

IN THE COURT OF THE ADDL. CIVIL JUDGE & JMFC., AT
PANDAVAPURA

DATED ON THIS THE 1st day of July 2024

:PRESENT:

Sri.KISHOR KUMAR, B.A.L, L.L.B.,
ADDL. Civil Judge & JMFC.,
PANDAVAPURA

O.S.NO.347/2022

Plaintiff : Smt. Saraswathi W/o K.Basavegowda

(By Sri.S.N.M, Adv.,)

v/s

Defendant : Sri.K.Basavegowda S/o Late Doddakarigowda

(By Sri.C.S.S, Adv.,)

ORDERS ON I.A.No.I

Applicant : Smt. Saraswathi --- Plaintiff

v/s

Opponent : Sri.K.Basavegowda --- Defendant

ORDERS ON I.A.No.I

This is a application filed by the plaintiff under Order 39
Rule 1 and 2 claiming temporary injunction against the

defendant restraining her from alienating the suit schedule properties till the disposal of the case.

2. In the accompanying affidavit of IA No.I, the plaintiff submitted that, the plaintiff is the wife of the defendant. The plaintiff and defendant marriage was solemnized on 08.09.1988 at Sriramamandira Kalyanamantapa, Vishweshwara nagara, Pandavapura Taluk. At the time of marriage the father of the plaintiff has given Rs.1 lakhs to the defendant as a dowry and also given 200gram gold to the defendant and also plaintiff father has incurred 2 to 3 lakh for their marriage. After the marriage the plaintiff and defendant are live with matrimonial life. There is no issues between the plaintiff and defendant.

3. The defendant having illicit relationship with other women and begotten children. Therefore the defendant has neglected the plaintiff and defendant has given harassment mentally and physically to the plaintiff. Therefore the plaintiff is unable to live with the defendant. Hence she has living separately. Even though the defendant has given harassment to the plaintiff. Therefore the plaintiff is unable to lead her life without financial assistance. Hence, the plaintiff filed this suit for maintenance and also she has filed application to grant relief of ad-interim injunction against the defendant. Hence, plaintiff has contended that she had got a prima facie case in her favour and balance of convenience lies in favour of the plaintiff and greater hardship

will be caused to the plaintiff if the order of injunction is not granted.

4. After the suit summons, the defendant appeared before the court and filed written statement and also filed memo same may be considered as an objection to I.A.No.I.

5. **The gist of the objection filed by the defendant is as follows:**

The contention of the defendant is that, suit filed by the plaintiff is not maintainable neither in law nor on facts. The defendant contended in his written statement that, he has categorically denied all the facts of the case and further contended that, the plaintiff and defendant are lead matrimonial life from 08.09.1988. But there is no issues therefore the plaintiff itself forced to the defendant to marry Mangalamma. Therefore the defendant has married Mangalamma due to that marriage begotten two children. Therefore the Mangalamma living with the plaintiff, the defendant has provided all the basic needs to the plaintiff. Eventhough the plaintiff has went to the job at Mysuru and she has earning Rs.15,000/- per month. Therefore the defendant is not liable to pay any maintenance to the plaintiff. The defendant is 65 years age and he has having ill health. Therefore the defendant depends upon income of the suit schedule properties and also obtained loan of Rs.4,00,000/- from the Karnataka Gramin Bank. Therefore, the plaintiff has

suppressed all the said case facts. Hence, plaintiff is not having prima facie case. The plaintiff has not appeared with clean hands before the court. Hence, this suit is not maintainable and prays to dismiss the application.

6. The following points that arise for my consideration are:-

Point No.1: Whether plaintiff has got prima facie case in her favour?

Point No.2: In whose favour the balance of convenience lies?

Point No.3: Who will be put to greater hardship, if the order of temporary injunction is not granted?

Point No.4: What Order?

7. I have heard the arguments of both the plaintiff and defendant counsel and perused the pleadings and documents available on the record.

