

**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE & JMFC
DHARWAD**

: PRESENT:

Sri. MARIYAPPA,
B.A., LL.B.
II Addl. Senior Civil Judge & JMFC
Dharwad

Dated this the 21st day of April, 2022

OS No.223/2014

PLAINTIFF : Dr.Ashmitha Padma @ Priyadarshini

(By Sri. P. S. U, Adv.)

-Vs-

DEFEDENTS : 1. Bhimanna S/o Narasappa Ambiger
and others

(By Sri. Ramakrishna Hegade, Adv.)

Parties to the IA No.IX

**APPLICANTs/
Ori. Defendants** : Bhimanna S/o Narasappa Ambiger
and another.

-Vs-

**OPPONENT /
Ori. Plaintiff** : Dr.Ashmitha Padma @ Priyadarshini

ORDER ON IA NO.IX

The counsel for the defendants No.1 and 2 has brought the instant application U/o.39 Rule 1 & 2 R/w Sec. 151 of CPC seeking an ad interim order restraining the plaintiff / counter claim defendants from alienating the counter claim properties in any manner till disposal of the suit.

2. The said application is accompanied with the sworn affidavit of the defendant No.1 wherein it is contended that, the plaintiff has filed suit for the relief of partition and separate possession by metes and bounds. On the other hand they sought the relief of counter claim in respect of properties which is aperted from the original suit. It is further contended that, by taking undue advantage of their names which have been entered in the record of rights in respect of counter claim properties, in order to cause loss or harm to the defendants No.1 and 2, the plaintiffs are going to alienate the properties. Therefore, the plaintiffs have to be restrained from alienating the properties till disposal of the suit. If the application is allowed no harm will cause to the plaintiffs. On the other hand it will put to loss and hardship to the defendants. They have prima facie case, balance of convenience and if the application is not allowed it will cause untold hardship and irreparable loss to them. On these grounds they prayed to allow the application.

3. On the other hand at the first instance the counsel for the plaintiff has filed memo on 02-05-2019 wherein it is stated

that, the contents of the written statement to the counter claim and objection to IA No.11 filed by the plaintiff may be treated as objection to the IA No.9. But later on the plaintiffs have filed their objection on 23-03-2022 to the present application. In the said objection she has denied affidavit averments as false and baseless. It is further contended that, the defendants have not assigned any bonafide reasons and grounds in the application or in the affidavit. The defendants have not sought for specific relief in their counter claim. On the other hand, the prayer is like *omni bus* and highly vague. The defendants have not produced any piece of evidence to substantiate that, the properties as shown in the IA No.9 are purchased by the defendant No.1. Even though the defendants have not described the properties as shown in the counter claim as per mandatory provision of order 7 rule 3 of CPC. The properties shown in the IA No.9 are purchased by the grandmother of the plaintiff. The sale deed very clearly demonstrates that, the said properties are purchased by the grandmother of the plaintiff from her own fund in the name of granddaughter and daughter Sarvamangala. The defendant No.2 of the counter claim i.e., Sarvamangala D/o Namadev Koujageri is not the plaintiff to the suit filed by the plaintiff. Therefore, counter claim cannot be made against non party to the proceedings and which is not maintainable. The defendants have not produced the periodical report about assets and liabilities submitted to the government to substantiate their contentions. Therefore, they have no right to claim over the property. The defendants have failed to make out the *prima facie* case and balance of convenience is not lies in their

favour, therefore if the application is not allowed no hardship or loss will cause to them. On these grounds they prayed for rejection of application.

4. Heard the arguments on both side and perused the material placed on record.

5. On perusal of the materials placed on record the following points arise for consideration are:

1. Whether the defendants have made out the prima facie case in their favour?
2. Whether the balance of convenience lies in favour of defendants?
3. Whether an irreparable loss will cause to the defendants if an interim order is not granted as prayed in the IA No.IX?
4. What order?

6. My finding to the above points are as under:

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| Point No.1 : | In the Affirmative. |
| Point No.2 : | In the Affirmative. |
| Point No.3 : | In the Affirmative. |
| Point No.4 : | As per the final order for the following: |

REASONS

7. **Point No.1 to 3:** These points have interlinked with each other and finding on point No.1 will bear on others hence in

order to avoid repetition of facts and discussion these point have been taken together for consideration. The preset suit is filed by the plaintiff for the relief of partition and separate possession in respect of suit schedule properties. On the other hand the defendants No.1 and 2 have contested the suit by filing their written statement and they have also made counter claim against the plaintiff and another by name Smt.Sarvamangala D/o. Namadev Koujageri who is not the party to the suit. Now the defendants have brought the instant application seeking an order for restraining the plaintiff and another from alienating the suit schedule properties as shown in the counter claim in any manner till disposal of the suit. In the affidavit which is annexed to the present application wherein it is contended that, by taking undue advantage of their names have been appeared in the ROR the plaintiff and another in order to cause loss and harm to the defendants are trying to alienate the properties. Therefore, they have to be restrained from alienating the properties in any manner. It is further contended that, the plaintiff has brought instant suit for the relief of partition and separate possession by metes and bounds. On the other hand they have also sought the relief of counter claim in respect of properties which is aparted from the original suit.

