



**IN THE COURT OF THE SENIOR CIVIL
JUDGE & JMFC AT SHIGGAON**

DATED THIS THE 25th DAY OF JANUARY 2023

**Present: Smt. Fairoza H.Ukkali,
B.A.LLM.,
Senior Civil Judge & J.M.F.C.,
Shiggaon**

O.S.91/2018

Plaintiffs: Smt.Gangavva W/o Malleshappa
Bandivad and another

V/s

Defendants: Smt.Chandrika W/o Prabhugouda
Doddamani and others.

I.A.II/2023

Applicant: Smt.Gangavva W/o Malleshappa
Bandivad and another

V/s

Opponents: Smt.Chandrika W/o Prabhugouda
Doddamani and others.

KAHV710003802018

**ORDER ON IA NO.II**

The plaintiffs have filed this I.A. under Order XXXIX Rules 1 and 2 R/w Section 151 of CPC, seeking an order of temporary injunction restraining the defendant No.1 from alienating or transferring the suit schedule B properties, till the disposal of the suit.

2) In the affidavit, the applicant has stated that the suit properties are all ancestral properties and defendant No.1 after the death of her husband by taking undue advantage without disclosing the real facts before the revenue authority got entered her name to the suit schedule 'B' properties and is acting against the interest of family and minors. That the defendant No.1 has ill intention to transfer or alienate the suit schedule 'B' properties by residing in her

KAHV710003802018



parental house and if she does so, it will cause hardship to the plaintiffs. That the plaintiffs have made out prima facie case and balance of convenience lies in their favour. Hence the applicant has prayed to allow the I.A.

3) The defendant No.1 has filed written statement and has filed memo submitting to consider the said written statement as objections to I.A.No.I. The defendant No.1 has admitted the relationship between the parties. Defendant No.1 has also admitted that suit schedule A, B and C properties being the properties belonging to the propositus namely Siddanagouda S/o Somanagouda Doddamani. The other allegations made by plaintiffs that the defendant No.1 being residing in her parental house is intending to transfer the suit schedule 'B'

KAHV710003802018



properties has been denied. In further the defendant No.1 herself has claimed counter claim by seeking partition in the suit schedule A, B and C properties.

4) I have heard on both side and perused records.

5) The following points arise for my consideration:

- 1) Whether the applicants have made out prima-facie case for granting an order of Temporary injunction?
- 2) Whether the balance of convenience lies in favour of the applicants?
- 3) Whether irreparable loss and injury will cause to the applicants, if an order of temporary injunction is refused?
- 4) What order?

KAHV710003802018



6) My answers to the above points are as follows:

Point No.1 : In the Negative,
Point No.2 : In the Negative,
Point No.3 : In the Negative,
Point No.4 : As per final Order,
for the following:-

REASONS

7) **POINT No.1:** The plaintiffs have filed the suit against the defendants seeking the relief of partition and separate possession by contending that the suit schedule A to C properties are the ancestral properties. As regards the relationship between parties, there is no dispute between the plaintiffs and defendants. The plaintiffs have contended that, after the death of her husband Prabhugouda, the 1st defendant having got changed the revenue records of the suit schedule 'B' properties in her name is

KAHV710003802018



intending to alienate the said properties. The said plea of the plaintiffs has been denied by the 1st defendant.

8) The plaintiffs have produced RTC extracts of suit schedule 'B' properties and on perusal of these RTCs, it is forthcoming that item no.1 to 5 of suit schedule 'B' are standing in the joint names of deceased Prabhugouda and defendants No.4 and 5 and item No.6 is standing in the names of deceased Prabhugouda and defendant No.3. Absolutely no name of 1st defendant is forthcoming in any of the revenue records of 'B' schedule properties.

9) It is the say of the plaintiffs that after the death of her husband Prabhugouda, the 1st defendant has got entered her name in the revenue records. There is no say by the plaintiffs that the 1st defendant

KAHV710003802018



has got deleted the names other defendants i.e., defendants No.3 to 5 from the revenue records. As per RTC extracts produced by the plaintiffs the suit schedule 'B' properties are standing in the joint names of Prabhugouda and defendants No.3 to 5. If at all the 1st defendant gets enter her name in the revenue records her name will be continued along with the names of defendants No.3 to 5. Under such circumstances, the 1st defendant cannot alone alienate the suit schedule properties without the consent of defendants No.3 to 5, whose names are appearing in the revenue records. Therefore as the revenue records of suit schedule 'B' properties are not standing exclusively in the name of 1st defendant, question of she alienating the suit schedule 'B' properties does not arise.

KAHV710003802018



10) In the plaint itself, the plaintiffs have stated that the husband of defendant No.6 namely Siddanagouda Halemani is looking after the suit schedule properties and 1st defendant has left the matrimonial home and is residing in her parental house. When as per the plaintiffs the suit schedule properties are being maintained by the husband of defendant No.6, question of 1st defendant coming from her parental house and alienating 'B' schedule properties which are standing in the joint names of Prabhugouda and defendants No.3 to 5 does not arise. Therefore no prima facie case has been made out by the plaintiffs for granting an order of temporary injunction. Hence Point No.1 is answered in the Negative.

11) **POINTS No.2 AND 3:** Both these points are taken up together for common discussion

KAHV710003802018



to avoid repetition, as they are inter related and based on same set of facts. In view of reasons and finding on Point No.1, as the plaintiffs have failed to make out a prima facie case, no balance of convenience lies in their favour. Further as the suit schedule properties are standing in the joint names of Prabhugouda and defendants No.3 to 5 and as per the plaintiffs the husband of defendant No.6 is maintaining the suit schedule properties, no hardship will cause to the plaintiffs, if an order of temporary injunction is refused. Hence Points No.2 and 3 are answered in the Negative.

12) **POINT No.4**: For the aforesaid reasons and findings on Points No.1 to 3, I proceed to pass the following:-

KAHV710003802018

**ORDER**

I.A No.II filed by plaintiffs under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC is dismissed.

Considering the relationship between the parties, no order as to cost.

(On my dictation transcribed and typed by the Stenographer, print out taken by her, corrected and then pronounced by me in the Open Court on this the 25th Day of January 2023.)

(FAIROZA H.UKKALI)
Senior Civil Judge & J.M.F.C.,
Shiggaon.

KAHV710003802018



I.A No.II filed by plaintiffs under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC is dismissed.

Considering the relationship between the parties, no order as to cost.