

KAKB410003892023



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 31th DAY OF MAY 2024

ORIGINAL SUIT No.129/2023

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	27/09/2023
iv.	Number of the application	I.A No.I
v.	The date on which the objections are filed by different opponents	20-12-2023
vi.	The date on which the orders were passed on the said application	31/05/2024

Plaintiff/s

Sudha W/o Satish @ Santosh.

V/s

Defendant/s:

Manshetty S/o Siddamallappa Kanti & others.

-: I.A.No.I :-

Applicant/s:

Sudha w/o Satish @ Santosh.

V/s.

Opponent/s:

Manshetty S/o Siddamallappa Kanti & 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 she has stated that she has filed this suit for the relief of Partition and separate possession of suit properties and to declare that the compromise decree passed in O.S No. 90/1991 and compromise decree passed in O.S No.201/2022 are null and void and not binding on the plaintiff. It is stated that plaintiff is the daughter of defendant No.1 and defendant No.2. The defendant No.3 is the brother of plaintiff. The defendant No.4 to 8 are the children of defendant No.1 through his second wife Sushilamma. It is stated that plaintiff and defendants are the members of Hindu Joint family. It is further stated that mother of the plaintiff Lalitabai is illiterate and by taking undue advantage of illiteracy of Lalitabai, the defendant No.2 and defendant No.1 malafidely entered into compromise decree in O.S No.90/1991. At the time of compromise decree, the plaintiff was four years minor girl and her brother was also a minor. It is further stated that the defendant No.1 and defendant No.4 to 8 once again filed O.S No.201/2022 before Addl.

Civil Judge at Chincholi seeking partition and separate possession. Without impleading the plaintiff, they compromised the suit. The suit properties in O.S No. 90/1991 are not fertilized land and the suit properties in O.S No.201/2022 are fertilized lands. The said compromise decrees are obtained without the interest of minor plaintiff. It is further stated that the suit properties stands in the name of defendants and they are trying to alienate the suit properties the plaintiff has share in 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.

3. The defendant No.1,4 to 6 filed memo to adopt the contents of written statement as objections to I.A No.I. It is contended that Sushilamma is the first wife and Lalitabai is the second wife of defendant No.1. It is further contended that the defendant No.2 including the defendant No.3 have filed number of

cases that is O.S No.90/1991 in which the defendant No.2 Lalitabai, plaintiff and defendant No.3 filed the suit for declaration of ownership and possession against the defendant No.1 in O.S 90/1991. In the said suit the plaintiff, defendant No.2 and defendant No.3 compromised the matter and share was given to them. After some years, the son of Manshetty that is Siddamallappa and Ravikanth filed O.S 83/2003.

4. It is further contended that against the defendant No.1 Manshetty and defendant No.2 Lalitabai and plaintiff and defendant No.3 Srikanth had filed the suit for declaration of ownership with a consequential relief of perpetual injunction and correction of revenue records. But the said suit is also compromised in between the Siddamallappa, Ravikanth, Manshetty, Lalitabai, Sudha and Srikanth. And in that compromise the plaintiffs admitted that, the defendant No.2 Lalitabai is the second wife of the defendant No.1 Manshetty, and also admitted that, Sudharani and Srikanth are the daughters of defendant No.1 Manshetty through Lalitabai.

According to the compromise the defendant No.2 to 4 Lalitabai and her daughter Sudha and her son Srikanth are the owners in possessor of the suit land measuring 01 acre 33 guntas of portion of land Sy.No.162 of village Salebeernalli. And after the compromise the present plaintiff Sudha and defendant No.2 Lalitabai and defendant No.3 Srikanth were no way concerned to the other properties of the Manshetty and other defendants. In the year 1991 when the plaintiffs mother Lalitabai claimed some of the properties through her son and daughter, at that time only, the partition were takes place in between plaintiff's mother Lalitabai and the son of the Sushilabai to ascertain this facts, it clearly discloses the O.S No.83/2003,O.S.No.13/2003,O.S.No.83/2003 andO.S.No.90/1991.

5. It is further contended that there was already partition were between the mother of the plaintiff and her son Srikanth and her daughter Sudha in O.S.No.83/2003, and O.S.No.90/1991, and O.S No.13/2003 by knowing full well that, there were already partition in between the plaintiff and her mother and her brother

Srikanth. On these grounds the defendants prayed to reject the application.

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

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

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

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

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|-------------------|---|--------------------|
| 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 :

9. 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.No.I 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 she has a fair question as to the existence of her rights.

(vi) It is pleaded by the plaintiff that she being the daughter of defendant No. 1 is entitled for share in the suit schedule properties. It is stated that the compromise decree passed in O.S.No.90/1991 and O.S.No.201/2022 is null and void and not binding on the plaintiff. On the contrary the defendants have stated that the plaintiff her mother and her brother are all parties to compromise decree passed in O.S.No.90/1991 and O.S.No.201/2022 and therefore as there is already partition the plaintiff cannot seek repartition in the suit schedule properties.

(vii) On perusal of pleadings of both parties, it shows that the defendants have not disputed the relationship between parties to

the suit. It is specifically contended that there is already a partition between parties to the suit. The plaintiff has stated that the compromise decree passed in O.S.No.90/1991 was made when the plaintiff was minor. In support of her case the plaintiff has produced Record of rights of suit schedule properties and also produced certified copy of compromise decree passed in O.S.No.90/1991 and O.S.No.201/2022. In the compromise decree passed in O.S.No.90/1991 the present plaintiff is plaintiff No.2 aged 4 years. The age of the plaintiff in the present suit is shown as 45 years. Thus taking into consideration the documents produced by the plaintiff and the contents of the written statement prima facie it shows that there was already a partition in the suit schedule properties. The plaintiff is also party to the compromise decree. Thus the plaintiff has not made out a prima-facie case triable by this court for grant of Temporary Injunction order. Hence, I answer point No.1 in Affirmative.

10. 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 plaintiff, then more irreparable loss will be suffered by the defendants.*

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 defendants when

compared to the plaintiff. Accordingly, this court answers point No.2 and 3 in Negative.

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.II filed by the Plaintiffs U/o 39 Rule 1 and 2 of CPC seeking an order of Temporary Injunction to restrain the Defendants from alienating, mortgaging or creating charge over the suit schedule properties 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 **31st day of May 2024**)

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