

ORDERS ON I.A.NO.II

The learned counsel for the plaintiff filed an I.A. No.II under Order XXXIX rule 1 and 2 R/w Sec.151 of CPC seeking an order of ad-interim temporary injunction against the defendant No.3, 4 and 6 to 25, their henchmen, servants or any person or persons claiming under them restraining from alienating, transferring, encumbering, mortgaging, mutating revenue records, further developing or creating any third party rights or interest in and over the suit schedule I and II properties in any manner, pending disposal of the suit.

On perusal of the entire materials available on record, it is noticed to the court that, this is a suit for partition and separate

possession and declaration is concerned. On careful perusal of the affidavit of the plaintiff, it is noticed to the court that the suit schedule properties are joint family properties, in which he has a lawful and undivided 1/3rd share, and that no partition by metes and bounds has ever taken place. The defendant No.1, not being the absolute or exclusive owner of the suit schedule properties, had no authority to bequeath, alienate or otherwise deal with the said properties. Notwithstanding the same, Defendant No.1 has purportedly executed illegal and void documents in respect of the suit schedule properties, without plaintiff knowledge, consent, or concurrence behind his back. Consequently, Defendant No.2 and 3 does not acquire any exclusive, absolute, or transferable right under such illegal acts.

It is further submitted that, the Defendant No.1, without having any absolute or exclusive title, has executed illegal and void gift deeds in respect of Suit Schedule Property Nos.II and III in favour of Defendant No.2, Suit Schedule Property No.I Namely Plot No.11 to 22 carved out of suit property No.I in favor of defendant No.2 and 3, behind his back and without his knowledge or consent. The said deeds do not confer any right, title, or interest upon Defendant No.2 and 3 and are not binding on his lawful share. The defendant No.2 falsely, falsely

claiming rights under the said illegal gift deeds, has further executed an illegal relinquishment deed in favour of defendant No.3 in respective Suit Schedule Property No.1 Namely Plot No.11 to 22 carved out of suit property No.1, and has also entered into a Joint Development Agreement with the defendant No.6 in respect of Suit Schedule Property No.II, even though the property continued to remain joint family property.

It is further submitted that the defendant No.5, under an illegal and unenforceable Joint Development Agreement, purportedly executed by Defendant No.1 in his favour, has proceeded to sell plots carved out of Suit Schedule Property No.I in favour of Defendant Nos.7 to 14 and Defendant Nos. 19 to 22, without any lawful authority, and without his knowledge, consent, or concurrence, and behind his back.

It is further submitted that the defendant Nos.2 and 3, without any right or title, have also alienated some plots carved out of Suit Schedule Property No.1 in favour of Defendant Nos.15 to 18, which transactions are illegal, void, and not binding on his undivided share. The defendant No.2 has also converted Suit Schedule Property No.II from agricultural to non-agricultural use and has sold certain plots carved out of Suit Schedule Property No.II. Defendant No.6, claiming under the illegal Joint Development

Agreement, is now making frantic attempts to further alienate plots carved out of Suit Schedule Property No.II and is proceeding with developmental activities at great haste. The Defendant Nos.7 to 25 are purchasers claiming through illegal and void transactions and are attempting to further alienate, encumber, or create third-party interests in suit schedule property Nos.I and II, which will seriously prejudice his lawful rights and render the suit infructuous. The defendant No.3, without any independent right under the illegal gift deed executed by defendant No.1 and the illegal relinquishment deed executed by defendant No.2, has entered into a compromise in O.S. No.353/2025 on the file of the Hon'ble Principal Senior Civil Judge, Hubballi in respect of plots No.15 to 22 carved out of suit schedule property No.1. The said compromise is wholly unauthorized and not binding on his share.

It is further submitted that the Defendant No.4, claiming through Defendant No.3 under the said illegal compromise and void transactions, is attempting to assert rights and is seeking to enter her name in respect plots No.15 to 22 carved out of suit schedule property No.I, which is wholly illegal and without authority of law. Unless Defendant Nos.3, 4, and 6 to 25 are restrained by an order of temporary injunction from alienating,

transferring, encumbering, further developing, or creating third-party interests in respect of suit schedule property Nos.1 and 2, and unless Defendant No.6 is restrained from carrying out any further developmental activities, he will suffer irreparable loss and injury, and the very purpose of the suit will be defeated, leading to multiplicity of proceedings.

Plaintiff has made out a prima-facie strong case and balance of conveniences are in his favor. By granting ex-parte ad-interim injunction no loss or injustice will be caused to the defendant No.3, 4 and 6 to 25. On the contrary, if at all the ex-parte ad-interim injunction has not been granted, plaintiff will be put heavy and irreparable loss which cannot be compensated in terms of money. Therefore, the plaintiff having right over the said properties. In such circumstances, he has filed the present suit.

Anyhow, in this stage the contents of the affidavit sworn by the plaintiff are presumes to be genuine in order to avoid the defeating the rights of the plaintiff, it is better to grant interim relief against the defendant No.3, 4 and 6 to 25 regarding restraining them from alienating or encumbering or creating charge the suit schedule I and II properties to anybody, if the properties are alienating to some one purpose of the suit will be defeated

*and rights of the plaintiff also curtailed,
hence I proceed to pass the following:*

ORDER

*I.A. No.II filed by the plaintiff
under Order XXXIX Rule 1 and 2 R/w
Sec.151 of CPC is hereby allowed.*

*Consequently, defendant No.3, 4
and 6 to 25 are hereby restrained
from alienating the suit schedule I and
II properties in favour of third persons.*

*This order is in force until passing
consider order on the same.*

*Plaintiff is to comply the order 39
rule 3(a) of CPC.*

*Issue order on IA No.II to the
defendant No.3, 4 and 6 to 25 and
suit summons to the defendants.*

Call on:

sd/-

*I Addl. Senior Civil Judge and JMFC.,
Hubballi.*