



**IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.,
MULBAGAL**

Present: **Sri. GOWDA JAGADEESHA RUDRE.**

B.Com., L.L.B.

Senior Civil Judge and JMFC., Mulbagal.

DATED ON THE 05th DAY OF MARCH-2025

O.S.No.155/2022

Plaintiff/s	V/s	Defendant/s
Smt.Pushpalatha.		Smt.Krishnavenamma & Another.

PARTIES TO I.A.No.1

Applicant/Plaintiff	V/ S	Opponent/Defendants
Smt.Pushpalatha.		Smt.Krishnavenamma & Another.

Provision under which application is filed.	:	Under Order 39 Rule 1 and 2 read with Section 151 CPC.
Relief sought for.	:	To restrain the Defendants from alienating or disposition the suit schedule property.
The date on which application is filed.	:	02.11.2022.
The date on which the objection/written statement is filed.	:	11.04.2023.

The date on which the orders passed on the said application.	:	05.03.2025
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PARTIES TO I.A.No.3

Applicant/Plaintiff	V/ S	Opponent/Defendants
Smt.Pushpalatha.		Smt.Krishnavenamma & Another.

Provision under which application is filed.	:	Under Order 39 Rule 1 and 2 read with Section 151 CPC.
Relief sought for.	:	To restrain the Defendants from interference with peaceful possession and enjoyment of the Plaintiff over the suit schedule property.
The date on which application is filed.	:	28.06.2023.
The date on which the objection/written statement is filed.	:	11.04.2023.
The date on which the orders passed on the said application.	:	05.03.2025

COMMON ORDERS ON I.A.No.1 & 3

The Plaintiff has filed IA No.1 under Order 39 Rule 1 and 2 read with Section 151 of CPC seeking ad-interim temporary

injunction order restraining the Defendants, their agents, P.A. holders or anybody claiming through them from alienating and encumbering or creating charge on the suit schedule property till disposal of the suit.

2. The IA No.3 filed by the Plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC seeking ad-interim temporary injunction order restraining the Defendants, their agents, P.A. holders or anybody claiming through them from interfering with peaceful possession and enjoyment of the Plaintiff over the suit schedule property till disposal of the suit.

3. The Plaintiff has sworn to an affidavits in support of I.A.No.1 and 3 wherein she stated that, the suit schedule property is joint family property of herself and Defendant No.1 and 2. The Defendant No.1 is her mother and Defendant No.2 is her full blood sister and they hail from Kondappa and Defendant No.1 couple. It is stated that, her brother Sudhakar died death of bachelor. The Defendant No.2 marriage was preformed with one P.Chikkareddappa and she is residing in her matrimonial house. Whereas, the marriage of Plaintiff was performed with one M.Kumar and he was brought to her parental house as ilatam son-in-law. The Plaintiff and her

husband was looking after her father Kondappa and Defendant No.1. Her father Kondappa passed away on 21.04.2021.

4. It is further stated that, the suit schedule property was acquired by the Kondappa with the joint family income in the name of Defendant No.1 and constructed a house measuring 20X20 feet in which Plaintiff, her husband and Defendant No.1 were jointly residing. Things stood like this, the Defendant No.1 and 2 in collusion executed registered release deed dated 23.09.2022 in favour of Defendant No.2. The said release deed does not binding upon the share of Plaintiff. It is also stated that, the Defendants taking advantage of their names mutated in the revenue documents attempting to alienate the same and causing obstruction to her possession. The Plaintiff has got prima faice case and balance of convenience leans in her favour and irreparable loss would be caused to her if no temporary injunction is granted. **With these averments, the Plaintiff sought to allow the I.A.No.1 and 3.**

5. The Defendants appeared through their advocate and filed their detailed written statement along with memo to treat the contents of the written statement as objection to I.A.No.1.

