



IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL JUDGE
AND J.M.F.C. HUBBALLI

Present:- Smt.Deepa G Manerkar, B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C., Hubballi.

Dated this the 02nd day of July 2025

O.S. No.484/2023

Smt. Saraswati W/o Arjun Devaji and others

...Plaintiff/s

-Versus -

Sri. Mallappa S/o Hanamanthappa Pawar,
and others.

.....Defendant/s

:: IA.No.I ::

Smt. Saraswati W/o Arjun Devaji and others

Applicant/plaintiff

-V/s -

Sri. Mallappa S/o Hanamanthappa Pawar,
and others.

Opponents/Defendants



:: ORDERS ON IA.NO.I FILED U/O 39 RULE 1 AND 2
R/W 151 OF CPC ::

The present I.A.No.1 has been filed by the counsel for the plaintiff for the relief of ex-parte ad-interim injunction to restrain the defendants, their men or person claiming under them from alienating or transferring or creating any charge over the suit schedule properties.

2. In the affidavit annexed to the IA, it is sworn by the plaintiff to treat the plaint as part and parcel of this present I.A., hence plaint averments are taken into consideration. It is sworn in the plaint that, the propositus of family plaintiff and defendant No.1 to 7 was one Hanumanth, he died in the year 1997. His wife Smt. Yallavva predeceased him . That Hanumanth is having two sons one Mallappa i.e., defendant No.1 and Shivappa, plaintiff No.1 is his daughter. The second son of Hanumanth by name Shivappa died on 20-09-2021 leaving behind defendant No.2 and 3 his two wives and defendant No.4, 5, 6 and 7 as his legal heirs. The suit properties are ancestral properties of plaintiffs and defendant No.1. After the death of propositus Hanumanth, his two sons Mallappa and Shivappa got their names alone



mutated in the revenue records. That no partition has taken place by meets and bounds between the plaintiffs and defendants.

3. It is further sworn in the affidavit that, the defendant No.1 has already entered into agreement of sale with defendant No.8 with respect to portion of suit schedule I landed property. The defendant No.8 has also initiated proceedings against defendant No.1 for the relief of specific performance of said alleged agreement of sale and matter is pending before Hon'ble High Court of Karnataka. However the defendants with an intention to create hurdles and complications in the matter and in order to cause harassment and to dupe his legitimate share of plaintiff are trying to further alienate and dispose of the suit properties in favour of some third parties. Therefore it is just and necessary to grant exparte injunction. If the IA is not allowed the plaintiff will put to irreparable loss, hardship and injustice which cannot be compensated in terms of money. That the plaintiff has made out prima facie case, the balance of convenience also lies in favour of plaintiff. Hence prayed to allow the I.A.



4. The counsel for defendant No.8 has filed memo to treat Written statement as objection to I.A.No.I, hence the Written statement avernments of defendant No.8 is taken into consideration. In the written statement filed by defendant No.8, it is contended that, the present suit is not maintainable under law and facts and same has been filed only to harass the defendant No.8. That the description of suit schedule properties is incomplete and incorrect. The plaintiffs have not included all the joint family properties as such the suit is not maintainable. That the defendant No.1 for family and legal necessity and in order to dispose of family debts has sold the properties. It is admitted that, in O.S.No.4/2020 was filed and decreed on 06-07-2023 and pendency RFA No.100328 is also admitted. It is further contended that, there is no cause of action to file the present suit. The court fee paid is not sufficient. Hence prayed to dismiss the I.A.

5. Based on above, the points that would arise for my consideration is as under :



POINTS

1. Whether plaintiff has made out a prima facie case?
 2. Whether balance of convenience lies in favour of plaintiff ?
 3. Whether the plaintiff will be put to irreparable loss and injury in case if the injunction is not granted ?
 4. What order ?
-
6. Heard the arguments from both sides, perused records.
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7. My findings to the aforesaid points is as under :

Point Nos.1 to 3 : in the affirmative,

Point No.4 : As per final order
for the following



REASONS

8. **Point No.1 to 3:** Since these points are inter linked they are taken up together for common discussion to avoid repetition of facts and reasoning.

