

**IN THE COURT OF
I ADDL CIVIL JUDGE AND JMFC
AT ,HARIHAR**

(Presided Over by SMT JYOTI ASHOK PATTAR)

Original Suit No.255/2023

Dated this the 27th day of April, 2024

Smt. Sharadamma and another

....PLAINTIFFS

//Versus//

Hanumanthappa B R and others.

.....DEFENDANTS

PARTIES TO I.A.NO.I

Ratnamma W/o Nagendrappa

Age: 54 years, R/o: Rajanahalli

... APPLICANT/PLAINTIFF No.2

//Versus//

Hanumathappa B S S/o late Ramappa,

Age: 58 years, Occ: Agriculture,

R/o: Konatele village, Tq: Honnali,

Dist: Davanagere.

..... OPPONENTS/DEFENDANTS

ORDER ON I.A.No.I

The present application is filed by the plaintiff No.2 U/O XXXIX Rule 1 and 2 R/w Sec.151 of CPC along with suit., seeking an order to grant temporary injunction against the defendants restraining from alienating the suit schedule properties.

2. In the affidavit accompanying with the I.A.No.I, it is stated that the suit schedule properties are ancestral joint family properties of plaintiffs and defendant No.1 to 3 and they are in peaceful possession and enjoyment of suit schedule properties. Further stated that, the plaintiffs have claimed their share in the suit schedule properties, but the defendant No.1 to 3 denied the same. Further stated they came to know that, the propositus Ramappa i.e. father of the plaintiffs and defendant No.1 to 3 had sold out the property behind their back without their consent, which is not binding on the plaintiffs. Further specifically stated that, the suit schedule properties are the ancestral joint family properties and they are having the share in the suit schedule properties. Hence, prays to allow the application.

3. On the other hand, the defendant No.7 filed objection to I.A.No.1 wherein he admitted the relationship of the plaintiffs and defendants stated in the plaint and denied the other contents of the application. Further contended that, he purchased the Item No.1 property under the sale deed on 19.06.2006 from the father of the plaintiffs and defendant No.1 to 3 i.e. Ramappa and he is the absolute owner in possession of the item No.1 property. Further contended that, the plaintiffs and defendants colluding with each other filed this false suit to harass him. On these grounds prays to reject the I.A.No.I with costs.

4. Heard arguments of both the sides.

5. The following points arise for the Court consideration ;

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

- 2 Whether plaintiffs have made out the balance of convenience in their favour?
- 3 Whether the plaintiffs will be put to irreparable injury, if the temporary injunction as claimed by is refused?
- 4 What Order?

6. This Court findings on the above points are as under:-

Point No.1: In the Affirmative.

Point No.2: In the Affirmative

Point No.3: In the Affirmative

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

REASONS

7. Point No.1 to 3:- In order to get the order of temporary injunction parties have to show that, prima facie case is in their favour and balance of convenience lies in their favour. Further they have to show that in case of temporary injunction order as sought by is not granted, they will be put to heavy and irreparable loss, which cannot be compensated in terms of money.

8. Keeping the above cardinal principles in mind, this Court has gone through the materials placed on record. It is the specific case of the plaintiffs that, the suit schedule properties are the ancestral joint family properties and in order to prove the prima facie case the plaintiff along with the suit has produced some documents I.e RTC extracts, hand written RTC's, CC of mutation extract, CC of Sale deed dated: 05.20.2007, Encumbrance certificate and the xerox

copy of partition deed and submitted that they are also having share in the said properties.

9. Per contra, it is the contention of the defendant No.7 is that, he purchased the the suit schedule property item No.1 property from the father of the plaintiff and the defendant No.1 to 3 and he is the bonafide purchaser of the said property and the plaintiffs are not having any right, title or interest over the item No.1 property. This being the case, the contention taken by the defendant is matter of trial and at this stage the Court cannot held mini trial and adjudicate the matter on merits. That based on the averments made in the application as well as the documents produced by the plaintiffs and the admission made by the defendant in his objection statement it can be said the plaintiffs have made out prima facie case.

10. At this juncture, any opinion on merits of the case will prejudice the minds of the parties. Therefore, without going to the merits of the case and keeping open the defence taken by the defendant No.7 for the trial. This Court opines that the plaintiffs are entitled to interim relief sought for, as the plaintiff has made out prima facie case.

11. Mere prima-facie case itself is not a ground to grant injunction. The plaintiffs/Applicants have to show that, the balance of convenience is also lies in their favour and in case the defendants succeeded in their illegal act, they will be put into heavy and irreparable loss, which cannot be compensated in terms of money. Further, if the injunction order is granted, no substantive loss would be caused to the

defendants. As stated above the defendant has taken specific contention that he is the purchaser of the suit schedule Item No.1 property. This being the case at this stage if the temporary injunction is not granted, the plaintiffs will be put more hardship rather than the defendant. Therefore, considering the above facts as discussed herein above, at this juncture, the balance of convenience lies in favour of the plaintiffs. Further in case if temporary injunction is not granted the plaintiffs will be put to heavy and irreparable loss rather than the defendant. Therefore, Court is of the opinion that, the point No.1 to 3 are answered in the affirmative.

12. Point No.4:- In view of the above discussion, this Court proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiffs U/o XXXIX Rule 1 & 2 R/w Sec. 151 of CPC., is hereby allowed.

The defendants, their men, their agents or any other person or persons are hereby restrained by way of temporary injunction from alienating the suit schedule properties to third parties by way of temporary injunction till next date of hearing.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the open Court on this the 27th day of April, 2024).

Sd/-
(Jyoti Ashok Pattar)
I Addl. Civil Judge & JMFC,
Harihara.