

KAHS610052452021



**IN THE COURT OF II ADDL CIVIL JUDGE AND JMFC AT
CHANNARAYAPATNA,HASSAN
Presided Over by SUNEETA**

PRESENT:- Smt. SUNEETA ., B.A., LL.B.,
III Addl. Civil Judge & JMFC,
C/C II Addl. Civil Judge & JMFC,
Channarayapatna.

Dated 19th day of FEBRUARY 2025

O.S./860/2021

Plaintiff/s : Komala H.B D/o Late Boregowda
W/o Ashokkumar B.S
Aged about 39 years,
R/at: Door No. 301, 5th main Road,
2nd Cross Road,
Kengeri Upanagara,
Bengalure.

(By Sri **.DRN** Adv.,)

V/s

Defendant/s : 1. Jayamma W/o Late Lakkegowda
Aged about 60 years,

2. Somegowda S/o Late Lakkegowda
Aged about 37 years,

Both are R/at:

D.Honnenahalli Village,
Shravanabelagola hobli,
Channarayapatna Taluk,
Hassan District.

3.Vasantha W/o Late Murali,
Aged about 41 years,
R/at: Chikkahosahalli village,
K.R.Pete Taluk,
Mandya district.

4.Anitha W/o Late Ranganatha
Aged about 39 years,
Likhitha fashion Tailor,
Near Ganesh circle,
3rd Main Road, 14th Cross Road,
T.C. Palya, Ramamurthy Nagara
Bengalure.

(D-1 and 2 by Sri. **D.K.M** advocate.,)
D-3 and 4 are placed Exparte)

I.A.No. 1**Applicant:**

H.B.Komala

(Plaintiff)**V/S****Opponent:**

Jayamma and others

(defendants)

**ORDER ON I.A NO. 1 PLAINTIFF FILED UNDER ORDER
XXXIX RULE 1 AND 2 R/W SEC 151 OF CODE OF CIVIL
PROCEDURE.**

The plaintiff has filed the present application U/O.39 Rule 1 & 2 R/W Sec 151 of CPC for seeking order of Temporary Injunction against the defendants restraining them from alienating the suit schedule properties or executing any Sale, Gift, Lease, Mortgage, or in any other deed in respect of the suit schedule properties till disposal of the suit.

2. The plaintiff has sworn to an affidavit in support of the application and has stated that the averments of the plaint may be read as part and parcel of the affidavit. It is stated in the plaint that, the plaintiff's father by name Boregowda had two wives named 1st Lakshamma and 2nd Nanjamma. The husband of the defendant No.1 and father of defendant No.2 to 4 by name Lakkegowda was born through 1st wife . The said 1st

wife died about 50 years ago. After the death of 1st wife, the father of the plaintiff by name Boregowda married the mother of the plaintiff by name Nanjamma about 46 years ago as per rights and customs prevailed in Hindu religion. The plaintiff by name H.B.Komala born to the Boregowda through 2nd wife by name Nanjamma. The defendant No.1 is the wife of Lakkegowda and defendant No.2 to 4 are the children of Lakkegowda and defendant No.1. The said Lakkegowda also died 30 years ago. Further stated that father of the plaintiff by name Boregowda died on 09-03-1993. After the death of Boregowda, mother of the plaintiff managed the entire affairs of the joint family. Further stated that mother of the plaintiff by name Nanjamma also died on 26-07-2021. Further suit schedule properties are ancestral and joint family properties. No partition have been effected between the plaintiff and defendants in respect of the suit schedule properties. Katha of the Item No.1,2,4 and 5 of the suit schedule properties are standing in the name of plaintiff's mother by name Nanjamma.

Further stated that katha of the Item No.3 of the suit schedule property is standing in the name of deceased Boregowda. The Plaintiff has requested the Defendants to effect the partition and hand over her share in the suit schedule properties, but the Defendants have not considered her request. Further stated that defendants are trying to alienate the suit schedule properties to third parties. Hence, the Plaintiff has filed this suit for claiming her share in the suit schedule properties. If the defendants are to succeed in their attempt of alienating the suit schedule properties, then the plaintiff will be put to great hardship and injustice, which cannot be compensated in terms of money. Therefore, it is required to restrain the defendants from alienate the said property till disposal of the suit. The plaintiff further contended that, she has made out prima facie grounds and balance of convenience, hardships are tilt in her favour. Accordingly, prayed for allow the application.

