

**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:- 27<sup>th</sup> day of February 2024

**O. S. No.82/2019**

**BETWEEN :**                    Smt. Neelamma

//VERSUS//

**AND :**                            Smt. Puttananjamma and others

**I. A. No.I**

APPLICANT/S:    Smt. Neelamma

.....(Plaintiff)

- V/s -

OPPONENT/S:    Smt. Puttananjamma 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     | 02.03.2019                           |
| iv.  | Number of the application                      | I.A. No.I                            |

|     |                                                                   |                      |
|-----|-------------------------------------------------------------------|----------------------|
| v.  | The date on which the objections are filed by different opponents | Objections not filed |
| vi. | The date on which the orders were passed on the said application  | 27.02.2024           |

**ORDERS ON IA No.I 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 defendant No.1 & 8 restraining them from alienating the suit schedule properties in any manner till disposal of the suit.

2. This application is supported by the affidavit of plaintiff wherein it is contended that, suit schedule properties are the joint family properties of plaintiff and defendant No.1 to 5, originally standing in the name of grand father of plaintiff late Bhogappa. After the death of Bhogappa, the suit properties came to the father of plaintiff Kalaswamappa and he was in possession of the same. After his death, the plaintiff and defendant No.1 to 5 were in joint possession of the same by cultivating the same. But on 15.05.2000 the defendant No.4 & 5 have illegally sold the suit properties in favour of defendant No.6. Thereafter the defendant No.6 has sold 4 acres in suit item No.1 property in favour of defendant No.7 on

26.09.2008. Similarly the defendant No.4 has illegally sold suit item No.2 property in favour of defendant No.8 on 28.04.2008. The said sale deeds are not binding over the plaintiff. The suit item No.3 & 4 properties are changed into the names of defendant No.2, 4 and 5 illegally without the knowledge of this plaintiff on pouthi grounds through MR No.1/95-96 and 18/2017-18. The plaintiff has challenged the said khatha before Asst. Commissioner, Hunsur, and the said appeal is pending for adjudication. The suit schedule properties are the joint family properties and there is no partition took place, but now the defendant No.2 to 4 and 7 are trying to alienate the same. Hence, the plaintiff has convened panchayath in the village and requested for partition of the suit schedule properties. But they have not made any partition. Hence, plaintiff has filed this suit against the defendants seeking partition along with the present application. Hence, prays to allow the application.

3. In spite of giving opportunities, the defendants have not filed objections to the present application. Hence, objections to the present IA No.I is taken as not filed.

4. Heard both the counsels.

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 Negative
  - Point No.2 : In the Negative
  - Point No.3 : In the Negative
  - 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 against the defendants. The contention of plaintiff is that, suit schedule properties are the joint family properties of plaintiff and defendant No.1 to 5, originally standing in

the name of grand father of plaintiff late Bhogappa. After the death of Bhogappa, the suit properties came to the father of plaintiff Kalaswamappa and he was in possession of the same. After his death, the plaintiff and defendant No.1 to 5 were in joint possession of the same by cultivating the same. But on 15.05.2000 the defendant No.4 & 5 have illegally sold the suit properties in favour of defendant No.6. Thereafter the defendant No.6 has sold 4 acres in suit item No.1 property in favour of defendant No.7 on 26.09.2008. Similarly the defendant No.4 has illegally sold suit item No.2 property in favour of defendant No.8 on 28.04.2008. The said sale deeds are not binding over the plaintiff. The suit item No.3 & 4 properties are changed into the names of defendant No.2, 4 and 5 illegally without the knowledge of this plaintiff on pouthi grounds through MR No.1/95-96 and 18/2017-18. The plaintiff has challenged the said khatha before Asst. Commissioner, Hunsur, and the said appeal is pending for adjudication. The suit schedule properties are the joint family properties and there is no partition took place, but now the defendant No.2 to 4 and 7 are trying to alienate the same.

9. In support of the contention the plaintiff has placed on record RTC extracts, MR extracts, copy of registered sale deed dated

15.05.2000, copy of registered sale deed dated 28.04.2008, copy of registered sale deed dated 26.09.2008, copy of Aadhar card. On perusal of the said documents it reveals that the the dispute of the parties only decided on full fledged trial. Hence, at this stage Court cannot grant a temporary injunction against the defendants only on the available documents. This Court relied the Judgement of Hon'ble High Court in *R. Dilip Kumar v. S. Ramu* reported in ILR 1992 KAR 2905 has held that "It cannot be disputed that in order to entitle to a temporary injunction, the plaintiff must have a clear prima facie case. Where there is doubt about the case of the plaintiff or when the case of the plaintiff is not clear, this extraordinary relief of temporary injunction cannot be granted to him."

10. It is common knowledge that plaintiffs/appellants and petitioners 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.

11. At the stage of passing an interlocutory order 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.

12. 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.

13. The Apex Court in the case of **Shivakumar Chanda etc V/s. Municipal Corporation of Delhi reported in 1993 (3) SCC 161** reiterated the dictum and held thus – it has been pointed out repeatedly 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. It is appropriate to refer the judgment in **Dalpath Kumar V/s. Prahlad Singh** wherein it is elucidated the doctrine of irreparable injury and its necessity besides the existence of prima facie case and observed thus :

“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.”

20. 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 exercise its sound judicial discretion in granting or refusing the relief of interim injunction pending the suit.

21. In **Best sellers Retail (P) Ltd., V/s. Adithya Nirla Nuvo Ltd.**, reported in **(2012) 6 SCC 792** the 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.

22. 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.

23. 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.”

24. 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.

25. 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.”

26. 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.

27. With respect to the questions of balance of convenience and irreparable injury, since both parties are claiming right over the same subject matter, if an injunction is granted then a possibility cannot be ruled out that it may cause hardship. Hence for these reasons and in view of the law laid down by the **Hon'ble High**

**Court in R. Dilip Kumar v. S. Ramu** (referred supra), I am of the considered opinion that at this stage it is not proper to grant the extra ordinary relief of temporary injunction. Accordingly, points No.1 to 3 are answered in the **Negative**.

**28. 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 rejected.

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 27<sup>th</sup> day of February 2024.).*

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