

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

Present:
Sri. RAGHAVENDRA.R.
B.A.L, L.L.B.
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.143/2024

Dated this the 05th day of September, 2024

Plaintiff : Smt. Kavya W/o Anand Menasigi and
another.

.Vs.

Defendant : Sri. Anand S/o Sangappa Menasigi and
others.

PARTIES TO I.A. No.II

Applicant/s : Smt. Kavya W/o Anand Menasigi and
another.

.Vs.

Opponent/s : Sri. Anand S/o Sangappa Menasigi and
others.

- i. Provision under which application is filed : Under Order 39 Rule 1 and 2 R/w Sec.151 of CPC
- ii. Relief sought for : To restrain the defendants No.1 to 4, their legal heirs, representatives, successors, agents, servants, executants, assignees or any other persons claiming through and under them, as not to alienate/transfer or creating charge and encumbrance in and over the suit property by way of sale, gift, will, mortgage or in any other mode in favour of third persons

till disposal of the suit, in the interest of justice and equity.

iii. The date on which : 20.03.2024
application is filed

iv. Number of the : II
application

v. The date on which : 30.08.2024
objections are filed
by different
opponents

vi. The date on which : 05.09.2024
orders were passed
on the said
application

ORDERS ON IA No.II

This order arises out of interlocutory application No.I filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendants No.1 to 4, their legal heirs, representatives, successors, agents, servants, executants, assignees or any other persons claiming through and under them, as not to alienate/transfer or creating charge and encumbrance in and over the suit property by way of sale, gift, will, mortgage or in any other mode in favour of third persons till disposal of the suit, in the interest of justice and equity.

2. The brief facts of the affidavit annexed to application is that, the plaintiff has filed the suit for partition and separate possession. The plaintiff No.1 is legally wedded wife of defendant No.1, the plaintiff No.2 is born to them. The defendant No.1 has neglected the plaintiffs to maintain. The plaintiffs have filed Criminal Misc. Petition No.41/2022

on the file of Hon'ble Principal Civil Judge and JMFC, Badami against the defendant No.1 for monthly maintenance of Rs.20,000/- per month. The Hon'ble JMFC Court, Badami pleased to pass interim maintenance award for Rs.5,000/- per month in favour of the plaintiff No.1 knowing the passing the interim maintenance, failed to make the maintenance of amount regularly, and comply and obey of the order of the Court. Now the said petition is pending for adjudication. The plaintiffs have apprehended that, the defendant No.1 to 4 by colluding with each other, with intention to defraud and deprived the legitimate share in the suit properties, may at any movement, alienate or transfer the suit properties or they may also create the charge and encumbrances of any third parties including financial institution illegally, unlawful. Unatuhroisdly, without plaintiffs knowledge and consent. Hence, the plaintiffs have filed this application for supra relief.

3. The defendant No.1 have resisted the application by filing memo to consider written statement as objections to interim application. These defendant No.1 has admitted relationship with plaintiffs. The defendant No.1 has totally denied the averments of the plaint. It is submitted that, serial No.A of the suit property is self acquired property of the deceased Sangappa. The said property has been purchased out of his own earning by raising loan over the said property in the year 2004. Said Sangappa had constructed the house in that property by raising loans. The defendants have spent more than eleven lakhs for

treatment of Sangappa. Even after discharge from the hospital deceased Sangappa was continued under all treatment and medication till his last breathe. These all expenses are meet out by the defendant No.1, 3 and 4 by raising hand loans and property loans. It is submitted that after demise of Sangappa, his sons, wife and daughters have inherited property and said property has become their separate property. This succession has taken place prior to marriage. It is submitted that, during the life time of deceased Sangappa, he has sold the property bearing survey No.416/1+2+3/B to one Nagesh S/o Shivappa Hadli for his family necessity and antecedent debt. The claim of the plaintiffs that, after alienation of the above said property deceased Sangappa purchased suit properties are imaginary and created story of the plaintiff. The serial No.B property is self acquired property of defendant No.2. the serial No.C property is self acquired property of the defendant No.1, it has purchased on 18.03.2016 by raising loans. There is outstanding loan of Rs.21 Lakhs over the said property. The defendant No.1 has made every attempt to bring back the plaintiff No.1 but his efforts went in vain. The plaintiff is voluntarily deserted the defendant No.1 without there being any valikd reasons. Hence, the plaintiff have filed the present false suit and made the defendants to suffer mentally and financially without there being any valid grounds to file the present suit against the defendants. Hence, the defendants prayed to dismiss the application with costs.

