

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.521/2024

Dated this the 23rd day of April, 2025

Plaintiff : Smt. Preeti W/o Venkatesh Nakod and
others.

.Vs.

Defendant : Smt. Shobha W/o Buddivantasa Nakod.

PARTIES TO I.A. NO.I

Applicant/s : Smt. Preeti W/o Venkatesh Nakod.

.Vs.

Opponent/s : Smt. Shobha W/o Buddivantasa Nakod.

- 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, transferring or creating charge over the suit property to meet ends of justice.
- iii. The date on which application is filed : 21.11.2024
- iv. Number of the application : 1

v. The date on which : 27.03.2025
objections are filed
by different
opponents

vi. The date on which : 23.04.2025
orders were passed
on the said
application

ORDERS

This order arises out of interlocutory application No.1 filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendants from alienating, transferring or creating charge over the suit property to meet ends of justice.

2. The brief facts of the affidavit annexed to application is that, the suit properties are being ancestral and joint family properties. That the defendant has purchased the suit item No.1 property with the funds of joint neculus. Now, the defendant is likely to alienate or transfer and creating charges over the suit property by availing the loans from the banks or financial institutions to harass the plaintiffs. Hence, the plaintiffs prayed to allow the application.

3. The defendant has filed the detailed written statement and filed a memo to consider the written statement as objections to application. The defendant has totally denied the description of the properties. The defendant has admitted the relationship. The defendant has contended

that the defendant is the legally wedded wife of Late Buddivantasa Nakod, who unfortunately passed away on 05.12.2000. After the death of her husband, the defendant has been solely responsible for maintaining the entire family. It is submitted that, her parents were well settled and financially stable. They had provided her with financial assistance from time to time, especially for the education and marriage of her children. It is submitted that the property mentioned in the serial No.1 is not in the name of the defendant or her deceased son, the plaintiffs have no right to claim any share in it. The defendant, out of love and affection for her grand children, has continued to provide for their educational and daily expenses despite of facing financial difficulties herself. The plaintiffs have filed the suit with an ulterior motive to harass the defendant and unjustly claim a share in properties and assets to which they are not entitled. Hence, prayed to dismiss the suit and also interim application.

4 I have heard the arguments canvassed by the learned counsel for the defendant. The plaintiffs have failed to address the arguments despite of several opportunities.

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 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 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 not in dispute about relationship of the parties. The plaintiffs have produced the photocopy of the sale deed which was unregistered one. The plaintiffs have not produced a single piece of the document to show that serial No.1 property is standing in the name of the defendant or Venkatesh. The defendant has taken a specific contention that the serial No.1 property is neither standing in her name nor in the name of the deceased Venkatesh. When such being the case, the plaintiffs ought to have produced a relevant piece of document to substantiate their claim over the serial number No.1 suit property. Both the parties have made several allegations in their pleadings. It is true that the parties ought to have prove their contentions taken in

the pleading by adducing cogent evidence. Under these circumstances, the evidence on both sides is very much necessary to give specific findings on the rival contentions of the parties. The entire written statement of the defendant does not depict that she had intent to dispose off the suit properties as alleged in the application. Furthermore, the plaintiffs have not placed any material worth to show the suit item No.1 and motor cycle is standing in the name of the defendant. Under these circumstances granting of stay order on landed property does not arise at all.

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 defendant's 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. At this point of time, I would like to place reliance on the decision reported in (2010) 1 SCC 689 - Kashi Mata Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and another. In the Hon'ble Supreme Court held in para 16 that:

“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience of irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.....”.

The ratio laid down in the above decision clarifies that the plaintiffs ought to made out prima facie case in order to

obtain temporary injunction. 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 mentioned above, a full-fledged trial is needed to decide the parties' contentions. By considering all the materials on record it is appears to Court that, it is not necessary to issue prohibitory order against the defendant as prayed by the plaintiff in this application. If the injunction has been granted in favour of the plaintiff, the plaintiff 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.**

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 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 **23rd day of April, 2025**)

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