



**IN THE COURT OF PRL. CIVIL JUDGE & I ADDL. JMFC.,
RANEBENNUR.**

Dated on this the 04th day of July, 2025.

Present: Sri. ADITHYAKUMAR H.R, B.A.LL.B.

Prl. Civil Judge & I Addl. JMFC.,Ranebennur.

ORIGINAL SUIT NO.324/2023

Plaintiffs:

Smt. Sharadavva W/o Nagappa Pujar,
& others.

(Rep. By Sri. M.T.B., Advocate)

V/s

Defendants:

Smt. Ningamma W/o Hanumappa Eresimi
& others.

(Deft. No.1 by Sri. N.B.A., Advocate)

(Deft. No.2& 3 by Sri. P.R.K., Advocate)

I.A. NO. I CAUSE TITLE.

Applicant/

Plaintiffs: Smt. Sharadavva W/o Nagappa Pujar,
& others.

V/s

Opponents/

Defendants:

Smt. Ningamma W/o Hanumappa Eresimi
& others



ORDER ON IA NO. I

The application under consideration is filed by the plaintiffs under Order XXXIX Rule 1 and 2 R/w. Sec.151 of CPC, seeking that the defendants be restrained from alienating or creating any charge or interest or executing any documents in favor of anybody over the suit schedule properties till the disposal of the suit.

2). Brief facts of the case necessary for the purpose of disposing the application are as under:

2.1). The plaintiffs have filed this suit seeking the relief of partition and separate possession of their 3/4th share and also sought such other and further reliefs. It is stated in the plaint that, one Dyavappa Ereseemi is the propositus of the family. The suit property was granted in his favour. He and his wife died intestate leaving behind four children. The plaintiffs No. 1 to 14 are belong to the two branch of sons of propositus. Defendant No. 1 is belongs to the branch of another son. Plaintiff No. 15 is the daughter of propositus. The suit properties are ancestral and joint family properties in nature and no kind of partition has ever taken place. When the plaintiffs approached to effect the partition, the defendants refused and denied their share. Since the suit properties are standing the name of defendants, they are trying to alienate



the suit property to create the third party rights.

2.3). In support of the application the plaintiff No.2 has filed his affidavit by reiterating the entire plaint averments and he has further contended that, the suit property is standing in the name of defendants, taking undue advantage of their names in the revenue records they are trying to alienate the same to create third party interest. If that is happened the very purpose of filling this suit will be frustrated and it is the plaintiff who will be subjected to irreparable loss if the application is rejected. On the other hand, no harm or prejudice will be caused to the defendants if the interim order as sought for by the plaintiffs is granted. On these grounds, the applicant seeks that this Court be pleased to allow the application as prayed for.

3). Upon due service of summons defendants No. 1 to 3 have appeared before the court. Defendant No. 1 has filed written statement and adopted the same as objection to the application. Defendants No.2 & 3 have not filed any objection nor written statement.

In the written statement, defendant No. 1 has admitted the relationship and nature of the suit property. She also admitted the rights and share of plaintiffs and also claimed to provide her share.



4). The counsel for either side have not addressed their arguments and the same was taken as not addressed. Perused the records.

5). After carefully analyzing and upon the perusal of the plaint, affidavit sworn to the application and the objection put forth by the defendants and other materials available on record, the following points arise for my consideration.

POINTS

1. Whether plaintiffs have made out a prima facie case to grant the relief as sought for in the IA-I.?

2. Whether plaintiffs prove that balance of convenience lies in their favour as regards the IA-I.?

3. Who will be put to irreparable loss and injury if the IA-I is rejected or granted.?

4. What order.?

6). After giving its anxious consideration and after carefully perusing the documents produced at this stage of the matter, this court answers the afore raised points as under:

Point No.1 : In the affirmative.

Point No.2 & 3 : In the affirmative.



Point No.4 : As per final order for the following;

:: REASONS ::

7). POINT NO.1:

7.1). The provision that the Plaintiff seeks to invoke here is Order XXXIX Rule 1 and 2 of Civil Procedure Code. After perusal of the prayer sought in the IA-I it is needless to state that the case of the Plaintiffs, as regards the IA-I falls within Clause (a) of Order XXXIX Rule 1 of Civil Procedure Code, which verbatim reads as follows:

“Where in any suit it is proved by affidavit or otherwise:- (inter alia).

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or.”

