

IN THE COURT OF IV ADDL. SENIOR CIVIL JUDGE
AND J.M.F.C., DHARWAD.

Present: SRI.ANAND S KARIYAMMANAVAR
B.A., LL.B(Hon's)
IV Addl. Senior Civil Judge
& J.M.F.C., Dharwad.

OS No.444/2022

Dated : 4th day of July 2024

Plaintiff/s : Smt.Gouravva W/o Goudappa Mudigouda
and others.

(R/by Sri.B.V.S, Adv)

V/s.

Defendant/s: Ningappa S/o Basappa Kelageri
and others.

(D1 R/ by Sri.S.R.H, Adv)
(D7 & 8 R/by Sri.S.G.H, Adv)
(D2 to 6 Exparte)

PARTIES TO IA NO.II

Applicant/s : Smt.Manjula W/o Shivanand Kyamanakeri
(Org.pl No.5) and others.

V/s.

Opponent/s: Ningappa S/o Basappa Kelageri
(org defs) and others.

ORDER ON I.A.NO.II

The plaintiffs filed this application under Order 39 Rule and 1 and 2 R/w Section 151 of CPC and sought to issue ad-interim temporary injunction against the defendants

from alienating the suit schedule properties till the disposal of this suit.

2. Further, the plaintiff No.5 filed her affidavit in support of this application and submitted that, plaintiffs have filed this suit for relief of declaration to declare that the sale transaction between the father of the plaintiffs and defendant No.7 to 9 is null and void and same are not binding on their share over the suit schedule properties and also for the relief of partition and separate possession. Further it is submitted that, the defendant No.7 to 9 by colluding with each other attempting to alienate the suit schedule properties and if they alienate, it will lead to multiplicity of proceedings, hence present application is filed.

3. On the contrary, the defendant No.7 & 8 filed their written statement on 04.01.2024 and in their written statement they have denied the claim of the plaintiffs. Further, at the time of argument, the counsel for the defendant No.7 & 8 submitted that, they will not alienate the suit properties.

4. During the pendency of this suit, defendant No.9 reported as dead, accordingly plaintiffs has taken necessary steps to bring the LRs of defendant No.9 though the notice were served on defendant No.9(a) to (d), they have not choosen to appear before this court. Later after impleading LRs of defendant No.9, summons were duly served, however they remained absent and placed exparte.

5. I have heard the arguments of both side on IA No.II and perused the material available on record.

6. Now the following points arise for my consideration.

1.	Whether the plaintiffs have made out prima facie case ?
2.	Whether the balance of convenience lies in favour of the plaintiffs ?
3.	Whether irreparable loss would be caused to the plaintiffs, if the instant interlocutory application is not allowed ?
4.	What order ?

7. My answers to the above points are as under:-

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

REASONS

8. **Point No.1 to 3:-** These points are interconnected with each other, as such in order to avoid repetition of facts, they are discussed together.

8(a). This is a suit filed by the plaintiffs against the defendants for the relief of partition and separate possession and also for the relief of declaration to declare the sale transaction between the father of the plaintiffs and defendant No.7 to 9 as null and void and same are not binding on their shares and also for the relief of declaration to declare the partition dated 04.08.2000 between the father and brothers of plaintiffs as null and void and not binding on the plaintiffs share. Further on perusal of the material available on record, it is the case of the plaintiffs that defendant No.1 is the son of first wife of plaintiffs father and plaintiffs No.1 to 5 and defendant No.2's husband are the daughters and son of

second wife and the suit schedule properties are the ancestral and joint family properties of plaintiffs and defendant No.1 and 2, hence the plaintiffs are having equal share over above suit properties. The father of the plaintiffs have sold certain suit properties in favour of defendant No.7 to 9 by defeating the legitimate share of the plaintiffs. Further on perusal of the material available on record, in the present case the relationship of the parties are not disputed by the either of the parties.

9. Further, at the time of arguments, learned counsel for the defendant No.7 & 8 submitted that they are not going to alienate the suit schedule properties till the disposal of this case. However, as there is specific contention of the plaintiffs that suit properties are ancestral and joint family properties of plaintiffs and defendant No.1 and 2 and if temporary injunction is not granted, defendant No.7 & 8 and LRs of defendant No.9 may alienate the suit schedule properties to third parties and same will lead to multiplicity of proceedings. Under such circumstances, it is plaintiffs who will suffer irreparable loss or injury than the defendants. In view of the admissions of the relationship between the

plaintiffs and defendant No.1 and 2, it clearly make out prima facie case in favour of plaintiffs and balance of convenience lies in favour of plaintiffs, therefore if the temporary injunction is granted no hardship will be caused to other side. Hence, for the above stated reasons, I have answered **point No.1 to 3 “in Affirmative”**.

10. **Point No.4:-** For the reasons stated while discussing **point No.1 to 3**, I proceed to pass the following:-

ORDER

The I.A.No.II filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendants are hereby restrained from alienating the suit schedule properties till the disposal of this suit.

No order as to costs.

(Dictated to stenographer, typed by her, corrected and then pronounced by me in the open court on **4th day of July 2024**)

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

For order
04-07-2024

(Order pronounced in the open Court vide separate order)

ORDER

The I.A.No.II filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendants are hereby restrained from alienating the suit schedule properties till the disposal of this suit.

No order as to costs.

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

ORDER

The I.A.No.X filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby dismissed.

No order as to costs.

(Anand S Kariyammanavar)
IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.

ORDER

***The I.A.No.XI filed by the plaintiffs
under Order 26 Rule 9 R/w Section 151
of CPC is hereby dismissed.***

No order as to costs.

(Anand S Kariyammanavar)

IV Addl. Senior Civil Judge,
& J.M.F.C., DHARWAD.