

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 31st DAY OF AUGUST 2023

ORIGINAL SUIT No.61/2023

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	21/04/2023
iv.	Number of the application	I.A No.I
v.	The date on which the objections are filed by different opponents	28/08/2023
vi.	The date on which the orders were passed on the said application	31/08/2023

Plaintiff/s

Shreelekha W/o Bharathkumar Bhogle

V/s

Defendant/s:

Ashwini W/o Praveen Kumar and others.

-: I.A.No.I :-

Applicant/s:

Shreelekha W/o Bharathkumar Bhogle

V/s.

Opponent/s:

Ashwini W/o Praveen Kumar and others.

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

1. The plaintiff filed I.A.No.I U/o 39 Rule 1 and 2 of Civil Procedure Code, 1908, along with the main suit praying to restrain the Defendants from alienating, mortgaging or creating charge over the suit schedule property till disposal of suit.

2. The application is accompanied with an affidavit sworn in by the plaintiff wherein she has stated that she has filed this suit for the relief of Partition and separate possession in respect of suit properties. It is stated that the Saibanna and Rajamani are the parents of plaintiff and deceased Praveen Kumar and deceased Sanjukumar. The defendant No.1 is the wife of deceased Praveen Kumar and defendant No.2 is the wife of deceased Sanjukumar.

The Saibanna being the common ancestor of parties to the suit was the owner in possession of suit properties and after his death, the suit properties are transferred to the name of his wife Rajamani. The suit properties are the ancestral and joint family properties of plaintiff and her brothers. After the death of mother of the plaintiff the defendant No.1 and 2 are not giving any profits from the suit property to the plaintiff and they have refused to give the share of the plaintiff. The suit properties are illegally mutated in the name of defendant No.1 and 2.

3. It is further stated that the defendant No.1 and 2 are trying to alienate the suit property. Thus the plaintiff has stated that if application is not allowed irreparable loss will be caused to her as she has prima facie case and balance of convenience lies in her favour. Thus, she prayed to allow the application.

4. The defendant filed memo adopting the contents of written statement as objections to the present application. The defendants have admitted the relationship between them and the plaintiff. It is contended that the suit suffers from non-joinder of necessary parties as the son of deceased Praveen Kumar and Daughters of deceased

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Sanjukumar are not made as party to the suit. It is admitted that The Saibanna being the common ancestor of parties to the suit was the owner in possession of suit properties and after his death, the suit properties are transferred to the name of his wife Rajamani. It is contended that the plaintiff got separated from the joint family by taking amount of Rs.2,00,000/- from the alienation of land bearing Sy.No.141/2. It is contended that the defendant No.1 had filed O.S No.1/2018 seeking partition and separate possession against deceased Rajamani, plaintiff and Sanjukumar. In the said suit the present plaintiff filed counter claim and same is pending. To clear off the family debts, the Rajamani had agreed to sell the suit land to Shivaraj patil and executed agreement of sale. The said Shivaraj patil filed suit for specific performance of contract in O.S No.39/2018 and during pending of both the suits Rajamani and Sanjukumar died. The plaintiff and defendants were unable to clear the loans and therefore the defendants and the plaintiff settled the matter and it was agreed that out of 4 acre 14 guntas of land the defendant should sell 2 acres of land to Vallaballaya and the amount was to be paid to the plaintiff. Accordingly agreement was

entered and O.S No.39/2018 was withdrawn by Vallaballaya. The Rs.2,00,000/- was paid to the plaintiff towards her share and the plaintiff relinquished her rights in the suit property. The plaintiff has filed this suit to extract some more amount from the defendants. On these grounds the defendants prayed to reject the application.

5. Heard arguments of learned counsel for the plaintiff and learned counsel for the defendants on I.A. and perused the entire materials on record.

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

- 1) *Whether plaintiff has made out prima-facie case?*
- 2) *Whether the factor of balance of convenience lies in favor of plaintiff?*
- 3) *Whether the plaintiff proves that irreparable loss will be caused to her if an order of temporary Injunction is not granted to the plaintiff?*
- 4) *What Order?*

7. 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 Affirmative
- Point No.2** : In the Affirmative
- Point No.3** : In the Affirmative
- Point No.4** : As pecuniary final orders
for the following,

: R E A S O N S :

8. Reasoning on Point No.1:

i) The suit is for the relief of Partition and Separate possession in respect of the suit schedule property. As an interim relief the plaintiff has filed I.A. under the provisions of Order 39 Rule 1 and 2 Civil Procedure Code, 1908. The plaintiff who has sought for the Temporary Injunction order has to prove that she has a prima-facie case, balance of convenience lies in her favor and she has to make out grounds to show that if the temporary injunction is not granted in her favour then she will suffer irreparable loss and injury. If the plaintiff satisfies these 3 ingredients then the plaintiff will be entitled to this equitable relief sought by her. The plaintiff

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 plaintiff satisfies the essential ingredient to earn the order of equitable relief. It is upon the plaintiff to show he has a fair question as to the existence of his rights.

