

KAMS300007762024



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C., HUNSUR.**

Present: **Zaibunnisa, B.Com., L.L.B.,**
Prl. Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 30th day of November 2024

O.S.NO.146/2024

Plaintiffs : Smt. Selvi V and others

V/s

Defendants: Smt. P. Virudhambal and others

I.A. No. II and III

Applicant : Smt. Selvi V and others

V/s

Opponents : Smt. P. Virudhambal and others

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| Provision of IAs filed | : | IAs II and III U/O 39 Rule 1 and 2 of CPC |
| Relief sought | | Temporary injunction |
| Date of filing IA No.II & III | : | 03.06.2024 |
| Number of IAs | | IA No.II and III |
| Date of objections filed by the defendant No.3 and 4 | : | 26.09.2024 |
| Date on which the order passed on the application | : | 30.11.2024 |

ORDERS ON IA No.II AND III

The plaintiffs have filed these two applications under similar provision of Order 39 Rule 1 and 2 of CPC, one is to restrain the defendants their family members, their agents or anybody acting and claiming under them from alienating the suit schedule properties and another is to direct the defendants not to cut and remove the trees standing the suit schedule properties, pending disposal of the suit.

2. After appearance of the defendants, defendant No.3 and 4 have filed their separate objections to the applications. For the purpose of brevity, the facts stated in the affidavit annexed to the applications and objections will be stated at appropriate stage of the orders.

3. Heard both side arguments and perused the materials placed and available on record.

4. On the basis of the rival contentions, the following points would arise for my consideration,

1. Whether the plaintiffs have made out a prima-facie case in their favour to allow the applications?

2. Whether balance of convenience lies in favour of the plaintiffs ?

3. Whether irreparable loss and injury will be caused to the plaintiffs in case of non-granting temporary injunction as sought for in IA No.II and III?

4. What order?

REASONS

5. **Point No.1 to 3:** Since these points are interlinked with each other, they are taken up together for consideration in order to avoid repetition of facts and material circumstances.

6. It is the suit filed by the plaintiffs seeking their shares in the suit schedule properties. The plaintiffs also brought the applications on hand seeking interim relief of temporary injunction against the defendants apprehending the alienation of the suit properties and also to restrain them from cutting and removing the trees standing in the suit schedule properties during the pendency of the suit. According to the plaintiff No.1, her father M. Ponnuswamy, during his lifetime, had purchased the suit schedule properties under sale deed dated 22.10.1990 from one Sri. Mathew P Ninan. Thereafter all the revenue records were transferred in his name and he was in possession and enjoyment of the said properties.

It is further stated that Late M Ponnuswamy died on 17.01.2006, thereafter the revenue records were transferred to the name of her mother Smt. Virudambal, the defendant No.1. After the death of her father all his legal heirs have been in joint possession and enjoyment of the suit schedule properties and there

has been no partition so far. Apart from the landed properties a dwelling house and shops are there, which are commercial in nature and are fetching rents which is exclusively enjoyed by the defendant No.1 to 3. The plaintiffs have been requesting the defendant No.1 to 3 to divide the properties in accordance with law and to grant respective shares but the defendant No.1 to 3 have denied their shares in the suit schedule properties.

It is further submitted that the schedule A property contains areca nut, coconut and teak wood trees. the profits derived from the same is denied to them. In spite of repeated requests for the share in the schedule properties the defendant No.1 to 3 are denying their rightful share in the schedule properties. The 1st defendant had create a charge on the property by mortgage as could be gathered from the encumbrance certificate issued by the authority concerned wherein the defendant No.1 has discharged the sum of Rs.20,56,200/- as on 26-8-2006. Therefore, the plaintiffs approached this court with the suit to claim their share in the suit schedule properties and also the applications on hand seeking the interim relief of temporary injunction to restrain the defendants from alienating the suit schedule properties and also from cutting and removing the trees standing the suit schedule properties during the pendency of the suit.

7. Per contra the defendant No.3 and 4 have filed their separate objections to the applications and contended that suit of the plaintiffs is not maintainable in law. The plaintiffs are guilty of "suppression varie and suggestio Falsie" the plaintiffs suppressed the true and real facts before the court and not approached the court with clean hands while seeking equitable reliefs, therefore, they are not entitled for the equitable relief. The plaintiffs in order to achieve their illegal desire of swindling the properties and to

extract money from them with an intention to gain wrongfully. They have no *locus standi* to file the suit or the present applications. These defendants are in lawful possession of the properties and the plaintiffs, with an intention to cause hardship and loss have created the documents and filed the suit. The property is not self acquired property of M Ponnuswamy but it was purchased with the hard earn money of defendant No.1, 3 and 4 but it was registered in the name of their father Ponnuswamy. Under such circumstances, the plaintiffs have not made out any prima facie case and the balance of convince tilt in favour of the defendants. The adjacent owners encroached on all the four sides of the suit schedule item No.1 property. The said adjacent owners are not made as parties to the suit as some portion of the properties are in their possession. The defendant No.1 has filed necessary petition before the court for taking the possession of the same.

It is further submitted that these defendants never cutoff any trees as alleged by the plaintiffs in the applications, the adjacent owners who are in illegal possession of a portion of property may cut the trees and may utilize. Further, all the teak, coconut and other trees are grown by the defendant No.3 and 4 by investing huge money and they never cut any trees as alleged by the plaintiffs. Hence prayed to dismiss the applications.

