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**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
JEWARGI.**

Present

Sri. Kashinath V. Uppar

B.Sc. LL.B.

Civil Judge & JMFC., Jewargi.

Dated on this the 6th day of January-2026

O.S. No. 50/2024

- PLAINTIFFS:**
1. Neelamma @ Laxmibai W/o late Mallappa @ Mallikarjun, Age: 48 years, Occ: Agricultural, R/o Andola, tq: Jewargi, Dist. Kalaburagi.
 2. Kartik S/o late Mallappa @ Mallikarjun, Age: 23 years, Occ: Student, R/o Andola, tq: Jewargi, Dist. Kalaburagi.
 3. Kaveri D/o late Mallappa @ Mallikarjun, Age: 19 years, Occ: Student, R/o Andola, tq: Jewargi, Dist. Kalaburagi.

(By. Sri. R.K., Advocate)

V/s.

DEFENDANTS: Smt. Honnamma W/o alleged Mallappa @ Mallikarjun
Age: 40 years, Occ: Pvt. Service,
R/o Ambanna Anegundi house, Opp: Maralayya Swamy
house, Shahapur, Dist. Yadagir.

(D-1 By Sri. J.V.H., Advocate)

PARTIES TO I.A. NO.II

APPLICANT/S : Neelamma @ Laxmibai W/o Mallappa
PLAINTIFF and others
V/S

OPPONENT/ : Honnamma
DEFENDANTS

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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.II under Order 39 Rule 1 & 2 R/w. Section 151 of C.P.C., to grant an ex-parte temporary injunction against defendant restraining her from alienating, mortgaging or creating any type of charges over the suit schedule property, till disposal of the suit.

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

The plaintiff No.1 is the legally wedded wife of deceased Mallappa. Plaintiff No.2 and 3 are the sons and daughters of deceased Mallappa. The Mallappa was died on 15-07-2011. The suit schedule property earlier it was standing in the name of Gurulingappa who is the father-in-law of the plaintiff No.1. Said Gurulingappa had two sons one Kareppa and Mallappa. The said Mallappa married to the plaintiff No.1 and plaintiff No.2 and 3 son and daughter of deceased Mallappa. The plaintiffs are acquired the title and ownership by way of succession, hence plaintiffs are the absolute owner in possession of the suit schedule property. The defendant is totally stranger, she noway concerned to the suit property and deceased Mallappa. The defendant is illegally mutated her name in the ROR of suit schedule

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property. Now defendant is trying to alienate the suit property. Hence, plaintiff constrained to file this suit.

3. 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.II

4. In pursuance of the suit summons, defendants appeared and resisted the claim of plaintiff by filing written statement. The defendant No.1 have filed written statement and filed he written statement contents are the consider as objection to the I.A.No.II. The defendant denied the entire plaint averments in toto. The defendant is denied the relation of the plaintiff with deceased Mallappa. It is the contention of the defendant that, she is the legally wedded wife of deceased Mallappa. The plaintiff are the noway concerned to the suit property and deceased Mallappa. However, plaintiff No.1 has succeed to getting her name jointly in the ROR of suit schedule property. The defendant is denied that, the Mallappa married to the plaintiff No.1 and the plaintiff No.2 and 3 children of deceased Mallappa and plaintiffs are acquired the title of ownership by way of succession.

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

POINTS

- . 1. Whether the plaintiffs/applicant has made out prima-facie case for grant of temporary injunction?
 - . 2. Whether the balance of convenience is lies in favour of plaintiffs/applicants?
 - . 3. Whether the irreparable loss and injury would be caused to the plaintiffs/applicants if the temporary injunction is refused?
 - . 4. What order?
6. 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

7. **Point No.1:-** I have already set out in brief as to what the case of the plaintiffs is and as to what the objection of the defendant.

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8. 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 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.

9. I have considered the documents produced by the plaintiffs and defendants. On perusal of the documents produced by plaintiff it reveals that record of rights of suit property presently standing in the name of plaintiff No.1 and defendant jointly. Plaintiff further produced the order of D.C.Kalaburagi. Plaintiff further produced the S.S.L.C.Marks-card of plaintiff No.2. Admittedly this suit filed by the plaintiff for seeking a relief of declaration and injunction. It is the contention of the plaintiff that, plaintiff No.1 is the legally wedded wife of deceased Basappa and plaintiff No.2 and 3 are the sons and daughters of deceased Basappa. It is the

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contention of plaintiffs that, they are the legal heirs of the deceased Basappa and they are succeed the property by virtue of succession. On the other hand defendant has objected that, plaintiffs are the no way concerned to the deceased Basappa. It is the contention of the defendant that, she is the legally wedded wife of deceased Basappa. On perusal of records, presently suit property standing in the name of plaintiff No.1 and defendant jointly. 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 written statement cannot be adjudicated at this stage of the trial. It required full-pledge trial.

10. The court cannot express its opinion regarding the merits of the case. While dealing with the application of this nature the only function of the court is to see does the applicants have 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. The apprehension of the plaintiff 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

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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.

11. **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 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.

12. 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

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name of plaintiff No.1 and 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 plaintiffs and not in favour of the defendant. 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 plaintiff 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 plaintiff is under apprehension that defendants are trying to alienate the suit schedule property in favour of others. Therefore, I am of the view that if the I.A No.2 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.

13. **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:

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**ORDER**

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

The defendant is 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.

(Directly dictated to the Stenographer, directly on Computer typed by him, revised and corrected by me, then pronounced in the open court on this the 05th day of January, 202)

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

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