

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.

OS No.337/2023

Dated this the 14<sup>th</sup> day of March, 2024

Plaintiff : Smt. Kusuma W/o Virupakshappa Agadi and  
another.

.Vs.

Defendant/s : Smt. Kasturi W/o Ravindra Agadi and others.

PARTIES TO I.A. No.I

Applicant/s : Smt. Kusuma W/o Virupakshappa Agadi and  
another.

.Vs.

Opponent/s : Smt. Kasturi W/o Ravindra Agadi 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 from alienating or creating any encumbrance on the suit schedule property during pendency of the suit till disposal of the suit.
- iii. The date on which application is filed : 01.08.2023
- iv. Number of the application : I

- v. The date on which : 23.11.2023  
objections are filed by  
different opponents
- vi. The date on which : 14.03.2024  
orders were passed on  
the said application

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### **ORDERS ON IA No.I**

This order arises out of interlocutory application No.I filed by the applicants/plaintiffs under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendants from alienating or creating any encumbrance on the suit schedule property during pendency of the suit till disposal of the suit.

2. The brief facts of the affidavit annexed to application is that, the plaintiffs have filed this suit for partition and separate possession over the suit properties. The plaintiffs have averred that, the suit property are ancestral and joint family properties of the plaintiffs and defendants. That, the defendants have denied for partition of the suit properties despite of advice of elders of the family. That the defendants with malafide intention are trying to alienate or encumber the suit properties with an intention to deprive the legitimate share of the plaintiffs. Hence, the plaintiffs have filed this application for supra relief.

3. The defendant No.4 filed the written statement. The defendant No.1 to 3 have adopted the written statement of the defendant No.4 by filing memo. The defendants No.1 to 4 have filed the memo to consider the written statement as objections to IA No.I.

The defendants have not disputed the relationship of the plaintiff but it is their contention that, the item NO.3 property was self acquired property of deceased Ravindra on 18.07.1992 and the suit of the plaintiff is barred by law of limitation. Hence, the defendant No.1, 3 to 9 prayed to dismiss the suit as well as interim application with costs.

4. I have heard the arguments canvassed by learned counsel for parties.

5. The following points are for my consideration.

- Point No.1: Whether the plaintiff has made out a prima facie case in their favour ?
- Point No.2: Whether balance of convenience lies in favour of the plaintiff ?
- Point No.3: Whether the plaintiff 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 affirmative.
- Point No.2: In the affirmative.
- Point No.3: In the affirmative.
- 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. The plaintiffs have filed this suit for partition and separate possession over the suit properties. On perusal of the records of rights extract placed by the plaintiff are clearly indicates that, item No.1 and 2 properties are jointly standing in the name of the plaintiff and defendants. Item No.3 property jointly standing in the name of the defendants. It is the main contention of the defendants that, item No.3 is self acquired property of Ravindra. The plaintiffs have pleaded that, the suit properties are all joint family properties and no partition between the parties and they are joint, constructive possession over the same. So, both the parties ought to have establish their respective pleadings by way of adducing cogent evidence. At this juncture, it is very difficulty to give specific finding on the rival contentions of the parties. It can be gathered from the written statement of the defendants that, the defendants have no intention to alienate the properties in lis. But, if the apprehension of the plaintiffs have been happened or occurred, then the situation might be irreversible at the time of disposal of the case and it can not to be compensated in terms of money.

8. 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.

9. 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. As I discussed above, the entire written statement of the defendants No.5 does not depict that, the defendant No.1, 3 to 9 are in hurried manner to dispose off the suit schedule property. 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. By considering the all the materials on record it is appears to Court that, even though, no intention was found in the written statement of the defendants, it is safe and necessary to issue prohibitory order against the defendants as

prayed in the application in order to avoid multiplicity of the proceeding between the parties as well as to keep the suit properties intact. In other words, the plaintiff has established the prima facie case and balance of convenience to get the relief as prayed in the application. If the defendants have succeeded in creating any kind of encumbrance over the suit property, it can not be compensated in terms of money.. Hence, I answer **point No.1 to 3 in the affirmative.**

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

**ORDER**

**Interlocutory Application No. I filed by the plaintiffs under Order XXXIX rules 1 and 2 of Code of Civil Procedure is hereby allowed with costs.**

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

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the 14<sup>th</sup> day of March 2024)

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