

ORDERS ON I.A.NO.II

The learned counsel for the defendant No. 1 and 3 has filed an application U/o 39 rule 3(a) R/w sec. 151 of CPC seeking recall, vacate or set-aside the exparte Temporary injunction order dated 11.09.2024 passed by this court.

2. The learned counsel for the defendant No. 1 and 3 stating that the plaintiff did not comply the provision of **Exparte Temporary Injunction U/O 39 Rule III C.P.C.** Further stated that, the plaintiff did not send the documents to defendants.

3. The sufficient opportunity given to plaintiff to file the objection to I.A. No.II. The plaintiff failed to file an objection to I.A. No.II.

4. Heard the arguments from plaintiff side on I.A.No.II.

5. The following points are arise for consideration of this court.

POINTS

1. **Whether I.A. No.II filed by the defendant No. 1 and 3 is deserves to be allowed?**
2. **What order?**

6. This court has perused the I.A.No.II and comply the order in respect of exparte Temporary injunction. Hence, this court have answer the above points as follows:-

Pont No.1: In the Affirmative

**Pont No.2: As per final order
for the following:**

REASONS

7. **Point No.1:-** The plaintiff has filed this suit against the defendants for the relief of Partition and Separate Possession. This court has been passed an exparte temporary injunction against the defendants on 11.09.2024. The defendant No. 1 and 3 appear through their counsel on 17.09.2024 and filed an present application seeking vacate the exparte temporary injunction passed by this court. The plaintiff not filed the objection to I.A.No.II.

8. The counsel for the defendant No. 1 and 3 vehemently argued that, the plaintiff has not complied the provisions of **Under Order 39 Rule 3(A) (iii) Of Code Of Civil Procedure**, hence order of exparte temporary injunction automatically vacated. The counsel for the defendant No. 1 and 3 are open the RPAD cover which is send by the plaintiff to the

defendant No. 1 and 3. It is noticed that, the plaintiff not send the suit documents to the defendants at the time of comply the temporary injunction order.

9. **Order 39 Rule 3 Of C.P.C. Reads As Follows:**

Before granting injunction, court to direct notice to opposite party:-

The court shall in all cases, exparte where it appears that, the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that, the object of granting the injunction would be defeated by delay and require the applicant:-

a) To deliver to the opposite party, or to send to his by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with:-

- (i) **A copy of the affidavit filed in support of the application.**
- (ii) **A copy of the plaint.**
- (iii) **Copies of documents on which the applicant relies and**

b) To file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

10. The provisions **Under Order 39 Rule 3(A)** (iii) is very clear that, the plaintiff shall send the all the suit documents relied upon him. In the present case the plaintiff not send the documents relied upon him, this is admitted by the counsel for the plaintiff.

11. In the above discussion the plaintiff has not complied the provisions of **u/O 39 Rule 3(A) Of C.P.C.** Hence, ex parte temporary injunction granted by this court is deserved to be vacated. Accordingly, **answer the Point No.1 in the Affirmative.**

13. **Point No.2:-** In view of above discussion this court proceed with pass the following:

ORDER

**The I.A.No.II U/o 39 Rule 3(a)
R/w sec. 151 of CPC., filed by the
defendant No. 1 and 3 is here by
allowed.**

No order as to cost.

**The exparte T.I. granted by this
court on 11.09.2024 is vacated.**

**Issue summons to Defendant
No. 2 if PF is paid R/by 21.10.2024.**

Sd/-
Senior Civil Judge & JMFC,
Malavalli.