

IN THE COURT OF THE CIVIL JUDGE AT MUNDARGI

PRESENT: Smt. SHOBHA.E.,

B.A.L., LL.B.

Civil Judge and JMFC.,

Mundargi.

DATED THIS THE 03rd DAY OF JANUARY-2022

O.S.No.135/2019

PLAINTIFFS:

1. Sri. Bhimappa S/o Somappa Samshi,
Age; 45 years, Occ: Agriculture,
R/o: Venkatapur, Tq: Mundargi, Dist: Gadag.
And another.

(By. Sri. M.F.B. Advocate)

// V/s //

DEFENDANTS:

1. Sri. Somappa S/o Bhimappa Samshi,
Age; 66 years, Occ: Agriculture,
R/o: Venkatapur, Tq: Mundargi, Dist: Gadag.
And others.

(By. Sri. R.R.C. Advocate)

PARTIES TO I.A.IV

APPLICANT: Sri. Somappa S/o Bhimappa Samshi.

...Plaintiff

//V/s//

OPPONENTS: Sri. Bhimappa S/o Somappa Samshi.
And another.

...Defendants

ORDER ON I.A.IV

The 1st defendant has filed I.A.No.IV Under Order 39 Rule 1 R/w Sec.151 of C.P.C. and prayed to restrained the plaintiffs from alienating are creating charge inrespect of Re.Sy.No.316/2, measuring 6 acre 13 guntas till the disposal of the suit.

2. The application is supported by an affidavit, wherein he has stated that he his the 1st defendant in this suit and he is conversant with the facts of the case. The plaintiffs have filed the suit against the defendants for relief of partition and separate possession of their share in the properties. Now the plaintiffs are trying to alienate the property and also trying to create charge over the property. By allowing the present application the plaintiffs will not be prejudiced in any manner if the application is not allowed the defendants will be put to

irreparable loss which cannot be compensated. On these grounds prays to allow the application.

3. Per contra the plaintiffs have not filed the objection to the application. Hence, objections taken as not filed. In spite of giving opportunity the defendants fails to argue. Hence, arguments of the defendants side taken as nil.

4. Perused the documents, pleadings and other material on record.

5. The point that arise for my consideration are as under;

1. Whether the defendants have made out prima facie case?
2. Whether the balance of convenience lies in their favour?
3. Whether the defendants will be put to irreparable loss and injury if Temporary Injunction is not granted?
4. What Order?

6. My findings 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:** Since these points are taken together for common discussion to avoid the repetition of facts.

8. The suit is one for the relief of partition and separate possession of the share of the plaintiffs. Now the present application is filed by the defendants and prays to restrained the plaintiffs from alienating or creating charge over the property bearing Sy.No.316/2, measuring 6 acre 13 guntas. It is to be noted that the relief which is claimed by the defendants in respect of Sy.No.316/2, which is not a subject matter of the suit. Even the defendants have not stated how that property is related to them and they have not stated how they got

right over the that property. On perusal of entire application the defendants have not narrated how and from where that property is connected to them. The entire application is drafted in vague manner. When the property itself is not the subject of the matter the question of granting injunction against that property does not arise for consideration. Even the defendants have not stated how they have made out the prima facie case against the plaintiffs. When the defendants have fails to establish the prima facie case definitely the balance of the convenience will also be not lies against them. Therefore, by looking into the entire application and the order sheet it appears that the defendants are in the habit of filing unnecessary application only with an intention to drag the case. Therefore, I am of the view that the defendants have not made out any prima facie case to allow the application. Therefore, **I answered Point No.1 to 3 in the Negative.**

9. **POINT NO.4:** On the basis of the reasons mentioned above, I proceed to pass the following;

ORDER

I.A. IV filed by the
defendants is hereby rejected
with cost of the Rs.4,000/-.

(Dictated to the Stenographer on computer, transcript corrected and pronounced by me, in the open court on this 03rd day of January-2022

(Sd/-03.01.2022)
Civil Judge & JMFC.,
Mundargi.