

IN THE COURT OF THE ADDITIONAL CIVIL JUDGE & JMFC.,
AT HEGGADADEVANAKOTE.

PRESENT : **SRI. SURESHA.S.N** B.A., L.L.B.,
Addl. Civil Judge & JMFC
Heggadadevanakote

Dated:- 25th day of September 2024

O. S. No.18/2024

BETWEEN: Smt. Gowamma and another

//VERSUS//

AND : Sri. Naganayaka and others

I. A. No.I

APPLICANT/S: Smt. Gowamma
.....(Plaintiff No.1)

V/s

OPPONENT/S: Sri. Naganayaka and others
..... (Defendants)

i.	Provision under which the application is filed	Under order XXXIX Rule I & II of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	04.01.2024
iv.	Number of the application	I.A. No.I
v.	The date on which the objections are filed by different opponents	Memo filed on 27.05.2024 to treat the contents of W/s

		as objections to IA No.I
vi.	The date on which the orders were passed on the said application	25.09.2024

**ORDERS ON I.A. No.I UNDER ORDER
39 RULE 1 AND 2 OF C.P.C.**

The Applicant/plaintiff No.1 has filed Application/IA No.I under Order 39 Rule 1 & 2 of CPC seeking for an order of temporary injunction against the defendants restraining them from alienating the suit schedule properties in any manner till disposal of the suit.

2. In the accompanying application with IA No.I, the applicant/plaintiff No.1 has contended that, the plaintiffs have filed this suit against the defendants seeking relief of Partition and separate possession in the suit schedule property. The suit schedule property is originally belongs to Sri. Ranganayaka. Sri. Ranganayaka and his wife Smt. Chikkamma have got four children namely Gowramma (plaintiff No.1), Naganayaka (defendant No.1), Thimmanayaka, Dead by L.R. Smt. Gopamma (defendant No.2), Lakshmi (defendant No.3) and Nagesh (defendant No.4). The said Ranganayaka and Smt. Chikkamma were in possession and enjoyment of suit property along with plaintiffs and defendants. The said Ranganayaka was died on 20.01.2018 and Smt. Chikkamma

died on 19.08.2011. The husband of defendant No.2 and father of defendant No.3 & 4 Sri. Thimmanayaka was died around 6 years ago. After their death, the plaintiffs and defendants are in possession of the suit property. The suit schedule property is the ancestral and joint family property of both plaintiffs and defendants and there is no partition took place between them. The plaintiffs are also having rights over the suit property and the defendants have not allotted the share to the plaintiffs. The plaintiffs on several occasions requested the defendants to give their share in the suit property, but the defendants have not given any share. Dated 18.12.2023 the plaintiffs requested the defendants for their separate share in the suit property, but the defendants refused the same. There are several panchayaths held in this matter, and despite advise from the panchayathdars the defendants did not give any share to the plaintiffs. Hence, the plaintiffs have filed this suit against the defendants seeking partition and separate possession. The plaintiffs have made out a prima facie case and the balance of convenience lies in their favor. If the application is not allowed, great hardship and injury will be caused to the plaintiffs and very purpose of filing the suit will be frustrated. On the other hand, no hardship will be caused to the other side if the application is allowed. Hence, prays to allow the present application.

3. After service of suit summons, the defendants appeared before the Court through their counsel and defendant No.1 filed written statement along with a memo stating that the contents of W/s may be adopted as objections to IA No.1. In the W/s it is stated that the suit of the plaintiffs is not maintainable either in law or on facts and hence it is liable to be dismissed. Further it is admitted that, plaintiffs, defendant No.1 and husband of defendant No.2 are the children of Ranganayaka and Smt. Chikkamma. The suit property originally belongs to Ranganayaka purchased through registered sale deed dated 17.03.1981. After purchase the said Ranganayaka got changed the khatha of the suit property in his name and is in possession of the same till his death. Even during the lifetime of said Ranganayaka, the suit property was cultivated by the defendant No.1 and his brother late Thimmanayaka. Now the said Ranganayaka, Chikkamma and Thimmanayaka were dead. It is denied that the plaintiffs and defendants are in joint possession of the suit property. But the defendant No.1 alone is in possession of the suit property by cultivating the same. The averments made at plaint para No.3 & 4 are all concocted for the purpose of this suit and the plaintiffs have to prove the same. It is denied that the plaintiffs are having right over the suit property as it is a joint family property. It is further denied that on 18.12.2023 the plaintiffs

