

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

Dated this the 1st day of October, 2024

**Present: Sri. Sunil .R B.Com, LL.B.,
Addl. Sr. Civil Judge & JMFC,
Chamarajanagara.**

O.S.No.240/2022

Plaintiff : Smt. Shivanagamma
@ Nagamma

Vs

Defendants : Sri. K. Mahadevappa and others

Parties to IA No.I

Applicant : Smt. Shivanagamma
--- Plaintiff

Vs

Opponents : Sri. K. Mahadevappa and others
--- Defendants

ORDER ON I.A. NO.I

The plaintiff has filed IA No.I under order 39 rule 1 and 2 of CPC for granting injunction order against the defendants and restrained them from selling, mortgaging, hypothecating or in any way from alienating the suit schedule properties.

2. In the accompanying affidavit, the plaintiff stated that the suit schedule properties are ancestral and joint family properties of herself and her brother defendant No.1. She and defendant No.1 are in joint possession and enjoyment of the suit schedule properties being the joint owners of the same. She and defendant No.1 were children of Late. Smt. Dundamma. The suit schedule properties earlier owned by her father. The defendant No.2 is the wife of defendant No.1, the defendant No.3 and 4 are children of defendant No.1. Her father died on 10.09.1991 and after the demise of her father, the defendants got changed the khatha of suit schedule properties into their names behind back of her knowledge and without her consent. She is having half share in the suit schedule properties. The defendants have no manner of rights, ownership or title to execute any documents in respect of suit schedule properties. She is having prima-facie case and balance of convenience to obtain the injunction order against the defendants. If, IA No.1 is allowed, no harm or injustice will be caused to the defendants. On the other hand, if IA No.1 is not allowed, the defendants are alienating or creating charge over the suit schedule properties which will cause injustice to her.

Hence, on these grounds, she prays to allow the IA No.I.

3. On the other hand, the defendants have filed objection stating that IA No.1 filed by the plaintiff is not maintainable either in law or on facts and liable to be dismissed. The plaintiff is not having any right, title and interest over the suit schedule properties. The plaintiff and her mother namely Smt. Dundamma gave consent to transfer the khatha of suit schedule properties and accordingly, the khatha of the suit schedule properties were transferred to the name of defendant No.1 through MR No.114/2001-02 and INH No.01/1993-94. As such, the defendant No.1 is in possession and enjoyment of the same. The plaintiff gave consent to transfer the khatha of the suit schedule properties to the name of defendant No.1 in the year 2002. Thereafter, she kept quiet for long time and now, she filed this suit by making false allegations under the instigation by some people. The plaintiff is not having prima-facie case or balance of convenience to obtain the injunction order against them. If IA No.1 is not allowed, no hardship or injustice will be caused to the plaintiff. On the other hand, if IA No.1 is allowed, they will be put to great hardship, irreparable loss and injustice which cannot be compensated in any

manner. Hence, they pray to reject the IA No.1.

4. Heard the arguments on IA No.1 from learned counsel for the plaintiff and defendants.

5. After hearing the arguments, the points that arise for my consideration are as follows:

POINTS

1. Whether the plaintiff has made out prima-facie case against the defendants to obtain injunction order?
2. In whose favour balance of convenience is lies on?
3. If temporary injunction is granted, who will be suffering from injustice and great loss?
4. What order?

6. My findings to the points are as follows:

Point No.1 t o 3 : **In the Negative**

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

R E A S O N S

7. Point No.1 to 3: Since these points are inter-linked to each other, they have taken together for common discussion in order to avoid the repetition of

facts. On perusal of plaint, it is noticed that the plaintiff has filed this suit against the defendants for seeking the relief of declaration and partition. In the plaint, the plaintiff stated that the partition deed dated:26.10.2016 is not at all binding upon her equal share over the suit schedule properties. As such, whether to know that the registered partition deed is not binding upon the share of the plaintiff over the suit schedule properties, it requires full fledged trial. But, at this stage it cannot be conducted full fledged trial.

8. On perusal of RTC extract of suit schedule properties, it is noticed that the khatha of the suit schedule properties stands in the name of defendant No.1. After changing the khatha of the suit schedule properties, the plaintiff never challenged the said mutation register before the concerned authority. In the plaint, the plaintiff stated that the suit schedule properties are ancestral and joint family properties of herself and defendant No.1. The plaintiff has not produced the documents prima-facie shows that the suit schedule properties were owned by her father namely Late. Kempappa @ Kempaiah. As such whether to know that the suit schedule properties are ancestral properties of plaintiff and defendant No.1, it

requires full fledged trial. But, at this stage it cannot be full fledged trial. Further more, the documentary evidence produced by the plaintiff, it is noticed that at this stage, the plaintiff is not having prima-facie case or balance of convenience to obtain the injunction order against the defendants.

9. It is well settled law that to granting the injunction order, the plaintiff must show the prima-facie case and balance of convenience. In this suit, the balance of convenience lies infavour of the defendants. As such, if injunction order is granted infavour of the plaintiff, the defendant will be causing hardship and injustice which cannot be compensated in terms of money. Accordingly, this court answer the **Point No.1 to 3 in the Negative.**

10. Point No.4 : In view of my answers given on the above points, this Court proceed to pass the following:-

ORDER

I.A. No.I filed by the plaintiff under order 39 Rule 1 and 2 of CPC is hereby rejected.

No order as to costs.

*[Dictated to the Stenographer, transcribed and typed by her on the computer, corrected by me and then pronounced in the open Court on this **1st day of October, 2024**]*

**[Sri. Sunil .R]
Addl. Sr. Civil Judge and JMFC.,
Chamarajanagara.**