

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

Present: **Smt. Shirin Javeed Ansari, B.A., L.L.B.,(Hon's) LL.M**
Prl., Senior Civil Judge & J.M.F.C.,
Hunsur.

Dated, this the 17th day of March 2023

O.S.NO.46/2022

PLAINTIFFS

- : 1. Sri. Moganegowda,
S/o Late. H. P. Papegowda,
Aged about 62 years,
R/at Halebeedu Village,
Bilikere Hobli, Hunsur Taluk,
Mysuru District-571 105.
2. Smt. Hemavathi,
D/o Late. H. P. Papegowda,
W/o Nagaraju,
Aged about 58 years,
R/at Boregowdana Koppal,
Gavadagere Hobli,
Hunsur Taluk,
Mysuru District-571 105.
3. Smt. Ramadevi,
D/o Late. H. P. Papegowda,
W/o Rajappa,
Aged about 56 years,

R/at Arasukallahalli,
Gavadagere Hobli,
Hunsur Taluk,
Mysuru District-571 105.

4. Smt. Shailaja @ Shailavathi,
D/o Late. H. P. Papegowda,
W/o Chandrashekar,
Aged about 50 years,
R/at Kesthur at Village & Post,
Chunchanakatte Hobli,
K.R.Nagara Taluk,
Mysuru District-571 602.

V/s

DEFENDANTS

:

Sri. Maruthigowda H. P.,
S/o Late. H. P. Papegowda,
Aged about 65 years,
R/at Halebeedu Village,
Bilikere Hobli, Hunsur Taluk,
Mysuru District-571 105.

PARTIES IN I.A. NO. I

Applicants/Plaintiffs : Sri. Mogannegowda & others

V/s

Opponent/Defendant : Sri. Maruthigowda H. P.,

ORDERS ON IA No.I

This is an application filed by the applicants/plaintiffs U/O 39 Rule 1 and 2 R/W/Sec. 151 of CPC against the defendants seeking temporary injunction restraining the defendants from alienating the suit schedule properties to any third parties till disposal of the suit in the interest of justice and equity.

2. The present application is filed at the stage of framing of issues.

3. The present application is supported by the affidavit of the plaintiff No. 1, in the affidavit it is stated that the suit schedule properties are the ancestral joint family properties of the plaintiffs and defendants. That Sri. Puttegowda having five children, two daughters and three sons. The two daughters were married long back and they are dead. The two sons are unmarried and they also died long back. There are issues of them and both are dead. The H.P. Papegowda is having five children and two sons. The plaintiff No. 1 and defendant and three daughters i.e., plaintiffs No. 2 to 4. The plaintiffs and

defendants constituted a joint Hindu family. The father of the plaintiff No. 1 and other plaintiffs and defendant Sri. Late. H.P. Papegowda and Late. Gowramma died intestate leaving behind the plaintiffs and defendants as successor to the estate of the suit schedule properties. The father of the plaintiff and defendants H.P. Papegowda died on 13.08.2014. Their mother also died on 11.07.2016, prior to that the father of the plaintiff was in possession and enjoyment of the suit schedule properties. Thereafter, the katha of the said properties were changed in the name of their mother. Late. Papegowda and Gowramma have died intestate. 'A' and 'B' schedule properties are the ancestral joint family properties of the plaintiffs and defendants. The plaintiffs are in joint possession and enjoyment of the schedule properties and there is no partition in the family. As such, the plaintiffs and defendants are the coparceners, they have got equal share or 4/5th share in the suit schedule properties. The defendant is trying to alienate the suit schedule properties, without the knowledge of the plaintiffs. The defendant is intending to alienate the same just to defeat the rights of the plaintiffs. The defendant is trying to cut the trees and trying to sell the same to third parties. The defendant

is approaching the agents for the purpose of selling the suit schedule properties. The plaintiff No. 1 has made out prima facie case and balance of convenience lies in his favour. If the application is not allowed, much hardship will be caused to the plaintiff as it will lead to multiplicity of proceedings and on the other hand, no hardship will be caused to the defendants and Hence, on these grounds the plaintiff No. 1 sought for allowing the present application in the interest of justice and equity.

4. The defendants have filed their detailed written statement before the court and specifically contended that after the death of their father, the defendant took the entire responsibility of maintaining the family. The plaintiff No. 1 was a Secretary in the Milk Dairy of Halebeedu, wherein he had misused the funds of the society. The defendant with utmost difficulty cleared all the dues of the milk dairy society with his self earnings. The defendant performed the marriage of the daughter of the plaintiff No. 2 spending huge amount. The defendant performed the marriage of the plaintiff No. 1 out of his earnings. The defendant alone took the responsibility of

performing the marriage of the plaintiff No. 4 out of his earnings. The son of plaintiff No. 3 Sri. Ravish K.R. was brought up and educated by the defendant alone. The defendant himself assisted for the marriage of the daughter of the plaintiff No. 3 by name Smt. Roopa. Having derived all the benefits from the defendant, the plaintiffs have filed the present suit against the defendant projecting him as villain, with false and baseless allegation made against him. Therefore, the plaintiffs had taking advantage of this and filed the false suit. On all these grounds the defendant sought for reject the present application in the interest of justice and equity.

