

IN THE COURT OF CIVIL JUDGE AT CHITTAPUR

**Present: Sri.Prakash Arjun Banasode, B.A. LL.B.,
Civil Judge & JMFC.,
CHITTAPUR.**

Original Suit No. 40/2016

Dated: 17th Day of June 2017

Plaintiff/s :

1. Smt. Mallamma
W/o. Chandrama @ Chandrasha Harbol,
Age: 62 years, Occ: Agriculture,
R/o. Katamdevarahalli village,
Post: Belagumpi, Tq: Chittapur,
Dist: Kalaburagi.
2. Shashikala
D/o. Chandrama @ Chandrasha
and W/o. Muniyappa Kattimani,
Age: 36 years, Occ: Household,
R/o. Village Bommanahalli,
Post: Birnahalli, Tq: Sedam,
Dist: Kalaburagi.

(By Sri. G.R.V., Advocate)

// v/s //

Defendant/s:

1. Smt. Peeramma (Devadasi Women)
W/o. Dharmanna,
Age about: 55 years, Occ: Household,
R/o. Ashraya Colony, Chittapur.
2. M/s. S.M.G. Contractors,
Civil and Fabrication Contractors,
ACC Ltd., Wadi, Behind Bus Stand,
Birla Area, Wadi (Jn.), Tq: Chittapur.

3. Asst. Provident Fund Commissioner,
Employees Provident Fund Organisation,
Aland Road, Kalaburagi.

(By Smt. M.V.L., Advocate)

I.A.No.I

Petitioner/s:

Smt. Mallamma
W/o. Chandramma @ Chandrasha Harbol,
Age: 62 years, Occ: Agriculture,
R/o. Katamdevarahalli village,
Post: Belagumpi, Tq: Chittapur,
Dist: Kalaburagi and another.

.....(Plaintiffs No.1 and 2)

// **V/s** //

Respondent/s:

Smt. Peeramma (Devadasi Women)
W/o. Dharmanna,
Age about: 55 years, Occ: Household,
R/o. Ashraya Colony, Chittapur.

.....(Defendant No.1)

**-:: ORDER ON I.A.No.I U/o 39 Rule 1 & 2 of CPC FILED
BY THE PLAINTIFF/ PETITIONER::-**

1. This is an application U/o 39 Rule 1 & 2 of CPC filed by the plaintiff for seeking ad-interim exparte temporary injunction order against the defendant No.1 or any other persons on her behalf from interfering in the peaceful possession and enjoyment of the plaintiff's over the suit

lands bearing No.538 and 539 of village Nagaon, Tq: Chittapur and claiming PF amount from the defendants No.2 and 3 till the disposal of the suit in the interest of justice and equity.

2. The plaintiff No.1/petitioner has contended in her annexed affidavit in support of I.A.No.I that, she is the legally wedded wife of deceased Chandrasha @ Chandrama. It is further contended that the plaintiffs are only successors and legal heirs of deceased Chandrasha @ Chandrama. It is further contended that the plaintiffs have become absolute owners and possessors of all the properties left by the deceased Chandrasha @ Chandrama. It is further contended that there is a PF amount due from defendants No.2 and 3. The defendant No.1 is no way concerned to the family of the plaintiffs. The defendant No.1 is already married with another person. Therefore, the defendant No.1 is not entitled to claim any manner and in any way to claim the PF amount from the defendants No.2 and 3 or to claim any rights in respect of agricultural lands. The defendant No.1 is illegally and unauthorizedly and without any rights is creating troubles and inconvenience in the possession of the plaintiffs over the suit properties. The plaintiff has made out prima facie case and balance of convenience is also in favour of plaintiff. If injunction order is not granted the plaintiffs will be put irreparable loss. Therefore, it is prayed to allow the application.

