

KAKP410016772024



IN THE COURT OF THE CIVIL JUDGE & JMFC, AT:
KARATAGI.(ITINERARY COURT)

:: Present ::

Shri. Nagesh Patil,
B.Com.,LL.B.
Civil Judge & JMFC, Karatagi.
(Itinerary Court)

Dated this the 5th day of August 2024

Original Suit No.72 of 2024

Plaintiffs :

1. H.Manjula W/o Devendragouda Patil,
Age: 72 years, Occ: Household,
R/o: Yaradona, Tq: Karatagi and 2 others.

(By Shri. G.S.S., Advocate)

Vs

Defendants:

1. Anand Patil S/po Devendragouda Patil,
Age: 44 years, Occ: Electronic work,
R/o: Yaradona village, Tq: Karatagi,
Dist: Koppal.

(By Shri. G.S.V, Advocate)

Parties To I.A.No.1

Applicants/Ori. Plaintiffs:

- 1) H.Manjula W/o Devendragouda Patil
and two others,

Vs

Opponents/Ori. Defendants:

- 1) Anand Patil S/po Devendragouda Patil,

i	Provision under which the application filed	U/O XXXIX Rule 1 & 2 R/W Sec.151 of CPC
ii	Relief sought for	Temporary Injunction
iii	The date on which the application is filed	07-03-2024
iv	Number of the application	I.A.No.1
v	The date on which the objections are filed by opponents	23-07-2024 written statement averments taken as objections
vi	The date on which the orders were passed on the said application	05-08-2024

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

The plaintiffs have filed this application with a prayer to restrain the defendant from alienating or creating any document, encumbrance over the suit schedule property till disposal of the suit.

2. In support of the application, the plaintiff No.1 has sworn to an affidavit where in stated that, the plaintiff No.2 &3 are daughters. The suit property originally belongs to her and she had purchased the same while she was an Government employee. Due to difficulty in law and procedure it was purchased in the name of her son I,e, defendant. At the time of purchase of the same defendant was minor and she had purchased the same out of her salary savings and joint family income.

(b) It is further contended that suit property was purchased by her to leave separately after her retirement along with her family, but the defendant having bad intention and deserted her and started to make hectic efforts to oust her from suit property and she requested him in the year 2023 to effect partition but he did not heed her request and now the defendants on the strength of documents standing in his name trying to alienate the suit property to the third persons.

They have got a prima-facie case and the balance of convenience is in their favor. If the application is not allowed they will be put to heavy and irreparable loss which cannot be compensated in terms of money and on the other hand no loss will be caused to the other side if the application is allowed. Hence prays to allow the application.

3. On the other hand, the defendant has filed written statement and memo stating that, written statement may be treated as objections to IA No.I.

(a) In the written statement he denied all contents of plaint paras and specifically contended that, the plaintiff No.1 is the second wife of one Devendragouda and plaintiff No.2 and 3 and defendant are her children. Therefore the plaintiff No.1 is not entitle to share in the suit property or property of husband. The daughter of the first wife of Devendragouda namely Vidyavathi and the present plaintiff No.2 have filed suit

against their father Devendragouda and his sister Smt.Sangamma before Civil Judge at Kushtagi in OS No.330/2014 for partition and separate possession in RS No.3 measuring 6 acres 4 guntas of Jageer Rampur Tq:Kushtagi. In the said partition suit there was a compromise wherein the plaintiff No.1 in the said suit i.e. Vidyavathi got 2 acres 25 guntas of land and the present plaintiff No.2 i.e. Rohini got 2 acres of land and her father and sister of Devendregoud got 1 acre 4 gunta of land to their share. Infact the defendant is also entitle share in the said land.

(b) It is further contended that the suit property is his absolute property, it was purchased by his father during his minority and after attaining the majority he became the owner in possession of the suit property and he residing in the suit property after constructing a house and the plaintiffs have been share in the suit property. The plaintiff No.1 was a government employee and now she retired and she being the second wife of his father is not entitled to get any share in the suit property

and other properties of Devendregouda. Accordingly, on all these grounds prays to dismiss the application.

4. Heard the arguments on both sides.

5. The following points arise for my determination are:

POINTS

- 1) Whether the plaintiffs have made out prima-facie case for grant of temporary injunction?
- 2) In whose favour balance of convenience lies?
- 3) To whom irreparable injury would be caused in case of refusal of temporary injunction?
- 4) What order?

6. On hearing the arguments and on perusal of the materials placed on record, my answer to:-

Point No.1: In the Affirmative

Point No.2: In favour of the plaintiffs

Point No.3: To the plaintiffs

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

:: REASONS ::

7. Point No.1:- The Plaintiffs have filed this suit for partition and separate possession against the defendants. According to them the plaintiff No.1 is the mother of plaintiff No.2 and 3 and she had purchased the suit property while she was an government employee. Due to difficulty in procedure she has purchased the suit property in the name of defendant at that time her son was minor and it was purchased out of her salary saving and also with joint family income. The suit properties purchased to leave peacefully by her of retirement along with her family but the defendant with bad intention deserted her and started to oust her from the suit property and she requested the defendant to effect partition and gave share to them in the suit property but he did not heed their request. Hence this suit.