3. The suit summons were issued to the Defendants, the defendant No.1 and 2 have appeared before the Court through their Counsel, but the Defendant No. 3 and 4 have failed to appear before the and Court, hence they have been placed Exparte. The defendant No.1 and 2 have filed objection and has stated that the averments of the written statement may be read as part and parcel of the objection. They have totally denied the case of the plaintiff and denied the relationship between the plaintiff and defendants. Further contended that, the plaintiff has no rights to file the suit in respect of the suit schedule properties. Further contended that, neither the plaintiff nor her alleged mother was not at all related to the family of these defendants and the suit properties in any manner and at any point of time. The suit items No.1,2,4 and 5 are the joint family properties of the defendants. As a point of fact the Item No.3 property was absolute and self acquired property of Late Boregowda (grand father of the 2nd defendant) and he had been in absolute possession and exclusive

enjoyment over the same. The said Boregowda was having very much love and affection towards the 2nd defendant, out of his love and affection towards the 2nd defendant the said Boregowda has bequeathed the Item No.3 of the suit schedule property in favour of defendant No.2 by duly executing the registered Will dated 04-12-1985. That Will was duly executed, when he was in sound and disposal state of mind. Further contended that, on the basis of the said Will, the 2nd defendant has got changed katha of the Item No.3 of the suit schedule property in his name and also been in peaceful possession and enjoyment of the Item No.3 of the suit schedule property as absolute owner. All these facts are well within the knowledge of the plaintiff. Therefore, the plaintiff has no rights over the said properties. The plaintiff has filed this suit with the intention to harass the defendants and grab the defendants properties. With these contentions the defendant No.1 and 2 have sought for rejection of I.A.No.1.

4. Heard the arguments of learned counsels appearing for the parties and perused the materials on record.

5. Now, the points that arise for consideration are as follows:

POINTS

1. Whether plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for ?

2. Whether balance of convenience lies in her favour?

3. Whether the plaintiff will be put to irreparable loss and hardship, if I.A. No.1 is not allowed?

4.What order?

6. My findings to the above points are as under:

Point No.1: In **Affirmative**

Point No.2: In **Affirmative**

Point No.3: In **Affirmative**

Point No.4: As per final Order
for the following:

REASONS

7.POINT No.1: The learned counsel for the plaintiff argued that that the suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. The Plaintiff has requested the Defendants to effect the partition and hand over her share in the suit schedule properties, but the Defendants have not considered her request. Further stated that defendants are trying to alienate the suit schedule properties to third parties. If the defendants are alienated the suit properties to third party, it would lead multiplicity of the proceedings. Hence they have to be restrained from alienating the suit properties by way of injunction. The learned Counsel for the plaintiff in support of his argument drew the attention

of this court towards the documents and argued that suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants. The plaintiff has got prima facie case, hence temporary injunction has to be granted in her favour. Per contra the learned counsel for the defendants vehemently argued that the plaintiffs have no right and title, interest over the suit properties. The plaintiffs have filed this false suit with the intention of causing trouble to the defendants. The plaintiff has no right and interest over the suit properties. With these contentions, the counsel for the Defendant No.1 and 2 sought for rejection of I.A.No.1.

8. In the light of the arguments canvassed by the learned Counsels appearing for the parties, this court has carefully perused the list of documents produced by the plaintiff that Record of rights of the Item No.1 to 4 of the suit schedule properties, Copy of the Tax assessment record, Death Certificate of late Nanjamma and Boregowda. Per contra, the

documents produced by the defendant No.1 and 2 consist of copy of Handwritten Record of rights of the Item No.3 of the suit schedule property for the year 1981-82, Computerized Record of rights of the Item No. 3 of the suit property, Computerized mutation Extract, Copy of the Registered Will dated 04-12-1985.

9. At this stage, without going in to 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 has made out a prima facie case for granting interim relief.

10. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The

court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

11. The case of the plaintiff is that, Boregowda had two wives 1. Lakshamma 2. Nanjamma. The husband of 1st defendant and father of defendant No.2 to 4 by name Lakkegowda was born through 1st wife of Boregowda. The plaintiff is the daughter of Boregowda born through his second wife by name Nanjamma. The defendants in their written statement disputed the relationship with the plaintiff. In order to prove the same, the plaintiff has produced death Certificate of late Nanjamma and Boregowda. On perusal of the death Certificate of Nanjamma it shows that deceased Nanjamma

died on 26-07-2021. Further in the death Certificate husband name of the deceased Nanjamma shown as Boregowda. So, it is clear that deceased Nanjamma is the wife of deceased Boregowda. On perusal of the death Certificate of Boregowda it shows that deceased Boregowda died on 09-03-1993. Per contra, the defendants have not produced any documents to disprove the relationship between the parties and mere denial of the averments of the affidavit by the defendants cannot be considered that they have established that relationship narrated by the plaintiff in her plaint is not true and correct. It is the case of the plaintiff that the suit schedule properties are the ancestral properties of plaintiff and defendants. The defendant No.1 and 2 contended that Item No.1,2 and 4 and 5 are the joint family properties of defendants. Item No.3 of the suit schedule property is the self acquired property of late Boregowda. It is stated that the said Boregowda who is the grand-father of the defendant No.2 was the owner of the Item No.3 of the suit property. During his life time, he had executed

