khatha of application schedule properties is not in the name of the 1st defendant. The 2nd defendant has purchased the application schedule property from the 1st defendant and the 1st defendant has sold the application schedule property in order to clear the loan borrowed from Karnataka Bank, Tarikere for purchase of the property. The plaintiff has no share in the application schedule properties. Further, the 2nd defendant being the owner of the application schedule properties cannot be restrained by an order of injunction and if she is restrained by an order of injunction, more hardship will be caused to the owner of the property. Accordingly, these defendants prayed to dismiss the application.

9. With this background now I would like to scrutinize the materials available on record. In the present suit, the evidence of the plaintiff is already completed. When the case is set-down for recording the evidence of the defendants, the plaintiff has come up with the present application. As per the

documents produced by the plaintiff and the defendants, the khatha of item No.1 of the suit schedule stands in the name of the 2nd defendant in the year 2014-15, item No.2 of the suit schedule stands in the name of the 1st defendant in the year 2008-09, item No.3 of the suit schedule stands in the name of the 1st defendant in the year 2007-08 and item No.4 of the suit schedule stands in the name of the 2nd defendant in the year 2014-15 and item No.5 of the plaint schedule stands in the name of the 3rd defendant. It is the case of the plaintiff that, the 1st defendant acquired the suit schedule properties under the registered partition deed on 10.09.2008 and hence, the suit schedule properties are all joint and ancestral properties of the plaintiff and defendant No.1. The plaintiff made an allegation that, the 1st defendant colluding with the 2nd defendant and his father illegally executed a registered sale deed dated 14.03.2012 in favour of defendant No.2 in respect of item No.1 and 2 of the suit schedule, though the 1st defendant had no independent right. The certified copy of the partition deed dated 10.09.2008 is marked at Ex.D5. As it could be seen from the said partition deed, suit item No.2 and 3 properties are fell to the share of the 1st defendant. The

alleged sale deed dated 14.03.2012 is marked at Ex.P2. The recitals of the said sale deed shows that, the 1st defendant has sold item No.1 and 4 of the plaint schedule in favour of the 2nd defendant. So it is clear that, in the partition dated 10.09.2008, suit item No.2 and 3 properties were fell to the share of the 1st defendant and in pursuance of the said partition, the khatha of item No.2 and 3 are the plaint schedule is mutated in the name of the 1st defendant. The defendants have produced the certified copy of the three registered sale deeds dated 23.07.2007 which shows that, the 1st defendant has purchased item No.2 and 3 of the plaint schedule for valid sale consideration. The said sale deeds are marked at Ex.D1 to 3.

10. So it is clear that, at the present khatha of suit item No.1 and 4 properties stands in the name of the 2nd defendant and the khatha of suit item No.2 and 3 properties stands in the name of the 1st defendant and suit item No.5 property stands in the name of the 3rd defendant. It is the objection raised by the 2nd defendant that, she being the owner of the above said properties cannot be restrained by any order and if

the owner is retrained by an order of injunction, more hardship will be caused to the owner of the property. As adverted supra, she purchased suit item No.1 and 4 properties from the 1st defendant who is none other than her son. In pursuance of the registered sale deed dated 14.03.2012 which is marked at Ex.P2. Further, there is no ambiguity to the effect that, khatha of suit item No.2 and 3 properties stands in the name of the 1st defendant. Though, the evidence of the plaintiff is already completed, the assertion of the plaintiff and the contention of the defendants not yet decided on merits. It is the stand of the plaintiff that, all the suit schedule properties are the joint family properties of herself and the 1st defendant. Such being the case if the defendants alienate the suit schedule properties during the pendency of the suit, the alleged right of the plaintiff over the suit schedule properties will be defeated.

11. The ***Supreme Court in Gujarat Bottling Co. Ltd. and Ors. V/s Coca Cola Co. and Ors. (1995) 5 Supreme Court Cases 545*** has held as under:-

“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests-(i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favor of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time whether the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to

be protected against injury resulting from his having been prevented from exercising his own legal rights which he could not be adequately compensated.”

12. It is clear from the law laid down by the Hon’ble Apex Court that, the grant of interim injunction is a discretionary relief and it should be granted where it is necessary to protect the legal right of a party until it is established at the trial and triple principles essential for grant of interim injunction co jointly existed. In the instant case, there is no serious and bonafide contention for investigation and trial on the basis of the facts stated in the application and the pleading which require this Court to protect the right of the plaintiff by injecting the defendants from alienating the plaint schedule properties. However, it is clarified that, the observation made in this order are only on the basis of prima facie view of the matter and nothing decided in this order would be constituted an expression of opinion of this Court on any of the questions involved on merit of the case which would be decided in final order. Hence for the reasons stated above, I answer point No.1 to 3 in the Affirmative.

13. **Point No.4:** In view of the foregoing reasons and conclusion arrived at point No.1 to 3, the application filed by the plaintiff deserve to be allowed. Hence, I proceed to pass the following:

ORDER

I.A.No.1 filed under Order 39 Rule 1 and 2 R/w Sec.151 of C.P.C filed by the plaintiff is hereby allowed.

The defendants are hereby restrained from alienating the application schedule properties in any manner till disposal of the suit.

Cost shall follow the event.

(Direct Dictation given to the Stenographer, typed by him, corrected by me and then pronounced in the open Court on this the 11th day of February 2021.)

Sd/-

**(PAVITHRA.M.D)
CIVIL JUDGE AND
ADDL.J.M.F.C., TARIKERE.**