

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.477/2023

Dated this the 06th day of April, 2024

Plaintiff : Dr. Manjunath S/o Veerabhadrappa
Kuragund @ Totager.

.Vs.

Defendant/s : Smt. Shivabai W/o Veerabhadrappa
Kuragund @ Totagar and others.

PARTIES TO I.A. No.I

Applicant/s : Dr. Manjunath S/o Veerabhadrappa
Kuragund @ Totager.

.Vs.

Opponent/s : Smt. Shivabai W/o Veerabhadrappa
Kuragund @ Totagar 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 from alienating the suit schedule properties in any manner during pendency of the suit till disposal of the suit.
- iii. The date on which application is filed : 03.11.2023

- iv. Number of the : I application
- v. The date on which : D.1 to D.4 dt:19.02.2024 objections are filed by different opponents
- vi. The date on which : 06.04.2024 orders were passed on the said application

ORDERS ON IA No.I

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 from alienating the suit schedule properties in any manner during pendency of the suit till disposal of the suit.

2. The brief facts of the affidavit annexed to application is that, the plaintiff has filed this suit for partition and separate possession. It is submitted that, the suit schedule A and B properties are joint family properties acquired out of the nucleus from the ancestral properties. On account of strained relationship between plaintiff and defendants, the plaintiff had requested the defendant to effect partition and hand over the separate share in the suit properties but the defendant No.1 to 4 refused to effect the partition. On the contrary the defendant No.1 is claiming the schedule B-1 property is her absolute property and defendant No.2 is also claiming the suit schedule B-2 property is his absolute property. The plaintiff came to know that the defendant No.1 with malafide intention to defeat plaintiff share has created a bogus gift deed in favour of defendant

No.2 on 17.08.2020. The defendant No.1 had no absolute right, title and interest in and over the suit property. The defendant No.1 to 4 are likely to create third party interest in and over the suit properties. Hence, the plaintiff has filed this application for supra relief.

3. The defendant No.1 to 5 have appeared through respective counsel in pursuance of suit summons. The defendant No.5 has not filed any written statement de-spite of several opportunities. The defendant No.1 to 4 have resisted the application by filing written statement and memo to considered the written statement as objections to application. The defendant No.1 to 4 have contended that, the schedule B properties are absolutely self acquired properties of defendant No.1. The defendants have admitted the pedigree annexed to plaint. The plaintiff who had falsely claimed that the Totager family and the relations between Totager and present suit properties is not clearly defined. In view of the same the suit properties are not all ancestor properties, such being fact mere allegation does not postulate or founder to claim of the plaintiff. It is submitted that, the plaintiff had no right to challenge or claim the self acquired property of defendant No.1, as such he is not entitled to any relief as prayed in the suit. The plaintiff after suffering from stolen the documents in respect of schedule C property, when the defendant have put in the theft complaint of the documents pertaining to the suit schedule C properties, this false suit is being filed. That the defendant No.1 has already made her last WILL in respect of CTS No.925 measuring 300.3/9 Sq.Yards situated at Extension Bengeri, Hubballi according to here will and wist of her death the said property shall be equally owned by defendant No.3

and 4 in which the plaintiff and defendant No.2 have no right, title and interest. Hence, the defendants prayed to dismiss the suit and interim application.

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:** The learned counsel for the defendant No.1 to 4 has vehemently argued that, the husband of the defendant No.1 went in adoption as per the pedigree but nowhere adoption father names has been appeared in the documents produced by the

plaintiff. The written statement of the defendant No.1 to 4 that too in respect to pedigree referred in the plaint is totally admitted by the defendants. The plaintiff produced the certified copy of the sale deed while addressing the arguments on application. The document indicates that, the husband of the defendant No.1 referred along with adoptive father. Hence, at this juncture It stolen I have not found any good grounds accept the arguments canvassed by the learned counsel for the defendant No.1 to 4 in this regard.

8. It is contention of the plaintiff that, the plaintiff's father was kartha of the family and the property standing in the name of defendant No.1 was also purchased from joint family income. Per contra, it is the specific case of the defendant No.1 to 4 that, the property which was gifted to defendant No.2 by the defendant No.1 was absolute property of the defendant No.1. The plaintiff counsel highlighted the avocation of the defendant No.1 in the affidavit annexed to application filed for permission to produce the documents and sale deed relied by the defendant No.1. These documents are clearly demonstrated that, the defendant No.1 is doing house hold work. It does not mean that, the defendant No.1 was not hold sufficient income at the time of the purchase of the property. The plaintiff has not placed any material worth to show that the property was purchased by the propositour in the name of the defendant No.1. Section 14 of Hindu Succession Act reads thus:

14. Property of a female Hindu to be her absolute property. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this

Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

On careful reading of the above provision of Law, prima facie proves that, schedule B property which was standing in the name of the defendant No.1 was her absolute property. The plaintiff ought to have prove that, the said property is not her absolute acquired property. So, at this stage the Court is not supposed to hold mini trial to decide this aspect. It is not in dispute that, the defendant No.1 has gifted the property to defendant No.2.

9. The defendant No.1 to 4 have made certain allegation against the plaintiff in respect to stolen of some documents in the written

statement but their own documents is contrary to their pleadings. Under these circumstances, the evidence on both sides is very much necessary to give specific finding on the rival contentions of the parties. 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. 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 plaintiff it needs full fledged trail. 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 defendant No.1 to 4, it is safe and necessary to issue prohibitory order against the defendants No.1 to 4 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 properties, it can not be compensated in terms of money.. Hence, I answer **point No.1 to 3 in the affirmative.**

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

ORDER

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

**The defendant No.1 to 4 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 **06th day of April 2024**)

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