

IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,
BANGARPET.

PRESENT : - Sri. A.C. DAYANANDMURTHY, B.A., LL.M.
Addl. Civil Judge and JMFC, Bangarpet.
C/c. Prl. Civil Judge & JMFC., Bangarpet.

Dated this the 1st day of September, 2018.

OS 85/2018

Plaintiffs :- Smt. Sathya, 28 years,
W/o Gopalappa,
D/o Late Gangappa,
R/at Marasuru Village,
Anekal Taluk,
Bangalore (R) District.

(By Sri. AMR - Adv.)

-V/s-

Defendants :- 1. Smt. Aruna, 30 years,
D/o Late Gangappa,
R/at C/o Narayanaswamy,
S/o Thayalur Muniswamappa,
Budikote village & Post,
Bangarpet Taluk.

2. Sri. Venkatesh, 19 years,
S/o Late Gangappa,

3. Smt. Shyamamma, 40 years,

2nd wife of Late Gangappa,

Defendant No. 2 and 3 are
R/at Kalagoram Village,
Suligiri Taluk,
Krishnagiri District,
Tamil Nadu.

(Ex-parte)

PARTIES TO IA No. 1

Applicants : Smt. Sathya
V/s

Opponents : Smt. Aruna and others

ORDER ON IA NO. I

The plaintiff has filed this application U/o 39 Rule 1 and 2 R/w. Sec. 151 CPC with praying this court to pass temporary injunction against the defendants restraining the defendants, their agents, servants, friends or any others on their behalf from alienating i.e., from selling, mortgaging, changing

katha of the suit schedule property in any manner pending disposal of the suit.

2) In the affidavit annexed the plaintiff stated that, plaintiff and defendant No. 1 are the children of one Gopalappa born through his 1st wife Smt. KUmaramma, The defendant No. 3 is the 2nd wife of Gangappa and defendant No. 2 is her son. The suit schedule property is left by their deceased father Gangappa and after his death plaintiff and defendant No. 1 and 2 have succeed to his estate and are joint possession and enjoyment of the same as co-owners and joint owners. The defendant No. 3 got transferred the katha of the schedule property in her name. The plaintiff demanding the defendants to arrange for amicable partition, but they giving evasive answers. The defendants are trying to alienate the schedule property. Hence this application.

3) Per contra the defendants have not appeared before the court nor filed their objection to the IA. Hence, defendants placed Ex-parte.

4) Heard arguments by both side.

5) Points that would arise for my consideration are as under -

1. Whether the plaintiff has made out prima facie case ?
2. If, so in whose favour balance of convenience and hardship lies?
3. What order?

6) My findings to the above points are as under

- | | | |
|------------|----|---|
| Point No.1 | :- | In the affirmative |
| Point No.2 | :- | In favour of plaintiff |
| Point No.3 | :- | As per final order
for the following ; |

REASONS

7) **Point No. 1 and 2** :- These two points are intermixed with each other as such they are taken up together for discussion in order to avoid repetition of the facts. I have already set out in brief as to what the facts of the plaintiff. In a nutshell the case of the plaintiff is that, plaintiff and defendant No. 1 are the children of one Gopalappa born through his 1st wife Smt. KUmaramma, The defendant No. 3 is the 2nd wife of Gangappa and defendant No. 2 is her son. The suit schedule property is left by their deceased father Gangappa and after his death plaintiff and defendant No. 1 and 2 have succeeded to his estate and are joint possession and enjoyment of the same as co-owners and joint owners. The defendant No. 3 got transferred the katha of the schedule property in her name. The plaintiff demanding the defendants to arrange for amicable partition, but they giving

evasive answers. The defendants are trying to alienate the schedule property.

8) So far as grant to temporary injunction is concerned it should be a small steps during the progress of suit or proceeding towards the preservation of its subject matter which could be property or any other right has now gained enormous importance and some times, it becomes even more important then the final result of the suit or proceedings with the change of the time the dilemma of the judicial Court or tribunal is that initially it has treat the truth and falsehood as per and has to give the same treatment, protection and hearing until it concludes its investigation, find out which is right or wrong, false or true. This process takes a long time during which by some interim measure, the subject matter of the dispute between the parties has to preserved and it is dis-anxiety for preservation of the property on the part of the

judicial Court, which is misused and abused by the side which has come before the Court with a wrong or false case or a doubtful case which has been filed only to take a chance.

9) It is pertinent to note that, injunction is an equitable relief. For grant of order of injunction by the Court, it should always be kept in mind that, its origin is from equitable jurisdiction and before passing the order claim must be tested and the particulars of the normal requirements with the application praying for the injunction and have a good prima facie case, chance of suffering irreparable injury and balance of convenience is in his favour and other particulars connected with the matter the Court should have extra cautious approach in testing the prima facie case, for a certain amount of extra rigor avoid the abuse of the trust of the Court.

10) It is pertinent to note that, it is well settled that in granting or refusing to grant temporary injunction, the Court has very wide discretion. The exercise of the discretion should be in a judicial manner, depending upon the circumstances of each case. No hard and fast rule can be laid down for the guidance of the Court to that effect. It is well settled that, while granting injunction plaintiff must show –

- i. existence of prima facie case,
- ii. balance of convenience and
- iii. the injury must be of an irreparable loss
that can not be compensated in terms of
money.

