

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE
AND JMFC., AT CHAMARAJANAGARA.**

Dated this the 30th day of November 2019

Present: Sri. Ganapati Gurusidda. Badami B.A. LL.B.(Spl)
ADDL. SENIOR CIVIL JUDGE & JMFC.,
CHAMARAJANAGARA.

O.S. No:68/2018

1. Sri. Goutham S S/o L Sudesh and an another
.....Plaintiffs

V/s

1. Sri. L. Sudesh S/o T. Lingarajegowda and an another
.....Defendants

ORDER ON I.A.NO.1 U/O 39 RULE 1 AND 2 OF CPC

Plaintiffs have filed this application seeking the relief of temporary injunction order restraining the defendant No.2, his legal heirs, his men or anybody on his behalf from alienating the suit property till the disposal of the suit.

2. In the accompanying affidavit of the minor guardian of plaintiffs, she has stated that, the suit

property is joint family property of herself and defendant No.1 and at the time of purchasing the suit property from Venkateshmurthy S/o V. Ramanna, she has also given amount by bringing the same from her parental house and given to the defendant No.1 to purchase the said property and sale deed has been registered in the name of defendant No.1. She has stated that, the defendant No.1 has alienated the said property in favour of defendant No.2 by executing deed in the office of Sub-Registrar, Chamarajanagara on 28.03.2018. She has stated that, the defendant No.1 has not led happy married life with her and left her about one year back and she has filed Crl.Misc. No.454/2017 before Learned Principal Civil Judge and JMFC, Chamarajanagar seeking the relief of maintenance and defendant No.1 has neglected her and her children and residing in separate house. She has also stated that, the defendant No.1 is running Nimishamba Enterprises in Tyagaraja Road of Chamarajanagara and he is also the dealer of electronic goods and defendant No.2 is owner of Pavan Bhandar, Chamarajanagara and in order to cheat the plaintiff, she has purchased suit property from the defendant No.1. She has also stated that, even though elders

convened the panchayath and advised to the defendant No.1 to lead happy married life, he has not heeded to the advice and on the instigation of others, he has transferred the suit property to the defendant No.2 with an intention to deprive their right in the suit property. She has stated that, she approached the defendant No.1 and asked share in the suit property which is denied by him and the defendant No.2 and others instigated defendant No.1 not to give share in the suit property. She has also stated that, if her application is not allowed and temporary injunction order is not granted, the defendants will alienate the suit property by which she will be put to heavy and irreparable loss. Therefore, she prayed to allow the application.

3. Though sufficient time has been granted to the defendants, they have not filed objections to I.A.No.1. Hence, objections to I.A.No.1 taken as not filed.

4. Heard the arguments of learned counsel for plaintiffs. Though sufficient time has been granted to the defendants, they have not submitted the arguments. Hence, defendants side arguments are taken as not addressed and suit is taken for disposal on merits.

5. Points arise for my consideration is

1. Whether plaintiffs have made out prima facie case and balance of convenience to grant temporary injunction order?
2. Who will be put to irreparable loss?
3. What order?

6. My findings on the above points are as under

Point No.1: In the affirmative

Point No.2: In favour of the plaintiffs

Point No.3: As per the final Order,
for the following

REASONS

7. Point No.1 and 2: On perusal of materials on record, the plaintiffs have filed this suit against the defendant seeking the relief of partition and separate possession of share in the suit schedule property. On perusal of genealogical tree shown in para No.2 of the plaint, the defendant No.1 and applicant Kamalakshi @ Kasturi are husband and wife and plaintiffs are their

children and defendant No.2 is the purchaser of the suit property. AS per the plaintiffs, the defendant No.1 and their Mother Kamalakshi @ Kasturi jointly purchased suit property and their mother also given the amount for purchasing the said property by bringing amount from her parental house and sale deed has been presented in the name of defendant No.1. As per the plaintiffs, the defendant No.1 neglected to maintain them and he has not led happy married life with their mother for which she has filed Crl. Misc. No.454/2017 on the file of Learned Principal Civil Judge and JMFC, Chamarajanagar and since last two years, the defendant No.1 has neglected to maintain them and their mother convened the panchayath and inspite of advice of elders, the defendant No.1 has not heeded to the advice of elders and neglected to maintain them and also refused to give share in the suit property. They have produced certified copy of sale deed dated 28.03.2018 and as per the said document, the defendant No.1 has sold the suit property to the defendant No.2 for his family necessity and repay the loan amount for the consideration of Rs.10,72,000/-. The plaintiffs claimed that, they are having share in the said property. The defendant No.1 has filed written

statement and admitted the relationship and denied the rest of the contents. He has also admitted that, the plaintiffs have filed maintenance case against him. He has taken contention in the written statement that, the suit property has been purchased by him out of his own earnings and it is self acquired property and he has sold the said property to the defendant No.2. The defendant No.2 has also filed his written statement and denied the contents of plaint and also taken contention that, the suit property is self acquired property of defendant No.1 and he has purchased said property under registered sale deed and he has been in possession and enjoyment of the said property. Though in the sale deed it is shown that, the suit property is self acquired property, it is the question to be decided during the course of trial. The plaintiffs have claimed that, the suit property is joint family property purchased by defendant No.1 and mother of the plaintiff and for purchasing the said property, their mother also contributed the amount and said property purchased in the name of defendant No.1. Already the defendant No.1 was sold the suit property to the defendant No.2. The plaintiffs are claiming their legitimate right in the suit property which is denied by the defendant No.1 on

the ground that, it is his self acquired property. Whether suit property is self acquired property or joint family property is the question to be decided during the course of trial. If, suit property is alienated by the defendant No.2 during the pendency of the suit, it will lead to multiplicity of the proceedings and the plaintiffs will be put to loss and hardship and their rights in the suit property cannot be decided. So, I feel it just and proper to restrain the defendant No.2 from the alienating the suit property till the disposal of suit. So, I hold that, plaintiffs have made out prima facie case and balance of convenience. If suit property is alienated, plaintiffs will be put to irreparable loss. So, I answer **point No.1 in the affirmative and point No.2 in favour of the plaintiffs.**

8. Point No.3: For the reasons discussed above, I proceed to pass the following

ORDER

I.A.No.1 under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Temporary injunction order is granted restraining the defendant No.2

from alienating the suit property in any form to any body till the disposal of the suit.

No order as to cost.

[Typed by me, corrected and then pronounced in the open court on this 30th day of November, 2019.]

[GANAPATI GURUSIDDA. BADAMI]

Addl. Senior Civil Judge & JMFC.,
Chamarajanagara.