

KAMD310086522021



**IN THE COURT OF THE I ADDL.CIVIL JUDGE & JMFC, AT
MADDURU
PRESENT**

Smt.Nalina S.C B.A, LL.B.,
I Addl.Civil Judge & JMFC,
Madduru

Dated this 6th day of October 2023

O.S. NO.436/2021

PLAINTIFFS : Smt.Sangeetha and another

(By Sri.T.H., Advocate)

-Vs-

DEFENDANTS : Sri.Krishnaraja Urs and another

(By Sri.G.N.S., Advocate)

I.A.No.I.

**APPLICANTS/
PLAINTIFFS:**

- 1. Smt.Sangeetha**
W/o late Siddalingaraj Urs, 25 years,
- 2. Kum.Akshatha**
D/o late Siddalingaraj Urs, 3 years,
since minor, represented by her
natural guardian-next friend-
mother 1st plaintiff,

Both are R/o No.88, 1st Floor,
7th Cross, 2nd main, Sunkadakatte,
Bengaluru-91.

-V/s-

OPPONENTS / Sri.Krishnaraja Aras and another
DEFENDANTS:

- | | |
|--|--|
| 1. Provision under which the application is filed | U/O XXXIX Rule 1 & 2
: R/w Sec.151 of CPC |
| 2. Relief sought for | : Restrain the alienation |
| 3. The date on which the application is filed | : 19.11.2021 |
| 4. Number of the application | : I.A.No.III. |
| 5. The date on which the objections are filed by different opponents | : 03.02.2023 |
| 6. The date on which the orders were passed on the said application | : 06.10.2023 |

ORDER ON I.A No.III U/O XXXIX RULE 1 AND 2 R/w
Sec.151 OF CPC BY THE PLAINTIFF

1. The plaintiffs have filed present suit against the defendants for the relief of partition and separate possession over the suit schedule properties. Along with plaint, the plaintiffs have filed present IA U/o 39 rule 1 and 2 R/w 151 of

C.P.C for restrain the defendants from alienating the suit schedule properties.

2. As per the plaintiffs contention that, plaintiffs and defendants are the joint family members and suit schedule properties are the ancestral and joint family properties. To disprove the right of the plaintiffs, the defendants are trying to alienate the suit schedule properties. Hence, sought for allow the application.

3. Defendants filed written statement and also filed memo for adoption of written statement as objection to I.A. In the written statement they have not denied the relationship between the plaintiffs and the defendants and the suit schedule properties are ancestral and joint family properties. Even not denied the rights of the plaintiffs over the suit schedule properties. But they only contended that, the propositus had other children and plaintiff No.1 also another daughter, but they have not made them as party in the suit and documents of propositus not produced and the entire death benefits of the husband of plaintiff No.1 and son of defendant No.1 has utilized by the plaintiff No.1 only. The husband of plaintiff No.1 and son of defendant No.1 viz., Siddalingaraja Aras borrowed 3 to 4 lakhs hand loan and all were cleared by the defendant

No.1. As such, the plaintiff also liable to clear the loan made by her husband. Hence, sought for reject the suit and I.A.

4. Heard by both side. Perused the IA and material on records.

5. Court arises point for consideration as below:

1. Whether the plaintiffs have made out prima-facie case for grant of temporary injunction as sought for?
2. Whether the balance convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will be put to irreparable loss and injury if IA.No.1II is not allowed?
4. What order?

6. The findings of this court on the above said 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 the final order
for the following:-

REASONS

7. **POINT NO.1 to 3**:- These three points are interlinked with each other, I have taken them together for discussion to avoid repetition of facts of the case.

8. As already discussed that, there is no dispute regarding relationship, status of property rights of the plaintiffs. Only dispute is non-joinder of necessary parties, discription of the suit schedule properties not correct. In this regard it will be decide after full pledged trial. In this pre-trial stage, Court cannot conduct mini trial. Moreover, the defendants have not specifically denied as they are not trying to alienate the suit schedule properties. Hence, the plaintiffs have made out prima-facie case. If TI is not granted as prayed by the plaintiffs it may be chance of the alienation of the suit schedule properties and it cannot compensate on money and it will leads to multiplicity of proceedings and irreparable loss caused to the plaintiffs. Hence, the balance of convenience is in favour of plaintiffs than defendants. Hence answer the **Point No.1 to 3 in the Affirmative.**

9. **Point No.4:** For the above discussion on point No.1 to 3 this court proceeds to pass the following :

ORDER

I.A.No.III filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

Restraining the defendants, their agents, their servants or anybody acting on their behalf from alienate the schedule properties till disposal of the suit.

No order for cost.

(Dictated to the stenographer, corrected and then pronounced in the Open Court on this the 6th day of October, 2023.)

(Nalina.S.C)
I Addl.Civil Judge & JMFC,
Madduru.