

KAHS510007192021



Presented on : 05-06-2021
Registered on : 05-06-2021
Decided on : 08-07-2025

IN THE COURT OF CIVIL JUDGE AND JMFC, BELUR

AT: BELUR

Present:

**Sri. Nagendra.,
B.A., LL.B.,**

Civil Judge & JMFC, Belur.

O.S.No.199/2021

Dated this, the 08th day of July, 2025.

Sri.Madhu G. S/o.Late Guruswamy K.B
and another

...Plaintiffs

-Versus-

Smt.Radha W/o.Late Guruswamy K.B.
and others

....Defendants

I.A. No.II

Sri.Madhu G. S/o.Late Guruswamy K.B
and another

...Applicant/ Plaintiffs

-Versus-

Smt.Radha W/o.Late Guruswamy K.B.
and others

...Opponents/Defendants

(By- **Sri. SNL.**, Advocate for Plaintiffs)
(By- **Sri.BVN.**, Advocate for Defendants)

ORDERS ON I.A. No.II

The plaintiffs have filed IA.No.II under Order 39 Rule 1 and 2 of Code of Civil Procedure seeking injunction against the defendants restraining them from alienating and mortgaging the suit schedule properties till disposal of the suit.

2. The defendants have filed written statement and same has been adopted as objection to IA No.II.

3. Heard learned counsel for the plaintiffs and defendants.

4. After perusal of the records of the case, the following points would emerge for my consideration:

1. Whether the plaintiffs have made out a prima-facie case?
2. Whether the balance of convenience is lies in favour of the plaintiffs?
3. Whether the plaintiffs would be put to untold hardship and irreparable loss if the temporary injunction is not granted?
4. What order?
5. My findings on 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

6. **Point No.1 and 2:** I have taken these two points together for my common discussion as they are inter-linked with each other in order to avoid repetition of the same.

7. In an affidavit appended to the application, the plaintiffs have stated that the second plaintiff is the second wife and first plaintiff is the son of deceased K.B.Guruswamy. The first defendant is the first wife of deceased K.B.Guruswamy and remaining defendants are the children of first defendant. The suit schedule properties are ancestral properties of plaintiffs and defendants. The suit schedule properties are standing in the name of K.B.Guruswamy who is the father of first plaintiff and defendant No.2 and 3. The said K.B.Guruswamy acquired the suit schedule properties under the registered partition deed and thereafter as per MR No.40/2002-03, khatha has been transferred in the name of K.B.Guruswamy. The said K.B.Guruswamy had maintained the family of plaintiffs and defendants out of the income derived from the suit schedule properties. They have equal share in the suit schedule properties. The said K.B.Guruswamy on 01.02.2021 died leaving behind plaintiffs and defendants as his legal heirs. Now, they have no interest to continue in the joint family with the defendants. About one month back they have requested the defendants to effect partition and allot 1/5th share in the suit schedule properties, but the defendants have refused to effect partition. Hence, plaintiffs prays to allow the IA No.II.

8. Per contra, the defendants have filed written statement and same has been adopted as objection to the IA No.II. In the

written statement, the defendants have denied the application averments in material aspects. The defendants contended that as shown in the genealogical tree produced by the plaintiffs, their father K.B.Guruswamy has not got second marriage and therefore, the plaintiff No.1 is no way concerned with them. It is contended that their father K.B.Guruswamy has acquired the suit schedule properties from his ancestors under the registered partition deed, based on the registered partition deed revenue documents have been changed in the name of K.B.Guruswamy. That their father on 01.02.2021 died leaving behind him, the defendants as his legal heirs in Suguna Hospital, Bengaluru. After the death of their father, they are in possession over the suit schedule properties. The first defendant is the wife of K.B.Guruswamy and defendant No.2 and 3 are the legal heirs of the first defendant. Except the defendants there are no other legal heirs to the K.B.Guruswamy. The said K.B.Guruswamy has not got second marriage for any reason during his life time. The said K.B.Guruswamy had legal knowledge and therefore, there is no provision under the law to marry second wife during the life time of first wife. Hence, the defendants pray to dismiss the IA No.II.

9. In view of rival contentions put forth by both the parties, now let me see whether the plaintiffs have made out prima-facie case and balance of convenience for grant of temporary injunction as prayed in I.A.No.II.