requested the defendants to give their separate share in the suit property, and the defendants have refused to give their share. The boundaries mentioned in the plaint schedule are incorrect.

4. Further it is contended that, the suit schedule property was purchased in the name of Ranganayaka when the defendant No.1 and the husband of defendant No.2 are in joint family status through registered sale deed dated 17.03.1981. At the time of purchase of suit property, the plaintiffs are married and settled in their husbands' house. The father of plaintiffs and defendant No.1 has no ancestral properties or any other property. At the time of purchase, Ranganayaka was aged about 60 years, and he was not in a position to earn at that age. The defendant No.1 has purchased the suit property out of his hard earned money in the name of his father who is the elder member of the joint family. The defendant No.1 was cultivating the suit land and he was in possession of the same since from the date of purchase. The father of defendant No.1 during his lifetime has executed unregistered Will in the presence of witnesses. After death of Ranganayaka, the defendant No.1 alone was doing agriculture in the suit land. The plaintiffs have illegally got changed the khatha of the suit property vide MRH 1/2020-21 on pouthi grounds. The said khatha is not binding over the defendants and it is null and void. The plaintiffs are not entitled to get any share in

the suit property. They have filed this false suit against the defendants with an intention to make unlawful gain. Hence prays to dismiss the suit as well as the present application.

5. Heard both sides on IA No.I.

6. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration.

- 1) Whether the plaintiff No.1 has established prima facie case?
- 2) Whether the balance of convenience lies in favour of plaintiff No.1 ?
- 3) Whether irreparable loss and hardship will be caused to the plaintiffs if injunction is not granted?
- 4) What order?

7. My findings to the above points are as under:

- Point No.1 : In the Affirmative
- Point No.2 : In the Affirmative
- Point No.3 : In the Affirmative
- Point No.4 : As per the final order
for the following,

REASONS

8. POINT NO.1 TO 3: Since these points are interlinked with each other they are taken up together for common discussion to

avoid repetition of same facts.

9. I have heard Learned counsels and have gone through the record of the case carefully. 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 plaintiffs have to show a prima-facie case in their favour, secondly balance of convenience is also in their favour and lastly they would suffer irreparable loss if interim injunction as prayed is not granted.

10. In the present application, the plaintiff No.1 has claimed temporary injunction in favour of herself and plaintiff No.2 and against the defendants thereby restraining them from alienating the suit schedule property in favor of any third parties in any manner till disposal of the suit.

11. The plaintiffs have filed the present suit against the defendants seeking relief of partition and separate possession in the suit schedule property contending that, suit schedule property is originally belongs to Sri. Ranganayaka. Sri. Ranganayaka and his wife Smt. Chikkamma have got four children namely Gowramma (plaintiff No.1), Naganayaka (defendant No.1), Thimmanayaka, Dead

by L.R. Smt. Gopamma (defendant No.2), Lakshmi (defendant No.3) and Nagesh (defendant No.4). The said Ranganayaka and Smt. Chikkamma were in possession and enjoyment of suit property along with plaintiffs and defendants. The said Ranganayaka was died on 20.01.2018 and Smt. Chikkamma died on 19.08.2011. The husband of defendant No.2 and father of defendant No.3 & 4 Sri. Thimmanayaka was died around 6 years ago. After their death, the plaintiffs and defendants are in possession of the suit property. The suit schedule property is the ancestral and joint family property of both plaintiffs and defendants and there is no partition took place between them. The plaintiffs are also having rights over the suit property and the defendants have not allotted the share to the plaintiffs. The plaintiffs on several occasions requested the defendants to give their share in the suit property, but the defendants have not given any share. Dated 18.12.2023 the plaintiffs requested the defendants for their separate share in the suit property, but the defendants refused the same. There are several panchayaths held in this matter, and despite advise from the panchayathdars the defendants did not gave any share to the plaintiffs.