(vi) In this case the plaintiff claims that defendant No.1 and 2 being her Sister in laws have illegally mutated suit property in their name. She further claimed that the suit property are the ancestral and joint family properties. The relationship and nature of the properties is undisputed. The only contention of the defendant is that Rs.2,00,000/- was paid to the plaintiff towards her share and the plaintiff relinquished her rights in the suit property. The claim of the defendants that Rs.2,00,000/- was paid to the plaintiff towards her share and the plaintiff relinquished her rights in the suit property is matter of trial. The plaintiff has produced record of rights of suit property and mutation register extract. On the contra at this stage no documents are produced by the defendants to show about Suit O.S 1/2018 and O.S No.39/2018.

(vii) The plaintiff claims that the suit schedule property is the joint family property which is also admitted by the defendants. The record of rights of suit property shows the name of defendants. The say of the defendants that Rs.2,00,000/- was paid to the plaintiff towards her share and the plaintiff relinquished her rights in the suit property is matter of trial and the same cannot be adjudicated at this stage as a full-fledged Trial. Though defendant has denied the case of plaintiff but he has not produced any documents at this stage. The record of rights in respect of suit land property shows the name of defendants. Determination of all these aspects needs a full fledged trail. Under such circumstances the suit schedule property is to be kept intact till disposal of the suit. Therefore, the plaintiff has made out a prima-facie case triable by this court for grant of Temporary Injunction order. Hence, I answer point No.1 in Affirmative.

9. Reasoning on Point No.2:

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 made out a prima facie case. The documents produced by the plaintiff does shows that the balance of convenience lies in his favour. To rebut the documents of the plaintiff the defendant has not produced any such materials. When the case of both the parties is compared the plaintiff by producing the documents has shown that the name of the defendant appears in the Record of Rights of suit schedule property and her apprehension that the defendants may alienate the suit schedule property is acceptable. Hence, the balance of convenience lies in favor of the plaintiff and accordingly point No. 2 is answered in favour of the plaintiff holding that balance of convenience lies in favor of the plaintiff.

10. Reasoning on Point No. 3:

i) Irreparable loss : *Ordinarily injury is irreparable when without fair and reasonable address of Court, it would be denial of justice. Very often an injury is irreparable where it is continuous and repeated or where it is remediable at law only by a multiplicity of*

suits. Sometime the term irreparable damage refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.

ii) As discussed while answering point No. 1 and 2 this court has opined that the plaintiff has made out prima-facie case and the balance of convenience lies in her favour. Under such circumstances the plaintiff apprehends that as the name of the defendants are depicted in Record of Rights of land then the defendants might alienate the suit schedule property during pending of the suit and the rights of the plaintiff will be effected. This claim of the plaintiff is acceptable. If the defendants taking advantage of their names appearing in the Record of Rights of land of the suit schedule property alienates the suit schedule property during pending of the suit then the rights of the plaintiff will be effected and it will also lead to multiplicity of proceedings. Therefore, if an order of Temporary Injunction is not granted then more irreparable loss will be caused to the plaintiff when compared to the defendants. It is necessary that the suit schedule property

should be kept intact till disposal of the suit. Accordingly, this court answers point No.3 in favor of plaintiff holding that if an order of Temporary Injunction is not granted then more irreparable loss will be caused to the plaintiff as compared to the defendants.

11. 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.I filed by the Plaintiff U/o 39 Rule 1 and 2 of CPC seeking an order of Temporary Injunction restraining the defendants from alienating, mortgaging or creating charge over the suit schedule property till disposal of suit is hereby allowed.

The defendants by way of Temporary Injunction order are hereby restrained from alienating the suit schedule property in any manner till disposal of the suit.

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Posted for compliance of section 89 Civil
Procedure Code, 1908.

(Dictated to Typist typed by her corrected by me, signed and
pronounced by me in the open court on **31st day of August 2023**)

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

(Order pronounced in open court vide its separate Order)

:- O R D E R :-

IA.No.I filed by the Plaintiff U/o 39 Rule 1 and 2 of CPC seeking an order of Temporary Injunction restraining the defendants from alienating, mortgaging or creating charge over the suit schedule property till disposal of suit is hereby allowed.

The defendants by way of Temporary Injunction order are hereby restrained from alienating the suit schedule property in any manner till disposal of the suit.

Posted for compliance of section 89 Civil Procedure Code, 1908.

Call on 27-09-2023.

**Senior Civil Judge & JMFC.,
Chincholi.**