

**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:- 14th day of March 2023

O. S. No.20/2017

BETWEEN : Sri. Shankar lingappa

 //VERSUS//

AND Smt. Puttachandri and others

I. A. No.I

APPLICANT/S: Sri. Shankar lingappa

 (Plaintiff)

 - V/s -

OPPONENT/S: Smt. Puttachandri and others

 (Defendants)

**ORDERS ON IA No.1 FILED UNDER ORDER
39 RULE 1 AND 2 OF CPC**

The applicant/plaintiff has filed Application under Order 39
Rule 1 & 2 of CPC seeking for an order of temporary injunction

against the defendants restraining the defendants, their agents, servants or anybody acting on behalf of them from alienating the suit schedule property to others in any manner till disposal of the suit.

2. This application is supported by the affidavit of plaintiff wherein it is contended that, he has filed this suit for the relief of partition and separate possession of his share over the suit schedule property. The suit schedule property bearing Sy. No.12/3 measuring 1 acre 20 guntas situated at Narasipura village, Kandalike Hobli, H.D. Kote Taluk, is the ancestral joint family property of plaintiff and defendants and they are in joint possession and enjoyment of the same. There is no partition taken place between them with respect to the suit property. The plaintiff and defendants are cultivating the suit property jointly and enjoying the same. When such being the case, the differences arose between them. Taking advantage of the same, the defendants colluding each other are making hectic attempt to get the khatha of the suit property to their name

and making hurried attempt to alienate the same to some third person without giving share to plaintiff with a malafide intention to defeat and defraud the share of plaintiff. If the defendants succeed in their illegal attempt of alienation, the plaintiff will be put to untold hardship and injury, and further it will lead to multiplicity of proceedings. Without the aid of Court, the plaintiff cannot resist the illegal act of the defendants. The plaintiff has made out a prima facie case and balance of convenience lies in his favor. If the application is not allowed, the plaintiff will be put to untold hardship, injury and inconvenience and the 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 application.

3. After service of suit summons, defendant No.2 to 7 appeared through their counsel and filed objection to the application stating that, the application filed by the plaintiff is not maintainable either in law or facts and same is liable to be

dismissed in limn. The plaintiff has no manner of right or interest over the suit property as it was allotted to defendant No.4 by way of family arrangement and the suit property is in the sole possession of defendant No.4. The defendant No.4 nor any of the defendants are not intended to sell the suit property and the plaintiff has narrated a false story only to file the impugned application and to obtain a order illegally. Hence, the question of alienation does not arise at all. The plaintiff has not property explained as to what the hardship or inconvenience will be caused to the plaintiff if the impugned application is not allowed. As the defendants are not intend to sell the suit property, the impugned application is liable to be dismissed with costs.

4. Heard both the counsels. The counsel for plaintiff submitted written arguments.

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

- 1) Whether the plaintiff has established prima facie case?
 - 2) Whether the balance of convenience lies in favour of plaintiff?
 - 3) Whether irreparable loss and hardship will be caused to the plaintiff if injunction is not granted?
 - 4) What order?
6. 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

7. Point No.1 to 3: Since these points are interlinked with each other they are taken up together for common discussion to avoid repetition.

8. This is a suit filed by the plaintiff seeking relief of

partition and separate possession in the suit schedule property. The contention of plaintiff is that, suit schedule property is the ancestral joint family property of plaintiff and defendants and they are in joint possession and enjoyment of the same. There is no partition taken place between them with respect to the suit property. The plaintiff and defendants are cultivating the suit property jointly and enjoying the same. When such being the case, the difference arose between them. Taking advantage of the same, the defendants colluding each other are making hectic attempt to get the khatha of the suit property to their name and making hurried attempt to alienate the same to some third person without giving share to plaintiff with a malafide intention to defeat and defraud the share of plaintiff

9. In support of the contention the plaintiff has placed on record RTC extract in respect of Sy. No.12/3 to the extent 1 acre 20 guntas for the year 2016-17 standing in the name of father of plaintiff i.e., Lingappa S/o Muddappa and in column

No.10 it is mentioned as MR 1/2000-01 others 31-7-2000, MR extract in MR No.2/2002-03. The plaintiff has also furnished family tree affidavit. On perusal of the entire documents placed by the plaintiff it appears that, suit schedule property is the absolute property of father of plaintiff and defendants i.e., Lingappa.

10. On the other hand, the defendants except filing written statement has not furnished documents pertaining to the suit schedule property.

11. 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 plaintiff has to show a prima-facie case in his favour, secondly balance of convenience is also in his favour and lastly he/she would suffer irreparable loss if interim injunction as prayed is not granted.

12. In the present application, the plaintiff has claimed interim injunction in his favour against the defendants thereby restraining them from alienating the suit schedule property in any manner till the disposal of the suit.

13. 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.

14. The prima facie case only means that there is a legal right vested in the plaintiff 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 plaintiff is entitled for share, which is triable issue and matter requires investigation by way of evidence of the parties and the plaintiff can be said to have the prima-facie case in her favour.

15. 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 her is not granted to her which shall result into multiplicity of litigation. On the other hand, it will not affect the interest of the defendant.

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 U/o 39 rule 1 & 2 is hereby allowed.

Consequently the defendants, their agents, servants or any body acting on behalf of them are restrained from alienating the suit schedule property in any manner 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 **14th day of March 2023.**)*

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