3. Per contra, the defendant No.1 has filed objection to the IA No.1 U/o. 39 Rule 1 and 2 of CPC. In the objection it is contended that the plaintiffs are no way related to the defendant No.1 and also the deceased husband of defendant No.1 Chandrasha @ Chandrama. It is further contended that the defendant No.1 is the legally wedded wife of deceased Chandrasha @ Chandrama. Except the defendant No.1 no other persons are legal heirs and successors of the deceased Chandrasha @ Chandrama and his properties. It is further contended that the defendant No.1 is nominee in the PF office records which was entered by her husband during his lifetime. There is no prima facie case to the plaintiffs case and balance of convenience not lies in favour of plaintiffs. Hence, the IA No.1 is not maintainable. If the application is allowed the heavy and irreparable loss would be caused to the defendant No.1 which cannot be compensated in terms of money and there will be multiplicity of proceedings. Hence, this application is fit for dismissal. It is prayed that the consider contents of the written statement as part and parcel of this objection. Therefore, it is prayed to dismiss the application with costs.
4. Heard learned counsel for the plaintiff and defendant.
5. The points that arise for my consideration are as under: -
 1. Whether plaintiff/petitioner has made out prima facie case for granting ad-interim exparte T.I. order against the defendants?

2. In whose favour the balance of convenience lies?
 3. Who will be put irreparable loss and injury if temporary injunction order is not granted?
 4. What Order?
6. My findings on the above points are as under: -
- Point No.1 : In the Partly Affirmative,
 - Point No.2 : In the Partly in favour of plaintiff,
 - Point No.3 : In the Partly in favour of plaintiff,
 - Point No.4 : As per final order,
for the following...

-:: REASONS ::-

7. **Points No.1 to 3 :-** These points are interconnected to each other, to avoid the repetition of facts and for the sake of convenience, I have taken up these points together for common discussion.
8. The plaintiff No.1/petitioner filed application U/o 39 rule 1 and 2 of CPC for seeking ad-interim exparte T.I. order against the defendant No.1 restraining her or any other persons on her behalf from interfering in the peaceful possession and enjoyment of the plaintiffs over the suit schedule lands bearing Sy.No.538 and 539 of village Nagaon, Tq: Chittapur till the disposal of the suit in the interest of justice and equity. The plaintiff had filed suit against the defendants for declaration and perpetual injunction and also mandatory injunction against the

defendants in respect of suit properties. It is specific contentions of the plaintiff No.1 that, she is the legally wedded wife of deceased Chandrasha @ Chandrama. It is further contended the plaintiffs are only successors and legal representatives of deceased Chandrasha @ Chandrama. It is further contended that the plaintiffs have become absolute owners and possessors of the all the properties left by the deceased Chandrasha @ Chandrama and also PF amount of deceased Chandrasha @ Chandrama due from the defendants No.2 and 3. It is further contended that the defendant No.1 is no way concerned to the family of the plaintiff. The defendant No.1 is a Devadasi Women and she is already married with another person and therefore, she is not entitled to claim any right in any manner in the PF amount and also in the suit schedule properties. But, the defendant No.1 opposed the application by filing objection to the IA No.1 wherein it is contended that the plaintiffs are no way related to the defendant No.1 and also the deceased husband of defendant No.1 Chandrasha @ Chandrama. It is further contended that she is the legally wedded wife of deceased Chandrasha @ Chandrama except her no other persons are legal heirs and successors of deceased Chandrasha @ Chandrama. It is further contended that she is the only nominee in the PF office records which was entered by her husband during his lifetime.

9. To prove the prima-facie case of the plaintiffs for granting ex parte temporary injunction order against the defendant No.1, the plaintiff No.1 has got produced Xerox copies of letter issued by Assistant PF Commissioner, Kalaburagi, document No.2 is the Xerox copy of letter issued by contractor dated 21.11.2011, documents No.3 to 6 are the RORs of the suit lands, document No.7 is the entire mutation proceedings and connected notices from the Tahasil Office, Chittapur, document No.8 is the legal heir certificate of deceased Chandrasha @ Chandrama, document No.9 is the objection petition filed by the plaintiff to the PF office, documents No.10 to 12 are the Xerox copies of Aadhar Card and Ration Card and Xerox copy of living certificate of plaintiff No.2 Shashikala.
10. On the other hand, the defendant No.1 has also got produced documents, document No.1 is the application filed by the defendant No.1 to the Tahasildar Chittapur for claiming amount in respect of funeral ceremony of deceased Chandrasha @ Chandrama, document No.2 is the death certificate of deceased Chandrasha @ Chandrama, document No.3 is the Xerox copy of Election Card of deceased Chandrasha @ Chandrama, document No.4 is the Xerox copy of Election Card of defendant No.1 Peeramma, document No.5 is the Bank SB account pass book, documents No.6 and 7 are the RORs of the suit lands.

