

KAKB620006262022



Presented on : 25-05-2022
Registered on : 30-05-2022
Decided on : --
Duration :

IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI***Present*****Sri. Kashinath V. Uppar
B.Sc. LL.B.**

Civil Judge & JMFC., Jewargi.

O.S. No.71/2022**Dated on this the 27th day of June-2024****ORIGINAL SUIT No.71/2022**

PLAINTIFF: Mahantappa @ Mahantesh S/o Shankrappa Yetnal,
Age: 32years, Occ: Agriculture,
R/o Magangera, tq: Yedrami, dist: Kalaburagi.

(By. Sri. J.V.Hatti., Advocate)V/s.

DEFENDANTS: 1. Shankrappa S/o late Gollalappa Yetnal,
Age: 63years, Occ: Agriculture,
R/o Maganagera, Tq: Yedrami, Dist: Kalaburagi.
2. Lalitabai alleged W/o Shankrappa Yetnal,
Age: 40years, Occ: Agriculture,
R/o Maganagera, Tq: Yedrami, Dist: Kalaburagi.

(By Sri. B.G., Advocate)

PARTIES TO I.A. No.1**APPLICANT/
PLAINTIFF**

: Mahantappa @ Mahantesh

V/S

KAKB620006262022



OPPONENT/ : Shankrappa & another
DEFENDANTS

ORDER ON I.A No.I FILED BY PLAINTIFF
U/O 39 RULE 1 & 2 OF C.P.C.

The plaintiff has filed I.A No.I under Order 39 Rule 1 & 2 R/w. Section 151 of C.P.C., to grant an ex-parte temporary injunction against defendant No.1 and 2 restraining them from alienating, mortgaging or creating any type of charges over the suit property is an agricultural land bearing Sy.No.191/2, measuring 09 acres 03 guntas, including 04 acre phot kharab and Sy.No.191/5 measuring 30 guntas, situated at Magangera village, tq: Yadarami, dist: Kalaburagi, pending disposal of the suit.

2. As per the plaint averments and affidavit annexed to the I.A.No.1 the case of plaintiff /applicant in brief is as under:

The plaintiff is the natural son of defendant No.1 born through his first wife by name Bhagamma. Defendant No.2 is the alleged wife of defendant No.1. the plaintiff and defendants are the members of Hindu Joint family and they are residing without partitioning the same by metes and bounds. Defendant No.2 is the alleged wife of defendant No.1, as the defendant No.1 has contract marriage with the defendant No.2 during the subsistence of first marriage of natural mother of plaintiff, therefore, defendant No.1 has no right to interest or title over the suit schedule properties. Suit properties are the ancestral and joint family properties of plaintiff

KAKB620006262022



and defendant No.1, as per oral partition between his elder brothers by name Devindrappa suit property was allotted to the defendant No.1 and his name was appearing in the ROR on the behalf of Hindu joint family. Defendant No.1 and 2 behind the back of plaintiff without the knowledge of plaintiff has got entered the name of defendant No.2 to the extent of 03 acres. Defendant No.2 has no any right in suit schedule property her name was entered in the ROR of suit schedule property. Plaintiff has $\frac{1}{2}$ share in the suit schedule property, now the defendant No.1 and 2 trying to alienate the suit schedule property.

3. Along with the suit, plaintiff has filed I.A. No.1 Under Order 39 rule 1 and 2 of CPC seeking temporary injunction to restrain the defendants from alienating, mortgaging or creating any charge over the suit property.

4. The plaintiff has sworn to the affidavit and prayed to consider the plaint averments as part and parcel of the affidavit. The plaintiff further averred that the defendants by taking undue advantage of illegally entry of his name to the record of rights. The plaintiff further averred that, the defendant by taking undue advantage of the entry of his name in the ROR of the suit property, now trying to alienate the suit property only in order to deprive the rights of the plaintiffs over the suit schedule property. The plaintiffs have made out prima-facie case, balance of convenience lies in their favour and if temporary injunction order is not granted plaintiffs will be put to irreparable loss and injury which cannot be compensated in terms of money. Therefore, plaintiffs prayed to allow the I.A.No.1.

5. In pursuance of the suit summons, defendant No.1 and 2 appeared and resisted the claim of plaintiff by filing written

KAKB620006262022



statement. The defendant No.1 and 2 have filed counter petition to I.A. No.1 and sworn to an affidavit and prayed to consider the written statement averments as objections to I.A. No.1. The defendant No.1 and 2 denied the relationship of the plaintiff and defendants, and defendant No.1 had two wives, first by name Lalitabai is the first wife of defendant No.1 i.e., defendant No.2, and second wife by name Bhagamma. The plaintiff is the son of first wife of defendant No.1, therefore, plaintiff has no right to filing the this suit. Plaintiff is suppressing the all material facts.

6. On considering the I.A No.1, affidavit and objections/written statement to I.A No.1, the points that would arise for my consideration are as under:

POINTS

1. Whether the plaintiff /applicant has made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiff/applicants?
3. Whether the irreparable loss and injury would be caused to the plaintiff /applicants if the temporary injunction is refused?
4. What order?

