

KAHS310009912024



Presented on : 27-05-2024
Registered on : 27-05-2024
Decided on : 03-03-2025
Duration : 0year 9months 6days

**IN THE COURT OF THE II ADDL. CIVIL JUDGE &
J.M.F.C AT ARAKALGUD**

DATED: THIS 3RD DAY OF MARCH 2025

:-P R E S E N T:-

**SRI. RAGHU.M. B.A.L., LL.B.,
II Addl.Civil Judge & JMFC.,
Arakalgud**

ORIGINAL SUIT No.223/2024

Plaintiff/s : 1. Druvitha.H.K.
D/o. H.H.Kumaraswamy,
Aged about 22 years,

2. Kruthin.H.K.
H.H.Kumaraswamy,
Aged about 20 years,

Both are R/at.
Sulugalale Colony,
Shanivarasanthe Town,
Shanivarasanthe Hobli,
Somavarapete Taluk,
Kodage District,

(By Sri. P.S.P., Advocate)

-V/s-

Defendant/s.

H.H.Kumaraswamy,
S/o. Huchhaiah,
Aged about 47 years,
Agriculturist,
R/at. Sulugalale Colony,
Shanivarasanthe Hobli,
Somavarapete Taluk,
Kodagu District.

(By Sri. S.P.J., Advocate)

IA No. II

Applicant/plaintiff
No.1

Druvitha.H.K.
D/o. H.H.Kumaraswamy,
Aged about 22 years,
R/at. Sulugalale Colony,
Shanivarasanthe Hobli,
Somavarapete Taluk,
Kodagu District.

-- Plaintiff No.1

V/s

Opponents

: H.H.Kumaraswamy

--- defendant

1	Provision Under which the application is filed	U/O. 39 Rule 1 & 2 of CPC
2	Relief sought for	Restraining the defendant, his men, agents, supporters and any body claiming under him from alienating the suit schedule property till the disposal of the suit by way of temporary injunction.
3	The date on which the application is filed	27.05.2024
4	Number of the application	I.A.No.2
5	The date on which the objections are filed by different opponents	Not filed
6	The date on which the orders were passed on the said application	03.03.2025

ORDER ON IA NO. 2

UNDER ORDER 39 RULE 1 AND 2 OF CPC

This Interim application No.2 filed by the applicant/ plaintiff No.1 under order 39 rule 1 and 2 of C.P.C. seeking temporary injunction against the defendant from alienating the suit schedule property till the disposal of the suit by way of temporary injunction.

2. In the affidavit annexed to the application filed by the applicant/plaintiff No.1 stated that, plaintiffs are the children of defendant and they have filed the suit against the defendants for the relief of partition and separate possession. The plaintiff and defendants are the joint family members and suit schedule properties are ancestral and joint family properties. The suit schedule properties originally ancestral properties of grand mother of defendant and after her death, katha of suit schedule properties was transferred to the name of grand father of plaintiffs and father of defendant by name Huchhaiah by virtue of M.R.No.5/1990-91. The said Huchhaiah had four children. Namely, H. Chandrashekhara, H.H.Manjula, H.H.Kumaraswamy (defendant) and Shivakumari.H. and they have partitioned the family properties by virtue of registered partition deed and as per deed, katha of suit schedule properties has been mutated in the name of defendant by virtue of M.R.No.H1/2019-20. Since then, the defendant is enjoying and managing the suit schedule properties on behalf of joint family. When such being the case, the

plaintiffs have demanded the defendant to effect partition, but, the defendant has refused to give share. Hence, the plaintiffs have filed the suit for the relief of partition and separate possession and also filed the present application on the apprehension that, the defendant may alienate the suit schedule properties.

3. On the other hand, the defendant even entered appearance before the Court through his counsel has not filed objection to the application. Hence, the Court has taken on note that, the objections to I.A.No.2 taken as not filed.

4. Heard the arguments of plaintiffs and by perusal of application and documents on record, following points that arise for my consideration:

:POINTS:

- 1. Whether the plaintiff No.1 has made out prima-facie case against the defendant in respect of suit schedule property?***
- 2. Whether the plaintiff further proves Balance of convenience lies in her favour?***
- 3. Whether irreparable loss causes to defendants if application is not allowed?***
- 4. What order?***

5. By considering the arguments presented by counsel for defendant No.1 and material available on records, my findings to the above points are;

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:

6. **POINT NO.1 to 3 :-** At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well-settled principles of law that, at the time of disposing the Temporary Injunction application, the court cannot go into the prima-facie title and only to consider whether the plaintiff No.1 has made out a prima-facie case for granting interim relief.

7. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that, the applicant must make out a prima-facie case in support of the right claimed by her. The court must be satisfied that there is a bonafide dispute raised by the applicant.

8. The plaintiffs have produced list of documents which consists of Family tree, partition deed dated: 17.08.2019, M.R.No.5/190-91, Hand written RTC extracts with respect to suit schedule properties, M.R.No.H1/2019-20 and computerised RTC extracts with respect to suit schedule properties.

9. On perusal of M.R.5/1990-91 makes clear that, katha of Sy.No.34/1, measuring 5 acres 29 guntas, Sy.No.35/1, measuring 2 acres 9 guntas of land of Malenahally village, Konanuru Hobli was transferred from Channamma to H.K.Huchhaiah and revenue entries were got mutated in the name of H.K.Huchhaiah. Later on the defendant and his father and his brothers and sisters have entered in to partition by virtue of registered partition deed dated: 17.08.2019 and as per the

partition deed defendant has got suit schedule properties to his share and subsequently, revenue entries are transferred to the name of defendant and running in the name of defendant till to day. As such the plaintiffs have fled this suit against the defendants seeking partition over the suit schedule properties. Though, the defendants even entered appearance before the court has not filed written statement or objections to the present application. As could be seen from the all these documents that, the suit schedule properties are not self acquired properties of defendant and they have fallen to the defendant from his father. Though, if, the defendant is alienated the suit schedule properties during pendency of the suit delay will be caused and it will lead multiplicity of proceedings. Therefore, at this juncture, it is appropriate to restrain the defendant from alienating the suit schedule properties and if the defendant is restrained from selling the property nothing will be caused to him. Under these circumstances the plaintiffs have made out prima facie case against defendant. Accordingly, point No. 1 to 3 are answered in the affirmative.

10. Point No.4: In view of the discussions made above, this Court proceeds to pass the following:

O R D E R

I.A.No.2 filed by the plaintiff No.1 U/o
39 rule 1 and 2 is hereby allowed.

The defendant is hereby restrained
by way of temporary injunction from
alienating the suit schedule properties till
disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on to the computer typed by her,
transcript revised, corrected and then pronounced by me in the open court this the
day of 3rd day of March 2025)

(Sri. Raghu .M)
II Addl. Civil Judge & J.M.F.C.,
Arakalgud.