9. The plaintiffs have come up with the I.A. stating that the propositus of the family by name Hanumanth is their father, plaintiffs and defendants are members of joint Hindu family and suit schedule properties ancestral properties of plaintiffs and defendants. That said Hanumanth died intestate. That there is no partition in respect of suit properties by meets and bounds. However, the defendant No.1 and deceased Shivappa who are the brother of plaintiffs, after the death of her father got their names mutated in the revenue records behind the back of plaintiffs. That defendant No.1 has entered into agreement of sale dated 07-09-2012 with defendant No.8 with respect to portion of suit schedule properties. That the said defendant No.8 had filed O.S.No.4/2020 for the relief of specific performance of contract which was decreed and the defendant No.1 had preferred RFA before the Hon'ble High Court of Karnataka which is pending. On



request made by the defendant No.1 to effect partition, it was refused.

10. It is pertinent to make mention that, except defendant No.8 other defendants have not filed any Written statement. In the Written statement filed by the defendant No.8 he has contended that the defendant No.1 for his family and legal necessity and in order to pay all debts has executed agreement of sale in his favour in respect of suit schedule I property for total consideration of Rs.14 lakhs and has received Rs.12 lakhs. That the defendant No.1 and other defendants have consented for the said agreement of sale.

11. In support of the case of the plaintiffs, the plaintiffs herein has produced RTC pertaining to Block No.122P2 and certificate issued by the PDO Devargudihal in respect of house No.27. Admittedly, it can seen from RTC pertaining to suit schedule Sl.No.I property, the same is standing in the name of defendant No.1 Shivappa S/o Hanumantappa jointly. That the certificate issued by the PDO Gram Panchayath Devargudihal shows that, the house property is standing in the name of defendant No.1. It is also relevant to make note that, the other



defendants or family members of the plaintiffs have not filed any Written statement denying either relationship or the nature of the suit properties. Though it is contention of defendant No.8 that in order to meet out legal necessity and to pay family debts the defendant No.1 has agreed to sell suit schedule Sl.No.1 property for total consideration of Rs.14,00,000/- and he has also obtained decree for specific performance of contract in O.S.No.4/2020. The defendant No.1 at present had not placed any materials on record to show that there is a partition in respect of suit schedule properties between plaintiffs and defendants. He has also not placed any materials to show that plaintiffs are signatory to the agreement of sale dated 07-09-2012 executed by defendant No.1 in his favour. The contention of defendant No.8 that defendant No.1 has agreed to sell the suit schedule Sl.No.I property for legal and family necessity has to be decided only at full fledged trial. The said contention cannot be decided at this stage. At present it can be gathered that suit schedule properties are ancestral properties of plaintiffs and defendants No.1 to 7. The plaintiffs are also having her share in the suit properties. That in the event defendants succeed in alienating the share of the plaintiffs in suit schedule properties, it will lead to multiplicity of proceedings. Therefore at this stage,



the plaintiffs have made out prima-facie case for grant of injunction, the balance of inconvenience in their favour. It is the plaintiffs who will be put to irreparable loss and injury on the other hand, the contention of defendants can be decided at full fledged trial. Since the plaintiffs have made out fulfilled three parameters for granting of equitable relief of injunction, they are entitled for relief sought under present I.A. Accordingly, above points are answered in the **affirmative**.

12. **Point No.4:-** In view of my findings on points No.1 to 3, I proceed to pass the following:

~:: ORDER ::~

IA.No.I filed by the plaintiffs U/o
39 Rule 1 and 2 R/w Sec.151 of C.P.C is
hereby allowed.

The defendants, their men or any
person are hereby restrained by way of
ad interim injunction from alienating or



transferring the suit schedule properties
in any manner till further orders .

(Dictated to the stenographer, transcribed, typed by her, corrected by me, and then pronounced in the open court on this the 02nd day of July 2025.)

Sd/-
(Smt. Deepa G.Manerakar)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

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