

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE, AND
JUDICIAL MAGISTRATE FIRST CLASS AT HONNALI.**

PRESENT :Smt. Archana K. Unnithan B.E.; LL.B

Additional Civil Judge and JMFC.Honnali.

.OS 180/2016

Dated this day of 31st August 2019

PLAINTIFF		DEFENDANT
1. Thirumala H. N S/o Narasappa, aged about 42 yeas, R/o: Soratur village, Honnali taluk and another. (Rep. By Sri.HGS Advocate)	V/S	1. Narasappa S/o Doddappa , aged about 73 years, R/o Soratur village, honnali taluk and others. (D1 Rep. By UK advocate, D2, 3, 5, 6 Rep. By sri. ABJ advocate, D4 Rep. By Sri. DRS advocate, D7 exparte, D8 Rep. By Sri. HMS advocate.)

Parties to IA no. 3

PLAINTIFF/applicant		DEFENDANT/opponent
1. Thirumala H. N S/o Narasappa, aged about 42 yeas, R/o: Soratur village, Honnali taluk and another.	V/S	1. Narasappa S/o Doddappa , aged about 73 years, R/o Soratur village, honnali taluk and others.

Order on I.A. No. 3

The plaintiff has filed this I.A no.3 u/o 39 R. 1 and 2 of CPC praying to grant a temporary injunction not to alienate the suit schedule item no.2 property till disposal of the suit by allowing this application.

2. The plaintiff has filed this IA no.3 along with affidavit stating that, suit schedule item no.2 is an agricultural land measuring 1 acre 14 guntas originally belongs to joint famiy of plaintiffs and D1 to 7, it is contended that, the plaintiff and defendants are the joint family members and there is no partition among them. Since, the khata pahani stands in the name of 1st defendant. The 1st defendant is trying to alienate the suit schedule item no.2 property without the consent of plaintiffs. Hence, seeks for injunction.

3. Learned counsel for D1 has filed objection to IA stating that, agricultural land in sy.no. 90 to an extent of 1 acre 14 guntas is absolute property of 1st defendant who acquired by virtue of grant in the month of October 2003. since, 1st defendant is aged and there is no one look after him inevitably has entered into agreement of sale on 26-03-2012

for sale consideration of Rs. 79,000/- and received entire sale consideration. The plaintiffs are trying to put a hindrance to the application schedule property. In the written statement filed by the defendant .

4. Heard both sides, perused materials on record. The following points arises for the consideration of this court .

1. *Whether the plaintiff has made out prima facie case?*
2. *Whether the balance of convenience is lies in favour of plaintiff?*
3. *Whether the plaintiff will put great hardship and loss if injunction is not granted?*
4. *What order?*

5. My findings to the above points are as follows

Point no.1 : In the negative

Point no.2 : In the negative

Point no.3 : In the negative

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

:

REASONS

6. **Point no.1 to 3:** These points are taken together for

consideration to avoid the repetitions.

On perusal of the plaint, written statement and the IA no.3 it is observed that, defendants have denied contention of the plaintiffs that, they are members of undivided joint family, having undivided joint family properties. The plaintiff has produced a G. Tree and RTCs to show that, properties are standing in the name of defendants. The G. Tree produced goes to show that, the plaintiff and defendants constitute a hindu family. The law presumes that every hindu family is a joint family until the status is severed. However, there is no presumption as to the properties held by the joint family. It is specific case of the defendants that, the application schedule property is a self acquired property of D1 . Whether the application schedule property is a self acquired property or a joint family property can not be ascertained without a full fledged trial. When such is the case , this court is the opinion that, the plaintiffs have failed to establish prima facie case, balance of convenience , irreparable injury and loss . Hence, this court proceeds to answered **point no.1 to 3 in the negative.**

7. Point no.4: Accordingly, this court proceeds to pass the

following :

//ORDER//

The IA no.3 filed by the plaintiffs is
hereby rejected.

No order as to cost.

(Smt. Archana K. Unnithan)

Addl. C.J & JMFC., Honnali