

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC
AT MULBAGAL.**

Dated this the 26th day of June 2019.

OS. No. 129/2019

Present :

Smt. A.N. Kanthamma, B.A.,LLB,
C/c Prl. Civil Judge & JMFC
Mulbagal

Plaintiff: Smt. Ambika,

V/s

**Defendants: Sri. H.V.Somashekar Redday &
Another,**

Parties to I.A.No.2

**Applicant:
Plaintiff**

Smt. Ambika,
D/o Late Rajappa,
Grand Daughter of Venkatappa,
Aged bout 35 years,
Agriculturist,
R/o Panasamakanahalli Village,
Chelidhiganahalli Hobli,
Srinivasapura Taluk.

(By **Sri. C.S.N.**—Advocate)

V/s

**Opponents:
Defendants**

1. Sri. Somashekar Reddy,
S/o late Venkatappa,
Aged about 56 years,
Agriculturist,
R/o Halekuppa Village,
Nangali Post,
Byrakur Hobli,
Mulbagal Taluk.

2. Sri. Ashwathnarayan,
S/o Ananthapadmanabaiah,
Aged about 39 years,
R/o Thippadoddi Village & Post,
Byrakur Hobli,
Mulbagal Taluk.

(Defendant No.1 & 2 by **Sri. C.M.G –**
Advocate)

ORDERS ON I.A.NO 2 FILED UNDER ORDER 39 RULE
1 & 2 R/W SEC. 151CPC

ORDER ON IA.2

The Plaintiffs/Applicants have filed IA No. 2 U/O 39 Rule 1 and 2 CPC praying to grant temporary injunction restraining the Defendants from alienating or encumbering or creating charges on the suit schedule properties in any manner pending disposal of the suit.

2. Per contra, the defendant No.1 has filed the written statement and prays to adopt written statement as objections to above said IA No.3 and he totally denied all the averments as false and prayed to reject the IA and the defendant No.2 has also filed objections to I.A. No.3 and written statement. In the written statement he totally denied all the averments as false and prayed to reject the IA.

3. Heard the learned counsels for the Plaintiff and the defendants and perused the materials placed on record.

4. Now, the Points that would arise for the consideration of this court are as under:-

- 1. Whether the plaintiff proves that she has prima facie case in her favour?*
- 2. Whether the balance of convenience lies in her favour?*
- 3. Whether the plaintiff proves that she would be subject to loss and hardship in the event of not allowing the I.A.?*
- 4. What Order?*

5. The findings of this court on the above points in I.A.

No. 1 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 the final order below
for the following;

REASONS

6. Point Nos.1 to 3: Since these points are interlinked, they are taken up together for discussion. It is the contention of the plaintiff that the suit schedule properties are the ancestral and joint family properties of the Plaintiff and the Defendant No.1. One late Venkatappa is grand

father of plaintiff and he got two children, one daughter by name Nagaveni, who is mother of the plaintiff and one son by name Somashekar Reddy i.e Defendant No.1. That during the life time of Venkatappa he was acting as Kartha of the joint family and after his death defendant No.1 being male and educated member in the family became the Kartha of the joint family. The said Venkatappa died long back and the mother of plaintiff and defendant No.1 are only legal heirs to succeeded the estate of deceased Venkatappa. The plaintiff's mother by name Nagaveni died about 3 years back leaving behind the plaintiff as her the legal heir to succeed the estate of her mother.

7. That during the lifetime of grandfather of Plaintiff Venkatappa, the Plaintiff and her mother Nagaveni and Defendant No.1 Somashekar Reddy subscribed their hard labor and sweat to improve the joint family properties. That till today the joint nucleus of the family is continuing. All the suit schedule properties formerly are standing in the name of Venkatappa. That the Defendant No.1 without the knowledge or consent of the Plaintiff or the mother of the Plaintiff created the khata as if he is only the legal heir to the deceased Venkatappa and finally refused to allot the

legitimate share of the Plaintiff and the Defendant recently addicted to bad habits and just to knock off the suit schedule properties making negotiations with the third parties to alienate the suit schedule properties. That the 1st Defendant executed a lease deed dated 17-12-2018 in favour of 2nd Defendant and the 2nd Defendant is attempting to construct a petrol bunk in item No.1 of the suit property and the Defendant No.2 is most powerful financially sound and politically influenced backed by rowdy elements attempting to trespass over the item No.1 of the suit schedule property and attempting to start the work and just to knock off the Plaintiff's share created the alleged lease deed dated 17-12-2018.

8. It is the contention of the defendants that the plaintiff is not the member of family of 1st defendant. The mother of the plaintiff married 50 years ago and the plaintiff is a stranger to 1st defendant's family and plaintiff and defendant No.1 are not in joint possession of suit schedule properties and defendant No.1 is in the exclusive possession of the suit schedule properties. It is contended that the 1st defendant is the absolute owner of suit

schedule properties and the he has a right to lease the property in favour of defendant No.2 and he has executed lease deed in favour of defendant No.2 in respect of Item No.1 of suit schedule properties.

9. The Plaintiff has filed the present suit for the relief of partition and separate possession of her 1/2 share in the suit schedule properties. The defendant No.1 disputes the relationship between the Plaintiff and himself and to prove relation between the plaintiff and defendant No.1, full-pledged trial is required.

10. In support of her case the Plaintiff has produced the G Tree, RTCs and mutation register of the suit schedule properties and in the said documents discloses the Name common ancestor Venkatappa and name of defendant No.1. Therefore having regard to the facts and circumstances of the case, this court is of a considered opinion that the Plaintiff has made out a prima-facie case, which is fit to go to trial. If the Defendants alienate or encumber the suit schedule properties, pending disposal of the suit, it would lead to multiplicity of proceedings and

thereby the Plaintiff will be put to great hardship and inconvenience.

11. The purpose of granting temporary injunction is to preserve the subject matter of the suit till the rights of the parties are adjudicated finally. In this case the balance of convenience in granting temporary injunction lies in favour of Plaintiff as no irreparable injury or hardship will be caused to the Defendants if alienation of the suit schedule properties is restrained by way of interim order. Hence Points No.1 to 3 are answered in the **Affirmative.**

12. Point No. 4: In view of above findings, I proceed to pass the following;

ORDER

IA No. 2 U/O 39 Rule 1 and 2 R/w Sec. 151 CPC filed by the Plaintiff is hereby allowed. No order as to costs.

The Defendants, their agents, servants, family members, representatives or anybody claiming through them are hereby restrained, by way of temporary injunction from alienating or encumbering or creating

charges on the suit schedule properties in any manner
pending disposal of the suit.

(Dictated to the Stenographer, transcribed by him, transcript revised, corrected and pronounced by me in open court on this the 26th day of June 2019.)

(A.N. Kanthamma)
C/c Prl. Civil Judge & JMFC.,
Mulbagal.