



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

Dated on this the 03rd day of December 2025.

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

Prl. Civil Judge & JMFC.,Ranebennur.

ORIGINAL SUIT NO.334/2024

Plaintiffs: Smt. Laxmavva W/o Hanumagouda
Danappagoudra & another
(Plf. By Sri. Y.H.K, Advocate)

V/s

Defendants: Sri. Shivappa S/o Rudrappa Mattimani
& others
(Defts. By Sri. N.B.B., Advocate)

I.A. NO. II CAUSE TITLE.

Plaintiffs/

Applicants : Smt. Laxmavva W/o Hanumagouda
Danappagoudra & another

-Vs.-

Opponent/

Defendants: Sri. Shivappa S/o Rudrappa Mattimani
& others.



ORDER ON IA NO. II

The application under consideration is filed by the plaintiff 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 Declaration and permanent injunction by restraining the defendants from their interference over the suit schedule property and such other reliefs. The case of the plaintiffs in a nutshell is that, the suit property was originally measuring 5 acres 24 guntas and belong to one Basappa Hallalli, he died on 20.09.1967. After his death, his wife inherited the suit property and she bequeathed a Registered Will dated 31.10.1967, wherein she allotted 1/3rd share to the deceased husband of plaintiff No.1 and remaining 2/3rd share were allotted to the father of defendants. After her death, 1/3rd share over the entire extent measuring 1 acre 34 guntas was allotted towards western side. After the death of husband of plaintiff No.1, the plaintiffs succeeded the same and have been in possession and



enjoyment of the suit property. The defendants' father without the knowledge of the plaintiffs falsely executed a Will in favour of defendants to the extent of entire property and their names were mutated. Taking advantage of the same, the defendants started to interfere to the possession and enjoyment of plaintiffs and also denying their title. Hence, the present suit is filed.

2.2). In support of the application the plaintiff No.1 has sworn to the affidavit accompanying the application reiterating the plaint averments and he has further contended that the defendants by taking undue advantage of innocence of the plaintiffs and claiming to be the owners of entire extent have been trying to dispossess the plaintiffs and if that is happened the very purpose of filling this suit will be frustrated and it is the plaintiffs 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 plaintiff is granted. On these grounds, the applicants seeks that this Court be pleased to allow the application as prayed for.

3. Upon due service of the suit summons the defendants No.1 to 3 have made their appearance before the court through their common counsel and filed their common written statement and



objection to the application. It is contended in the objection that, the present application is neither maintainable in law nor on facts; the applicants have not come before the court with clean hands and the plaintiffs failed to show their prima facie case to grant the temporary injunction and also the balance on connivance is not in favour of the plaintiffs. It is specifically contended that, the description of boundary as shown in the plaint schedule is incorrect and the plaintiffs never in the possession of the suit property within the boundaries described in the plaint. They also denied the alleged cause of action and limitation to file this suit. It is further contended that, the suit property was originally belong to their father and they have acquired interest over the same. They have been in possession and enjoyment of the suit property as on filing of this suit. Despite of it, the present suit is filed by plaintiffs to harass them and the same is not maintainable. Upon these grounds the defendants sought for rejection of the application.

4). Heard the counsel for both side. 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-II.?**
- 2. Whether plaintiffs prove that balance of convenience lies in their favour as regards the IA-II.?**
- 3. Who will be put to irreparable loss and injury if the IA-II 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 rule that before the issue of a temporary injunction, the court must satisfy itself that the plaintiff has a *prima facie* case, it does not mean that, the court should examine the merits of the case closely and come to a conclusion that the plaintiffs have a case in which they are likely to succeed. All that, the court has to



see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects.

7.3). Keeping the above principles in mind, let this court turn to the documentary evidence available on record. With these aspects in mind when the records are perused, it becomes evident that the plaintiffs claim their prima-facie case on the suit schedule property based on the Registered Will dated 31.10.1967 in favour of the husband of the plaintiff No.1. It is the specific case of the plaintiffs that, the suit property was originally belong to one Thirakavva W/o Basappa Hallalli and she bequeathed a Registered Will in favour of husband of plaintiff No.1 and father of defendants. After her death, they jointly made a Vardi and their names were mutated.

7.4). In the objection the defendants denied the same and in written statement they have claimed that, since 1988 they have been in possession and enjoyment of the entire suit property. Hence, the plaintiffs have no rights to claim any rights over the same. It is also contended that, by virtue of family partition in the year of 2008-09 between them, they have been in separate possession and enjoyment of the suit property as Vardi submitted in MR No.63/2008-09.



7.5). Admittedly, the defendants have not produced any prima facie documents to show that, how the entire suit property was acquired by them. Though they have claimed their title based upon a registered Will, absolutely there is no materials before the court to show that, from whom and when such Will was bequeathed. In order to prove the prima facie case the plaintiffs also produced documents along with plaint. On going through the same at MR No.235/1 dated 13.09.1971 would prima facie demonstrates that, the father of defendants and husband of plaintiff No.1 jointly made a Vardi stating that, they have acquired the suit property through Registered Will dated 31.10.1967. Further also demonstrates that, 1/3rd share towards western side of entire extent was allotted to the husband of plaintiff No.1 and remaining share was allotted to the father of defendants.

7.6). The documents such as partition deed among the defendants and further revenue entries would demonstrates that, contrary to the earlier Vardi, the defendants have entered into partition to the entire extent measuring 5 acres 24 guntas. Further, the documents of revenue proceedings also would prima facie demonstrate that, the plaintiffs have challenged the revenue entries made based upon the partition, wherein by its order dated 21.11.2022 the Assistant Commissioner, Haveri was rejected the appeal holding that, the



litigation among the parties is civil in nature. Thereafter, the plaintiffs filed this suit.

7.7). Dwelling upon these crucial documents it establishes that, the plaintiffs having triable issue and made out a prima facie case. The validity of Will in question and subsequent partition among defendants and further revenue entries are matter of trial. At this stage, this court cannot hold a mini trial to that effect. Though defendants denied the correctness of boundary and description of plaint schedule, since 1/3rd undivided share was allotted to the husband of plaintiff No.1, they also to be considered as owners in possession of the suit property to the extent of their 1/3rd share.

7.8) On going through the materials available on record it prima faice establishes that, the Plaintiffs are in possession of suit property to the extent of 1/3rd share allotted to the husband of Plaintiff No.1. The previous litigation between the parties also establishes the interference by defendants to the possession and enjoyment of plaintiffs. Their 1/3rd share has to be protected until disposal of this suit.

7.9). 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 plaintiffs have made a prima facie case for triable issue. Further, the apprehension of alienation of suit property by defendants cannot be ruled out which would cause multiplicity of proceedings and create third parties interest. 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 plaintiffs 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.

8.4). 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.I 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.II 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 in the 1/3rd of western portion of the suit schedule property allotted to deceased Hanumagouda till the disposal of the suit.

No order as to cost

For issues by;

(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 3rd day of December 2025).

Sd/-
(ADITHYAKUMAR H.R)
Prl. C.J. & JMFC Court
Ranebennur.

