

KAHS610011342018



**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 22<sup>nd</sup> day of November 2024**

**F.D.P. NO.12/2018**

**Petitioner/s :-** Manjushetty,  
S/o Late Nanjashetty,  
Aged about 44 years,  
R/o Dindaguru village,  
Kasaba Hobli,  
Channarayapatna Taluk.

**(By Sri. K.B.K. Adv.)**

**V/s**

**Respondent/s:-** 1. Kalyanamma,  
W/o Late Nanjashetti,  
Aged about 71 years,  
R/o Dindaguru village,  
Kasaba Hobli,  
Channarayapatna Taluk.

2. Sannathayi,  
W/o Late Gundashetti,  
Aged about 53 years,  
R/o Jaginakere village,  
Santebachahalli Hobli,  
K.R. Pete Taluk,
3. Jayanna W/o Late Suresh,  
Aged about 44 years,  
R/o Janivara village,  
Kasaba Hobli,  
Channarayapatna Taluk,
4. Vanajakshi W/o Raju,  
Aged about 41 years,  
R/o Dindaguru village,  
Kasaba Hobli,  
Channarayapatna Taluk.

**(R-1, 4 By Sri. L.P.G. Adv.)**

**(R-2, 3 Absent)**

**PARTIES TO I.A. No.I**

**Applicant/s :** Manjushetty  
(Petitioner)

**-V/s-**

**Opponent/s :** Kalyanamma and others  
(Respondents)

**ORDER ON I.A. NO.I**

The instant application is filed the petitioner against the respondents U/o. XXXIX Rule 1 and 2 of C.P.C. seeking an order of Ad-interim temporary injunction restraining the respondents from alienating the petition schedule properties by way of Sale, Gift, Lease, Will or any other document till pending disposal of the petition.

**2.** In support of the application, affidavit is filed, wherein the petitioner has sworn to fact that he has filed this petition for drawing final decree. The respondents are his mother and sisters, but the respondents in order to defraud the petitioner, they have executed an agreement of sale in favor of Manjegowda, resident of Dindaguru, in respect of Item No.1 property and also executed sale agreement in favor of Krishna, R/o Dindaguru in respect of Item No.3 property. Though the respondents are not having any absolute right to dispose off the schedule properties, they have tried to alienate the same in favor of the third party, hence it would require to restrain them by way of temporary injunction, accordingly he prayed to allow the application.

**3.** On the other hand, the respondent No.4 has filed an objection to the application by denying the entire averments made in the affidavit annexed to the application and contended that the schedule properties are not the joint family properties of petitioner and respondents and they are her self-acquired properties. So, under these circumstances, restraining the respondents by way of temporary injunction does not permit under the Law. If the application is allowed, the respondents are put irreparable loss and injury, accordingly, she 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 petitioner has made out prima-facie case?
2. Whether the balance of convenience lies in favor of petitioner ?
3. Whether the petitioner is 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 petitioner herein had filed a suit in O.S. No.11/2014 against the respondents for the relief of partition and separate possession in respect of schedule properties and the same came to be decreed vide Judgment dated 04-07-2017 and wherein the petitioner is allotted 6/25<sup>th</sup> share in Item No.2 to 4 properties and defendant No.2 to 4 are also allotted 6/25<sup>th</sup> share each in Item No.2 to 4

properties and Respondent No.1 is allotted 1/25th share in the schedule properties. Being aggrieved by the said Judgment, the respondent No.3 & 4 have preferred an appeal before the Hon'ble Senior Civil Judge, Channarayapatna in R.A. No.11/2018 and said appeal came to be dismissed vide Judgment dated 24-11-2018. In pursuance to the same, the petitioner has filed this petition for drawing the final decree. In response to the notice, the respondents appeared through their counsel and filed objection, accordingly they have lead their evidence. At this juncture, the petitioner has come up with this application.

**9.** As aforesaid, as per the petitioner, the respondents have executed an agreement of sale in respect of Item No.1 & 3 properties in favor of one Manjegowda and Krishna, R/o Dindaguru, in order to defraud his rights over the schedule properties. Hence, it would require to restrain them by way of temporary injunction. But as per the respondent No.4, the schedule properties are not the joint family properties of petitioner and respondents, they are the self-acquired properties of herself. Hence, it is not permissible under Law to restrain her from alienate the schedule properties.

**10.** It is pertinent to note that as aforesaid, the suit of the plaintiff came to be decreed and the same was confirmed by the Hon'ble appellate court, but there is no documents on record to show that the respondents preferred an appeal before the Hon'ble High Court of Karnataka against the Judgment of this court and appellate court. So, under these circumstances, the judgment passed by this court and appellant court attained finality. Hence the objection raised by the respondent No.4 as to the fact that the schedule properties are her self-acquired properties does not hold any water. Since the petitioner is allotted 6/25<sup>th</sup> share in the schedule properties, the respondents do not have absolute right to dispose of the properties without consent and knowledge of the petitioner. So, under these circumstances, in order to avoid the multiplicity of the proceedings and allow the petitioner to ripe fruits of the decree, it would restrain the respondents from alienating the schedule properties till pending disposal of the petition. Therefore, this court is of opinion that the petitioner has made out prima facie case and balance of convenience lies in his favor. If the respondents are not restrained from alienating the schedule properties, the

petitioner put irreparable loss and injury and it cannot be compensated in terms of money. 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.I filed by the petitioner under order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The respondents are hereby restrained from alienating the schedule properties by way of Sale, Gift, Lease, Will or any other document till pending disposal of the petition.

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 **22<sup>nd</sup> day of November 2024.**)

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