

KAHS610026542022



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 7th day of March 2025

O.S. NO.723/2022

Plaintiff/s :- C.N. Pushpalatha,
W/o Shekhar,
D/o Nagaraj C.S.,
Aged about 45 years,
R/o Thotada mane,
Damminingala village,
Shravanabelagola Hobli,
Channarayapatna taluk,
Hassan district.

(By Sri. K.N.K. Adv.)

V/s

Defendant/s:- 1. C.N. Harish,
S/o Late C.S. Nagaraj,
Aged about 43 years,

2. C.N. Yogesh,
S/o C.S. Nagaraj,
Aged about 40 years,
Both are R/o B. Cholenahalli village,
Shravanabelagola Hobli,
C.R. Patna Taluk. Hassan district.

(D-1 By Sri. B.C.M. Adv.)

(D-2 By Smt. C.L.B. Adv.)

PARTIES TO I.A. No.4

Applicant/s : C.N. Pushpalatha,
(Plaintiff)

-V/s-

Opponent/s : C.N. Harish & another
(Defendants)

ORDERS ON I.A. No.4

The instant application is filed by the plaintiff against the defendant No.1 U/o. XXXIX Rule 1 and 2 of C.P.C on 22-02-2025 at the state of cross-examination of PW-1 seeking an order of ad-interim temporary injunction, restraining the defendant No.1 from damaging and changing the nature of suit schedule properties.

2. In support of the application, affidavit is filed, wherein the plaintiff has sworn to fact that she has filed this suit against the defendants for the relief of partition and separate possession. She is examined as PW-1 and when the matter was posted for cross-examination of PW-1, the defendant No.1 has taken time. By taking undue advantage of the absence of the plaintiff, the defendant No.1 on 18-02-2025 has dug the mud in the Item No.1 property measuring 1 acre 2 guntas with the help of JCB and damaged the nature of suit property and also sold the mud in the suit schedule property more than 400 tractors for Rs.400/- per load. In spite of request made by her, the defendant No.1 has abused her in filthy language, hence, she has lodged a complaint before the Shravnabelagola Police Station. In pursuance to the same, she and defendant No.1 were called and defendant No.1 was directed to not to damage the suit properties, but in spite of that the defendant No.1 has continued his illegal act. If the defendant No.1 is not restrained by way of temporary injunction, the nature of the suit property will be changed and it is difficult for her to cultivate the suit schedule property. Accordingly, she prayed to allow the application.

3. On the other hand, the counsel for the defendant No.1 has filed an objection by denying the entire averments made in the affidavit annexed to the application and contended that the suit properties are fallen to the share of defendant No.1. The plaintiff was already allotted 14 guntas of land in Sy. No.30/6 and she has sold the same in favor of third party. In spite of that she has come up with this false suit. Only in order to cause inconvenience to the defendant No.1, she has come up with this false application. Accordingly, he 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 plaintiff has made out prima-facie case?
2. Whether the balance of convenience lies in favor of plaintiff?
3. Whether the plaintiff 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 inter-connected 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 plaintiff against the defendants for the relief of partition and separate possession in respect of suit schedule properties. The defendants are contesting the case of the plaintiff, accordingly issues have been framed, in the result the plaintiff was examined herself as PW-1 and when the matter was posted for cross-examination of PW-1, the plaintiff has come up with this application.

9. As aforesaid, as per the plaintiff, the defendant No.1 has illegally dug the mud in suit item No.1 property and cause damage and change the nature of the suit item No.1 property with the help of JCB. Hence, it would require to restrain him from doing such illegal acts by way of temporary injunction. On the other hand, as per the defendant No.1, the suit schedule properties fallen to his share, the plaintiff was already given 14 guntas of land in Sy. No.30/6 and same was sold by her in favor of third party. In spite of that she has come up with the false application. Hence, she is not entitled for any relief.

10. As could be seen from the rival pleadings of both the parties, the plaintiff and defendants are brothers and sister. As per the plaintiff, the suit schedule properties are ancestral and joint family properties, but as per the defendants, there was already partition held among them. In pursuance to the same, 14 guntas of land in Sy. No.21/1 was given to the plaintiff and she has sold the same in favor of third party. It is pertinent to note that, as per the photographs produced by the plaintiff, it prima facie appears that there is some activities made in the landed property by digging mud with the help of JCB. Though the defendant No.1 has

denied the claim of the plaintiff, he has not denied the said activities. Further, as per the documents produced by the counsel for the defendant No.1, the plaintiff has executed an agreement of sale in favor of one Sathish in respect of 8 guntas in Sy. No.14/3 and also executed an agreement of sale in respect of D. Jagadeesh Chandra in respect of 14 guntas of land in Sy. No.30/6.

11. It is pertinent to note that whether the partition was already held between the plaintiff or defendant is a matter of trial. Further, the plaintiff was allotted the alleged property by virtue of partition and suit properties are allotted to the share of defendant No.1 is also matter of trial. Since the lis between the parties is still in adjudication, either the plaintiff or the defendants do not have any right to cause any damage or change the nature of suit property. If at all, the defendant No.1 is not restrained from doing such alleged acts in respect of Item No.1 property, the nature of the property will be changed and rights of the plaintiff and other defendants will be defeated. Therefore, under these circumstances, it would necessary to restrain the defendant No.1 from causing any damage and change the nature of the suit schedule properties till pending disposal of the suit.

Therefore, on assessing of materials submitted by both the parties, the plaintiff has more prima facie case and balance of convenience rather than the defendant No.1. If an order of T.I. is not granted, the plaintiff may 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.**

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

:: ORDER ::

I.A.No.4 filed by the plaintiff under order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendant No.1 is hereby temporarily restrained from causing any damage and change the nature of the suit schedule properties 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 **7th day of March 2025.**)

(DEEPU B.C.)
Prl. C.J. and JMFC, C.R. Patna.

