

KAHV710004112023



**IN THE COURT OF THE SENIOR CIVIL
JUDGE, AT SHIGGAON SITTING AT SAVANUR**

DATED THIS THE 6th DAY OF OCTOBER 2023

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

O.S.55/2023

Plaintiff : Chandrappa S/o Shankrappa Meti

V/s

Defendants: Shankrappa S/o Hanumantappa
Meti

I.A.I/2023

Applicant: Chandrappa S/o Shankrappa Meti

V/s

Opponents: Shankrappa S/o Hanumantappa
Meti

ORDER

The plaintiff has filed this application under
Order XXXIX Rules 1 and 2 r/w Sec.151 of CPC,

KAHV710004112023



seeking an order of temporary injunction restraining the defendant No.5 from alienating the suit schedule B5 to B23 properties, pending disposal of the suit.

2. In the affidavit, the applicant has stated that the suit B5 to B23 properties were purchased in the name of defendant No.5 under the registered sale deeds dated 18.12.2015 with the aid of the income of joint family properties and hence those properties are joint family properties and as they are standing in the name of defendant No.5, he is trying to alienate the same and if he does so much hardship and injury will cause to the plaintiff. Hence the plaintiff has prayed to allow the I.A.No.I

KAHV710004112023



3. The defendant No.5 has filed written statement and has filed memo adopting the said written statement as objections to I.A.No.I. In the said written statement, the defendant No.5 has admitted the relationship between the parties, but has denied the suit schedule B5 to B23 properties being the joint family properties and has contended that since 16 years he is working and is earning income and out of his independent income he has purchased those properties and has become the absolute owner and no single rupee was invested by joint family property and plaintiff has no right to claim share in those properties. Hence the defendant No.5 has prayed to dismiss the suit of the plaintiff.

KAHV710004112023



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

5. The following points arise for my consideration:

- 1) Whether the applicant has made out prima-facie case for granting an order of Temporary injunction?
- 2) Whether the balance of convenience lies in favour of the applicant?
- 3) Whether any hardship or injury will cause to the applicant if an order of temporary injunction is refused?
- 4) What order?

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

Point No.1 : In the Affirmative,
Point No.2 : In the Affirmative,
Point No.3 : In the Affirmative,

KAHV710004112023



Point No.4 : As per final Order,
for the following:-

REASONS

7. **POINT No.1:** The plaintiff has filed the suit against the defendants seeking the relief of partition and separate possession and has filed I.A.No.I under Order XXXIX Rule 1 and 2 of CPC, seeking an order of temporary injunction restraining the defendant No.5 from alienating the suit schedule B5 to B23 properties by contending that those properties are purchased in the name of defendant No.5 out of joint family income and therefore they are also the joint family properties and defendant No.5 by taking undue advantage of the properties standing in his name is trying to

KAHV710004112023



alienate the properties. The specific defence of the defendant No.5 is that out of his independent income he has purchased suit schedule B5 to B23 properties and no income of joint family was utilized for the purchase of said properties and he is absolute owner of the said properties and plaintiff has no right to claim partition of those properties.

8. The learned counsel for plaintiff submitted that joint family has sufficient income from other properties and out of said income suit schedule B5 to B23 are purchased in the name of defendant No.5 and now defendant No.5 to defeat the right of partition of the plaintiff in the suit property is making attempts to alienate suit schedule B5 to B23 properties and if does so much

KAHV710004112023



hardship and irreparable loss will cause to the plaintiff and hence prayed to allow the IA.

9. The learned counsel for defendant No.5 submitted that out of his independent income defendant No.5 has purchased the properties and through cheques he has made payments for purchasing properties and the same has been recited in the sale deeds and therefore all those properties are self acquired properties and absolute properties of defendant No.5 and the plaintiff has no share in those properties and if an order temporary injunction is granted much hardship and loss will cause to defendant No.5. Hence the learned counsel for defendant No.5 has prayed to dismiss the I.A.

10. The plaintiff has contended that the suit schedule B5 to B23 properties are purchased out of

KAHV710004112023



joint family funds and therefore they are joint family properties and he is having share in those properties and defendant No.5 is making attempts of alienation of those properties. The specific say of defendant No.5 is that suit schedule B5 to B23 properties are his self acquired purchased properties. As regards the allegation of he making attempts of alienation there is no denial by defendant No.5. The defendant No.5 has produced original sale deeds which reveal that suit schedule B5 to B23 properties are purchased by defendant No.5 on 18.12.2015. In these sale deeds there is reference about paying the sale consideration amount through cheques. Merely because the sale consideration amounts are paid through cheques, the same will not prove that the amount shown in

KAHV710004112023



the cheques was the self earnings of defendant No.5. In order to ascertain whether the sale consideration amount paid to the vendors for purchasing suit schedule B5 to B23 properties was the income of the joint family or it was independent income of defendant No.5, it requires evidence.

11. At this stage it is considerable that the suit is for partition and if pending suit any suit properties are alienated the same will lead to multiplicity of proceedings and it will hamper the fair adjudication of the case. Pending suit for the purpose of effective adjudication of the matter, all the suit properties are required to be kept in status-quo. Therefore the plaintiff has made out a prima facie case for granting an order of temporary

KAHV710004112023



injunction. Hence Point No.1 is answered in the Affirmative.

9. **POINTS No.2 AND 3:** Both these points are taken up together for common discussion 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 plaintiff has made out prima facie case, balance of convenience lies in favour of the plaintiff. Further if pending suit, any of the suit schedule B5 to B23 properties are alienated by defendant No.5, it will cause hardship and injury to the plaintiff who has approached this Court seeking the relief of partition in the suit properties and the said alienations will lead to multiplicity of proceedings. Hence Points No.2 and 3 are answered in the Affirmative.

KAHV710004112023



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

ORDER

I.A No.I filed under Order XXXIX Rule 1 and 2 R/w Sec.151 of CPC is allowed.

An order of temporary injunction is granted restraining the defendant No.5 from alienating the suit schedule B5 to B23 properties, pending disposal of the suit.

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 6th Day of October 2023.)

(FAIROZA H.UKKALI)

KAHV710004112023



Senior Civil Judge and J.M.F.C.,
Shiggaon.

KAHV710004112023

