

KAKB410000322024



IN THE COURT OF THE SENIOR CIVIL JUDGE
& J.M.F.C., AT : CHINCHOLI

Present : Smt.Jyoti.Shantappa.Kale
L.L.M.,
Senior Civil Judge & JMFC, Chincholi.

DATED : THIS THE 02nd DAY OF APRIL 2024

ORIGINAL SUIT No.8/2024

i.	Provision under which the application is filed	U/o 39 Rule 1,2 CPC
ii.	Relief sought for	Temporary Injunction Order.
iii.	The date on which the application is filed	05/03/2024
iv.	Number of the application	I.A No.II
v.	The date on which the objections are filed by different opponents	18/03/2024
vi.	The date on which the orders were passed on the said application	02/04/2024

Plaintiff/s

Geetha W/o Sharanreddy & others.

V/s

Defendant/s:

Sharanareddy S/o Hanamanth

-: I.A.No.II :-

Applicant/s:

Geetha W/o Sharanreddy & others.

V/s.

Opponent/s:

Sharanareddy S/o Hanamanth

**ORDER ON INTERIM APPLICATION No.II FILED BY
THE PLAINTIFF UNDER ORDER 39 RULE 1 AND 2 CIVIL
PROCEDURE CODE, 1908**

1. The plaintiffs filed I.A.No.II U/o 39 Rule 1 and 2 of Civil Procedure Code, 1908, along with the main suit praying to restrain the Defendant from withdrawing the sugarcane amount from Sidda Siri Ethonal and power Chincholi private limited till disposal of suit.
2. The application is accompanied with an affidavit sworn in by the plaintiff No.1 wherein she has stated that they have filed the suit for the relief of partition and separate possession. The plaintiff

No.1 is the legally wedded wife of defendant. It is stated that the plaintiff has sold the Sugarcane to the Sidda Siri Ethonal and power Chincholi private limited in the name of plaintiff No.1 but the defendant is trying to deposit the sugarcane amount in his favour by colluding with the Sidda Siri officers as the record of rights stands in the name of defendant. It is further stated that if the amount is released to the defendant then the plaintiffs will be put to great loss and injustices which cannot be compensated in terms of money. Thus the plaintiffs have stated that if application is not allowed irreparable loss will be caused to them as they have prima facie case and balance of convenience lies in their favour. Thus, they prayed to allow the application.

3. The defendant filed memo to adopt the written statement as objections to the present application. It is contended that the plaintiff No.1 is the wife of defendant but she has not resided with the defendant after the marriage. It is denied that plaintiff No.2 and 3 are children born out of wedlock of plaintiff No.1 and the defendant. It is contended that suit properties are not the joint family properties of plaintiffs and defendant. It is specifically

contended by the defendant that he has purchased the land bearing Sy.No153/1 measuring 18 acre 10 gunta under registered sale-deed dated: 26-05-1975. 5 acres of land was given by the mother of the defendant to him and that it is his separate property. It is further contended that land bearing Sy.No153/1 measuring 18 acre 10 gunta is self acquired property of the defendant and therefore the plaintiff has no right over the suit property. The suit is not maintainable. On these grounds the defendant prayed to reject the application.

4. Heard arguments of learned counsel for the plaintiffs and learned counsel for the defendant on I.A.No.II and perused the entire materials on record.

5. On the basis of materials on record the points arise for my consideration are as under,

- 1) *Whether plaintiffs have made out prima-facie case?*
- 2) *Whether the factor of balance of convenience lies in favor of plaintiffs?*
- 3) *Whether the plaintiff proves that*

*irreparable loss will be caused to them if
an order of temporary Injunction is not
granted to the plaintiffs?*

4) *What Order?*

6. On perusal of the materials on record and the application and its contents, My findings on aforesaid points are as under

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

: R E A S O N S :

7. Reasoning on Point No.1:

i) The suit is for the relief of partition and separate possession in respect of suit properties. The suit property is land bearing Sy.No153/1 measuring 18 acre 10 gunta out of 30 acre 10 guntas of land and 5 acres of land standing in the name of deceased Ratanamma situated at Chimanchod village. As an interim relief the plaintiffs have filed I.A.II under the provisions of Order 39 Rule 1 and 2 Civil Procedure Code, 1908. The plaintiffs who have sought

for the Temporary Injunction order has to prove that they have a prima-facie case, balance of convenience lies in their favor and they have to make out grounds to show that if the temporary injunction is not granted in their favour then they will suffer irreparable loss and injury. If the plaintiffs satisfies these 3 ingredients then the plaintiffs will be entitled to this equitable relief sought by them. The plaintiffs who seeks for the interim relief has to approach the court with clean hands and there should be no suppression of any necessary materials and facts.

ii) *In a decision reported in 1958 AIR 79 SCR 514, Martin Burn Ltd vs. R.N.Banerjee - The Hon'ble Supreme Court held that a prima-facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence led in support of the same were believed. It does not involve the determination of the conflict of evidence or complex questions of fact and law, which call for detailed arguments. It further requires that the Plaintiff should come before the Court with clean hands. If he suppresses material facts and evidence then he is not entitled for the relief of injunction and further*

points of balance of convenience, irreparable injury need not be considered in such case.

iii) *In another decision reported in Prakash Singh vs State of Haryana, 2002 (4) Civil L.J.71 (P.H.)* [– The Court explained that Prima-facie does not mean that a Plaintiff/Applicant should have a full proof case in his favour which will succeed in all probabilities. It means that the plaintiff/applicant has a case which cannot be rejected summarily or dismissed out right. It raises consideration which can be considered on merits. The grant of temporary injunction cannot be requested by the party as a matter of right nor can be denied by the Court arbitrarily. The injunction is an equitable remedy and attracts the application of the maxim “he who seeks equity must do equity”. The Court has complete discretion to grant an injunction or to refuse it. The discretion to be exercised by the Court depends on the facts and circumstances of each case. The relief cannot be claimed as an affair of right however worthwhile the applicant’s case may be. The power to grant an injunction must, therefore, be exercised with the utmost prudence, vigilance, and care.

