

KAMS010074992023



**IN THE COURT OF THE III ADDL. DISTRICT & SESSIONS
JUDGE, MYSURU**

:PRESENT:

Sri **Gururaj Somakkalavar**, M.A.,LL.B.,
III ADDL. DISTRICT & SESSIONS JUDGE:
MYSURU.

R.A./229/2023

Dated this the 27th day of September 2025

Appellants Sri.Shivalingaiah & another

V/s

Respondents: Smt.Puttamma and others.

I.A

Applicant/
Respondent No.1 Smt.Puttamma

V/s

Opponents Sri.Shivalingaiah & another

**ORDERS ON I.A FILED U/O XXXIX RULE 1 AND 2 OF
CPC**

The Applicant/Respondent No.1 has filed I.A under Order XXXIX Rule 1 and 2 of CPC, praying to pass an order of Ad-interim temporary injunction restraining the appellants

and respondent No.6 to 9 from alienating the suit schedule property till the disposal of the above mentioned suit in the interest of justice and equity.

2. It is contended by the applicant in the affidavit accompanying to the application that, appellants and respondent No.6 to 9 are trying to alienate the suit schedule property. The said lands are the ancestral joint family property. The trial court has decreed the suit and after that, FDP No.5/2024 is filed, which is pending for consideration. It is urged that, without the consent of the plaintiffs/respondent No.1 to 5 got the Khatha illegally in order to deny the right and share the appellants/respondent No.6 to 9 are trying to alienate suit schedule property to third party. If, same is allowed the rights of the respondent No.1 to 5 will be affected. Hence, prayed to allow the application in the interest of justice and equity.

3. The appellants have filed objections to the said application contending that, the application filed by the applicant, is not maintainable either, in law or on facts. The respondent No.1 to 5 have obtained ex parte decree against the defendants. The respondent No.1 to 5 herein are nowhere connected to the family of the appellants and

respondent No.6 to 9. These appellants and respondent No.6 to 9 are only the legal heirs of Mahalingaiah. Since, there is no relation the respondent No.1 to 5 have no right to ask for share in the suit schedule properties. As such they can not seek for any temporary injunction against the defendants/appellants and respondent No.6 to 9. Therefore, prayed for dismissal of the application with cost.

4. Having heard the arguments of the counsel for the appellants and upon perusal of the material available on record, the points that arise for consideration of this court is:

1. Whether the respondent No.1 has made out grounds to allow the application U/O 39 R-1 and 2 of CPC?
 2. Whether the prima facie case, balance of convenience made out by the respondent No.1 to grant ad-interim temporary injunction?
 3. What order?
5. Findings of this court to the aforesaid points is:

Point No.1 : In the Negative

Point No.2 : In the Negative

**Point No.3 : As per final order
for the following:**

REASONS

Point No.1 and 2:

6. The present appellants here have challenged judgment and decree dated 10.07.2023 in OS No.174/2022 on the file of Senior Civil Judge & JMFC, Nanjangud.

7. The appellants herein are the defendant No.2 & 5 and respondent No.1 to 5 are the plaintiffs. Further other respondents are the defendants before the trial court.

8. The respondent No.1 to 5 have filed suit for partition and separate possession in respect of suit schedule property. The said suit came to be decreed by the trial Court. Aggrieved by the same present appeal is preferred.

9. In the present appeal the respondent No.1/plaintiff No.1 maintained application under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C, seeking temporary injunction against appellants and respondent No.6 to 9 restraining appellants and respondent No.6 to 9 from alienating the suit schedule property. In the said application it is urged that, appellants and respondent No.6 to 9 are trying to alienate the suit schedule property. The said lands are the ancestral joint family property. The trial court has decreed the suit and after that, FDP No.5/2025 is filed, which is pending for

consideration. It is urged that, without the consent of the plaintiffs/respondent No.1 to 5 got the Khatha illegally in order to deny the right and share the appellants/respondent No.6 to 9 are trying to alienate suit schedule property to third party. If, same is allowed the rights of the respondent No.1 to 5 will be affected.

10. The said application was contested by the appellants by filing objections. It is mainly urged that, the respondent No.1 to 5 have obtained exparte decree against the defendants. The respondent No.1 to 5 herein are nowhere connected to the family of the appellants and respondent No.6 to 9. These appellants and respondent No.6 to 9 are only the legal heirs of Mahalingaiah. Since, there is no relation the respondent No.1 to 5 have no right to ask for share in the suit schedule properties. As such they can not seek for any temporary injunction against the defendants/appellants and respondent No.6 to 9.

