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**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE  
AND J.M.F.C AT HUNSUR**

**Present:** Smt.Anitha, B.A. (Law) L.L.B.,  
Addl. Senior Civil Judge & JMFC.,  
Hunsur.

**Dated this the 30<sup>th</sup> day of November, 2024.**

**OS No.41/2024**

Plaintiff: Smt.H.J.Chaithra,  
W/o Javaranyaka,  
Aged about 22 years,  
R/at Hullenahalli village,  
Bilikere Hobli, Hunsur Taluk,  
Mysuru District.

-Vs-

Defendants: 1. Sakamma, W/o Late Kullanyaka,  
Aged about 80 years, R/at Hullenahalli  
village, Bilikere Hobli, Hunsur Taluk,  
Mysuru District. (1<sup>st</sup> defendant is dead  
by her Lrs the 2<sup>nd</sup> defendant)

2. Sri.Javaranyaka,  
S/o Late Kullanyaka, Aged about  
60 years, R/at Hullenahalli village,  
Bilikere Hobli, Hunsur Taluk,  
Mysuru District.

3. Smt.Gowramma, W/o Javaranyaka,  
Aged about 50 years, R/at Hullenahalli  
village, Bilikere Hobli, Hunsur Taluk,  
Mysuru District.

4. Smt.Neelamma, W/o Javarayanayaka, Aged about 45 years, R/at Hullenahalli village, Bilikere Hobli, Hunsur Taluk, Mysuru District.
5. Smt.Rathna, D/o Javarayanayaka, W/o Rajanayaka, Aged about 28 years, R/at Maralayyanakoppalu village, Bannikuppe Post, Kasaba Hobli, Hunsur Taluk, Mysuru District.
6. Smt.Rani, D/o Javarayanayaka, W/o Mooralappanayaka, Aged about 24 years, R/at Bannur village, Hasiru Beedi Market Road, Bannuru Post, Bannur Hobli, T.Narasipura Taluk, Mysuru District.
7. Sri.M.Manjunatha, S/o Late Madappa, R/at Koorgalli village, Ilavala Hobli, Mysuru Taluk and Mysuru District.
8. Sri.Sathisha N., S/o Late Nagegowda, R/at Subhashnagara, Opposite Taluk Office, K.R.Pete Town, K.R.Pete Taluk, Mandya District.

1.	Provision under which the application is filed	:	Under Order 39 Rule 1 and 2 of CPC
2.	Relief sought for	:	For grant of Temporary Injunction
3.	The date on which the application is filed	:	09.02.2024
4.	Number of the application	:	IA No.I
5.	The date on which the objection is filed by different opponents	:	16.10.2024
6.	The date on which the orders passed on the said application	:	30.11.2024

**ORDERS PASSED ON IA NO.I**

The learned counsel for the plaintiff filed I.A No.I under Order 39 Rule 1 and 2 of CPC seeking for an order of temporary injunction restraining the 8<sup>th</sup> defendant, his agents or anybody claiming on his behalf from alienating the suit schedule property in favour of anybody pending disposal of the suit.

2. The application is supported with the affidavit of the plaintiff stating that, the suit schedule property is her ancestral property and herself and defendants No.1 to 6 are having equal 1/5<sup>th</sup> share in the suit schedule property. It is further alleged that, on 05.12.2013 her grandmother the 1<sup>st</sup> defendant, her grandfather by name Kullanayaka, her father 2<sup>nd</sup> defendant and her aunts defendants No.4 to 6 have sold the suit schedule property in favour of the 7<sup>th</sup> defendant for sale consideration of Rs.1,73,000/-. She came to know about the same in a later stage and if the 7<sup>th</sup> defendant on the basis of the sale deed is going to sell the property it will prejudice her legitimate right over the suit schedule property. On 05.12.2016 the 7<sup>th</sup> defendant in order to deprive the right of the plaintiff over the suit schedule property sold the same in favour of 8<sup>th</sup> defendant for total consideration of Rs.8,63,000/- illegally. Now the 8<sup>th</sup> defendant is making attempt to alienate the suit schedule property in favour of other persons. If the application is not allowed the plaintiff will be put to great hardship. Hence, prayed to allow the application.

