

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 18th DAY OF DECEMBER 2023

ORIGINAL SUIT No.94/2023

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	24-7-2023
iv.	Number of the application	I.A No.I
v.	The date on which the objections are filed by different opponents	15-11-2023
vi.	The date on which the orders were passed on the said application	18-12-2023

Plaintiff/s

Mallamma W/o Bhimsha & others

V/s

Defendant/s:

Subhadhramma W/o Chandrappa and others.

-: I.A.No.I :-

Applicant/s:

Mallamma W/o Bhimsha & others

V/s.

Opponent/s:

Subhadhramma W/o Chandrappa 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 properties till disposal of suit.

2. The application is accompanied with an affidavit sworn in by the plaintiff wherein he has stated that he has filed this suit for the relief of partition and separate possession in respect of suit schedule properties. It is stated that the plaintiffs and defendants are the joint family members and the suit properties are the ancestral and joint family properties are plaintiffs and defendants. It is further stated for after the death of Chandrappa and Saidamma, the plaintiffs and defendants No. 1 to 5 have succeeded to the suit properties as joint owners and coparceners. It is further stated that

the defendants 1 to 5 without the knowledge of the plaintiffs got mutated suit properties in their names. It is further stated that on the basis of revenue records the defendants have an intention to sell the suit property. Thus the plaintiff has 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 defendants, filed memo to adopt the contents of written statement as objections to IA No.I.

The defendants have contented that Saidamma was the first legally wedded wife of deceased Chandrappa and when the plaintiff No.1 was 5 years old and plaintiff No.2 was 3 years old, the said Saidamma left the company of Chandrappa and developed extra marital affair with one Bakkappa Bhutali. One Ratnamma is the Sister of Saidamma. The said Bakkappa Bhutali was the husband of Ratnamma. It is further stated that for the welfare of minor plaintiffs, Chandrappa performed second marriage with defendant No.1 as Saidamma had refused join the company of Chandrappa and obtained customary divorce in the village. The Chandrappa and defendant No.1 have performed the marriage of both the plaintiffs

by incurring huge amount and have given dowry and gold articles at the time of marriage of the plaintiffs. It is further stated that the plaintiffs married and they are not members of Hindu joint family. On these grounds the defendants prayed to reject the application.

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

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

- 1) *Whether the plaintiffs have made out prima-facie case?*
- 2) *Whether the factor of balance of convenience lies in favor of plaintiffs?*
- 3) *Whether the plaintiffs prove 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 Affirmative
Point No.2 : In the Affirmative

Point No.3 : In the Affirmative
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 the suit schedule property. As an interim relief the plaintiffs have filed I.A.NoI 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 his favour then he 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 him. 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 they have a fair question as to the existence of their rights.

(vi) It is pleaded by the plaintiff that the plaintiffs and defendants are the joint family members and the suit properties are the ancestral and joint family properties are plaintiffs and defendants. It is further stated for after the death of Chandrappa and Saidamma, the plaintiffs and defendants No. 1 to 5 have succeeded to the suit properties as joint owners and coparceners.

(vii) On the contra the defendants have contended that Chandrappa and defendant No.1 have performed the marriage of both the plaintiffs by incurring huge amount and have given dowry and gold articles at the time of marriage of the plaintiffs. It is further stated that the plaintiffs married and they are not members of Hindu joint family.

(viii) On perusal of pleadings of both parties, it shows that the defendants have not disputed the relationship between parties the suit and also not disputed that the suit properties are the ancestral and joint family properties.

The say of the defendants that Chandrappa and defendant No.1 have performed the marriage of both the plaintiffs by incurring huge amount and have given dowry and gold articles at the time of marriage of the plaintiffs is matter of trial and the same cannot be adjudicated at this stage as the same needs a full fledged Trial.

(ix) The plaintiff at this stage has produced the records of rights of suit property. The record of rights in respect of suit land property shows the name of defendants. The documents produced by the plaintiffs show that they have prima-facie case. Determination of all these aspects needs a full fledged trail. Under such circumstances the suit schedule properties are to be kept intact till disposal of the suit. Therefore, the plaintiffs have made out a prima-facie case triable by this court for grant of Temporary Injunction order. Hence, I answer point No.1 in Affirmative.

8. 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 their favour. When the case of both the parties is compared the plaintiff by producing the documents has shown that the name of the defendants appears in the Record of Rights of suit schedule properties and his 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.

9. 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 their favour. Under such circumstances as the name of the defendants is depicted in Record of Rights of land then the defendants might alienate the suit schedule properties 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 name appearing in the Record of Rights of land of the suit schedule properties alienates the suit schedule properties during pending of the suit then the rights of the plaintiffs 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 properties should be kept intact till disposal of the suit. Accordingly, this court answers point No.3 in favor of plaintiffs holding that if an order of Temporary Injunction is not granted then more irreparable loss will be caused to the plaintiffs as compared to the defendants.

10. **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 Plaintiffs 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 properties in any manner till disposal of the suit.

(Dictated to Typist typed by him corrected by me, signed and pronounced by me in the open court on 18th day of December 2023)

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