

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

Dated this the 18th day of March, 2021.

Present :

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

O.S. No.70/2020

Plaintiff : Sri. T.Girish.

V/S

Defendants : Sri. T.Thimmaiah @ Rajanna and others.

I.A. No.I

**Applicant/
Plaintiff** : Sri. T.Girish,
S/o T.Thimmaiah @ Rajanna.

- V/S -

**Opponents/
Defendants** : Sri. T.Thimmaiah @ Rajanna,
S/o Late Thirumalaiah and others.

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ORDERS ON I.A. No.I

The plaintiff/applicant has filed IA No.I under Order XXXIX Rule 1 and 2 of CPC, to grant an order of temporary injunction restraining the defendants from alienating the suit schedule properties till disposal of the suit.

2. The said application filed along with affidavit and in the affidavit has stated that, he has filed suit against defendants for the relief of Partition and separate possession in respect of the suit schedule properties. Suit schedule properties are ancestral and joint family properties of himself and defendant no.1 to 3 and all the revenue records are stands in the name of defendant no.1 to 6 in respect of suit schedule properties. The defendants are colluded each other and mismanaging the joint family properties. Further stated that, he has entitled $1/4^{\text{th}}$ share in the suit schedule properties. He has requested the defendants to allot the share in the suit schedule properties, but the defendants are avoiding to give his share in the said properties. For which he convened panchayath in the village for partition, but was no use. Further stated that, the defendants are trying to alienate the suit schedule properties with an intention to deprive the right of the plaintiff over the suit schedule property. There is no legal and family necessity to sell the suit schedule properties.

3. Further stated that, he has made-out prima-facia case against the defendants and the balance of convenience lies in his favour rather than defendants. If the defendants are alienate the suit schedule properties in favour of any person then he will be put great hardship and injustice which cannot be compensated in terms of money. If the defendants are restrained, no harm will be caused other side. Hence, prays to allow the application.

4. In pursuance of suit summons, the defendant no.2 to 6 have appeared before the court through their counsel, but they have not filed written statement and objection on IA No.I though sufficient opportunity provided, hence the written statement and objection on IA No.I by the defendant no.2 to 6 taken as nil. The defendant no.1 not appeared though suit summons served, hence the defendant no.1 treated as exparte.

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 proves 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 will 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, suit schedule properties are ancestral and joint family properties of plaintiff and defendant no.1 to 3. Further

submits that, the plaintiff has got share over the schedule properties along with defendant no.1 to 3. Further submits that, suit schedule properties are standing in the name of defendant no.1 to 6 and they are trying to alienate the schedule properties to other persons in order to avoid the share of the plaintiff thereon. Further submits that, the prima facie case made out in favour of plaintiff and balance of convenience also lies on his favour. Further submits that, if the application is not allowed, the plaintiff will be caused irreparable loss and injury and which can not be compensated in terms of money. If the application is allowed, no harm and injustice will be caused other side.

9. It is the plaintiff/applicant to prove that, he has made out prima-facie case in respect of suit schedule properties in his favour. In order to prove the said contention, the plaintiff/applicant has produced documents such as total 18 computerized RTCs for the year 2019-20, E-Khatha, Certificate, Tax Assessment register and total 3 computerized mutation registers. On perusal of computerized RTCs,

E-Khatha it reveals that, all the suit schedule properties stand in the name of defendant no.1 to 6.

10. As already stated above that, though the defendant no.2 to 6 have appeared before the court, but not filed their written statement and objection on IA No.I. The defendant no.1 treated as exparte since he is not appeared though suit summons served. By considering the documents produced by the plaintiff it reveals that, there are sufficient grounds to show the prima-faice case of the plaintiff.

11. From going through contents of affidavit of the application and pleadings and also materials available on the hand, at this stage it reveals that, the plaintiff has established that, he has made out prima-facie case. 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 the parties and as the plaintiff/applicant is made out prima-facie case and also balance of convenience lies in his favour, it is very clearly shows 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/
applicant Under Order 39 Rule 1
and 2 of CPC is hereby allowed.

The defendants are hereby restrained from alienating the suit schedule properties in favour of third parties till disposal of the suit.

No order as to costs.

*(Dictated to Stenographer through on-line computer, corrected and then pronounced by me in Open Court, on this the **18th day of March, 2021**)*

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

