

KAMD510013442019



**IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC.,
AT NAGAMANGALA.**

Dated this the 10th day of January, 2022.

Present :

Sri. Devaraddy B.A., LL.M.
Addl. Civil Judge & JMFC.,
Nagamangala.

O.S. No.288/2019

Plaintiff : Narasimhamurthy.

- V/S -

Defendants : Nagarathnamma and others.

I.A. No.I

**Applicant/
Plaintiff** : Narasimhamurthy.

(By Sri. M.B.N. Advocate)

- V/S -

**Opponents/
Defendants** : Nagarathnamma and others.

(D-2 to 4, 8, 9, 11 & 12 By Sri. C.R.
Advocate, D-7 By Sri. M.D. Advocate
and D-5, 6 & 13 Placed Exparte)

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ORDERS ON I.A. No.I

The plaintiff/applicant has filed an IA No.I under Order XXXIX Rule 1 and 2 R/W/S 151 of CPC, and prays to grant ex-parte temporary injunction to restrain the defendant No.2 to 4, 8, 9 and 11, or anybody on their behalf from alienating the suit schedule properties in any manner in favour of anybody till disposal of the above suit.

2. The said application filed by accompanying affidavit and in the affidavit has stated that, he has filed the suit for Partition and Separate possession with regard to suit schedule properties. Himself and defendants are the Hindu undivided joint family members and suit schedule properties are their ancestral and joint family properties and they are having vested rights on the said properties. Himself and defendants are living separately by cultivating some portion of the suit schedule properties since differences arose between them. The suit schedule properties are not divided among them till the date.

3. Further stated that, the khatha of the suit schedule properties standing in the name of defendants and colluding each other are trying to alienate, mortgage the said properties though they are having rights thereon. Further stated that, he has got prima-facie case and the balance of convenience lies in his favour. If the application is not allowed then he will be put great hardship and injustice. If the application is allowed no injustice will be caused other side. Hence, prays to allow the application.

4. The defendant no.5, 6 and 13 placed as exparte, the defendant no.2 to 4, 7 to 9, 11 and 12 have appeared before the court through their counsel, but they have not filed written statement as well as objection on IA No.I though sufficient time provided. For which, objection on IA no. I taken as nil.

5. Heard hearing on IA No.I.

6. On the basis of above contention, the following points arise for my consideration.

1. *Whether the plaintiff/applicant prove that he has made out a prima facie case?*
2. *Whether the plaintiff/applicant proves that the balance of convenience lies in his favour?*
3. *Whether the plaintiff/applicant proves that he would suffer irreparable injury if temporary injunction is not granted in his favour?*
4. *What order?*

7. The findings to the above 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

Point No.1 :

8. The learned counsel for the plaintiff submits that, the suit schedule properties are ancestral and joint family properties of plaintiff and defendants and no partition taken place with regard to said properties till the date, but the

defendants have been intending to alienate the schedule properties. Further submits that, the plaintiff has made out prima-facia case and balance of convenience lies in his favour. If the application is not allowed then he will be put great hardship and injustice. Hence, prays to allow the application.

9. It is the plaintiff/applicant to prove that, he has made out prima-facie case in respect of suit schedule properties. In order to prove the said contention, the plaintiff has produced documents such as certified copies of the Register of Assessments for the year 2019-20, certified copies of the hand written RTCs, and computerized RTCs for the year 2019-20. On perusal of register of assessments and computerized RTCs which are produced by the plaintiff it is reveals that, schedule properties are standing in the name of defendant no.1 to 3, 5, 9, 11 and 12.

10. It pertinent to note that, it is the specific contention of the plaintiff that, the defendants colluded with revenue official and khatha of Schedule properties changed in their

name. It is the contention of the plaintiff that, the suit schedule properties are ancestral and joint family properties and he is having equal share therein along with defendants and the defendants are intended to sell the suit schedule properties with an intention to deprive his rights over the said properties. As already stated above that, the defendants even though appeared before the court through their counsel, but they have not filed the written statement as well as objection on this application though sufficient time provided. For which, the case of the plaintiff remained unchallenged and unquestioned.

11. From going through contents of the application, pleading and also materials available on the hand, at this stage it reveals that, the plaintiff has established prima facie case to seek the relief as sought in the present application. Hence, point No.1 is answered in the **affirmative**.

Point No.2 :

12. The plaintiff has produced the documents in respect of suit schedule properties to show that, he has made out

prima-facie case. Based on documents adduced by the plaintiff, it shows that, the balance of convenience also is in favour of the plaintiff. Hence, in view of the above discussion, the point no.2 is answered in the **affirmative**.

Point No.3 :

13. On the basis of contention taken by the plaintiff and also based on the documents produced by him and as the plaintiff/applicant is made out prima-facie case and also balance of convenience lies in his favour, it is very clearly show that, if the temporary injunction order is not granted it is the plaintiff who will be caused great hardship and irreparable loss than the defendants. Hence, the point No.3 is answered in the **affirmative**.

Point No.4 :

14. In view of discussion of point No.1 to 3, this court proceed to pass the following;

ORDER

I.A. No.I filed by the plaintiff
Under Order 39 Rule 1 and 2

R/W/S 151 of CPC is hereby allowed.

The defendant No.2 to 4, 8, 9 and 11, or anybody on their behalf are hereby restrained from alienating the suit schedule properties in any manner in favour of anybody till disposal of the above suit.

No order as to costs.

*(Dictated to Stenographer directly in the computer, corrected and then pronounced by me in Open Court, on this the **10th day of January, 2022**)*

(Devaraddy)
Addl. Civil Judge & JMFC.,
Nagamangala.