



IN THE COURT OF THE CIVIL JUDGE AND
JMFC, AT: BYADGI

Present: **Sri Suresh Wagganavar, BA. LL.B., (Spl)**
Civil Judge & JMFC, Byadgi.

Dated this the 17th day of September-2024

Original Suit No.126/2023

Smt-Ratna w/O. Basavaraj Kayakad
R/O-Guttal, Tq,&Dist,Haveri.

(By Sri.S.K.Y., Advocate)
.....PLAINTIFF

V/S

1. Smt-Iravva w/O.Shivappa Kayakad
R/O, Kengonda village, TQ-Byadgi., Dist,Haveri.
And Others.

(By Sri.P.R.M., Advocate for D-1,2 & 3)
(By Sri.M.H.K.,Advocate for D-4)

.... DEFENDANTS

PARTIES TO THE IA NO.I

Smt-Ratna w/O Basavaraj Kayakad
R/O -Guttal, Tq,&Dist, Haveri.

.... Applicant/Plaintiff



VS

1. Smt-Iravva w/O.Shivappa Kayakad
R/O, Kengonda village, TQ-Byadgi., Dist,Haveri.
And Others.

.... Opponents/Defendants

ORDER ON IA.NO.I

1. The plaintiff has filed interim application U/O XXXIX Rule 1 and 2, R/w Sec.151 of Civil Procedure Code., by seeking prayer to grant pass ad-interim temporary injunction by restraining the defendants, their, henchmen, relatives, servants, agents, administrators, officials and any such person claiming any right through them, for alienating or encumbering the suit schedule properties in favour of any person till the disposal of suit.

2.In the accompanying affidavit of the interim application, plaintiff has stated that, she has filed suit for partition and separate possession against the defendants. The sale deed executed by defendant No.1 infavour of defendant No.4 in respect of suit property item No.4 property dated 10.10.2022 is not binding on plaintiff, due to suit schedule



properties are ancestral joint family properties belongs to plaintiff's family since those properties are in joint in nature. Since the defendant No.1 alienated the joint family property infavour of defendant No.4 colluding with concerned officials, without partition taken place between them, being as a member of joint family. Recently the plaintiff heard from some others as the defendants are seriously trying to alienate suit schedule properties by way of sale deed in third party. The plaintiff has got prima facie case, and also balance of convenience infavour of plaintiff, if the defendants are succeeded to their attempts to alienate properties as stated above much hardship, irreparable loss and injury will be caused to plaintiff. Hence, prays to allow the application.

3.Per contra the defendant No.1 to 4 have appeared through their counsel and filed written statement and memo. Wherein it is contended that, the application filed by the plaintiff is hit by Karnataka Civil Rules of Practice. The plaintiff has not included all necessary parties in this suit. As per the genealogy, the plaintiff has not add the family members. The plaintiff has not included the purchaser by name Rudrappa Shekhappa Lamani. The defendant No.4 is



the purchaser of the suit property. The genealogy of the plaintiff is false and created one. The suit of the plaintiff is hit by law of limitation. This Court has no jurisdiction to entertained the suit. Hence, prays to reject the application.

4. Heard the arguments of plaintiff and defendants side. In view of the material placed before me and the contention raised by the parties, the following points have arisen for my consideration;-

P O I N T S

- 1.** Whether the applicant/plaintiff has made out a prime facie case for the grant of the TI as prayed?
- 2.** Whether the balance of convenience lies in favor of plaintiff?
- 3.** Whether irreparable loss would be caused to the applicant/plaintiff. If the instant interlocutory application is not allowed?
- 4.** What order?
- 5.** My answer to the above points are as under;



Point No.1 : In the Partly Affirmative,
Point No.2 : In the Partly Affirmative,
Point No.3 : In the Partly Affirmative and
Point No.4 : As per final order,
for the following;

REASONS

6.Point No.1 to 3:- These points are taken together for common discussions and to avoid the repetition of facts.

7. In support of defendant No.1 to 3 contention the respected learned senior counsel for defendant No.1 to 3 have relied on Judgment of Hon'ble High Court;

1) ILR 1992 Kar page 3772.

I have gone through the above said respective decisions the facts in the above said decision which is relied by counsel for defendant No.1 to 3 are not similar to the facts in this present case.

