

**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 29th day of July, 2022

O.S.No. 134/2021

Plaintiff/s : 1. Parvathamma
S/o Late. Kariyappa,
W/o Shivappa,
Aged about 60 years,
R/at Hullemala Village,
Kandalike Hobli, Saragur Taluk,

2. Premamma
D/o Late. Kariyappa,
W/o Shivapadappa,
Aged about 48 years,
R/at Kappasoge Village,
Hullahalli Hobli, Nanjangudu Taluk,

3. Bhagya
D/o Late. Kariyappa,
W/o Eshwarappa,
Aged about 45 years,
R/at Malali Village,
Chunchanakatte Hobli, K.R.Nagara Taluk,

(By Sh. K.S.Mohan., Advocate)

-V/S-

Defendant/s:

1. Prasanna
S/o Late Kariyappa,
Aged about 55 years,
2. Shivaraju
S/o Late Kariyappa,
Aged about 50 years,
D1 & 2 are R/at Alanahalli Village,

Hampapura Hobli,
H.D.Kote Taluk, Mysuru District.

3. Mahesh
S/o Boraiah,
Aged about 50 years,
R/at Keragalli Village,
Mysuru Taluk
Presently R/at K.G.Koppalu,
Mysuru city, Mysuru District.
4. Ravi
S/o Late. Mallegowda,
Aged about 38 years,
5. Mallesh
S/o Late. Mallegowda,
Aged about 36 years,

D4 & 5 are R/at D.Salundi Village,
Jayapura Hobli, Mysuru Taluk.

(D2 by Sh. S.Karigowda., Advocate,
D1,3 to 5 Exparte)

PARTIES TO I.A. II

Applicant/ Plaintiff : Parvathamma

-V/s-

Opponents/Defendants : Prasanna & 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 not replied and contested on behalf of defendants.

3. The application arose out of suit for partition and separate possession and permanent injunction claiming the partition of the properties bearing sy.no.1/1, 33, ¼, 33/1, 41/3, 43/3, 44/3, 33/2, 41/2, 43/2 and 44/2 Village Shindenahalli, Hobli Hampapura, H.D.Kote Taluk, Mysuru District (in short suit properties) in favor of plaintiffs and against the defendants thereby declaring that plaintiffs are the owners of 1/5th share collectively in the suit property. 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 have not contested the suit by filing their written statements.

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 1/5th 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 property. As of now the plaintiffs have made claim as to the title/share in the suit properties as coparceners therefore, matter requires investigation by way of evidence of the parties and the plaintiffs can be said to have the prima facie case in his favor.

9. As regards the creation of third party interest, the principle of balance of convenience and irreparable loss is placed in favor of plaintiffs, 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 applicant/plaintiff 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.

Put for P/E

Call on 18.08.2022

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 29th day of July, 2022)

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