12. On the other hand, the defendant No.1 filed written statement along with a memo to treat the contents of W/s as

objections to IA No.I. In the W/s the defendant No.1 has contended that the suit schedule property was purchased in the name of Ranganayaka when the defendant No.1 and the husband of defendant No.2 are in joint family status through registered sale deed dated 17.03.1981. At the time of purchase of suit property, the plaintiffs are married and settled in their husbands' house. The father of plaintiffs and defendant No.1 has no ancestral properties or any other property. At the time of purchase, Ranganayaka was aged about 60 years, and he was not in a position to earn at that age. The defendant No.1 has purchased the suit property out of his hard earned money in the name of his father who is the elder member of the joint family. The defendant No.1 was cultivating the suit land and he was in possession of the same since from the date of purchase. The father of defendant No.1 during his lifetime has executed unregistered Will in the presence of witnesses. After death of Ranganayaka, the defendant No.1 alone was doing agriculture in the suit land. The plaintiffs have illegally got changed the khatha of the suit property vide MRH 1/2020-21 on pouthi grounds. The said khatha is not binding on the defendants and it is null and void. The plaintiffs are not entitled to get any share in the suit property. They have filed this false suit against the defendants with an intention to make unlawful gain.

13. In support of their claim the plaintiffs have furnished computerized RTC extract, MRH1/2020-21, and also produced xerox copies of NCR acknowledgment, survey sketch and registered sale deed. On perusal of the RTC extract it reveals that the name of the plaintiff No.1 is appearing in the said RTC in column No.9 and in column No.10 it is mentioned as MR H1/2020-21 10/12/2020 pouthi. On the other hand, the defendant No.1 has furnished copy of unregistered partition deed dated 20.05.2013.

14. Hence, there is no way to disbelieve the version of applicant/plaintiff at this stage on documents available on record. If the present application is allowed, no hardship will arise to any of the parties.

15. 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/trial 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. The controversy is whether the defendants are intentionally trying to alienate the suit schedule property to third persons, which is triable issue and matter requires investigation by way of evidence of the parties and the plaintiffs can be said to have the prima-facie case in their favour.

16. It is common knowledge that plaintiff/appellant and petitioner apply for temporary injunction/stay in Courts but the Courts are generally loathed in granting injunction although the law in this regard is well settled. The Apex Court has time and again propounded triple test doctrine for the grant of temporary injunction, existence of prima facie case, balance of convenience and doctrine of irreparable injury, but more importantly all these tenets must co-exist together to enable the courts to exercise their judicial discretion in favour of the applicant. These three cardinal principles are to be applied in a proper perspective looking to the particular facts and circumstances of a case before deciding the grant of temporary injunction.

17. At the stage of passing an interlocutory orders such as on an application for the grant of ad-interim injunction under Rule 1 or 2 of Order 39 of the CPC, the competent court shall have to form its opinion on the availability of a prima facie case, the balance of convenience and irreparable injury – the three pillars on which rests the foundation of any order of injunction.

18. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court

satisfying that there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant. The Court's interference is necessary to protect the party from the species of injury. In other words irreparable injury or damage would ensue before the legal right would be established at trial and that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

19. The Hon'ble Apex Court in the case of **Shivakumar Chanda etc V/s. Municipal Corporation of Delhi reported in 1993 (3) SCC 161** held that, a party is not entitled to an order of an injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit.