The reason why this court considers that the relief sought by way of this application falls within the ambit of clause (a) is because, the said clause seeks to protect the applicant from two apprehensions either damage, alienate or wrongful sale of the suit properties; and because the relief sought by the plaintiff by way of



this application is to restrain the defendants from alienate or create any third party interest, it becomes obvious that the apprehension of the plaintiff is that the activities of the defendants if not curtailed would cause injury to the plaintiff's lawful rights. Needless to state in order to successfully maintain this application the plaintiff should first demonstrate existence of *prima facie* case in her favor.

7.2). At the very outset it would be incumbent upon this court to clarify that, the present suit is for partition and separate possession and the plaintiffs claiming the suit property as ancestral and joint family property and no partition has ever taken place. The defendants have not denied the relationship or status of the suit property. However, merely because the Plaintiffs are the joint family member, they cannot maintain the present application for interim injunction successfully, instead they have to demonstrate through some *prima facie* materials or documents to show that, the suit property is still available for partition and the defendants are trying to sell the suit properties in favour of others to create the 3rd party rights and he also has to show what is the imminent threat from the defendants that prompted them to seek the relief of interim injunction.



7.3). The Counsel for either side have not addressed their arguments. However, on going through the rival pleadings and undisputed facts it prima facie demonstrate that, the suit property is ancestral and joint family property of the parties to the suit. Further the documents available on record would show that, the same are standing the in the name of defendants. In such circumstances, the alienation of suit property by defendants cannot be ruled out.

7.4). It is settled law that, the grant of injunction is a discretionary relief, the exercise thereof is subject to the Court satisfying that there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of being entitled to the relief asked for by the plaintiff/defendant and the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue, before the legal right would be established at the trial and further that, the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

7.5). At this stage, this court cannot form an opinion with regard to absolute rights of defendants over the suit property. The rights of



the plaintiffs over the suit schedule property or their legitimate share can be decided after completion of full pledged trial and the same cannot be decided at this stage and no grounds made out to show that, if the interim injunction is granted what imminent threat or hardship will be caused to the rights or possession of defendants.

7.6). Since it is the suit for partition and separate possession, the rights of a parties can be decided only after recording the evidence and at this juncture this court only has to look into the prima facie case. At this stage, without going into the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case and 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.

7.7). The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands



of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiffs if the relief is refused; and injury and prejudice likely to be caused to the Defendant if the relief is granted. As such at this stage of the suit, without giving any expression on merits of the case, it is the firm opinion of the Court that, the plaintiffs have succeeded to make out a *prima-facie* case in their favour. Wherefore this court finds no hesitation to answer Point for Consideration No.(i) in the **Affirmative.**

8). Point No.2 and 3:

8.1). The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicants. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicants by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

8.2). The existence of the prima-facie case alone does not entitle the applicants for a temporary injunction. The applicants 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 them by which they can protect themselves from the consequences of apprehended injury.

8.3). As already discussed the relationship of parties and nature of suit property is not under dispute. Further, the apprehension of alienation of suit property by defendants is cannot be ruled out which would cause multiplicity of proceedings and create third parties interest. As reasoned supra that, the Plaintiff has made out a prima facie case and the question of rights and share of plaintiff is matter of trial. Until and unless completion of full pledged trial this court cannot presume the case as contended by the defendants. Hence, the rights and shares of the plaintiff has to be determined by way of trial and till completion of the trial, the defendants to be restrained from alienating or creating any 3rd party rights over the suit schedule properties to avoid the multiplicity of proceedings and to curtail the unnecessary delay in disposal.

8.5). In these circumstances this Court is of the opinion that if IA No.1 is rejected more mischief and hardship will be caused to the plaintiffs when compared to the mischief and hardship which will be suffered by Defendants if IA No.1 is allowed. By considering all these aspects this Court is of the opinion that if the application in



rejected, the Plaintiff will be put to irreparable loss and hardship and the same can not be compensated in terms of money. Hence this Court has answered Points No.2 and 3 in the **Affirmative**.

9). POINT No.IV:

For the foregoing reasons and finding given by this court on Point No. I to III, this court proceeds to pass the following:

ORDER

I.A. No.I filed by the plaintiff U/O 39 Rule 1 and 2 R/w Sec.151 of CPC is hereby allowed.

Defendants, their legal representatives, agents, servants or anybody acting on their behalf are hereby temporarily restrained from alienating or creating any charge or third party rights over the suit schedule property till the disposal of the suit.

No order as to cost.

(Dictated to the Stenographer directly on the computer, transcript is corrected and signed by me and then pronounced by me in the open court on this 04th day of July, 2025).

Sd/-
**Pri. C.J. & I Addl. JMFC.
Ranebennur.**

