

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE  
& J.M.F.C., HUBBALLI

Present:  
Sri. Ganapathi Prashanth M.,  
B.A.LL.B.,  
I Addl. Senior Civil Judge & J.M.F.C., Hubballi.

O.S. No.6/2022

Dated this the 22<sup>nd</sup> day of September, 2022

Plaintiff/s : 1. Smt.Anupama w/o.Sharan Byali, of  
Navanagar, Hubballi and others.

.Vs.

Defendant/s : 1. Smt.Susila w/o.Veerappa Byali of  
Navanagar, Hubballi and others

**PARTIES TO I.A.No.I and II**

Applicant/s : 1. Smt.Anupama w/o.Sharan Byali,  
Navanagar, Hubballi and others.

.Vs.

Opponent/s : 1. Smt.Susila w/o.Veerappa Byali and  
others

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**ORDERS ON I.A. No.1 and 2**

The plaintiffs have filed I.A.No.1 under Order 39 Rules 1 and 2 r/w.Sec.151 of C.P.C. to grant temporary injunction against the defendants 2 and 3 from alienating the suit properties pending disposal of the suit.

The plaintiffs have filed I.A.No.2 under Order 39 Rules 1 and 2 r/w.Sec.151 of C.P.C. against defendants 1 to 3 from dispossessing the plaintiffs from the house property bearing EWS No.109 situated at Navanagar, Hubballi.

2. The common grounds urged in the affidavit filed in support of the present applications are that, this suit is for partition and separate possession and the defendants are taking undue advantage of their possession over the suit properties and the names of some of the defendants appearing in some of the records of the suit properties, attempted to enter into illegal transaction of sale or mortgage with 3<sup>rd</sup> party and if they are succeeded, the rights of the plaintiff will be defeated and prayed to allow the I.A. It is also pleaded that the plaintiff is in actual possession and enjoyment of the house property bearing EWS No.109 situated at Navanagar Hubballi and the defendants taking undue advantage of names of some of the defendants appearing in some of the records, are attempting to dispossess the plaintiffs from the said house and hence I.A.No.2.

3. The defendants filed written statement and adopted the same as objections. It is their version that the deceased Sharan is the husband of plaintiff No.1 and father of plaintiffs 2 and 3. The defendant No.1 is the mother of said Sharan and also the mother of defendants 2 and 3. The marriage between Sharan and the plaintiff No.1 took place on 21/5/1998. He was not well educated and incapacity of maintaining any jobs in spite of his father made several attempts to get him a government job. The plaintiff No.1 never adjusted with Sharan and started creating the disputes. The husband of 1<sup>st</sup> defendant served multiple notices to the husband of plaintiff No.1 to vacate the residential house EWS No.109 which personally belonging to V.H.Byali acquired out of his self earnings by availing the loan and put up construction in the ground floor and 1<sup>st</sup> floor out of his self earnings and retirement benefits. Hence, the contribution by the husband of 1<sup>st</sup>

plaintiff for the said property does not arise. The husband of 1<sup>st</sup> plaintiff was low profile minimum low paying salary and did not even take care of his own family and hence, such person assisting the husband of 1<sup>st</sup> defendant does not arise. In the agreement dated 1/1/2005 and 2/1/2005 between V.H.Byali the husband of 1<sup>st</sup> defendant and said Sharan the husband of 1<sup>st</sup> plaintiff acknowledged that the entire house is self earned property of V.H.Byali and the plaintiff or Sharan do not have any share therein and that if the plaintiff or Sharan did not abide by any terms of the agreement, they get vacated from the house. The plaintiff No.1 started demanding the share after the death of V.H.Byali on 25/11/2008. After defendant No.1 returned from U.S.A., as harassment and torture from plaintiff No.1 and her husband, she transferred the plot No.261 to the husband of plaintiff No.1 vide gift deed dated 15/2/2011 against her will and wish. The husband of defendant No.1 was independently staying in EWS 109 ground floor. The defendant No.1 started taking the shelter at her grand daughter's place after surviving Corona positive and mild heart attack while at home. The plaintiffs have no right, title or interest over the suit properties and never contributed for any purchase or construction of building and suit properties are not the joint family properties and prayed to dismiss I.As.

4. Heard, perused the pleadings and materials placed on record.

5. The points for consideration are;

1. Whether the plaintiffs have made out prima facie case ?
2. Whether balance of convenience is lies in favour of the plaintiffs ?

3. Whether the plaintiffs will be put to irreparable injury if order is not granted ?
  4. What order ?
6. My findings on the above points are as follows:
- Point No.1 : Partly in the affirmative.
- Point No.2 & 3 : Partly in the affirmative.
- Point No.4 : As per final order, for the following;

### **REASONS**

7. **Point No.1:** The suit schedule properties are;
- (1) house property bearing EWS 109 situated at Navanagar, Hubballi,
  - (2) Plot No.262 measuring 1 gunta 7.50 ana situated at Vivekanand Nagar, Gokul road, Hubballi and
  - (3) House and open site in Plot No.5, Ward No.17A measuring 6 guntas 10 annas situated at Saptapur village, Navodayanagar, Dharwad.