20. The purpose of temporary injunction is, thus to maintain the status quo. The Court grants such relief according to the legal

principles, *ex debite justitiae*. Before any such order is passed the Court must be satisfied that a strong *prima facie* case had been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.

21. The Apex Court in the case of **Gujrath Bottling co. Ltd., V/s. Coco cola Co.**, reported in **AIR 1995 SC 2372** gave a landmark judgment as to the guidelines to be followed by the Court while considering applications for granting a temporary injunction. The Court held thus -

“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the Court applies the following tests:

- i. Whether the plaintiff has *prima facie* case,
- ii. Whether the balance of convenience is in favour of the plaintiff, and
- iii. Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

22. A finding on *prima facie* case would be a finding of fact. However, while arriving at such finding of fact the Court not only

must arrive at a conclusion that a case for trial has been made out but also other factors requisite for grant of injunction exist.

23. However it is pertinent that it may not be appropriate for any Court to hold a mini trial at the stage of grant of temporary injunction as held by Apex Court in S.M. Dyechem Ltd., V/s. M/s. Cadbury (India) Ltd., **AIR 2000 SC 2114**.

Prima facie case:- The expression prima facie is a latin expression meaning “**at first sight or based on first impression or on the face of it**”. Prima facie means that evidence brought on record would reasonably allow the conclusion that the plaintiff seeks. The term prima facie is used in modern law to signify that upon initial examination, sufficient, corroborating evidence appears to exist to support a case. In common law a reference to prima facie evidence denotes evidence that unless rebutted would be sufficient to prove a particular proposition or fact.

24. The Apex Court in **Gujarath Electricity Board Gandhinagar V/s Mahesh Kumar company, Ahamedabad** reported in **(1995) 5 SCC 545** elucidated the meaning of prima facie case thus prima facie case means that the Court should be satisfied that there is a serious question to be tried at the hearing,

and there is a probability of plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. Prima facie case is substantial question raised bonafide which needs investigation and a decision on merits. The Court at the initial stage cannot insist upon a full proof case warranting an eventual decree.

Principle of irreparable injury:- The second condition is that the applicant would suffer irreparable injury if the respondent/defendant is not injuncted. An irreparable injury is, in equity, the type of harm which no monetary compensation can cure or put conditions back the way they were. The term irreparable injury means injury which is substantial and could never be adequately remedied or atoned for by damages, injury which cannot possibly be repaired. It implies a substantial and continuous injury for which there does not exist any standard for ascertaining the actual damage likely to be caused. It is most opposite to mention here that 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, that cannot be adequately remedied or compensated by way of damages.

25. Thus, 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 it 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 be exercise its sound judicial discretion in granting or refusing the relief of interim injunction pending the suit.

26. In **Best sellers Retail (P) Ltd., V/s. Adithya Nirla Nuvo Ltd.**, reported in **(2012) 6 SCC 792** the Hon'ble Apex Court held that – only prima facie case alone is not sufficient to grant injunction and the court held thus –

"yet the settled principle of law is that even where prima facie case is in favour of the plaintiff, the court will refuse temporary injunction if the injury suffered by the plaintiff on account of refusal of temporary injunction was not irreparable."

Balance of convenience:- The applicant is required to prove in application for grant of temporary injunction that there is the

balance of convenience is in favour of the applicant i.e., the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant if the injunction is being refused. The balance of convenience come into picture when there is doubt as to the adequate remedies in damages available either to party or both.

27. The balance of convenience does not imply that the balance would be on one side and not in favour of the other. The Court must assess balance between the parties and take into consideration whether withholding the injunction will be greater than that which is likely to arise from granting it. In applying this principle the Court has to consider the amount of substantial mischief that is likely to be done to the applicant when the injunction is refused and compared it with that which is likely to be caused to the other side if the injunction is granted.