The Defendants have denied the entire plaint averments in toto and called upon the Plaintiff to put strict of the same. Under the heading of true facts of the case, from para No.11 of their written statement contended that, suit schedule property was acquired by the Defendant No.1 from its erstwhile owner by name M.Prabhavathi W/o K.R. Krishnappa through registered sale deed dated 28.04.2006 for valuable consideration of Rs.35,000/-. Consideration was paid by the Defendant No.1 by selling her gold ornaments which was gifted to her during her marriage. Thereby, the suit schedule property is separate property of Defendant No.1 by virtue of Section 14 of the Hindu Succession Act. It is further contended that, the Defendant No.1 has relinquished the rights in the suit schedule property in favour of Defendant No.2 by virtue of relinquishment deed dated 23.09.2022. On the basis of said release deed the Khatha of the suit schedule property has been effected in the name of Defendant No.2. It is specifically denied that, the suit schedule property is joint family property of Plaintiff and Defendants. It is also contended that, the Plaintiff and her father Kondapa have alienated the non-suit property in favour of one G.Sunilkumar on 13.09.2010 for valuable sale consideration of Rs.84,000/-.

The sale consideration received from said alienation was not shared with them and suppressing all these material facts this suit is filed to enrich herself. The Defendants submitted that, Plaintiff has no prima facie case and balance of convenience does not lean in her favour. If temporary injunction order is granted as sought, irreparable loss and injury would be caused to them. **With these contentions, the Defendants sought for rejection of I.A.No.1 and 3.**

6. Heard arguments of learned advocates appearing for the Plaintiff and Defendants and perused the materials available on record.

7. Based upon the above said respective contentions of the Plaintiff and Defendants, the following points arise for consideration of the Court.

POINTS OF I.A.NO.1

Point No.1: Whether the Plaintiff has established the existence of prima-facie case in her favour at this stage of the suit?

Point No.2: Whether the Plaintiff has established the existence of balance of convenience in her favour?

Point No.3: Whether the Plaintiff further proves that if the order of temporary

injunction is not granted she will be put to irreparable loss and hardship?

Point No.4: What order?

POINTS OF I.A.NO.3

Point No.1: Whether the Plaintiff has established the existence of prima-facie case in her favour at this stage of the suit?

Point No.2: Whether the Plaintiff has established the existence of balance of convenience in her favour?

Point No.3: Whether the Plaintiff further proves that if the order of temporary injunction is not granted she will be put to irreparable loss and hardship?

Point No.4: What order?

8. After hearing both parties and on perusal of the records, the Court proceeds to answer aforesaid points as under:-

Point No.1 : In the Affirmative.

Point No.2:The balance of convenience leans in favour of Plaintiff in respect of I.A.1 and the balance of convenience leans in favour of Defendants in respect of I.A.No.3.

Point No.3:Comparative hardship is more to the Plaintiff in respect of I.A.1 and Comparative hardship is more to the Defendants in respect of I.A.3.

Point No.4: As per final order for the following:-

:R E A S O N S:

9. **POINTS NO.1 OF I.A.NO.1 AND 3:-** These points are interlinked to each other, hence they are taken up together for common discussion and to avoid repetition of facts.

10. In order to consider the application under Order XXXIX Rule 1 & 2 read with Section 151 of CPC, the Court should satisfy three ingredients namely, prima-facie case, balance of convenience and irreparable injury to the plaintiffs if injunction is not granted. The existence of a prima- facie goes in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima-facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court. Further questions of balance of convenience and irreparable loss need not be considered since the Plaintiffs would fail at the very first stile itself. But if there was a prima-facie case then other consideration governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima-facie case or even a very

strong prima-facie case does not permit leap-forgoing by the Plaintiffs directly to an injunction without crossing the other hurdles in between. Even granting that the Plaintiffs have an invincible prima-facie case, they will not be entitled exhibits justice, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the plaintiffs might have an unbeatable prima-facie case.

11. The Plaintiff in proof of her plaint averments produced notarized copy of genealogical tree, notarized copy of relinquishment deed dated 23.09..2022, tax paid receipt, Aadhar Cards, Voter I.D. card, RTC extracts and photographs. As against the case of the Plaintiff, the Defendants relied upon the documents such as, xerox copy of registered sale deed dated 16.05.2003, relinquishment deed dated 23.09.2022, registered sale deed dated 03.04.2013 and death certificate of V.Kondappa.

