

O.S. 355/2016

**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC,  
AT SRIRANGAPATNA**

**Present :-**

**Smt. Chaitra A.M.,  
B.Sc., L.L.B.,  
Prl. Civil Judge and JMFC,  
Srirangapatna.**

**Dated this 16<sup>th</sup> day of January, 2018**

**OS 355/2016**

**Plaintiff :-**

) Sri. Girija  
D/o Late Mallegowda,  
Aged 55 years,

2) Smt. Renuka  
D/o Late Mallegowda,  
Aged 48 years,

3) Sri. Mahesha  
D/o Late Mallegowda,  
Aged 40 years,

4) Sri. Prakasha  
S/o Late Mallegowda,  
Aged 38 years,

All are R/at: Mallegowdanakoppalu village, K.  
Shettahalli Hobli,  
Srirangapatna Taluk.

**(By Sri. S.S.P,-Adv)**

**Vs**

**Defendants :-**

1) Smt. Devamma,  
W/o Hanumaiah,  
D/o Kempegowda,  
Aged 60 years,

2) Smt. Honnajamma,  
W/o Garesiddaiah,  
D/o Kempegowda,  
Aged 58 years,

3) Smt. Jayalaxmi,  
W/o Chinnagiri,  
D/o Kempegowda,  
Aged 55 years,

4) Sri. Mallikarjuna,  
D/o Kempegowda,  
Aged 55 years,

All are R/at: Mallegowdanakoppaluvillage,  
K. Shettahalli Hobli,  
Srirangapatna Talu.

**(By Sri. S.R.S.,-Adv)**

**:: Orders on application under Order 39 Rule 1 and 2  
R/W/Section 151 of CPC ::**

The plaintiff has filed the application under order 39 Rule 1 and 2 r/w sec. 151 of CPC seeking for an order of temporary injunction to restrain the 4<sup>th</sup> defendant from alienating the application schedule property until disposal of the suit.

2. The gist of the application is as follows;

The plaintiff has filed the affidavit. In the affidavit, it is stated that the suit schedule properties are the ancestral and joint family properties of plaintiffs and defendants and as such they are in joint possession and enjoyment over the suit schedule properties. The Khatha of the application schedule properties are standing in the name of 4<sup>th</sup> defendant. The 4<sup>th</sup> defendant taking undue advantage of the same in collusion with other defendants trying to alienate the application / suit schedule properties. The plaintiffs are having prima facie case. If the 4<sup>th</sup> defendants were to alienate the application/ suit schedule properties then the plaintiffs will be put to irreparable loss and as such the balance of convenience is also lies in favour of plaintiffs. Therefore it is just and necessary to grant an order of temporary injunction with respect to the application schedule properties. If the application is allowed no loss will be caused to the other side. If the application is not allowed the plaintiff will be put to heavy irreparable loss and legal injury. On these allegations, the plaintiffs filed the application.

3. On the other hand the defendants have filed a written statement and memo of adoption adopting the written statement as objections to the application under order 39 Rule 1 and 2 CPC. The defendants have admitted about the relationship of plaintiffs with defendant.s The defendants have denied that the suit schedule properties are the ancestral joint family properties enjoying the same by

plaintiffs and defendants in joint possession. The 4<sup>th</sup> defendant has also denied that the 4<sup>th</sup> defendant is trying to alienate the application schedule properties. But the defendants have taken a contention that during the life time of father of the defendants, a oral partition was effected between the 4<sup>th</sup> defendant and father of plaintiffs. Therefore there is no existence of joint family during the life time of father of 4<sup>th</sup> defendant or after the death of father of 4<sup>th</sup> defendant. On these contentions the 4<sup>th</sup> defendant has sought for dismissal of the application.

4. Heard arguments on application for plaintiffs and defendants also perused the documents placed before me.

5. The following points arise for my consideration is as follows:

1. Whether the plaintiffs have made out prima facie case against the defendants?
2. In whose favour, the balance of convenience lies?
3. Who will be put do irreparable loss and legal injury?
4. What Order?

6 . My findings to the above points are as follows: -

Point No.1 :- In the affirmative

Point No.2 :- In favour of plaintiffs

Point No.3 :- In favour of plaintiffs

Point No.4 :- As per the final order, for the flowing;

### **REASONS**

**7. Point No.1:** The plaintiffs have filed the application seeking for an order of temporary injunction to restrain the 4<sup>th</sup> defendant from alienating the application schedule properties. On the other hand the defendants have filed objections contending that the 4<sup>th</sup> defendant is not trying to alienate the application schedule properties. During the life time of father of 4<sup>th</sup> defendant a oral partition was effected among the father of plaintiffs and 4<sup>th</sup> defendant therefore the question of existence of joint family do not arise and the nature of properties are also not ancestral joint family properties as stated by plaintiffs. On these contentions the defendants sought for dismissal of the application.

8. The plaintiff has produced the 3 RTC to the application schedule properties. On perusal of RTC in column No.9 and 12 the name of 4<sup>th</sup> defendant is entered. The plaintiff has stated that the suit / application schedule properties are the ancestral and joint family properties but the defendants have denied the nature of the properties as ancestral joint family properties and taken a contention that there was a oral partition between 4<sup>th</sup> defendant and father of plaintiffs. At this stage without detail enquiry it is not possible to come to conclusion as to whether the suit/ application schedule properties are either ancestral joint family properties or not. In order to arrive at proper conclusion as to whether the suit / application schedule properties are either ancestral joint family properties or not a detail trial, proper oral as well as cogent evidence is

required. However as the suit is filed with respect to the suit / application schedule properties by stating that the properties are ancestral joint family properties and as the name of 4<sup>th</sup> defendant is entered in the RTC produced by plaintiff, at this stage in view of the documents produced by the plaintiffs the plaintiffs have made out prima-facie against the defendant No.4. Therefore in view of above discussion I answer this point in Affirmative.

**9. Point No.2 and 3:-** In view of discussion made on point No.1, if the 4<sup>th</sup> defendant were to alienate the application schedule properties during the pendency of the suit then the multiplicity of the proceedings may occur and therefore if temporary injunction is not granted to plaintiffs, then the plaintiffs will be put to irreparable loss and as such balance of convenience is in favour of plaintiffs. In view of above discussion, I answer these two points in affirmative.

**10. Point No.4:-** In view of above discussion on point no. 1 to 3, I proceed to pass the following:-

**: O R D E R :**

The application filed by the plaintiffs is hereby allowed.

The 4<sup>th</sup> defendant is hereby restrained from alienating the application schedule properties till disposal of the suit.

No order as to costs.

**(Chaitra A. M.),  
Prl. Civil Judge and JMFC,  
Srirangapatna.**

Order pronounced in the Open Court  
(Vide Separate Order)

**: O R D E R :**

The application filed by the plaintiffs is hereby allowed.

The 4<sup>th</sup> defendant is hereby restrained from alienating the application schedule properties till disposal of the suit.

No order as to costs.

Prl. Civil Judge and JMFC,  
Srirangapatna.