8. In the backdrop of above stated facts and circumstances, when I have gone through the materials available on record one thing is very clear that, the defendants are none other than the children and grand children of defendant No.1 and late Ponnuswamy. It is also not disputed that suit schedule property was purchased in his name and khata was standing in his

favour during the lifetime of said Ponnuswamy. Whether said Ponnuswamy had contributed anything for purchase of property or not ? is a crucial point to be decided only after trial, but not at this preliminary stage.

9. No doubt, the Court will consider various factors, including the strength of the prima-facie case, the balance of convenience, and the potential for irreparable harm, while considering the application for interim injunction. An oral undertaking by a party not to alienate may be considered, but it is not conclusive. Courts have the power to grant injunction to prevent alienation of property during a partition suit, particularly when there is a risk of irreparable loss or damage.

10. In view of the admission of the fact that the suit schedule property was purchased in the name Ponnuswamy and also in view of the nature of the suit, the plaintiffs sought to consider their applications and to pass temporary injunction order in their favour. At this juncture, it is to be noted that, the grant or refusal of order of temporary injunction is based on the establishment of prima-facie arguable case by the plaintiffs to proceed in the matter. In discharging a prima-case, the settled law appears to be that merits of the case should not be examined closely, deeper examination of the controversies is impermissible, stand of the parties are not be proved in such a manner as to give a final decision. The plaintiffs need not establish title, but it is enough if they can show that they have a fair question to raise as to the existence of the right which they alleged and ultimately it is the principles of equity by which the court should be guided.

11. Be that as it may, it is needless to state at this stage that the court cannot hold a mini trial to decide the applications and the case made out by the plaintiffs prima-facie discloses that no partition is took place between the parties and the right of succession of the plaintiffs over the properties needs full fledged trial. Till then defendants are to be restrained from alienating or creating charge in any form and in favour of any third parties as well as from cutting and removing the trees standing in the suit schedule properties during pendency of the suit for partition. If the defendants or anybody on the strength of alleged possession and enjoyment, are not restrained as sought for in the applications, the defendants may create some third party interest over the suit schedule properties, since the khata of the suit schedule properties now standing in the name of defendant No.1 from the name of late Ponnuswamy and this defendant No.1 is admittedly, mother and grandmother to plaintiffs and defendants. So far as the said relationship between the parties and nature of the suit schedule properties is concerned, no one is disputed the same. What is required to be looked into is right and share of the each of the plaintiffs and defendants which is to be elicited during trial on merits. When relationship and nature of properties is not disputed by the defendants it is necessary to grant some interim order so as to protect and preserve the properties intact during the pendency of the suit in order to avoid the multiplicity of the proceedings and any loss to the parties in the simple suit for partition. The very dispute regarding the right and share of the plaintiff in the suit properties itself is a prima-facie case which goes to establish that, the matter has to go for trial for the proper adjudication. When plaintiffs prove the prima-facia case, the balance of convenience automatically tilts in their favour.

12. It is settled law that the provisions of Order 39 Rule 1 CPC primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Here in the present case, the plaintiffs have contended that there are areca nut, coconut and teak wood trees in the suit schedule property and the defendants are trying to alienate the property and also to cut and remove the standing trees. If the defendants succeeded in their attempts, definitely it will cause irreparable loss to the plaintiffs in case, if they finally establish their right of share in the suit property and the property may not be available in its original form at the time of final adjudication of the claim of the parties over the subject matter of the suit. Hence, it is necessary to intervene and to grant temporary injunction which is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad-interim injunction, is to preserve the subject matter of the suit for the time being since material question is to be tried in the suit and there is probability of being entitled to the relief asked for by the plaintiffs and court's interference is necessary to protect the party from the species of injury. That the 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. Under settled position of law, there is presumption in favour of jointness of Hindu family, unless contrary is proved. The parties are yet to place proof of their respective contentions.

13. Considering the above said aspects, this court opined that the subject matter of the suit should be kept intact which includes the standing trees, till determination of the rights of the parties. The grant of interim order in favour of plaintiffs would not cause any hardship or inconvenience to the other side. Per contra, if the order is not granted, there will be chances of alienation which in turn lead to multiplicity of proceedings as discussed above. Therefore, I came to conclusion that it is just and necessary to protect the suit properties by way of granting temporary injunction against the defendants so that the dispute with respect to share of the plaintiffs in the suit properties must see its logical end. Under the above stated facts and circumstances I answer the **point Nos.1 to 3 in the Affirmative.**

14. **Point No.4:** In view of the reasons above I proceed to pass the following;

ORDER

I.A No. II and III filed by the plaintiffs
U/O 39 Rule 1 and 2 of CPC are hereby
allowed.

Plaintiffs and defendants are hereby
restrained from creating any charge or
changing the nature of suit schedule
property by cutting and removing the
standing trees in the suit schedule
properties till further orders.

(Dictated to the stenographer, directly on the computer, typed by her, corrected and then pronounced by me in the open Court on this day, the 30th November 2024).

(Zaibunnisa)
Pri. Senior Civil Judge & JMFC
Hunsur