8. My answers to the above points are as follows for the following reasons:-

Point No.1:- In the Affirmative

Point No.2:- In favour of the plaintiff

Point No.3:- In favour of the plaintiff

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

REASONS

9. **Point No.1:-** Since plaintiff has claimed the relief of ad-interim injunction against the defendant on the basis of suit filed for maintenance. She must establish a prima facie case in her favour to corroborate the case of the plaintiff, the plaintiff has produced the RTC extracts and katha extracts. It appears that, the RTC stands in the name of defendant. The defendant is in possession over the suit schedule property and moreover the defendant is the husband of the plaintiff, Further she has produced RTC in respect to the suit schedule property. On perusal of the said document, it is noticed that, the suit schedule property stands in the name of defendant, but now the suit schedule property stands in the name of defendant.

10. The defendant has trying to alienate the suit schedule properties. It is very pertinent to note that when the suit is filed for maintenance against the defendant, the plaintiff has to establish prima facie fact that the property is stands in the name of defendant. By perusing the document produced by the plaintiff it is fully established that properties are stands in the name of defendant.

11. Even though defendant has filed objection by stating that, the plaintiff has filed a false case against the defendant and the defendant is having illhealth, therefore he has dependent upon

the income of suit schedule properties except income of suit schedule property no any income to lead his life. Moreover the plaintiff is a working women and she is earning of Rs.15,000/- per month. Therefore the defendant is not liable to pay any income to the plaintiff. But the said fact has to be determined during the course of trial. The defendant admitted in his written statement the plaintiff is his wife. Therefore there is no dispute with regard relationship and admittedly she is living separate. Therefore it is clearly the presumption has to be drawn in favour of the plaintiff. A presumption is also to be held in favour of the plaintiff, that plaintiff is having a prima facie case. Therefore, which needs detailed trial. At this stage, this court cannot conduct mini trial in order to determine the said fact. I have no other option to hold that the plaintiff has got a prima facie case to try on her behalf. **Hence, this court answers point No.1 in the affirmative.**

12. **Point No.2 and 3** :- Since both these points are interlinked to each other and both these points are to be answered on the same set of facts and circumstances and reasoning. In order to avoid the repetition of facts and circumstances and reasoning I am discussing both these points together.

13. As these points are to be answered on the basis of comparative hardship of the plaintiff and defendant and also about the comparative case of both the parties. It is a well

established principles of law that the balance of convenience is a fact to be considered by the court holding that whose case more probable under the circumstances of the case. Though the defendant has took up a specific contention that he is depends upon the income of the suit schedule properties. But the plaintiff is the wife of the defendant. The defendant has to maintain his wife. Therefore, this court hold that the plaintiff has got a balance of convenience in her favour.

14. It is also the case of the plaintiff that now the defendant is trying to alienate the suit schedule property. Hence she claim the relief of ad-interim injunction. If an order of injunction is not granted and if the defendant is allowed to alienate the properties greater hardship will be caused to the plaintiff. As otherwise, if the defendant is allowed to alienate the property and if they alienated the property then the subsequent purchasers will have to be included in the suit and the plaintiff shall also claim the relief against them which may leads to multiplicity of the proceedings. If the injunction granted in favour of the plaintiff can be vacated or suit can be disposed on merits. When the suit is pending defendant is allowed to alienate the property once again the 3rd party interest will be created in the property without recognizing the right of the plaintiff. Under such circumstances, I am of the opinion that if an order of injunction is not granted greater hardship will be caused to the plaintiff. **Hence, this court answer Point No.2 & 3 in favour of the plaintiff.**

15. **Point No.4** :- In view of the above discussion, I pass the following order.

ORDER

- IA No.I filed by the plaintiff under Order 39 Rule 1 and 2 is hereby allowed.
- The defendant is hereby restrained by an order of ad-interim temporary injunction restraining them from alienating the suit schedule properties till disposal of the suit.

(Dictated to the Stenographer directly online to the computer, typed by him, corrected, then pronounced by me in the Open Court on this the 1st day of July 2024)

**(KISHOR KUMAR. K.N.)
Addl. Civil Judge & JMFC.,
Pandavapura.**

**(Orders pronounced in the open court
vide separate orders)**

:: O R D E R ::

IA No.I filed by the plaintiff under Order 39 Rule 1 and 2 is hereby allowed.

The defendant is hereby restrained by an order of ad-interim temporary injunction restraining them from alienating the suit schedule properties till disposal of the suit.

**Addl. Civil Judge & JMFC.,
Pandavapura.**