5. On the basis of the pleadings and rival contentions the following points arise for my consideration.

1. Whether the applicant/plaintiff proves that there is a prima facie-case in his favour?
2. Whether the applicant/plaintiff proves that there is a balance of convenience in his favour?
3. Whether the applicant/plaintiff approach that he will be put to irreparable loss and injustice if the application is not allowed?

4. What order?

6. Heard the argument of learned counsel for the plaintiffs and defendant and perused the material on record.

7. My finding 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 final order for the following;

REASONS

8. **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, as hereunder.

9. According to the plaintiff No. 1 that the suit schedule properties are the joint family properties. According to the defendant, he has taken the entire responsibility of marrying the plaintiffs and their children. The defendant also submit that, they are not in joint possession of the suit schedule properties along with defendants. It is trite that under the Hindu law a strong presumption has arisen in favour of the existence of joint family. Of course, this presumption does not

extend towards the existence of joint estate by the joint family. In the present application, the plaintiffs have sought to temporary injunction restraining the defendant from alienating the suit schedule properties. It is settled law that, the very intention of granting temporary injunction is to maintain the state of the things as it is. This well settled legal proposition can be borne out from the ration laid down by the Hon'ble High Court of Karnataka reported in 1999 (1) KLJ 577 Page.577 (Smt. Rathnamma V/s. B.A.Srinivasa Gupta and others) wherein it is held that.

“(C) CPC 1908, O.39 R.1-Temporary injunction-Grant of-Primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of parties are settled-It is issued to keep things in status quo pending litigation so that suit is not rendered infructuous by unilateral act of party-Where party seeking temporary injunction has satisfied Court that there is question of law or fact to be tried in suit, that court’s interference is necessary to save him from irreparable injury and that comparative mischief which is likely to issue from withholding injunction will be greater than that which

is likely to arise from granting it, party is entitled to relief.”

In ILR 2004 Karnataka page 4076 (Fakirasab V/s. Syedusab and others) wherein it is held that

“(B) CPC 1908-O-39 R.1 & 2-OBJECT OF – While considering an application for grant of temporary injunction, the 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 if would be available to the plaintiff if he ultimately succeeds in the suit.”

“(C) CPC 1908, O.39 R.1-Temporary injunction-Grant of-Primary purpose of temporary injunction which is only preventive relief, is to preserve property in dispute till legal rights of parties are settled-It is issued to keep things in status quo pending litigation so that suit is not rendered infructuous by unilateral act of party-Where party seeking temporary injunction has satisfied Court that there is question of law or fact to be tried in suit, that court’s interference is

necessary to save him from irreparable injury and that comparative mischief which is likely to issue from withholding injunction will be greater than that which is likely to arise from granting it, party is entitled to relief.”

Further in ILR 2007 Karnataka page 1214 (Smt. T.K.Gowramma V/s. C.K.Raviprasanna) wherein it is held as under:

“CPC, 1908-O.39 R.1 & 2-TEMPORARY INJUNCTION UNDER-GRANT OF-HELD, 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 at the trial.”

10. During the course of argument learned counsel for the plaintiff vehemently argued before the court that the defendant is trying to cut the trees and also alienating the suit schedule properties which is the ancestral properties of the plaintiffs and defendant. On the other hand, the learned

counsel for the defendant, vehemently argued before the court that the suit schedule properties are the self acquired property of the defendant. The defendant has performed the marriage of plaintiff No. 2. It is a meager property, earned out of the self earning of the parents. The defendant has married the daughter of the family nothing is remaining to alienate. It is also argued by learned counsel for the defendant that, the plaintiff has not produced any documents to show that the defendant is trying to cut the standing tree in the suit schedule properties.

11. In the instant case at this stage, it can only be said that the suit is one for the relief of partition and separate possession. If the defendant is permitted to alienate or cut the trees in the suit schedule properties it may lead to multiplicity of the proceedings and causes hardship to the plaintiff. On the contrary, if the defendant is restrain from alienating the suit schedule properties no hardship or prejudice will be caused to them. Looking to the background facts of the case, I am of the considered opinion that, it is just to maintain the status quo, the defendant is to be restrained from alienating the

suit schedule properties. Hence, I answer point No. 1 to 3 in the affirmative.

12. **POINT NO.4**: In view of the reason assigned above in finding arrive at on point No.1 to 3 I proceed to pass the following;

ORDER

IA No. I filed applicant/plaintiff
U/O XXXIX Rule 1 and 2 R/W/S
151 of CPC is hereby allowed.

The defendant is restrained
from alienating the suit schedule
property in any manner till disposal
of the suit.

No orders as to cost.

(Dictated to the stenographer directly on computer,
typed by her, revised, corrected and then pronounced by me in
the open Court on this day, the 17th day of March, 2022.)

(SHIRIN JAVEED ANSARI)
Prl. Senior Civil Judge & JMFC
Hunsur