8. The R.T.C. of suit item No.3 stands in the name of husband of 3<sup>rd</sup> defendant as per purchase in the year 2007-08. That is not prima facie shown to be purchase out of the joint family funds. The defendants produced the copy of the sale deed dated 22/2/2008 and loan sanction letter dated 10/2/2008 to show that the purchaser Satish Byali (defendant No.3) had his self earnings from his salary of more than Rs.16,00,000/- annually. Therefore the purchase of property for Rs.22,00,000/- by availing the loan by the defendant No.3, cannot be considered prima facie to be the ancestral property. Therefore, prima facie suit item No.3 being available for partition at the instance of plaintiff ruled out. Hence, prima facie case is not

made out to grant injunction against defendant No.3 from alienating the suit property as prayed for in I.A.No.1.

9. The suit schedule item No.2 property is plot No.262+640 situated at Vivekanand Nagar and said property stands in the name of defendants and also in the name of husband of 1<sup>st</sup> plaintiff jointly as per inheritance. Therefore, to this extent, prima facie case is made out to restrain from alienating the said property, pending disposal of the suit.

10. The suit schedule item No.1 property is house bearing No.EWS 109 situated at Navanagar. The plaintiff is in occupation of a portion of the said residential building, is not in dispute. However, whether the plaintiff has got any right over the said property is disputed. The khata in respect of the said property stands in the name of 1<sup>st</sup> defendant. The husband of 1<sup>st</sup> defendant is said to have executed a registered Will dated dated 18/3/2000 in respect of said house bequeathing said house in favour of 1<sup>st</sup> defendant. The certified copy of the said Will is produced by the plaintiff. The plaintiff has seriously disputed the execution of the said Will. The validity of the said Will has to be decided on the basis of due execution and attestation of the Will and the right of the testator to bequeath the said property.

11. The 1<sup>st</sup> defendant has executed the registered gift deed dated 29/10/2021 in favour of 3<sup>rd</sup> defendant in respect of the said property. Therefore even if temporary injunction is not claimed against 1<sup>st</sup> defendant in I.A.No.1, that would not affect the existence of prima facie case. The validity of the gift deed would depend upon the validity of the Will mentioned supra.

12. Therefore, a triable issue exists in the suit in respect of the said property. A prima facie case is not prima facie case in the suit

but only opinion that there exists a triable issue in the suit. From the above observations, it is clear that prima facie case is made out in respect of suit item No.1 and 2 but not in respect of suit schedule item No.3 property. Hence, point No.1 is answered partly in the affirmative.

**13. Point Nos.2 and 3:** When the plaintiffs have made out prima facie case in respect of suit item No.1 and 2, if the defendants 2 and 3 alienate the suit schedule item Nos.1 and 2, the rights of the plaintiff get jeopardized, cannot be ruled out if the purchaser put forth the plea of bonafide purchase for consideration. The balance of convenience lies in favour of the plaintiffs and the plaintiffs will be put to irreparable injury if temporary injunction is not granted in respect of suit item Nos.1 and 2 properties on I.A.No.1. Similarly when the possession of a portion of building situated in suit item No.1 is admitted fact, the plaintiff cannot be evicted by the defendants till the rights of the plaintiff therein are adjudicated in this suit. Therefore injunction against dispossession without due process of law can be granted on I.A.No.2, in respect of suit schedule item No.1 property, in respect of portion in occupation of the plaintiff. To this extent, the balance of convenience lies in favour of the plaintiffs and the plaintiffs will be put to irreparable injury if T.I. is not granted on I.A.No.2. In respect of remaining property viz item No.3 in the suit schedule, prima facie case is not made out and hence the plaintiffs will not be put to irreparable injury in respect of suit schedule item No.3. Hence, point Nos.2 and 3 are answered partly in the affirmative accordingly.

**14. Point No.4:** In view of finding on point No.1, this court proceeds to pass the following;

**ORDER**

I.A.No.1 filed by the plaintiff under Order 39 Rules 1 and 2 r/w.Sec.151 of C.P.C. is hereby allowed in part.

The defendant Nos.2 and 3 are hereby restrained from alienating or encumbering the suit item Nos.1 and 2 properties in any manner, pending disposal of the suit, by way of temporary injunction.

I.A.No.2 filed by the plaintiffs under Order 39 rules 1 and 2 r/w.Sec.151 of C.P.C. is hereby allowed.

The defendants are restrained from evicting the plaintiffs from the portion in her occupation out of the suit schedule item No.1 property, pending disposal of the suit, by way of temporary injunction.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected directly on computer and then pronounced by me in the Open Court on this the 22nd day of September, 2022)

(Ganapathi Prashanth M.,)  
I Addl. Senior Civil Judge & J.M.F.C.  
Hubballi.