11. Upon considering the rival contentions of the parties and after hearing the counsel for the parties and after perusal of the documents available on record, it reveals that the plaintiff No.1 claimed that she is the legally wedded wife of the deceased Chandrasha @ Chandrama and she and plaintiff No.2 have become owners and possessors of the suit lands and they are entitled to claim PF amount of deceased Chandrasha @ Chandrama as they are only legal heirs and successors of the deceased Chandrasha @ Chandrama. It is also claimed that the defendant No.1 is interfering and obstructing in the peaceful possession and enjoyment of the plaintiffs over the suit properties. It is very pertinent to note here that the defendant No.1 is also claiming that she is also legally wedded wife of the deceased Chandrasha @ Chandrama and she is also claiming rights in the suit properties and also PF amount of the deceased Chandrasha @ Chandrama. It is very pertinent to note here that both the plaintiff No.1 and defendant No.1 produced the document before the court to show that they are the legally wedded wife of the deceased Chandrasha @ Chandrama. Therefore, the plaintiff No.1 and defendant No.1 have got triable case. Therefore, to prove the case of the plaintiffs and case of the defendant No.1 the fair trial is necessary. It prima facie discloses that the suit schedule properties are standing in the name of Chandrasha @ Chandrama. It also prima facie discloses that the deceased Chandrasha @ Chandrama had

got PF amount in the PF office Kalaburagi. Therefore, to decide the fact that whether the plaintiff No.1 is legally wedded wife of deceased Chandrasha @ Chandrama or the defendant No.1 is the legally wedded wife of the deceased Chandrasha @ Chandrama, the fair trial is necessary. At the pre trial stage, it is not possible to the court to give finding on the legal status of the plaintiff No1 and defendant No.1. If the direction to the defendant No.2 and 3 is not given not to disburse PF amount of the deceased Chandrasha @ Chandrama, in favour defendant No.1, then the plaintiff No.1 may cause inconvenience and she may cause loss. The plaintiffs have to be given opportunity to prove her case. Therefore, the balance of convenience in respect of disbursing the PF amount of deceased Chandrasha @ Chandrama is partly in favour of plaintiff No.1 and she may cause hardship. Therefore, under the circumstances, to preserve the suit properties in tact, I am of the opinion that it is just and necessary to issue direction to the both the plaintiffs and defendant No.1 to maintain status-quo till disposal of the suit in respect of possession of the suit properties. It is also just and necessary to issue direction to the defendants No.2 and 3 concerns not to disburse the PF amount of deceased Chandrasha @ Chandrama till the disposal of the suit. Hence, **I answer instant points No.1 to 3 Accordingly.**

13. **Point No.4:** - In view of the above findings, I proceed to pass the following:

-:: ORDER ::-

I.A.No.I under Order 39 Rule 1 and 2 of CPC filed by the plaintiff is hereby partly allowed.

The plaintiffs and defendant No.1 are hereby directed to maintain status-quo in respect of possession of the suit properties till disposal of the suit.

The defendants No.2 and 3 are hereby directed not to disburse PF amount of deceased Chandrasha @ Chandrama to plaintiffs and defendant No.1 till the disposal of the suit.

No order as to costs.

(Dictated to the stenographer directly on computer, corrected and signed by me and then pronounced in the open court on the **17th day of June 2017**)

(PRAKASH ARJUN BANASODE)
Civil Judge & JMFC.,
CHITTAPUR.