

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote

Dated, this the 01st day of October, 2022

O.S.No. 74/2022

Plaintiff/s :

1. Rathanamma
W/o Late. Kendaganappa,
Aged about 70 years,
2. Sheelavathi
W/o Late. Adhiraj,
Aged about 50 years,
3. Lakshmi
W/o Srinivas
Aged about 44 years,
R/at N.Beguru Village,
Antharasanthe Hobli,
H.D.Kote Taluk, Mysuru District.
4. Rekha
W/o Parshwanath,
Aged about 42 years,

P1,2 and 4 are R/at Hirehalli,
Kandalike Hobli,
Saragu Taluk, Mysuru District.

(By Sh.Suhas. B.H., Advocate)

-V/s-

Defendant/s :

1. Vasantha
W/o Late. Ramesh
Aged about 45 years,
2. Rashmitha.R
D/o Late. Ramesh
Aged about 22 years,

3. Shobha
W/o Ningaraju
Aged about 43 years,
R/at Hunasekuppe, Antharasanthe Hobli,
H.D.Kote Taluk, Mysuru District.
4. Susheelamma
W/o Late. Puttaswamappa,
Aged about 60 years,
5. Lokesh
W/o Late. Puttaswamappa,
Aged about 37 years,
6. Nagamma
W/o Late. Puttasubappa,
Aged about 68 years,
R/at Hunasekuppe, Antharasanthe Hobli,
H.D.Kote Taluk, Mysuru District.
7. Pradeep Susainatha
Aged about 48 years,
R/at Hunasekuppe, Antharasanthe Hobli,
H.D.Kote Taluk, Mysuru District.

D1, 2, 4, 5 and 7 are R/at N.Beguru
Village, Antharasanthe Hobli,
H.D.Kote Taluk, Mysuru District.

(D4 & D5 by Sh. G.N.Narayanagowda.,
Advocate, D1,2, 3 & D6 Exparte)

PARTIES TO I.A. II

Applicant/ Plaintiff : Rathanamma

-V/s-

Opponents/Defendants : Vasantha & others

ORDER ON I.A.II

Vide this order, I shall decide an application under Order 39 rule 1 and 2 r/w Sec. 151 CPC filed by the plaintiffs.

2. The application is replied and contested on behalf of defendants no. 4 & 5.

3. The application arose out of suit for partition and separate possession and permanent injunction claiming the partition of the properties bearing sy.no. 59/1, 59/2 and 59/3 situated at N.Beguru Village, Antharasanthe Hobli, H.D.Kote Taluk (in short suit properties) in favor of plaintiffs and against the defendants thereby declaring that plaintiffs are the owner of 1/3rd share jointly in the suit properties. In addition, plaintiffs have claimed the decree of permanent injunction restraining the defendants from transferring, selling, parting with the possession, alienating, disposing off or creating third party interest in the suit properties.

4. The defendants no.4 & 5 have contested the suit and filed their written statement. Defendants no. 1 to 3, 6 and 5 have placed exparte.

5. I have heard Ld. counsel for the parties and have gone through the record of the case carefully.

6. For consideration of grant of relief of temporary injunction under Order 39 rule 1 & 2 CPC, the civil courts basically considers the three well known principles. Firstly, the plaintiff has to show a prima facie case in his favor, secondly balance of convenience is also in his favor and lastly they would suffer irreparable loss if interim injunction as prayed is not granted.

7. In the present application, the plaintiffs have claimed ad interim injunction in their favor and against the defendants thereby restraining them from alienating, transferring, selling, parting with the possession, disposing off or creating any third party interest to the extent of 1/3rd undivided share of the plaintiffs in the suit properties.

8. The prima facie case only means that there is a legal right vested in the plaintiffs and the defendants have infringed the same or intends to infringe the same so the matter requires investigation by way of evidence of parties to evaluate the pleadings of the parties to know which of the parties have legal right, title or interest in the suit properties. Both the parties have made rival claims as to the title/share in the suit properties therefore, matter requires investigation by way of evidence of the parties and the plaintiffs can be said to have the prima facie case in their favor.

9. As regards the creation of third party interest, the principle of balance of convenience and irreparable loss is evenly placed in favor of both the parties, therefore, in my view, the status quo should be preserved with regard to the title of the suit properties till the final disposal of the suit to avoid creation of any third party interest and multiplying the number of defendants.

10. In view of the above, the application is allowed. The defendants are restrained from raising any structure or selling, alienating or creating any third party interest in respect of the suit properties, during the pendency of the suit.

11. It is further important to mention here that the opinion express above shall not lay its impact upon the merits of the main case.

12. In view of the above, I proceed to pass the following;

ORDER

I.A.No.II filed by applicants/plaintiffs U/o 39 rule 1 &2 R/w Section 151 CPC is hereby allowed.

Consequently the defendants are restrained from raising any structure, transferring, selling, alienating, parting with possession or in any manner creating any third party interest in the suit properties till the disposal of the main suit.

It is further important to mention here that the opinion express above shall not lay its impact upon the merits of the main case.

No order as to cost in view of the relationship between the parties.

Issues framed and read over in the open court, for list of witness or list of documents and for P/E.

Call on: 20.10.2022

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 01st day of October, 2022)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote