

KAHS610007752020



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT CHANNARAYAPATNA

Present:- DEEPU B.C., B.A.L., LL.B.,
Prl. Civil Judge & JMFC,
Channarayapatna.

Dated this the 13th day of November 2024

O.S. NO.129/2020

- Plaintiff/s :-**
1. Khushi D/o Madhu,
Aged about 3 years,
 2. Chiranth S/o Madhu,
Aged about 8 months,
 3. Pallavi W/o Madhu,
Aged about 25 years,

Petitioner No.1 & 2 are minors,
Represented by their mother
i.e. Petitioner No.3/Pallavi,

All are R/o Sundahalli village,
Shravanabelagola Hobli,
Channarayapatna Taluk.

(By Sri. G.N.R. Adv.)

V/s

- Defendant/s:-**
1. Parvathamma,
W/o Late Chandregowda,
Aged about 60 years,
R/o Sundahalli village,
Shravanabelagola Hobli,
Channarayapatna Taluk.
 2. Kalpana W/o Late Balakrishna,
Aged about 44 years,
R/o Dabbeghatta village,
Kikkeri Hobli, K.R. Pete taluk,
Mandya district.
 3. Jalajakshi W/o Shankar,
Aged about 45 years,
R/o Kamalagara, 5th main road,
Opp. To Shankar Nag Bus stand,
Bangalore City.
 4. Manu W/o Chandrakumar,
Aged about 43 years,
R/o Halebelagola village,
Shravanabelagola Hobli,
Channarayapatna Taluk.
 5. S.C. Madhu,
S/o Late Chandregowda,
Aged about 35 years,
R/o Sundahalli village,
Shravanabelagola Hobli,
Channarayapatna Taluk.

(By Sri. D.K.M. Adv.)

PARTIES TO I.A. No.8

Applicant/s : Smt. Pallavi & others
(Plaintiff)

-V/s-

Opponent/s : Parvathamma & others
(Defendants)

ORDERS ON I.A. No.8

The instant application is filed by the plaintiffs against the defendants U/o.XXXIX Rule 1 and 2 of C.P.C on 30-07-2024 at the stage of defendant evidence, seeking an order of ad-interim temporary injunction, restraining the defendants from alienating the suit schedule properties by way of Sale, Lease or any other mode till pending disposal of the suit.

2. In support of the application, affidavit is filed, wherein the plaintiff No.3 has sworn to fact that she has filed this suit against the defendants for the relief of partition and separate possession, but in order to defraud the plaintiffs, the defendants have colluded with each other and they have tried to sell the suit schedule properties in favor of third parties. Though the said act

was questioned by the plaintiffs, the defendants have threatened the plaintiffs, hence it would required to restrain the defendants from alienating the suit schedule properties. If an order of temporary injunction is not granted, the plaintiffs may put irreparable loss and injury, accordingly they prayed to allow the application.

3. On the other hand, the defendant No.1 & 5 have filed an objection by denying the entire averments made in the affidavit annexed to the application and contended that the defendants have got partitioned the suit schedule properties through compromise in O.S. No.7/2020 before the Hon'ble Addl. Senior Civil Judge & J.M.F.C., Channarayapatna. The plaintiffs are only entitled for share in the properties allotted to the defendant No.5 in the said partition suit, but by suppressing the said materials fact before this court, the plaintiffs have come up with this false application. In pursuance to the compromise decree held in O.S. No.7/2020, the defendants got changed the katha in respect of their respective shares and they are in possession and enjoyment as an absolute owner. Though the plaintiffs have knowledge about the said facts, only in order to cause trouble to the defendants, they have come

up with this false suit, hence the plaintiffs are not entitled for any relief sought in the application. Accordingly, they prayed to reject the application.

4. Heard the arguments on both sides and perused the materials on record.

5. The points that arise for consideration of this court are as under:

1. Whether the plaintiffs have made out prima-facie case?
2. Whether the balance of convenience lies in favor of plaintiffs?
3. Whether the plaintiffs are suffers irreparable loss and injury if the T.I. is refused?
4. What Order?