Note:- It is made clear that, at this stage any observation made herein and opinion expressed are only for the purpose of disposal of this interim application. These observations shall not carry any weight in the final disposal of the suit.



The whole facts of the IA is already narrated at the inception of this order. Therefore, repetition of the same avoided here.

8. Heard the arguments from both side. So the plaintiff has alleged that, the suit properties are the plaintiff and defendant No.1. The defendants taking undue advantage name entered in the record of rights they have trying to alienate the suit property. To prove the prima facie case the plaintiff has produced record of rights of RS.No.19/4 of Kengonda village. On perusal of above said documents, it prima facie shows that the names of plaintiff and defendant No.1 to 3 is mentioned. The plaintiff further produced record of rights of RS.No.53/6 of Mallur village. On perusal of above said documents, it prima facie shows that the name of Neelagangavva Basappa Hadapad @ Kayakad and Iravva Shivappa Kayakad is mentioned. The plaintiff has produced declaration certificate issued by Gram Panchayat Mallur. On perusal of above said documents, it prima facie shows that the Panchayat No.81C was standing in the name Neelagangavva W/o Basappa Kayakad. Thereafter, the above said property is transferred in the name of defendant No.1. The plaintiff has produced xerox copy of sale deed and Form No.9. On perusal of above said documents, it prima



facie shows that the Panchayat No.300B is standing in the name of defendant No.4. The defendant No.1 was sold the suit property VPC.No.300B infavour of defendant No.4. It is pertinent to note here that, as per the records produced by plaintiff it reveals that earlier the suit property VPC.No.300B is standing in the name of defendant No.1. Thereafter, the defendant No.1 was sold the VPC.No.300B. At this juncture, I quoted below provisions as follows:

Hindu Succession Act, Section.14. **Property of a female Hindu to be her absolute property.** —(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Therefore, the above said provision is clear that any property possessed by a female Hindu is her absolute property. In this case, admittedly, the suit property VPC.No.300B is standing in the name of defendant No.1. Therefore, the defendant No.1 is every right to disposed her property as per her dream and fancy. Therefore, the defendant No.1 has sold the suit property VPC.No.300B infvour of defendant No.4. The plaintiff has no right to



question the above said property and not claim any temporary injunction against the above said property.

9. While considering the question of granting injunction one way or the others, evidently, the court, apart from finding out a prima-facie case, would consider the question in regard to the balance of convenience of the parties as also irreparable injury which might be suffered by the plaintiff if the prayer for injunction is to be refused. The contention of the plaintiff must be bonafide. Conduct of the plaintiff would also be relevant. In this case the plaintiff has not explained how the suit property VPC.No.300B is the ancestral joint family property at this stage. This court feels that the plaintiff is not entitle for the relief of temporary injunction against defendant No.4. That apart, on perusing the pleadings of plaintiff and documents placed before this court, the full pledged trial is required. That apart if TI is granted the purchaser would be frustrated and every possibility of causing damage to the suit way and due to which the plaintiff would not substance more hardship and loss at this stage.



10. From the above discussions, it is quite obvious that, the plaintiff has not made out prima-facie case for the grant of TI as prayed and also not prove other two statutory ingredients. Accordingly, this court answered the **point Nos.1 to 3 in the Partly Affirmative.**

11. Point No.4:- Since the plaintiff has fail to make out a prima-facie case and failed to proved hardship and the balance of convenience, she is not entitled to discretionary and equitable relief of TI as payed. Hence, for the aforesaid reasons, I proceed to pass the following;

ORDER

IA No.1 filed by the plaintiff U/o XXXIX Rule 1 and 2, R/w Sec.151 of CPC., is hereby allowed in part.

The defendant No.1 to 3 are hereby restrained by an order of temporary injunction from alienating or transfer the suit property RS.No.19/4 of Kengonda village, RS.No.53/6 of Mallur village and VPC.No.81/C of Mallur village till the disposal of suit.

The temporary injunction against defendant No.4 in VPC.No.300B of Mallur village is hereby rejected.

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O.S.No.126/2023

No order as to costs.

(Dictated to the Stenographer, directly on computer, after typed by her, corrected, and then pronounced by me in the open court on this the **17th day of September – 2024**).

Sd/-

(Suresh Wagganavar)
Civil Judge & JMFC,
Byadgi.