11) The first rule is that, the applicant must make out a prima facie case in support of the right claimed by him. The Court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs

investigation and a decision on merits and on the facts before the Court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infringement of such right is a condition precedent for grant of temporary injunction. The burden is on the plaintiff to satisfy the Court by leading evidence or otherwise that he has a prima facie case in his favour.

12) Prima facie case, however, should not be confused with a case proved to the hilt. It is no part of the Court's function at that stage to try neither to resolve a conflict of evidence nor to decide complicated questions of fact and of law which call for detailed arguments and mature considerations. These are matters to be dealt with at the trial. In other word, the Court should not examine the merits of the case closely at that stage because it is not expected to decide the suit finally. In deciding a prima facie case, the Court is to be guided by the

plaintiff's case as revealed in the plaint, affidavits or other materials produced by them.

13) The plaintiff should come before the Court with clean hands. If he suppresses material facts, documents then he is not entitled for the relief of injunction and further points of balance of convenience, irreparable injury even not required to be considered in such case.

14) It is pertinent to note that, the existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the Court about the second condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. In other words, the Court must be satisfied that refusal to grant injunction would

result in 'irreparable injury' to the party seeking relief and he needs to be protected from the consequences of apprehended injury. Granting of injunction is an equitable relief and such a power can be exercised when judicial intervention is absolutely necessary to protect rights and interests of the applicant. The expression irreparable injury however does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no certain pecuniary standard for measuring damages.

15) It is pertinent to note that, the third condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the Court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the

applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

16) At this stage, we are concerned that, prima facie case made out by the parties to which court has to relay on the documents produced by the plaintiff. The plaintiff has produced documents like Genealogical tree, Mutation register extract, RTC extracts.

17) Per contra defendants have not appeared before the court and hence, defendants placed Ex-parte.

18) From the scan of documents and facts of the case it is very clear that, as per the documents and facts of the case the plaintiff is having a prima facie case and balance of convenience in favour of plaintiff.

19) It is well settled law that, while deciding interim application, the Trial Court should not hold mini trial for which, I place the decision reported in **(2001) SCC 568 in case of Anand Prasad Agarwalla Vs. Tarakeshwar Prasad** wherein it was held that, the Court should not hold any mini trial at this stage. It is pertinent to note that, U/o.39 Rule 1 and 2 of CPC primarily concerned with the preservation of the property in dispute till legal right are adjudicated; injunction is a judicial process for which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court on exercise power of granting ad interim injunction is to preserve the subject matter of the suit in statue quo for the time being. It is well settled law that, the grant of injunction is discretionary relief.

20) It is pertinent to note that, the decision reported in **(2000) 9 SCC 572 in case of State of Karnataka Vs. State A.P.** wherein the Hon'ble Supreme Court of India held that, - injunction being a discretionary remedy, the Court may grant an order of injunction even if all the necessary ingredients are established and those ingredients are prima facie case of infraction of legal rights. Such infraction cases, irreparable loss and injury to the plaintiff and the injury is such nature that it cannot be compensated by way damages.

21) The present legal rights of the parties are not yet adjudicate as the matter was not yet posted for evidence after framing the issues. The Preservation of the property is dispute till legal rights are adjudicated, injunction is required. It is in nature of preventive relief to a litigant to prevent future possible injury. If the injunction is not granted in

such a case undue hardship would be caused to the plaintiff. Under these circumstances in order to protect the property during the pendency of the suit it is necessary to issue temporary injunction to maintain status-quo in respect of suit schedule property pending disposal of the suit. At this stage I am of the considered opinion that, the plaintiff has made out prima facie case and balance of convenience, hardship lies in favour of plaintiff. In order to protect property during the pendency of the suit it is necessary to direct the defendants to maintain status-quo in balance of convenience pending the disposal of the suit. Under these circumstances I hold that, the plaintiff has made out prima facie case in respect of the suit schedule property. Hence, I answered **Point No.1 in the Affirmative**. Further I hold that, the balance of convenience and hardship in favour of plaintiff,

hence I answered **Point No.2 in favour of the plaintiff.**

22) **POINT No. 3** - In view of the findings on the Point No.1 and 2, I proceed to pass the following:

ORDER

I.A. No. I filed by the plaintiff U/o 39 Rule 1 and 2 R/w Sec. 151 of CPC is hereby allowed.

Further it is ordered that, the defendants, their agents, servants, friends or any others on their behalf are hereby from alienating i.e., from selling, mortgaging, changing katha of the suit schedule property pending disposal of the suit.

In view of the facts and
circumstances of the case, parties are
directed to bear their own costs.

(Dictated to the steno, directly on computer and typed by her, corrected signed
& then pronounced by me in the open Court on this 1st day of September, 2018.)

(A.C. DAYANANDMURTHY)
Addl. CJ and JMFC, Bangarpet.
C/c Prl. CJ and JMFC, Bangarpet.