8. It is pertinent to note here that, admittedly the defendants have made counter claim against the plaintiff and another person by name Sarvamangala who is not party to the suit. On perusal of the material placed on record it appears that, the plaintiff has brought the IA No.31 U/o1 rule 10 R./w Sec.151 of CPC seeking an order for implead the said Sarvamangala as plaintiff No.2 to the present suit.

The said application is resisted by the defendants by filing their objections. Since the said application is pending for adjudication. Though the defendants have shown the name of said Sarvamangala as defendant No.2 to the counter claim but no summons is served on her. Hence without serving summons to the said defendant as she is not the plaintiff of the present suit, the claim against her by the defendants through the present application is not considerable one. Hence the present application is considered only against the plaintiff.

Let us discuss about whether the defendants have made out prima facie case to consider the present application.

9. The defendant No1 and 2 have brought the instant application seeking an order for temporary injunction against the plaintiff. In the affidavit the defendant No.1 has contended that, taking undue advantage of their names appearing in the RTCs the plaintiff is trying to alienate the properties. On the other hand the plaintiff has filed objection wherein contended that, the present application is false and baseless and the defendants have not produced any piece of evidence to substantiate that, the properties shown in the IA No.9 and in the counter claim are purchased by the defendant No.1 by investing joint family fund. The counter claim sought by the defendants is itself hit by order 7 rule 3 of CPC as they have not given proper description of the properties. The properties shown in the counter claim are purchased by the grandmother of the plaintiff under the registered sale deed by investing her own funds. Hence the application is liable to be dismissed.

10. It is the contention of the defendants that, the properties shown in the present application and counter claim are joint family properties and they were purchased by investing joint family funds. It is further contended that, they have apprehended that, at any time the plaintiff may alienate the suit properties without their consent and knowledge during the pendency of the suit. If the plaintiff succeeded in her attempt it will cause hardship to them. On the other hand the plaintiff has contended that, the defendants without proceeding with the suit have brought false application in order to drag on the matter as the suit is of the year 2014. There is no reason given by the defendants for their apprehension of alienation of the property by the plaintiff as the properties are purchased by the grandmother of the plaintiff from her own funds. Now at belated stage the defendants come up with present application without any reasonable grounds.

11. Admittedly in order to substantiate their contention the defendants have not produced any material document about their apprehension with regard to alienation of the properties by the plaintiff at any time. On careful perusal of counter claim averments it appears that, the defendants have contended that, the suit properties are the joint family properties and they have apprehended about that, the plaintiff may alienate the property at any time without their knowledge. On the other hand, the plaintiff has contended that, the suit property is purchased by her grandmother. Since the plaintiff has brought instant suit by contending that, the suit schedule properties are joint family properties and she is entitled her legitimate share and on the other hand the defendants have also made counter claim that,

the counter claim schedule properties also joint family properties. In order to find out the nature of the property whether it is joint family property or not and the question with regard to entitlement of share by the defendants, these points need full pledge trial. In the meanwhile there might be chances of alienation of the properties by the plaintiff, as the defendants have contended that, the suit property is joint family property. As discussed above since the suit and counter claim are filed for the relief of partition and separate possession in the suit schedule properties at this juncture without there being trial it is not possible to come to the conclusion that, the suit schedule properties are purchased by the grandmother of the plaintiff. Under such circumstances if the plaintiff succeed in her attempt of alienation of the properties it will cause inconvenience to the defendants and it will also cause multiplicity of the proceedings. It is pertinent to note here that, the apprehension may not be in actual but if the apprehension create the fear in the mind of the defendants about alienation of the property, it is sufficient to hold that, there is an apprehension of alienation of the properties at any time. Therefore, the defendants have made out prima facie case and the balance of convenience tilts in their favour. If the plaintiff has succeeded in her attempts to alienate the property in favour of 3rd person, definitely there is no end to the litigations and it will cause multiplicity of the proceedings. Therefore, if the plaintiff succeed in her attempt of alienation it will cause more hardship or injury to the defendants rather than the plaintiff in the event of an order of temporary injunction is not granted and the very purpose of the filing of the counter claim will become infructuous. It is pertinent to note here

that, among the counter claim properties only the property CTS No.4917B/426 of ward extension of Hubli is stated to be in the name of plaintiff and remaining property stated to be in the name of said Sarvamangala who is not party to the suit and no summons on counter claim is served on her. In order to avoid the multiplicities of proceedings the plaintiff is to be restrained from alienating the property in any manner. Hence point No.1 to 3 are answered in the **affirmative** and the following order is passed:

ORDER

The IA No.IX U/o.39 rule 1 and 2 R/w
U/Sec.151 of CPC filed by defendant No.1 and 2
is hereby allowed.

Consequently the counter claim defendant
No.1 is hereby restrained from alienating the
property CTS No.4917B/426 of Ward Extn of
Hubli in any manner till disposal of the suit.

No order as to the costs.

For hear on IA No.30.

Call on : 27-05-2022.

(Partly dictated to the stenographer, transcribed and typed by her, partly directly dictated and typed by her on computer, corrected and then, pronounced by me in the open court on this, the 21st day of April, 2022).

(Sri. MARIYAPPA)

II Addl.Sr CJ and JMFC, Dharwad.