3. The 3<sup>rd</sup> defendant filed the written statement and the same has been considered as objection to I.A.No.I. In the written-statement the 3<sup>rd</sup> defendant admitted the relationship between the parties. Further the 3<sup>rd</sup> defendant admitted that the suit schedule property is the ancestral property. She has specifically contended that, in order to deprive their right over the suit schedule property it has been sold in favour of the 7<sup>th</sup> defendant. She has also admitted that, the 7<sup>th</sup> defendant illegally sold the suit schedule property in favour of the 8<sup>th</sup> defendant. The 3<sup>rd</sup> defendant denied about the legal notice and prayed to dismiss the suit of the plaintiff with costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiff and the 3<sup>rd</sup> defendant and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

#### **POINTS**

1. Whether the plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of the plaintiff?
3. Whether irreparable loss and hardship is going to be caused to the plaintiff if an order of temporary injunction is not granted which cannot be compensated in terms of money?
4. What order?

5. The findings of the above points are as hereunder:

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**

6. **Point No.1 to 3:** Since, these points are inter connected with each other and needs common discussion on the same set of facts and to avoid repetition of facts, these points are taken up together for discussion.

7. This is the suit filed by the plaintiff against the defendants seeking the relief of partition and separate possession of her 1/5<sup>th</sup> share in the suit schedule property. The 1<sup>st</sup> defendant is the grand mother of the plaintiff, 2<sup>nd</sup> defendant is father of the plaintiff, 3<sup>rd</sup> defendant is mother of the plaintiff, 4<sup>th</sup> defendant is Aunt of the plaintiff who is 2<sup>nd</sup> wife of her father. Defendants 5 and 6 are the children of 2<sup>nd</sup> defendant through his 2<sup>nd</sup> wife defendant No.4. Defendants No.7 and 8 are the purchasers of suit schedule property. As per the plaintiff the suit schedule property is ancestral property of herself and defendants No.1 to 6.

8. Such being the case on 05.12.2013 the defendants No.1 to 6 colluded with each other and sold the suit schedule property in favour of the 7<sup>th</sup> defendant for total consideration of Rs.1,73,000/- and thereafter on 05.12.2016 the 7<sup>th</sup> defendant sold the suit schedule property in favour of the 8<sup>th</sup> defendant for consideration of Rs.8,63,000/-. As per the plaintiff on

several occasions she has demanded her share with the defendants. At last she filed the suit.

9. It is pertinent to note that, only the 3<sup>rd</sup> defendant filed the written statement. Defendant No.1 has been reported dead and her legal heirs are on record. Defendants No.2, 5 to 7 inspite of service of summons not chosen to appear before the court and they have been placed exparte. Defendant No.8 inspite of putting appearance not filed the written-statement. It is very much necessary to mention that the 3<sup>rd</sup> defendant admitted the suit of the plaintiff but taken up the contention that the suit is barred by limitation and prayed to dismiss the suit.

10. In support of the case the plaintiff produced the office copy of the legal notice dated 08.12.2023, the postal receipts and the endorsements issued by post-office about service of notice. The plaintiff also produced the sale deed executed in favour of the 7<sup>th</sup> defendant and produced the RTC as well as mutation register extract which shows that now the suit schedule property is standing in the name of defendant No.8. Now apprehension of the plaintiff is that on the strength of sale deed and revenue records the 8<sup>th</sup> defendant is now making attempt to alienate the suit schedule property to the 3<sup>rd</sup> parties. If the 8<sup>th</sup> defendant succeeds in his attempt it will cause more hardship to the plaintiff rather to the defendants. Further, the 8<sup>th</sup> defendant not disputed the case of the plaintiff. Therefore, this court comes to conclusion that, the

plaintiff has made a prima-facie case and the balance of convenience lies in favour of the plaintiff. If an order of temporary injunction is not granted definitely the plaintiff will be put great hardship which cannot be compensated in terms of money. Accordingly, point No.1 to 3 are answered in the affirmative.

11. **Point No.4:** In view of the reasons discussed above, this court proceeds to pass the following:

**ORDER**

IA No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed with costs of Rs.300/-.

The 8<sup>th</sup> defendant or anybody acting on his behalf are hereby restrained by an order of temporary injunction from alienating the suit schedule property infavour of 3<sup>rd</sup> parties pending disposal of the suit.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, the transcript corrected and pronounced by me in the open court on this the 30<sup>th</sup> day of November, 2024.)

**(Anitha)**

Addl. Senior Civil Judge and JMFC,  
Hunsur.