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**IN THE COURT OF CIVIL JUDGE AND J.M.F.C AT
SHIGGAON**

Present: Ashwinichandrakanth
B.Sc., LL.B.
Civil Judge and J.M.F.C.,
Shiggaon.

DATED 17th DAY OF MARCH, 2025

ORIGINAL SUIT NO.173/2022

1. Smt.Savitri @ Savakka W/o. Andaneppa Mallur,
Age: 58 years, Occ: Coolie, R/o:Kankanawad,
Tq: Shiggaon, Dist.Haveri and another.

(By Sri.K.S.J., Advocate)

.....PLAINTIFFS:

V/s.

1. Sri.Andaneppa Basavanneppa @ Basappa Mallur,
Age: 60 years, Occ: Agriculture,
R/o: Yatnalli, Tq: Shiggaon, Dist: Haveri
Now residing at Huralikoppi, Tq.Savanur
and others.

(By Sri.K.S.J., Advocate)

.... DEFENDANTS:

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PARTIES TO THE IA NO.I

1. Smt.Savitri @ Savakka W/o. Andaneppa Mallur
and another.

.... Applicants/Plaintiffs

V/s.

1. Sri.Andaneppa Basavanneppa @ Basappa Mallur
and others.

.... Opponents/Defendants

ORDER ON IA.NO.I

The plaintiffs have filed application under Order XXXIX Rule 1 and 2, by seeking prayer to grant ad-interim injunction against the Defendants not to alienate or create any kind of charge over the suit schedule properties till disposal of suit.

2. In support of the application Plaintiff has duly sworn affidavit and annexed the same along with the

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application and stated that, Defendant No.1 is the father of Plaintiff No.2 and trying to alienate the suit schedule properties. The suit schedule properties are the ancestral properties and which belong to the joint family properties. There was no partition among the Plaintiffs and Defendants. Plaintiffs further submitted that Plaintiffs are having 1/5th share in the suit schedule properties. Plaintiffs submits that there is a reliable information that, Defendants are trying to alienate the suit schedule properties. If this application is allowed no hard or loss would caused to other side. Hence, the Plaintiff prays to this court to allow this application.

3. On service of summons Defendant No.1 appeared before this court and filed written-statement and filed memo stating that, the written-statement may be treated as objections to IA No.I. and Defendant No.1

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has filed his written statement by denying entire averments of plaint and submits that, Defendant No.1 had married one Sunand on 15.02.1989. After their marriage they were leading their life happily since from 34 years. They had one son by name Manjunath. Defendant No.1 further submitted that, Plaintiff No.1 is not the legal wedded wife and Plaintiff No.2 is not the son of Defendant No.1. Both the Plaintiffs are not related to the Defendants. Plaintiffs with malafide intention to grab the suit schedule properties filed this suit. Hence, for this reasons Defendant No.1 prays to this court to dismiss this application with costs.

4. Heard, the arguments adduced by the both counsels, in view of the material placed before me and the rival contention raised by the parties. The following points have arisen for my consideration;



P O I N T S

1. Whether the prima-facie case lies infavour of Plaintiff?
2. whether the balance of convenience lies infavor of Plaintiff?
3. whether irreparable loss would be caused to the plaintiff. If the instant interlocutory application is not allowed?
4. What order ?
5. My answer to the above points are as under;

Point No1 : In Affirmative,
Point No.2: In Affirmative,
Point No.3: In Affirmative and
Point No.4 : As per final order
for the following:

R E A S O N S

6. **Point No.1:** The Plaintiffs seeking for relief of injunction against defendants not to alienate or create any kind of charge over the suit schedule properties.



7. At this stage without going to the merits of the case holding mini trial, this Court has considered the aspect of prima-facie case. At this stage this court makes it clear this court it looking forward prima-facie case not prima-facie title. It is settled principle of law that, at the time of disposing temporary injunction application the court cannot go into the prima-facie case title and only to consider whether the Plaintiff has made out prima-facie case for granting interim relief. The primary purpose of granting interim relief is preservation of things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words the object of making order regarding interim relief is to evolve a workable formula to the extent called for the demands of situation, keeping in mind the pros and cons of the matter and



striking a delicate balance between to conflicting interest i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused and injury and prejudice likely to be caused to the Defendants if relief is granted. The underlining object of granting Permanent Injunction is to maintain and preserve status-quo at the time of institution of proceedings and to prevent change in it until final determination of suit. It is in the nature of protective belief granted infavour of party to prevent future possible injuries.

8. The power to grant temporary injunction is at the discretion of the court. This discretion however should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that application must make out prima-facie in



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

9. The Plaintiffs in support of the case produced the RTC extracts, mutation extracts, Birth certificate and VPC extracts.

10. On perusal of the pleadings of the both parties and documents placed before this court. On perusal of the documents produced by the Plaintiffs the suit schedule properties stands presently in the name

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of Defendants. Further Plaintiffs are having apprehension that Defendants may alienate the suit schedule properties in order to deprive the rights of the Plaintiffs. Further Defendant No.1 submitted that, Plaintiffs are not related to the Defendants and Defendant No.1 not married Plaintiff No.1 and also Plaintiff No.2 is not the son of Defendant No.1. Hence, Plaintiffs are having no share in the suit schedule properties. More over plaintiffs claiming that suit schedule properties are ancestral joint family properties and Plaintiffs claiming that, they have $\frac{1}{5}^{\text{th}}$ share in the suit schedule properties. Defendant No.1 submitted that, Plaintiffs are not related to them. In order to ascertain this disputed fact which requires full fledged trial.



11. Plaintiffs claiming that Defendants are trying to alienate the suit schedule properties. If the suit schedule properties were alienated the rights of plaintiffs will be deprived. If this application is allowed at this stage no harm or loss would be caused to Defendants. In order to avoid the multiplicity of proceedings.

12. This court of the opinion that, the Plaintiffs made out prima-facie case which is sufficient to grant the relief of temporary injunction. If the injunction is granted no hardship will be caused to the Defendants. It is in the nature of protective relief granted in favour of party to prevent future possible injury as such at this stage of the suit, without giving any expressions on merits of the case it is opinion of the court the Plaintiff has succeeded to make out a prima-facie case in his



favour. **Accordingly, this court answered the point No.1 in the Affirmative.**

13. **Point No.2 and 3:** The second condition for granting interim injunction is that balance of convenience must be infavour of the Plaintiffs in other words the court must be satisfied that, the comparative mischief, hardship or inconvenience which is likely to be caused to the Plaintiffs by refusing the injunction will be grater than that which is likely to be caused to opposite party by granting it. On weighing the pleadings as well as documents of the Plaintiffs and Defendants balance of convenience does lies infavour of Plaintiffs. Accordingly, this court answered the **point No.2 and 3 are in the Affirmative.**

14. **Point No.4:** Since the plaintiff has made out a prima-facie case and proved hardship and the

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balance of convenience, Plaintiffs are entitled to discretionary and equitable relief of TI as prayed. Hence, for the aforesaid reasons, this court proceeds to pass the following;

ORDER

IA No.I filed by the Plaintiff under Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC., is hereby allowed.

The Defendants are hereby restrained by an order of temporary injunction from alienating or transfer the suit schedule properties till disposal of suit.

No order as to costs.

(Dictated to the stenographer, directly typed by her, corrected, and then pronounced by me in the open court on this the **17th day of March 2025**).

(ASHWINICHANDRAKANTH)

Civil Judge & JMFC,
Shiggaon.