7. The Learned Counsel for plaintiff has produced the record of rights of the suit property and argued that the plaintiffs have made out prima facie case and balance of convenience lies in favour of the plaintiffs. If temporary injunction is not granted the plaintiffs would be put to heavy and untold hardship.

KAKB620006262022



Therefore, the temporary injunction may be granted to the plaintiff.

8. On the other hand the defendants counsel has argued that, defendant No.1 and 2 has filed written statement against the plaintiffs and he has denied the relationship and nature of the suit property.

9. My answer to the above 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 order for the following:

REASONS

10. **Point No.1:** I have already set out in brief as to what the case of the plaintiff is and as to what the objection of the defendants.

11. It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C. (1) plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the party seeking the relief and (3) that the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who

KAKB620006262022



seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come to court with clean hands and place all the materials before the court so that, the court will be satisfied about the prima facie case in favour of the party seeking the order.

12. I have considered the documents produced by the plaintiffs and defendants. On perusal of the documents produced by plaintiffs it reveals that record of rights of suit property was originally standing in the name of one Shankrappa S/o Gollallappa after the partition between defendant No.1 and his brother their names was entered in the ROR. The defendant No.1 not denied the relation of the plaintiff but he only denied the plaintiff has son of first wife and he has no any right in the suit schedule property. It is specific case of the defendant that, he is entitle to half share in the suit schedule property. On perusal of the records, it reveals that, the ROR of the suit property was originally standing in one Shankrappa S/o Gollallappa, after partition between defendant No.1 and his brother by name Devindrappa the name of defendant No.1 was mutated and till today the name of defendant No.1 and 2 continued in ROR. It is apprehension of the defendant is trying to alienate the suit schedule property. At the stage, it is necessary to observe here that, the court cannot conduct the mini trial at the time of adjudicate the application of this nature. The dispute regarding the counter claim cannot be adjudicated at this stage of the trial. It required full-pledge trial.

KAKB620006262022



13. The court cannot express its opinion regarding the merits of the case. While dealing with the applications of this nature the only function of the court is to see does the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal of granting temporary injunction loss of hardship would be caused to which side. Plaintiff has produced the record of rights of suit property bearing Sy.No.191/2 measuring 09 acre 03 guntas, and 191/5 measuring 30 guntas standing in the name of defendant No.1 and 2, till today it is continued. The apprehension of the plaintiffs that the defendant No.1 is trying to alienate the suit schedule property the apprehension cannot be ruled out. At this stage of the proceedings, when such being the case it can be opined that the plaintiffs have made out a arguable case and therefore whenever there is a arguable case then it can be said that the plaintiffs have made out a prima-facie case. In this sense, I answer Point No.1 in the Affirmative.

14. **Point No.2 and 3** :- Both these points are taken up together for common discussion to avoid repetition of facts.

The court has to see that does the applicant will sustain such injuries which cannot possibly and adequately remedied by way of damage and the said damage would be in adequate in case of the success of the applicant. Considering the question of balance of convenience is concerned the court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status-quo till the adjudication

KAKB620006262022



of dispute finally decided. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being the discretionary relief the party who claims such relief should come to the court with clean hands and place all the materials before the court so that court will satisfy about the case in favour of the party seeking the order.

15. It is to be noted here that the plaintiff has sought for temporary injunction against defendant from alienating the suit schedule property. Admittedly the records of rights of some portion of the suit schedule property stands in the name of defendant. Therefore the possibilities of alienating the suit schedule property by the defendant cannot be ruled out. In this sense I hold that the balance of convenience lies in favour of the plaintiff and not in favour of the defendants. Now as regard to the hardship is concerned. If in case the temporary injunction is not granted and defendant alienates the portion of suit property which will lead to multiplicity of proceedings and plaintiffs will be put to hardship. On the other hand if the temporary injunction is granted no hardship will be caused to the defendant since in case if the plaintiff fails to succeed in the suit ultimately the defendant can deal with the property as per his whims and fancies. The plaintiffs are under apprehension that defendant is trying to alienate the suit schedule property in favour of others. Therefore, I am of the view that if the I.A No.1 is not allowed, the plaintiffs would be put to heavy and irreparable loss on the other hand defendant will not be put to any hardship. Hence, I answered Point No.2 and 3 in the Affirmative.

KAKB620006262022



16. **Point No.4** :- In view of my findings on Points No.1 to 3, the plaintiffs are entitled to the relief of temporary injunction which they have sought for. Hence, I proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiff under Order 39 Rule 1 & 2 of C.P.C. is hereby allowed.

The defendant No.1 and 2 are hereby restrained by an order of temporary injunction from alienating the suit schedule property or creating charge over the suit schedule property pending disposal of the suit.

Cost of this application will follow the result of this suit.

(Dictated to the stenographer directly on computer, typed by him and then corrected and pronounced by me in the Open Court on this 27th Day of June-2024).

(Kashinath V. Uppar)
Civil Judge & JMFC,
Jewargi.

Dictated on : 27-06-2024
Transcribed on : 27-06-2024
checked on : 27-06-2024
Signed on : 27-06-2024

KAKB620006262022



(Kashinath V. Uppar)
Civil Judge & JMFC,
Jewargi.

Visit ecourts.gov.in for updates or download mobile app “eCourts Services” from Android or iOS