

**IN THE COURT OF THE III ADNL. SENIOR CIVIL JUDGE &  
C.J.M., DHARWAD**

**:: PRESENT::**

Sri. Sanjay P. Gudagudi, M.A., LL.B.  
III Adnl. Senior Civil Judge & CJM.,  
Dharwad

Dated this the 20<sup>th</sup> day of August, 2016

**O.S. No. 223/2016**

**Plaintiff/s** : Dr. Ashmiha Padma @ Priyadarshini  
- **Vs** -

**Defendant/s** : Bhimanna N. Ambiger & others

**Parties to I.A. No.1**

**Applicants** : Dr. Ashmiha Padma @ Priyadarshini  
- **Vs** -

**Opponents** : Bhimanna N. Ambiger & others

**ORDER ON I.A.NO. 1 UNDER ORDER 39 RULES 1 AND 2 OF  
C.P.C. FILED BY THE PLAINTIFF**

The present interim application is filed by the plaintiff seeking temporary injunction to restrain the defendant Nos. 1 and 2 from alienating the suit properties until final disposal of the

suit. The defendants have filed written statement to treat as objection to the present application and prayed to reject the application.

2. It is the case of the plaintiff that the suit proproperties are ancestral joint family properties. The defendant No.1 is father of the plaintiff and the defendant No.2 is alleged second wife of the defendant No.1. The defendant No.1 has been neglecting the plaintiff for various reasons. The suit properties originally belonged to forefathers of the plaintiff. The plaintiff has lawful share in the suit properties. When the plaintiff asked her share in the suit properties, she was denied the same. Hence, the plaintiff has filed the suit for partition. The plaintiff has paima facie case and balance of convenience is in her favour. Hence, the plaintiff has sought for relief of temporary injunction to restrain the defendant Nos. 1 and 2 from alienating the suit properties until final disposal of the suit.

3. The defendant Nos. 1 and 2, in their written statement, have denied that the suit properties are ancestral joint family properties. The relationship between the plaintiff and the defendant No.1 has not been disputed. It is contended that the mother of the plaintiff filed petition for divorce under M.C. No. 5/2007 and she has given up all claims like past present and future on her behalf as well as on behalf of the plaintiff against the defendant No.1 in getting divorce. Hence, the plaintiff has no right over the suit properties. The defendant No.1 purchased

Contd....

sites in the name of the plaintiff when she was minor, but the said properties are not included as suit properties. The defendant No.1 has right over the said properties. Hence, the defendants have prayed his right over the said properties through counter claim. Hence, the defendants have prayed to reject the application.

4. Heard on the application.

5. The following points are arisen for consideration:

- 1) Whether the plaintiffs have prima facie case for trial?
- 2) Whether the plaintiffs have proved that balance of convenience is in their favour and irreparable loss and hardship would be caused to them, if temporary injunction has not been granted in his favour?

3) What order?

6. The above points are answered as under:

Point No.1 - In the Affirmative

Point No.2 - In the Affirmative

Point No.3 - As per final order for the following:

Contd....

**:R E A S O N S :**

7. **Point Nos. 1 and 2:** The instant suit has been filed for the relief of partition in respect of suit properties. The suit properties are discribed as agricultural lands viz.,

1) Rsy. No. 43/D plot No.122 measuring A:00::G:02

2) Rsy. No. 10/4 measuring A:04::G:00

3) Rsy. No. 10/1 measuring A::G:01

of Bammanakatti village. The relationship between the plaintiff and the defendant No.1 that the daughter and father has not been disputed. As per the case of the plaintiff the suit properties are ancestral joint family properties and she has lawful share in them. On the contrary the defendant Nos. 1 and 2 have denied the said contention of the plaintiff. It is contended that at the time of getting divorce from the defendant No.1 mother of the plaintiff has given up all future rights against the defendant No.1 on her behalf and on behalf of the plaintiff. Hence, the plaintiff has no right over the suit properties. The plaintiff has not inpleaded other joint family properties in the suit, which are shown in the counter claim of the written statement.

8. The plaintiff, at this preliminary stage of the suit, has produced certified copies of revenue documents like records of rights, mutation registers etc., A perusal of the said documents prima facie appears that the suit properties belonged to the ancestors of the family. The defendant No.1 has pleaded that the suit property No.1 bearing Rsy. No. 43/D is his self acquired

Contd....

property. The relationship between the plaintiff and the defendant No.1 has been admitted. In order to determine the rights over the suit landed properties, it requires a conclusive trial. The plaintiff has produced materials to show that the case is fit for trial. Of course, in the instant application, cause of action for the application has not been properly mentioned by the plaintiff, but the plaintiff has shown the prima facie case for trial. It is expected from both the parties to the suit to maintain the suit properties intact until final disposal of the suit. Any alienation of the suit properties during pendency of the suit may cause for multiplicity of proceedings. Moreover the section 52 of the Transfer of Property Act bars the parties to the suit from alienating the properties pendent lit, which are subject matter of the suit. As such, the plaintiff has prima facie case for trial and balance of convenience is in her favour. No hardship would be caused to the defendant Nos. 1 and 2 from not alienating the suit properties until final disposal of the suit. Hence, the point Nos. 1 and 2 are answered in **Affirmative.**

9. **Point No.3:** That for the reasons discussed supra, the following:

**:O R D E R:**

The I.A. No. 1 filed under Order 39 Rules 1 & 2 of C.P.C. by the plaintiff is allowed.

Contd....

The defendant Nos. 1 and 2 are, hereby, restrained by way of temporary injunction from alienating the suit properties until final disposal of the suit.

No order as to costs.

*(Typed on the laptop by me, then corrected and order is pronounced in the open court on the 20<sup>th</sup> day of August, 2016).*

(SANJAY P. GUDAGUDI)  
III Adnl. Sr.Civil Judge & CJM.,  
Dharwad

Contd....

*(Order is pronounced in open Court  
Vide separate order)*

:O R D E R:

The I.A. No. 1 filed under Order 39 Rules 1 & 2 of C.P.C. by the plaintiff is allowed.

The defendant Nos. 1 and 2 are, hereby, restrained by way of temporary injunction from alienating the suit properties until final disposal of the suit.

No order as to costs.

GUDAGUDI)

(SANJAY P.

III Adnl. Sr.Civil Judge & CJM.,  
Dharwad