6. Based on the materials placed on record, this court answers the above points are as under :

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 ::

7. Point No 1 to 3 :- As these points are interconnected with each other, they are taken together for common discussion in order to avoid repetition of facts and circumstances.

8. As could be seen from the record, the instant suit has been filed by the plaintiffs against the defendants for the relief of partition and separate possession in respect of suit schedule properties. In response to the suit summons, the defendants appeared through their counsel and they are contesting the suit, accordingly issues have been framed. The plaintiff No.3 got examined herself as PW-1 and also got examined one witness as PW-2 and they were fully cross-examined by the counsel for the defendants and when the matter was posted for defendants' evidence, the plaintiffs have come up with this application.

9. As per the plaintiffs, the suit properties are their ancestral and joint family properties, but the defendants in order to defraud the rights of the plaintiffs, they have tried to alienate the suit properties in favor of third parties. Hence, it would require to restrain them by way

of temporary injunction. In support of their claim, they have produced the M.R. extracts and RTC extracts. On the other hand, as per the defendant No.1 & 5, the suit properties were already divided among them through the compromise held in O.S. No.7/2020 before the Hon'ble Addl. Senior Civil Judge & J.M.F.C., Channarayapatna. Hence, the plaintiffs are only entitled for share in the allotted properties of defendant No.5. Only in order to cause trouble to them, the plaintiffs have come up with this false application.

10. As could be seen from the rival pleadings of both parties, the plaintiff No.1 & 2 are the children, the plaintiff No.3 is the wife of defendant No.5. The defendant No.1 is the mother-in-law of plaintiff No.3 and grandmother of plaintiff No.1 & 2. The defendant No.2 to 4 are the children of defendant No.1 and sisters of defendant No.5. As per the plaintiffs, the suit properties are ancestral and joint family properties of themselves and defendants and they are having equal share thereon. But as per the defendants, the suit properties are the self-acquired properties of defendant No.1, having acquired the same under the registered Will dated 11-09-2015. But it is pertinent to note that during the pendency of the

suit, the katha of suit Item No.4 & 5 got changed into the name of defendant No.5 by the defendant No.1 under M.R. No.9/2024-25 dated 12-08-2024. Since the issue between the plaintiffs and defendants in respect of nature of the properties is not yet to be adjudicated, the defendants cannot transfer or change the katha in respect of the suit schedule properties. The issue between the plaintiffs and defendants with regard to nature of the suit properties can be consider only after conducting trial, at this juncture, the court cannot conduct a mini trail. As aforesaid, the evidence of the plaintiffs' side is already closed and the evidence of the defendants is yet to be commenced. At this juncture, without any authority, the defendant No.5 got changed the katha of item No.4 and 5 property from the name of defendant No.1. So, under these circumstances, if at all, the defendants are not restrained by way of temporary injunction, they would have alienate the suit property in favor of third parties. So, such being the case, the very purpose of the suit of the plaintiffs will be defeated and the plaintiff may put irreparable loss and injury. On the other hand, no injury or inconvenience would cause to the defendants. So, under these circumstances, without prejudice to the merits of the case, this court is of opinion

that the plaintiffs case is more probable rather than the defendants. The plaintiffs are having prima facie case and balance of convenience in their favor and also they have established that if an order of temporary injunction is not granted, they may be put irreparable loss and injury. Thus, **point No.1 to 3 are answered in the Affirmative.**

11. Point No. 4 : In the light of above discussion, this court proceeds to pass the following:

:: ORDER ::

I.A.No.8 filed by the plaintiff under order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendants are hereby restrained from alienating the suit schedule properties by way of Sale, Gift, Lease or any other mode till pending disposal of the suit

No order as to costs.

(Dictated to the steno, transcribed and typed by her, corrected signed & then pronounced by me in the open Court on this **13th day of November 2024.**)

(DEEPU B.C.)
Prl. C.J. and JMFC,
Channarayapatna.