11. After hearing the both the sides and giving thoughtful consideration to the material on record it reveals that, the respondent No.1 to 5, who are the plaintiffs before the trial court have filed suit for partition and separate possession in respect of suit schedule properties. The trial

court decreed the suit. The defendant No.2 & 5 who are the appellants before the trial court have preferred this present appeal challenging the judgment and decree. The respondent No.1 to 5 claims that, the suit schedule properties are joint family properties. These respondent No.1 to 5 are the legal heirs of Mahalingaiah. As such they are entitle for share in the suit schedule properties. Whereas, the appellants and respondent No.6 to 9 denied the relation and submits that, these respondent No.1 to 5 have no right and share in the suit schedule properties. The suit came to be decreed and after that, FDP No.5/2024 is also filed, which is pending for adjudication. At this juncture the plaintiffs/respondent No.1 to 5 have filed this application alleging that, the appellants and respondent No.6 to 9 got the Khatha illegally and they are trying to alienate suit schedule property. It is to be appreciated that, already the suit is decreed and share is allotted to the plaintiffs/respondent No.1 to 5. The Final Decree Proceedings is also pending for adjudication. It is to be noted here that, the suit is decreed exparte, where the appellants and respondent No.6 to 9 have not contested the suit. Now, the said judgment and decree is seized before this court. The correctness and legality of the judgment is to be analyzed. Though, it is urged by the respondent No.1 to 5

that, at this juncture there is nothing is placed on record with regard to the attempt to alienate suit schedule property by the appellants and respondent No.6 to 9. The apprehension of alienation is not made out in the application. Admittedly, the suit is for partition and separate possession in which the respondent No.1 to 5 have already granted share. However, same is to be scrutinized by the court. The right of the respondent No.1 to 5 will not affect, if they are entitle for share they will get the same even against the third party. There is absolute nothing on record to substantiate that, there is attempt to alienate suit schedule property. When the respondent No.1 to 5 seeks temporary injunction they have to place material to that effect. More so the suit is decreed in their favour they can execute decree claiming share against any body. Hence, there is nothing substantial available to grant temporary injunction against appellants and respondent No.6 to 9.

12. It is to be noted here that, to grant temporary injunction the plaintiff has to establish prima facie case. Here, the suit of the plaintiffs is decreed. In the present appeal the entire material is to be re-examined. It appears from the material on record the plaintiff/respondent No.1 to 5 have not made out prima facie case. That, apart the suit is

one for partition and separate possession. It is relevant to note that the appeal is pending and the rights of the parties is to be adjudicated. The rights of the respondent No.1 to 5 will be protected if they are successful in substantiating their right and interest over the suit schedule property. The grounds urged by the respondent No.1 to 5 in the application are not sufficient. The apprehension of the respondent No.1 to 5 regarding the multiplicity of the proceedings can be dealt with in accordance with law.

13. At this juncture, it is worth to rely upon the observation of Hon'ble Apex Court in **Ramakant Ambalal Choksi V/s Harish Ambalal Choksi and others (2024) 11 SCC 351**. The Hon'ble Apex Court has laid down the principles governing granting of temporary injunction as under:

**PRINCIPLES GOVERNING GRANT OF
TEMPORARY INJUNCTION**

33. In the case of Anand Prasad Agarwal v. Tarkeshwar Prasad reported in (2001) 5 SCC 568, it was held by this Court that it would not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

34. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to

prove that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is

likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See: Dalpat Kumar v. Prahlad Singh reported in (1992) 1 SCC 719.)

The Hon'ble Apex Court has discussed about the irreparable loss in the above authority. The Hon'ble court held that, the court has to satisfy that non interference by the court would result in irreparable loss to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and they needs protection from consequences. But here in this case if, the respondent No.1 to 5 succeeds in the appeal they have got every right to claim their share in the suit schedule property. There is no irreparable loss to the respondent No.1 to 5 if the temporary injunction is not granted.

14. Here, at this juncture under given facts and circumstances of the case, the respondent No.1 to 5 have not made out prima facie case, balance of convenience in their

favour. The ingredients to grant temporary injunction are not satisfied. Hence, the application filed by the respondent No.1 to 5 deserves to be dismissed as devoid of merits. Accordingly, point No.1 and 2 held in **Negative**.

POINT No.3:

15. In the result, I proceed to pass the following:

O R D E R

Application filed by the respondent No.1
under Order 39 Rule 1 and 2 R/w Section
151 of C.P.C is hereby **dismissed**.

(Dictated to the Stenographer on computer, corrected and then pronounced by me in the open Court on this the **27th day of September 2025**)

**(Gururaj Somakkalavar),
III Addl. District and Sessions Judge,
Mysuru.**