10. The plaintiffs in support of their case have produced genealogical tree, RTCs bearing Sy.No.30/2, Sy.No.13/1, Sy.No.19/1, Sy.No.111/P54, Sy.No.104/P2 situated at

Mathighatta Village, Halebeedu Hobli, Belur Taluk and boundary certificate.

11. I have perused the documents produced by the plaintiffs. On perusal of the RTCs, it discloses that the suit schedule properties are standing in the name of father of plaintiff No.1 and defendant No.2 and 3. Further on perusal of the RTCs it clearly forth coming that the father of the plaintiff No.1 and defendant No.2 and 3 K.B.Guruswamy has acquired the suit schedule properties under the registered partition deed. The plaintiffs contended that the plaintiff No.2 is the second wife and plaintiff No.1 is the son of K.B.Guruswamy. The defendant No.1 is the first wife of K.B.Guruswamy and defendant No.2 and 3 are children of first defendant. The suit schedule properties have been acquired by their father K.B.Guruswamy under partition. They have got 1/5th share in the suit schedule properties. When they requested the defendants to effect partition, the defendants have refused to effect partition. Now, the defendants are trying to alienate the suit schedule properties to the 3rd person .

12. On the contrary the defendants contended that their father K.B.Guruswamy had not married the second plaintiff as a second wife and the first plaintiff is not son. The plaintiffs have no way concerned with them. Hence, the defendants prays to dismiss the IA No.II.

13. On going through the documents produced by the plaintiffs, it discloses that the suit schedule properties are still standing in the name of K.B.Guruswamy. But the plaintiffs have filed IA No.II to restrain the defendants from alienating the suit

schedule properties. When the plaintiffs have filed IA No.II to restraining the defendants from alienating the suit schedule properties, the properties must be stands in the name of defendants. In the case on hand, on perusal of the RTCs produced by the plaintiffs till today the suit schedule properties are standing in the name of K.B.Guruswamy. The settled position of law is that if any person claims to restraining opposite party from alienating the suit schedule properties, the suit schedule properties must be stands in the name of opposite party. When the suit schedule properties are stands in the name of defendants, then by considering the prima facie case and balance of convenience temporary injunction can be granted and the defendants can be restrained from alienating the suit schedule properties. In the case on hand, though the plaintiffs prays to restrain the defendants from alienating the suit schedule properties, the suit schedule properties are not stands in the name of defendants. When the suit schedule properties are not standing in the name of defendants, injunction cannot be granted. When the suit schedule properties are not stands in the name of defendants question of granting temporary injunction against defendants does not arise at all. If the suit schedule properties are stands in the name of defendants, certainly the defendants can restrain from alienating the suit schedule properties. Since, the suit schedule properties are not standing in the name of defendants, injunction against the defendants in respect of the properties standing in the name of their father can not be granted. Whether the plaintiff No.2 is second wife and first plaintiff is son of deceased K.B.Guruswamy is a matter of trial. At this stage the court cannot decide the said fact. Therefore, the contention of the defendants that the plaintiffs

are no way concerned to their family cannot be accepted. Accordingly, the plaintiffs have failed to made out prima facie case and balance of convenience. As such the plaintiffs are not entitled for discretionary relief pf temporary injunction. **Hence, Point No.1 and 2 are answered in the Negative.**

14. Point No.3: On perusal of the documents produced by the plaintiffs, it discloses that the suit schedule properties are still standing in the name of father of plaintiffs No.1 and defendant No.2 and 3. When the suit schedule properties are not standing in the name of defendants, injunction cannot be granted against the defendants. If the suit schedule properties are standing in the name of defendants, then certainly the defendants can restrain from alienating the suit schedule properties. Since, the suit schedule properties are not standing in the name of defendants injunction can not be granted. If the temporary injunction as prayed in IA No.II is granted, defendants will be put to untold hardship. On the other hand, if the temporary injunction as prayed in IA No.II is not granted, no loss and injustice will be caused to the plaintiffs. **Hence, point No.3 is answered in the Negative.**

15. Point No.4: For the aforesaid reasons and discussions made supra, I proceed to pass the following:

ORDER

IA No.II filed by the plaintiffs under Order 39 Rule 1 and 2 of Code of Civil Procedure is hereby dismissed.

Under the facts and circumstances of the case,
no order as to costs.

*(Dictated to Stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court on this, the **08th day of July, 2025**)*

(Sri. Nagendra)
Civil Judge and JMFC., Belur.