(iv) In a decision reported in *Prakash Singh V/s State of Haryana* 2002 (4) Civil L.J. 71 (P.H.) } *Prima facie* case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. *Prima-facie* case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily.

(v) In light of the principles enunciated in the decision stated above now let me ascertain if the plaintiffs satisfies the essential ingredient to earn the order of equitable relief. It is upon the plaintiffs to show they have a fair question as to the existence of their rights.

(vi) In this case the plaintiffs claims that suit properties are the joint family properties of plaintiffs and defendant. It is contended that there is no partition till date between plaintiffs and defendant in the joint family properties but nominally the suit property stands in the name of defendant. On the contrary the defendant claims that he has purchased the land bearing Sy.No153/1 measuring 18 acre 10 gunta under registered sale-deed dated: 26-05-1975. 5

acres of land was given by the mother of the defendant to him and that it is his separate property. It is further contended that land bearing Sy.No153/1 measuring 18 acre 10 gunta is self acquired property of the defendant and therefore the plaintiffs have no right over the suit property.

(vii) In the present application the plaintiff have sought to restrain the Defendant from withdrawing the sugarcane amount from Sidda Siri Ethonal and power Chincholi private limited. Perusal of the contents of application and the affidavit annexed with the application it goes to show that in the entire affidavit and the application the plaintiff has no where stated that the sugarcane is the crops grown in the suit property. It is specifically pleaded by the plaintiffs that plaintiff has sold the sugarcane to the Sidda Siri Ethonal and power Chincholi private limited.

(viii) In support her case the plaintiff has produced Yashwine card, report card of plaintiff No.2 and 3, copy of transfer certificate of plaintiff No.2 and 3, Addhar cards, I.D cards and Study certificates of plaintiff No.2 and 3. The plaintiff has also produced the record of

rights of suit property which shows the name of defendant and Ratanamma W/o Hanamanth reddy. The record of right depicts that there is sugarcane crop in 4 acre 10 guntas of land standing in the name of defendant. Though the plaintiff has pleaded that that plaintiff has sold the sugarcane to the Sidda Siri Ethonal and power Chincholi private limited but none of documents produced by the plaintiffs shows that the sugarcane was sold by the plaintiffs to the said factory. More over in the entire affidavit and the application the plaintiff has nowhere stated the quantum of amount i.e., quantum of amount which is said to be withdrawn by the defendant from the above said factory.

(ix) The plaintiffs have not produced any in support of his case the defendant has produced copy of sale-deed dated:26-05-1978 in respect of suit property, record of rights of suit property and mutation register extract. The defendant has also produced the letter dated;16-02-2024 issued by food and civil supplies and consumer department Kalaburagi where in a direction is issued to the managing director Sidda Seri Ethonal and power Chincholi,

stating that Sharanreddy S/o Hanamanth reddy has supplied the sugarcane grown in his land bearing Sy.No.153/1 measuring 01 acre 20 guntas out of 18 acre 10 guntas but due to the mistake of field man the name is wrongly mentioned and therefore it has directed that the same is to be rectified. The plaintiffs have not denied the said document and nothing is argued by the learned counsel for the plaintiffs in this regard. Had if the plaintiffs have sold the sugarcane to the above said factory, then the plaintiffs ought to have produced some materials or at least stated the quantum of amount. The contents of application and the affidavit are very cryptic. It is also pleaded by the plaintiffs that they are in possession of the suit property. In the absence of any cogent documents at this stage, it cannot be accepted that the plaintiffs are in possession of suit property and in the absence of materials, the plaintiffs have not made out a prima-facie case triable by this court for grant of Temporary Injunction order. Hence, I answer point No.1 in Negative.

8. Reasoning on Point No.2 and 3:

i) Balance of Convenience- :- *To see balance of convenience, it is necessary to compare case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be grater than which is likely to arrive from granting it.* As discussed while answering point No. 1 this court has opined that the plaintiff has not made out a prima facie case. The documents produced by the defendant does shows that the balance of convenience lies in his favour. When the case of both the parties is compared the defendant by producing the documents has shown that if injunction order is granted in favour of the plaintiffs, then more irreparable loss will be suffered by the defendant.

ii) As discussed while answering point No. 1 this court has opined that the plaintiffs have not made out prima-facie case and the balance of convenience does not lies in their favour. Under such circumstances if an order of Temporary Injunction is granted then more irreparable loss will be caused to the defendant when compared to the plaintiffs. Accordingly, this court answers point No.2 and 3 in Negative.

9. **Point No.4:** In view of my findings on point No.1 to 3. I proceed to pass the following;

:- O R D E R :-

IA.No.II filed by the Plaintiffs U/o 39 Rule 1 and 2 of CPC seeking an order of Temporary Injunction restraining the defendant from withdrawing the sugarcane amount from Sidda Siri Ethonal and power Chincholi private limited till disposal of suit is hereby rejected.

(Dictated to Typist typed by her corrected by me, signed and pronounced by me in the open court on **02nd day of April 2024**)

(Jyothi Shantappa Kale)
**Senior Civil Judge & JMFC.,
Chincholi.**