

suit schedule properties 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, plaintiff is the only daughter of late P.Shivanna. The suit schedule properties are the ancestral properties of plaintiff's grand father late Puttegowda, and it was not partitioned among the children of Puttegowda. The said Puttegowda died on 14.04.2019. The defendants have no sole right to alienate any of the suit properties. The defendant No.6 by taking advantage that suit item No.2 property stands in his name is trying to alienate the said property. Similarly suit item No.4 property is the joint family property, but defendant No.7 got changed the khatha of suit item No.4 property into his name illegally and now trying to alienate the said property to others. As the father of plaintiff was dead, the defendants are trying to alienate the joint family properties by changing khatha into their names without giving share to the plaintiff. The suit properties are the ancestral joint family properties of both plaintiff and defendant No.1 to 6 and

defendant No.1 was managing the joint family as kartha. The plaintiff came to know that defendants are trying to alienate the suit schedule properties, then the plaintiff demanded the defendants for her share in the suit properties dated 17.10.2020, but the defendants refused. Even the plaintiff approached panchayath, and in spite of advice of panchayathdars the defendants did not come forward to give the plaintiff her share in the suit properties. The suit item No.2 & 4 properties are standing in the name of defendants. Hence, the plaintiffs are constrained to file the suit along with this application.

3. After service of suit summons, defendant No.4 & 7 appeared through their counsel and filed separate written statement along with memo. The contents of their w/s are one and same. The w/s may be treated as objections to the said application by partly admitting the genealogy mentioned in the plaint at para No.2. It is admitted that Venkategowda has three sons namely Puttegowda, Nagegowda and Elakkigowda. The said Puttegowda died on 14.04.2019. But it is denied that

after death of Puttegowda suit properties are partitioned in MR No.1/2008-09 and after the death of Puttegowda, his L.Rs are in joint possession of joint family properties. The defendant No.1 is the wife of Puttegowda, they have got five children, among them P Shivanna is dead. The defendant No.3 to 6 are the brothers and sisters of father of plaintiff i.e., P Shivanna. The defendant No.2 is the wife of P Shivanna. They have got two daughters i.e., plaintiff and one Kavana. The said Kavana was dead and now plaintiff is the only daughter. It is further contended that, the defendant No.7 has purchased 1 acre out of total extent 1.12 acres in suit item No.4 property from grand father of plaintiff i.e., Puttegowda dated 06.02.2019 through registered sale deed for valuable consideration of Rs.3,00,000/- and he is in possession and cultivating the said property from the date of purchase. The plaintiff is well aware of the said fact, but has impleaded the said item No.4 property in the suit only with an intention to harass the defendant No.7. Excluding the said item No.4 property, this defendant has got equal share in other properties also. The plaintiff has not impleaded other properties situated at Kattehundi village, Hampapura Hobli i.e.,

Sy. No.15/13, 15/4 and 25/5, house and vacant site in the suit.

Hence, prayed to dismiss the application.

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 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 properties. The contention of plaintiff is that, she is the only daughter of late P.Shivanna. The suit schedule properties are the ancestral properties of her grand father late Puttegowda, and it was not partitioned among the children of Puttegowda. The said Puttegowda died on 14.04.2019. The defendants have no sole right to alienate any of the suit properties. The defendant No.6 by taking advantage that suit item No.2 property stands in his name is trying to alienate the said property. Similarly suit item No.4 property is the joint family property, but defendant No.7 got changed the khatha of suit item No.4 property into his name illegally and now trying to alienate the said property to others. As the father of plaintiff was dead, the defendants are trying to alienate the joint family

properties by changing khatha into their names without giving share to the plaintiff. The suit properties are the ancestral joint family properties of both plaintiff and defendant No.1 to 6 and defendant No.1 was managing the joint family as kartha. The plaintiff came to know that defendants are trying to alienate the suit schedule properties, then the plaintiff demanded the defendants for her share in the suit properties dated 17.10.2020, but the defendants refused. Even the plaintiff approached panchayath, and in spite of advice of panchayathdars the defendants did not come forward to give the plaintiff her share in the suit properties. The suit item No.2 & 4 properties are standing in the name of defendants.

