

COMMON ORDERS ON IA No.1 AND 2

This is a suit filed by the plaintiff for the relief of Declaration, Permanent Injunction and Partition against the defendants in respect of the suit 'A' and 'B' schedule properties. I.A.No.1 is filed by the plaintiff under **Order 39 Rule 1 and 2 of CPC** seeking an ad-interim order of temporary injunction restraining the defendants or anybody claiming under them from alienating, mortgaging, creating third party interest in/over the suit schedule properties and also filed IA.No.2 under **Order 39 Rule 1 and 2 of CPC** seeking an ad-interim order of temporary injunction restraining the defendants

from changing the record of the suit 'A' item No.2 property bearing Sy.No.104/2 measuring 1 acre 13 guntas till disposal of the suit by dispensing the notice to the defendants in the interest of justice and equity.

2. The I.A.No.1 and 2 is supported with the affidavit of the plaintiff. I have gone through the affidavit and the documents produced by the plaintiff. The learned counsel for the plaintiff has argued that the father of the plaintiff had gifted the suit 'A' schedule properties to the plaintiff during his lifetime by way of 'Hiba' and the suit 'B' schedule property was purchased in the name of the defendant No.2 who is the mother of the plaintiff and the defendant No.1. The learned counsel for the plaintiff has argued that the plaintiff is the absolute owner of the suit 'A' schedule properties and he is entitled for a specific share in the suit 'B' schedule property. The learned counsel for the plaintiff has argued that the defendant No.1 and 2 based on an invalid Will are trying to change the revenue records of the item No.2 of the suit 'A' schedule properties and also trying to alienate the suit schedule properties to defeat the claim of the plaintiff. At the time of arguments the learned counsel for the plaintiff has relied upon the judgment of the Hon'ble High Court of Karnataka in **AIR (Karnataka) 222: (1986) ILR (Karnataka) 4207:(1987) 1 Kant LJ 143,between Narunnissa Vs Shek Abdul Hamid**, wherein it is held that to the extent of one-third of the estate the administrator takes it is and active – trustee and for the remaining he is a bare trustee, subject to the consent by the heirs of the executant. The learned counsel for

the plaintiff has also brought the attention of this Court to the provisions under Section 40, 117, 118 and 119 of the Mohammaden law and emphasized that a Mohammaden cannot dispose off by Will more than 1/3rd of what remains of his property after the payment of his funeral expenses and debt and since the remaining two – thirds must go to his heirs as on intestacy unless the heirs' consent to the bequeathable third". If the present applications are not allowed then it can cause multiplicity of proceedings. At this stage, I'm of the view that the plaintiff has made out prima-facie case. Hence, I proceed to pass the following:

ORDER

I.A. No.1 and 2 filed by the plaintiff under **Order 39 Rule 1 and 2 of CPC** are hereby allowed.

The defendants or anybody claiming under them are hereby restrained by way of temporary injunction from alienating, mortgaging, creating third party interest in/over the suit schedule properties till the next date of hearing and further the defendants are hereby restrained from changing the record/khata of the item No.2 of the suit 'A' schedule properties bearing Sy.No.104/2 measuring 1 acre 13 guntas till next date of hearing.

The plaintiff is hereby directed to comply the exparte temporary injunction under the provision of **Order 39 Rule 3 of CPC** without fail.

Issue suit summons, notice on IA No.1 and 2 to the defendant No.1 and 2 and temporary injunction order to defendant No.1 and 2 after compliance, returnable by **02-02-2026.**

**Civil Judge & JMFC,
Hangal.**