

KADG220032122022



**IN THE COURT OF THE I ADDITIONAL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Present: Kum.Shama Srivatsa.

B.A ,LL.B, (Hon's), LL.M.

I ADDL. Civil Judge & JMFC, Channagiri.

Dated: This the 17th Day of September 2024.

O.S. No.246/2022

PLAINTIFFS : Sri. Ravi Naik

/Vs/

DEFENDANTS : Sri. Mahesh Naik

PARTIES IN I. A.I

APPLICANT : Sri. Ravi Naik

----- (plaintiff)

/Vs/

OPPONENTS : Sri. Mahesh Naik

(defendants)

1.	Provision under which the application is filed	Under Order 39 Rule 1 and 2 R/w 151 of CPC
2.	Relief sought for	Ad- interim temporary injunction
3	Date on which the application is filed	20.06.2022
4.	Number of the application	I.A.No.I

5.	Date on which the objections are filed by different opponents	25.11.2022
6.	The date on which the orders is passed	17.09.2024

Order on I.A No.1

This application is filed under order 39 Rule 1 and 2 read with Section 151 of CPC by the plaintiffs seeking ad-interim temporary injunction to restrain the defendants, their henchmen, assignees or anybody claiming through them from interfering into the plaintiffs peaceful possession and enjoyment over the schedule property till pending disposal of the suit.

2. Brief Facts stated in the Affidavit:

Plaintiff has sworn the affidavit and averred that, the suit schedule property is originally belongs to one Somabai W/o Nagya Naik totally to an extent of 4.30 Acre which is consequently the mutations were effected in the name of plaintiff vide M.R No. H4/2020-21 and Sy.No. 4/6 renumbered as 14/7.since then plaintiff became the owner and was in the possession of the suit schedule property. The plaintiff has alleged that without having any right interest or title over the suit schedule property the defendant has tried to interfere his possession, since six months and resisted with great difficulty several police complaints also made about interference caused by the defendants with the concerned police but defendants continued to interfere with peaceful possession of the plaintiff.

Thus, the plaintiff filed the suit with this application. Accordingly the plaintiff prayed to allow his application.

3. Statement of objection filed by the defendant:

Defendant has filed the written statement and prayed to treat the same as objection to the application. Defendant contended that, without the knowledge of ad legal heirs Somabai W/o Late Nagyanaika compromised in O.S No. 328/2017 on 21.04.2007 wherein all legal heirs were not made as parties. The shares allotted through compromised decree are unequal and same is not binding of the legal heirs of Ramakrishna and Baba Naika. Later, in O.S No. 58/2021 Sri. Ramanaika, Babanaika and Nagyanaika Challenged above said compromise decree which is pendings till date. Therefore plaintiff's rights are not conferred and he is not in possession in and over the suit schedule property without possession of propert and on disputed material temporary injunction cannot be granted. Thus the defendant prayed to dismiss the application.

4. Heard the counsel for plaintiff and counsel for defendants. Perused the records and on perusal of the same, following points arises for my considerations;

1. Whether the plaintiffs have made out prima facie case ?

2. *Whether the plaintiffs have shown that balance of convenience lies in their favour?*

3. *Whether the plaintiffs have further shown that if temporary injunction as prayed herein is not granted, they will be put to irreparable loss and injustice?*

4. *What order ?*

5. Having gone through the records produced by the parties and on perusal of the same, my findings on the above points are under:

Point No.i	: In the Affirmative
Point No.ii	: In the Affirmative
Point No.iii	: In the Affirmative
Point No.iv	: As per the final order for the following ;

REASONS

6. Point No. 1 to 3:

Since these points are interlinked with each other and they form part of the same transaction, they are taken up together for common discussion to avoid the repetition of facts.

7. Summary of the Plaintiff case is that, suit schedule property total to an extent of 4.30 Acre originally belongs to Somabai W/o Nagya Naika, situated at N. Basavanahalli

Village, Channagiri Taluk. This joint family property partitioned between the members on 20.07.2020 through registered partition deed bearing S.R.O No. 2654/2020-21 wherein 1-12.08.00 Acres fallen to the share of plaintiff herein. The necessary mutations were followed the partition deed and the current mutations were disclosing the actual possession of plaintiff in and over the suit schedule property. Plaintiff submitted that, the defendants having no right, title, interest over the suit schedule property interfered with peaceful in possession. Thus, without any alternative plaintiff has filed this suit along with instant application praying to grant the ad- interim temporary injunction order.

8. On the other hand, defendant contended that, plaintiff have no right, title or interest muchless possession in and over the suit schedule property, as the plaintiff alleged that, he is in possession of the suit schedule property by virtue of registered partition deed bearing SRO No. 2654/2020-21 date: 20.07.2020 is not binding on defendants. All members of joint family were not made as parties to partition deed as state supra and share are unequal same is challenged in O.S No. 58/2020. Which is pending for disposal. Thus, defendant prayed to reject the application as it is not tenable against the him.

9. Suit is filed seeking partition in the suit schedule property. When suit is pending for disposal in O.S No.

58/2020 plaintiff seeking permanent injunction against suit schedule property fallen to his share through registered partition deed SRO No. 2654/2020-21 will not bar to issue temporary ad interim injunction. Where as it is well settled law that , to grant interim injunction plaintiff as to prove his possession on the date of filing of the suit. In the instant case plaintiff successfully proved his possession over the suit schedule property as on the date of filing of the suit. Moreover, when defendants claiming their share virtually in the suit schedule property mere apprehension to cause interference is proved beyond doubt . When defendant himself admitted pending disposal of suit in O.S No. 58/2021 can be concluded after full fledged trial. At this stage before full fledged trial causing the result in O.S No. 58/2021 will not dismiss granting of ad interim injunction. Therefore, if the order has prayed for is not granted the defendants may take undue advantage of it and disposes the plaintiffs from the suit schedule property. In that moment, the plaintiffs will be put to irreparable loss and they also face multifarious proceedings. Under such circumstances the Point No. 1 to 3 are held in the affirmative.

10. **Point No. 4:-** In view of my findings on Point Nos.1 to 3, I proceed to pass the following:

ORDER

The IA No. I filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC is hereby allowed.

Consequently, the defendant, his labours, family members, supporters or anyone claiming through him are hereby restrained from interfering with the possession and enjoyment of the plaintiff in and over the suit property till disposal of this suit.

No order as to costs.

(Direct dictate to the Stenographer on computer, corrected by me and pronounced in the Open Court on this 17th day of September , 2024)

Sd/-

**(Kum. Shama Srivatsa)
I Addl Civil Judge & JMFC.,
Channagiri.**