28. The Apex Court in **Dalpath kumar V/s. Prahlad Singh (Supra)** discussed the legal connotation of the term balance of convenience and held thus -

“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 compared it with that it is likely to be caused to the other side if the injunction is granted.”

29. In **Kashi Math Samstan V/s. Shrimad Sudheendra Thirtha Swamy** reported in **AIR 2010 SC 296** the Hon'ble Apex Court held that – no interim injunction in the absence of prima facie case even if the other requirements are fulfilled, interim injunction U/o 39 Rule 1 & 2 of CPC cannot be granted when the party is unable to prove prima facie case in his favour even if such party makes out a case of balance of convenience and irreparable injury.

30. In **Gowrishankara Swamygalu V/s. Sri. Siddaganga Mutt ILR 1989 Kar 1701 ; 1989 (2) Kar LJ 548** the Hon'ble Karnataka High Court held with the co existence of all the three pillars for grant of temporary injunction. The Court held thus -

“It need hardly add the existence of prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction.”

31. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being

accepted by the court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will have also be evaluated before granting or refusing the injunction.

32. As regards the creation of third party interest, the principle of balance of convenience and irreparable loss is tilted in favour of the plaintiff. Plaintiff shall suffer an “Irreparable loss which cannot be compensated in terms of money as rights in immovable properties are involved” if relief so prayed by them is not granted to them which shall result into multiplicity of litigation. On the other hand, it will not affect the interest of the defendants.

33. It is settled law that the very intention of granting temporary injunction is to be maintain the state of things as it is. This well settled legal preposition can be born out from the ratio laid down by the **Hon’ble High Court of Karnataka reported in 1999 (1) KLJ Page No.577 Smt.Rathnamma V/s B.A.Srinivasa Gupta and Others** where in it is held that:

“CPC 1908- Order 39 R.1 & 2 -Temporary injunction grant of finally purpose of the temporary injunction which

is only preventive relief, is to preserve property in dispute till legal rights of parties are settled. It is issue to keep things in status-quo pending litigation, so that suit is not rendered infructuous by unilateral acts of party. Where a party seeking temporary injunction has satisfied the court that there is question of law or fact to be tried in the suit, that courts interference is necessary to save him from irreparable injury and that comparative mischief which is likely to issue from with holding injunction will be greater than that which is likely to arise from granting it, parties entitled to relief.

34. Further, it is settled ratio laid down in **ILR 2004 KAR 4076**,

Fakirasab vs. Syedusab and others, wherein it is held that:

“CPC 1908, Order 39 R 1 & 2- object of, While considering an application for grant of temporary injunction, that right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit.

35. Further, the ratio laid down in **ILR 2007 KAR 1214**.

Smt.T.K.Gowramma vs. C.K.Raviprasanna wherein it is held that:

“CPC 1908 -Order 39 R 1 & 2 temporary injunction, the relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour for the trial.

36. In the light of these findings, I am of the opinion that as the plaintiff has established all the three essential ingredients in his favour, hence application U/o 39 Rule 1 & 2 CPC is liable to be allowed.

37. It is however, clarified that the observations made above are only for the purpose of disposal of the present application and shall not tantamount to be expression of opinion on the merits of suit. The issues that could be decided only by a full fledged trial. Hence, I answered Points No.1 to 3 in the **Affirmative**.

38. POINT NO.4: In view of my answers to the above points No.1 to 3, and the reasons assigned therein, I proceed to pass the following.

ORDER

I.A. No.I filed by applicant/plaintiff
No.1 U/o 39 rule 1 & 2 is hereby allowed.

Consequently the defendants are
hereby restrained from alienating the suit
schedule property in any manner in favor
of others till the disposal of the main suit.

No order as to cost.

*(Dictated to the Stenographer directly on computer, typed by her, the same is corrected, revised, signed and then pronounced by me in the open court, on this the **25th day of September 2024**).*

(SURESHA.S.N.)
Addl. Civil Judge & JMFC
H.D.Kote.