

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

Dated this the 27th day of November 2023

Present

Sri. B. S. HONNASWAMY, B.A. LL.M
SENIOR CIVIL JUDGE & C.J.M,
CHAMARAJANAGAR.

O. S. 63/2023

Plaintiff : Madappa

Vs

Defendants : Nagappa M & another

I.A No. I

Applicants : Madappa
(Plaintiff)

(By Sri.KRK. Adv.,)

V/s

Opponents : Nagappa M & another
(Defendants)

(By Sri.ASSR & SS. Adv.,)

<i>i.</i>	<i>Provision under which the application is filed</i>	<i>U/O XXXIX Rules 1 & 2 R/w.151 of CPC</i>
<i>ii.</i>	<i>Relief sought for</i>	<i>Temporary Injunction</i>
<i>iii.</i>	<i>The date on which the application is filed</i>	<i>20.02.2023</i>

iv.	<i>Number of the application</i>	<i>I</i>
v.	<i>The date on Which the objections are filed by different opponents</i>	<i>08.09.2023</i>
vi.	<i>The date on which the Orders were passed on the said application</i>	<i>27.11.2023</i>

ORDERS ON IA No.1

The Plaintiff has filed I. A. No. I U/o 39 Rule 1 and 2 R/w Section 151 of CPC seeking to grant Temporary injunction against the defendants from alienating the suit schedule properties.

2. SCHEDULE : 1. All the piece and parcel of the land bearing Survey No.393/1 an extent of 1 Acre 0.16 ½ Gunta, Situated at Kothalavadi Village, Harave Hobli, Chamarajanagar Taluk. Bounded on East by Land of Madappa, West by Land of K.S Madappa, North by Land of Shivappa and South by Land of Sy.393/3. 2. Survey No.393/3 an extent of 1 Acre 0.16 ½ Gunta, Situated at Kothalavadi Village, Harave Hobli, Chamarajanagar Taluk. Bounded on East by Land of Madappa, West by Land of K.S Madappa, North by Land of Sy.393/3. and South by Land of K.S Madappa. 3. Survey No.575/1 an extent of 0.26 ½ Gunta, Situated at Kothalavadi Village, Harave Hobli, Chamarajanagar Taluk. Bounded on East by Road, West by Land of K.S Devappa, North by Land of Guruswamy and South by Land of

Sy.572/2. 4. Survey No.575/2 an extent of 0.26 ½ Gunta, Situated at Kothalavadi Village, Harave Hobli, Chamarajanagar Taluk. Bounded on East by Road, West by Land of K.S Devappa, North by Land of Sy No.575/1 and South by Land of K.S.Prasadappa and 5. Survey No. 244/2 an extent of 2 acre 0.29 Gunta, Situated at Kothalavadi Village, Harave Hobli, Chamarajanagar Taluk. Bounded on East by Lingappa, West by Land of Madappa – Srinatha, North by Road and South by Land of Mahadevappa and Samapathu.

3. The Plaintiff in his affidavit stated that, he has filed the suit against the 1st defendant for partiton and separate possession, he knows the 1st defendant, he knows the the suit schedule properties which is joint family properties and suit schedule properties are joint possession and enjoyment of his father. The 1st defendant try to alienate the suit schedule properties illegally, if it is alienated, the purpose of the suit will be defeated. Hence he prays to allow the application.

4. The Defendants No.2 filed memo and considered has written statement as objection to IA No .1, in his written statement stated that, suit itself is not maintainable and the plaintiff suppress the material facts. Plaintiff father Nagappa and mother Malligamma having only son i.e., the plaintiff. The suit schedule properties are the joint family

properties, enjoyed by the plaintiff and 1st defendant. 1st defendant is now aged and the plaintiff is looking after the suit schedule properties. In the suit properties the income received from the plaintiff and 1st defendant taken equal share and in possession of the joint family properties. In Survey No. 244/2 total extent 2 acres 29 Guntas sold to defendant No.2 illegally is false. The 2nd defendant was purchased item 5 of the property only to cheat to the plaintiff. The plaintiff is the son of Mahadevappa S/o Doddamadappa, there is no relationship between father and son, On 08.06.2006 Survey 244/2 measuring 2 acres 29 guntas including 3 gunta karab land situated at Terakanambi Village, was sold through registered Sale Deed. The 2nd defendant its absolute owner and enjoyment of the said property. The plaintiff filed similar suit in OS 39/2013 at Civil Judge and JMFC court, Gundlupet. On 01.02.2016 it was dismissed with costs, so the present suit is not maintainable it is hit by principles of res-judicata and prays to dismiss the application.

5. Heard the arguments both sides that the points that arise for my consideration;

1. Whether the Plaintiff has made out a prima-facie case for grant of Temporary Injunction?

2. Where does the balance of convenience lies ?
3. Who would be put to irreparable loss and injury? If injunction is granted?
4. What order?

6. My answer to above point are

Point No.1 to 3 : In the **Negative**

Point No.4 : As per the final order following;

:-REASONS:-

7. Points No.1 to 3 :- These point are taken together to avoid repetition of facts, On perusal of the documents, produced by the defendant No.2. The plaintiff has filed the similar suit against defendants the suit for partition and separate Possession at Civil Judge and JMFC Gundlupet, After contest the suit came to be dismissed with cost. Sale Deed dated 15.12.2005 executed by 1st defendant infavour of 2nd defendant. The plaintiff has not preferred any appeal challenging the Judgment and Decree. Without looking to the plaintiff RTC's the present suit is not maintainable, the plaintiff suppressed the material facts as it is hit by principles of res-judicata. Hence, at this stage the Plaintiff has not made out Prima faice case

and balance of convenience lies infavour of the defendants, if injunction is granted Irreparable loss and injury will cause to the defendants.

8. At the stage I relied upon the ruling of **Hon'ble supreme court in 1992(1) SCC in Dalpathkumar Vs Prahaladsingh**. The cardinal principles for grant of temporary injunction by observing as follows:-

“5:- Satisfaction that , there is a prima-facie case by its self is not sufficient to grant injunction. The court further as to satisfy that non interference by the court would result in irreparable injury to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and needs protection from the consequences of apprehended injury dispossession. Irreparable injury, however, doesmean there most be no physical possibility of repairing the injury , but means only that injury must be a material one, namely one that cannot be at adequately compensated by way of damages. The 3rd condition also is that “ the Balance of convenience” must be in favour of granting injunction. The court while granting or refusing to grant injunction should excise sound judicial discretion to find the amount of the substantial mischief or injury which likely

to be caused to the parties, if the injunction is refused and compare it with that which likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status quo and injunction would be issued, thus the court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

1995(5) SCC 545 Gujarath bottling company *observing as follows:-*

“47. Under order 39 of the code of Civil procedure, jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore the court, on being approached, will, apart from other considerations. Also look to the conduct of the party invoking the jurisdiction of the court. And may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with

the party against whom he was seeking relief. His conduct should be fair and honest.

Hence the above principles applies to the present case on hand and the Plaintiff has not made out a ground for seeking Temporary Injunction. Hence I answer **Point No. 1 to 3** in the **Negative.**

9. Point No.4:- For the above said reasons and discussion, I proceed to pass the following;-

:- ORDER:-

I.A. No.1 filed by the Plaintiff U/o 39

Rule 1 and 2 of CPC is hereby dismissed

with cost of Rs.500/-.

(Dictated to the Stenographer direct on computer and typed by her, revised corrected and then pronounced by me in the open court, on this the **27th day of November 2023**)

(B.S.HONNASWAMY)
Senior Civil Judge and CJM.,
Chamarajanagara