9. In support of her contention the plaintiff has placed some documents at this stage, some of them are genealogical tree, xerox copies of death certificates of her grand father Puttegowda, father Shivanna and sister of plaintiff by name Kavana, copy of ration card, copy of SSLC marks card of plaintiff, copy of RTC extract in respect of Sy. No.15/4 to the extent 1.04 acres for the year 2019-20, wherein the names of

Puttegowda and his brother Nagegowda are appearing in column No.9 of RTC and it is also mentioned as MR 11/85-86 ಕ್ರಯ in column No.10. RTC extract in respect of Sy. No.15/7 for the year 2019-20 for the extent 1 acre wherein the name of defendant No.6 is appearing in column No.9 and it is mentioned as MR H2/2019-20 14.08.2019 (ಕೋ.ಆ) ದಾನ. RTC bearing Sy. No.25/5 to the extent 31 guntas wherein the name of grand father of plaintiff Puttegowda is appearing and it is mentioned as MR 1/2008-09 23.07.2008 ವಿಭಜನೆ. RTC extract bearing Sy. No.25/3 to the extent 12 guntas wherein the name of Puttegowda is appearing and it is mentioned as MR 1/2008-09 23.07.2008 ವಿಭಜನೆ. The name of defendant No.7/Ramesh is appearing in column No.9 and it is also mentioned as MR H3/2019-20 14.08.2019 (ಕೋ.ಆ) ಕ್ರಯ. MR extracts, index of lands, copy of registered gift deed executed dated 20.03.2019, certified copy of registered sale deed dated 06.02.2019, xerox copy of demand register extract.

10. On perusal of the entire documents placed by the plaintiff it appears that, the plaintiff and defendants are the joint family members, the suit schedule properties are standing in the names of Puttegowda, Nagegowda, Jayanthi and Ramesh. The plaintiff in the plaint averred that, the suit schedule properties are originally belongs to Venkategowda, after his demise, his three sons Puttegowda, Nagegowda and Elakkigowda have partitioned the properties of Venkategowda. The Puttegowda has executed gift deed in favour of defendant No.6 pertaining to the land bearing Sy. No.15/7 measuring 1 acre, land bearing Sy. No.15/4 measuring 1 acre 4 guntas came to the share of Puttegowda, the said property was purchased by the father of Puttegowda i.e., Venkategowda. The sale deed and gift deed executed by Puttegowda in favour defendant No.6 is not binding to the share of plaintiff. The said properties are the joint family properties originated from Venkategowda.

11. On the other hand, defendants have filed written statement by partly admitting the genealogy mentioned in the

plaint at para No.2. It is admitted that Venkategowda has three sons namely Puttegowda, Nagegowda and Elakkigowda. The said Puttegowda died on 14.04.2019. But it is denied that after death of Puttegowda suit properties are partitioned in MR No.1/2008-09 and after the death of Puttegowda, his L.Rs are in joint possession of joint family properties. The defendant No.1 is the wife of Puttegowda, they have got five children, among them P Shivanna is dead. The defendant No.3 to 6 are the brothers and sisters of father of plaintiff i.e., P Shivanna. The defendant No.2 is the wife of P Shivanna. They have got two daughters i.e., plaintiff and one Kavana. The said Kavana was dead and now plaintiff is the only daughter. It is further contended that, the defendant No.7 has purchased 1 acre out of total extent 1.12 acres in suit item No.4 property from grand father of plaintiff i.e., Puttegowda dated 06.02.2019 through registered sale deed for valuable consideration of Rs.3,00,000/- and he is in possession and cultivating the said property from the date of purchase. The plaintiff is well aware of the said fact, but has impleaded the said item No.4 property in the suit only with an intention to harass the defendant No.7. Excluding

the said item No.4 property, this defendant has got equal share in other properties also. The plaintiff has not impleaded other properties situated at Kattehundi village, Hampapura Hobli i.e., Sy. No.15/13, 15/4 and 25/5, house and vacant site in the suit. In support of the contention, they have furnished copy of registered sale deed executed dated 06.02.2019, copy of sketch, copy of EC, RTC extracts, MR extracts.

12. 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.

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

14. There is no way to disbelieve the version of applicants/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 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 are restrained from alienating the suit schedule properties 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 **23rd day of January 2023.**)*

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