a Will dated 04-12-1985 bequeathing the Item No.3 of the suit property in favour of his grand son i.e., defendant No.2. On the basis of Will the defendant No.2 changed the katha of the item No.3 of the suit property in his name and he is in possession of the suit property. The plaintiff has no right and interest over the suit properties. After perusal of Record of rights of the Item No. 1 and 2 and 4 of the suit properties, it appears to this Court that the name of deceased Nanjamma W/o Boregowda is appearing in respect of the Item No. 1 and 2 and 4 of the suit properties. After perusal of Record of rights of the Item No. 3 of the suit property, it appears to this Court that the name of deceased Boregowda S/o Kengegowda is appearing in respect of the Item No.3 of the suit schedule property for the year 2020-2021. The mode of acquisition has been written as "RR1457". On perusal of the Copy of the handwritten record of rights produced by the defendants which indicate that the revenue entries relating to the Item No.3 of the property in question stood in the name of Boregowda S/o

Kengegowda from 1981-82 to 1985-86, the Boregowda S/o Kengegowda was shown as the owner of land in Cl.No.9 for the year 1981-82 to 1985-86. The mode of acquisition has been written as “RR1457”. On perusal of the Record of rights of the Item No. 3 of the suit property, it shows the name of defendant No.2. The mode of acquisition has been written as “MR H12/2024-2025 Dated 13-12-2024 WILL”. On perusal of the Computerized Mutation Extract shows that as per the Will katha of the item No.3 of the suit schedule property changed in the name of defendant No.2 as per MR H12/2024-2025. On perusal of the registered WILL dated 04-12-1985 shows that deceased Boregowda on 04-12-1985 under the registered Will had bequeathed the Item No.3 of the suit schedule property in favour of defendant No.2. Whether suit schedule properties are the ancestral and joint family properties of plaintiff and defendants or not, which is ultimately to be decided in the present case. It is needless to emphasis to that, these aspects are tried to be decide only after full pledged trial. All these

aspects require trial at the later state and at this stage it is not feasible to discuss the merits of the case.

12. On perusal of these documents produced by both the parties, at this juncture it appears that, dispute reveals among nature of the property and also execution of the Will in favour of defendant No.2. These are the factual controversies which was dwelled into at this juncture. As holding of mini trial while deciding the application filed under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 is completely prohibited. It is the main intention of granting temporary injunction is to amount the state of things as it is still determination of rights of the parties. If nature of the properties are altered or if properties are alienated during the pendency of the trial, it will un settled things which are going to be settled by virtue of adjudication to be made by the court. By considering all these facts and circumstances of this case, this Court is of the opinion that the plaintiff has made out

prima facie case, hence she is entitled for the equitable relief of temporary injunction. Accordingly, this court has answered Point No.1 in **Affirmative**.

13. POINT No.2 and 3: Balance of Convenience and Irreparable Loss and Injury:- The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

14. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy

open to him by which he can protect himself from the consequences of apprehended injury.

15. This Court has already opined that the plaintiff has made out prima facie case. In the present case also, as already noticed whether suit properties are the ancestral properties of plaintiff and defendants are ultimately to be decided in the present suit. If this question is answered by this court after full fledged trial, meanwhile if the defendants are permitted to alienate the suit properties, in that circumstances, it will requires substantial time to his unsto the same. Under such circumstances, irreparable loss and injury will be caused to plaintiff if defendants are able to alienate the suit properties. By considering all these, this court is of the opinion that the balance of convenience lies in favor of the plaintiff and if the present application is rejected more hardship and mischief will caused to the plaintiff when compared to the hardship and mischief caused to the defendants if present application is

allowed. Hence, this court has answered Point No.2 and 3 in **Affirmative.**

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

ORDER

IA No.I filed by plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 is hereby allowed.

It is hereby temporarily restrained the defendants, their men, agents etc. from alienating the suit schedule properties any manner to the 3rd persons or executing any Sale, Gift, Lease, Mortgage, or in any other deed creating any charge over the suit schedule properties till disposal of the suit.

No order as to costs.

(Dictated to the stenographer on-line to the computer and typed by her, corrected, signed and then pronounced by me in open court on **19th day of February 2025**)

(Suneeta)

3rd Addl. Civil Judge and J.M.F.C.
C/C 2nd Addl. Civil Judge and J.M.F.C.
Channarayapatna.