12. The Court has perused the documentary evidence tabled before the Court. It is no doubt true that, the suit schedule property was acquired by the Defendant No.1

through registered sale deed dated dated 28.04.2006 from one M.Prabhavathi for valuable sale consideration of Rs.35,000/-. It is also evident from the copy of the relinquishment deed dated 23.09.2022 that the rights in suit schedule property was relinquished in favour of Defendant No.2. Further, it is also evident from the copy of another relinquishment deed dated 08.07.2021 allegedly executed by the Defendant No.1 in favour of Plaintiff wherein the suit schedule property was released in favour of Plaintiff. Because, the Defendant No.2 possessed registered relinquishment deed in her favour the Court has not option to believe that, it is genuine document for the reason that, it as gone through with the ordeal with registration.

13. The case of the Plaintiff is that, the suit schedule property is joint family property of herself and Defendant No.1 and 2. In support of her contention she relied by the recitals of the alleged relinquishment deed wherein it recites that, the suit schedule property is joint family property of Defendant No.1. By placing reliance on above recitals the Plaintiff claims that, the suit schedule property is joint family property and Defendant No.1 has no right to execute so called

relinquishment deed in respect of suit property in favour of Defendant No.1. With these contention, the Plaintiff seeks partition and separate possession in the suit schedule property.

14. The parties to the suit are the members of joint Hindu family and whether Defendant No.1 blended the suit schedule property in the joint family is requires to be ascertained only after full pleaded. At this stage Court cannot hold mini trial for that purpose. At this stage, Court is of the opinion that, on going through the documentary evidence tabled before the Court, Plaintiff has prima-faice case for trial. Under such circumstance, the Court holds point No.1 to the I.A.No.1 and 3 are answered in the Affirmative.

15. **POINTS NO.2 AND 3 OF I.A.NO.1 AND 3:-** These points are interlinked to each other, hence they are taken up together for common discussion and to avoid repetition of facts.

16. The second 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.

17. 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 third 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.

18. It is no dispute fact that, the suit schedule property was acquired by the Defendant No.1 from its erstwhile owner. It was argued on behalf Defendants that, suit schedule property is separate property of Defendant No.1 and she has absolute right to relinquish her right in favour of any one whomsoever she is interested. Therefore, she rightly relinquished her right in favour of Defendant No.1 and Plaintiff has no manner of right to question it. On the other hand, Plaintiff submitted that, in the alleged relinquishment deed itself the nature of the suit property is made mentioned as joint family property. Therefore, the Defendant No.1 had no

absolute right to relinquish it. Whether the suit property is separate property or it was blended into joint family consisting of Plaintiff and Defendants requires full pledged trial has held in presiding para of Order. At this stage, the suit schedule property is entered in the name of Defendant No.1 and relinquishment deed is in favour of Defendant No.2. Until the controversy in between the parties is adjudicated the Court is of the opinion that, the Defendant No.1 and 2 should be restrained from the alienating the suit schedule property till disposal of the suit. Otherwise, creation of third party interest during pendency of the suit will result into multiplicity of proceedings. By doing so, rights of the Defendants would not be prejudice. Rather it will protect the interest of the parties to the suit.

19. So far as, the temporary injunction to restrain the Defendants from interfering with Plaintiff's possession is concerned, the Plaintiff is not entitled to seek said relief for the sole reasons that, the Plaintiff herself claims that, she and her husband are residing in the suit property along with Defendant No.1 as her husband is ilatam son-in-law. In such being the case, if Plaintiff is granted with temporary inunction she will

certainly attempt to dispossess the Defendant No.1 from the suit schedule property which is not the object of law. Therefore, the Court is of the opinion that, she is not entitled to the relief sought in the I.A.No.3. Accordingly, the Court answers Point No.2 and 3 of I.A.No.1 in the affirmative and Point No.2 and 3 of I.A.No.3 in the Negative.

20. **POINT NO.4:-** in view of the discussions made above, this court proceeds to pass the following:-

ORDER

I.A.No.1 filed by the Plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC is hereby allowed. Thereby, the Defendants, their Agents, P.A.Holder or anybody claiming through them are hereby restrained by an order of Temporary Injunction from alienating or disposition of the suit schedule property in any manner till disposal of the suit.

I.A.No.3 filed by the Plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC is rejected.

No order as to costs.

(Dictated to the stenographer, typed by him, revised, and corrected then pronounced by me in the open Court on 05th day of March -2025)

(Gowda Jagadeesha Rudre)
Senior Civil Judge & JMFC,
Mulbagal.