4. I have heard the arguments canvassed by learned counsel for parties and perused the materials on record.

5. The following points are for my consideration.

- Point No.1: Whether the plaintiffs have made out a prima facie case in their favour?
- Point No.2: Whether balance of convenience lies in favour of the plaintiffs?
- Point No.3: Whether the plaintiffs would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by them in interim application?
- Point No.4: What order?

6. My findings to the above points are as under.

- Point No.1: In the Negative.
- Point No.2: In the Negative.
- Point No.3: In the Negative.
- Point No.4: As per final order, for the following;

REASONS

7. **Point No.1 to 3:** These points are interlinked each other, as such I considered these points together to avoid repetition of facts of the case and for common discussion. It is no doubt, the present suit is for the partition and separate possession.

8. It is specific case of the plaintiff the suit properties are joint family properties and they are in constructive possession of the properties. The defendants have totally denied the contentions of the plaintiff regarding nature of

the suit properties and their contention is that, the Serial No.B and C properties are self acquired properties of defendant No.2 and 1 respectively and they have acquired the same prior to marriage of defendant No.1 and plaintiff No.1. It is worth to note herein, the plaintiffs have sought 1/6th each share in the suit properties. It is further relevant to note that, the plaintiffs have not disputed the sale deed of item No.C property in the name of the defendant No.1 but there contention is that, he has acquired the property from joint family nucleus. Whether the defendant No.1 has acquired this property by raising loan or joint family nucleus as alleged by the plaintiffs is triable issue and it needs full fledged trial. But right now or at this juncture, it can be presumed that the defendant No.1 has acquired the Serial No.C property prior to his marriage. Neither parties have disputed the maintenance case pending before the Hon'ble Civil Judge and JMFC, Badami. The defendant No.1 has made allegations on plaintiff No.1 in relating matrimonial aspect. When the maintenance case is pending before the above referred case, it is not suitable to give any findings on the matrimonial allegations made by the parties at this juncture. Under these circumstances, the evidence on both sides is very much necessary to give specific finding on the rival controversies of the parties. So, Heavy burden is on both to prove their contentions. To give specific finding on these issues it required full fledged trial.

9. It is well settled principle of Law that, the discretion of the Court is exercised to grant a temporary injunction only

when the plaintiffs have made out existence of prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; when the need for protection of the defendant's right is compared with or weighed against the need for protection of the defendants rights, the balance of convenience tilting in favour of the plaintiffs and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction order is not granted. The facility to Principles Governing Grant of Injunction is at the discretion from the Court. This foresight, however, should be exercised reasonably, judiciously as well as on sound lawful principles. Injunction must not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his right in a suit or any other proceeding.

10. Therefore, the Court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunction restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. The entire written statement does not depicts that, the defendants are in hurried manner to dispose of the suit properties. It is true that, If the acts of the defendants have

been postponed some time, no harm would be caused to defendants but injunction can not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. As I mentioned above, in order to decide the claim of the plaintiffs it needs full fledged trail. By considering all the materials on record it is appears to Court that, it is not necessary to issue prohibitory order against the defendants No.1 to 4 as prayed by the plaintiff in this application. If the injunction has been granted in favour of the plaintiffs, the plaintiffs might be used the injunction order against the defendants as a sword rather than shield. In other words, the plaintiff has failed to establish the prima facie case and balance of convenience to get relief as prayed in the application. Hence, I answer **point No.1 to 3 in the Negative.**

11. **Point No.4:** As per following;

ORDER

**Interlocutory Application No.II filed by
the plaintiff under Order XXXIX rules 1
and 2 of Code of Civil Procedure is hereby
dismissed with costs.**

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the **05th day of September, 2024**)

(Raghavendra. R)
I Addl. Senior Civil Judge and JMFC,
Hubballi.