8. On the other hand, the defendant has filed written statement and in written statement he has denied the entire contents of plaint paras and specifically contended that, the suit property is purchased by his father in the name of defendant and it is his absolute property and he is in possession of the suit property and constructed house residing therein. It is further contended that, the plaintiff No.1 is second wife of his father and she is not entitle to get any share either in the suit property or in the property of his father. Accordingly, on all these grounds prays to dismiss the application.

9. It is well settled principle that in order to obtain an order of injunction the party who seeks for grant of injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also lies in his favour and he will suffer irreparable loss and injury, if injunction is not granted. But it is equally well

settled principle that when a party fails to prove prima facie case to go for trial, the question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

10. With this backgrounds I have gone through the pleadings and documents on record. It is not in dispute that the plaintiff No.2 and 3 are the daughters of Devendragouda. It is also not in dispute that the suit schedule property is standing in the name of defendant. According to the plaintiffs, the suit property is purchased by the plaintiff No.1 while she was serving as government employee and due to procedural

technicalities it had been purchased in the name of defendant. But according to the defendant the suit property was purchased by his father in his name and is in possession of the suit property and the plaintiffs have no right to claim share in the suit property. .

11. On perusal of the photo copy of sale deed and construction permission produced by the plaintiffs it discloses that the suit property is standing in the name of defendant. It is apprehension of the plaintiffs that the suit property was standing in the name of defendant and he is trying to alienate the suit property to dupe the share of plaintiffs. Hence they have filed this application to restrain the defendant from alienating the suit property. Admittedly this is stage for hearing on I.A., and it is a settled position of law that at this stage the court cannot conduct a mini trial in order to ascertain the true facts. In the present application the apprehension of the plaintiffs that the defendant is trying to alienate the suit property. **“Whether the suit property is the**

purchased by the plaintiff No.1 in the name of defendant out of her salary savings and joint family income or not” and also as per the defense of defendant **“whether the defendant it was purchased by his father, he is the owner in possession of the suit property and plaintiffs have no right to claim share in the suit property or not”**. It needs to be tried and decide after full-fledged trial. Till then if the defendant alienate the suit property definitely it will leads to multiplicity of proceedings. In this regard this court would like rely upon a decision reported in **AIR 2007 (Noc) 943(D) Kar. Wherein his lordship held that;**

“ court has to be satisfied that case is not frivolous or vexatious one and that there is a serious question to be tried then the case involves serious question and triable issue injunction cannot be refused ”.

As such at this stage, on perusal of the documents produced by the plaintiffs the suit property is standing in the name of defendant. Therefore, to retain/preserve the property as it is till the matter in dispute is resolved and protect the right of the plaintiffs it is just and necessary to restrain the defendant from alienating the suit property. If they alienate the suit property it leads to multiplicity of proceedings. Hence, in order to avoid multiplicity of proceedings it is just and necessary to restrain him from alienating the suit property. Accordingly at this stage the plaintiffs have made out prima facie case to grant temporary injunction. **Accordingly, point No.1 is answered in the Affirmative.**

12. Point No.2:- It is not enough to the plaintiffs make out a prima facie case further plaintiffs have to show that the balance of convenience lies in their favour in considering the question of Balance of

convenience the court has to consider to whom more hardship or inconvenience would be caused if the temporary injunction is granted and if the defendant alienate the suit property plaintiffs would cause loss and injury and it leads to multiplicity of proceedings and no hardship will caused to the defendant, If the temporary injunction is granted. Therefore it appears that more hardship would be caused to the plaintiffs than to the defendant. Hence it appears to this court that balance of convenience is in favour of the plaintiffs for the reasons stated above. **Accordingly point No.2 answered in the Affirmative.**

13. Point No.3:- If the T.I. sought by the plaintiffs is not granted then the defendant may successful in alienating the suit schedule property and if ones the defendant has alienate the suit property it leads to multiplicity of proceedings hence in order to shorten the litigation it is just and necessary to grant temporary injunction. Hence I hold that the plaintiffs will be put to

an irreparable injury which cannot be compensated in terms of money. **Accordingly, Point No.3 answered in the Affirmative.**

14. Point No.4: For the foregoing reasons discussed, this court proceed to pass the following;

:: ORDER ::

The I.A.No.1 filed by the plaintiffs U/Order XXXIX Rule 1 & 2 R/W Sec.151 of C.P.C is hereby allowed.

The defendant is hereby restrained from alienating the suit property till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on computer typed by her, corrected & then pronounced by me in the Open Court on this the 5th day of August 2024).

**(Nagesh Patil)
Civil Judge & JMFC., Karatagi.
(Itinerary Court)**