

KAMS300022562024



**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 25th day of April 2025

O.S.NO.324/2024

Plaintiffs : Smt. Yashodamma and others

V/s

Defendants: Sri. Nagaraju and another

I.A. No. I

Applicant : Smt. Yashodamma and others1st plaintiff

V/s

Opponents : Sri. Nagaraju and anotherdefendants

Provision of IA filed	:	IA I U/O 39 Rule 1 and 2 of CPC
Relief sought		Temporary injunction
Date of filing IA	:	12.12.2024
Number of IA		IA No.I
Date of objection filed by the defendants	:	03.02.2025
Date on which the order passed on the application	:	25.04.2025

ORDERS ON IA No.I

The plaintiffs have filed this application U/o 39 Rule 1 and 2 of CPC to restrain the defendant No.2 from paying the schedule amount to the 1st defendant or his agents, pending disposal of the suit.

2. After appearance of the defendants, defendant No.1 has filed his objection to the application. For the purpose of brevity, the facts stated in the affidavit annexed to the application and objection 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 application?

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?

4. What order?

REASONS

5. **Point No.1** :- It is the suit filed by the plaintiffs seeking for partition of the amount available with the 2nd defendant bank by way of fixed deposit. That one Sri. Sannapapajigowda and Akkayamma are husband and wife they had four sons and three daughters, totally seven children, namely, Mahadevaiah, Rajamma, Natarjegowda, Vasanthamma, Chandregowda Nagaraju and Sarvamangala. Now among 7 children, except the defendant No.1 and 3 daughters remaining sons are dead leaving behind the plaintiff No.1 to 4, 7 to 10 as their legal heirs. Sri. Sannappajigowda who was the kartha of the family was looking after the affairs of the family including the ancestral and joint family properties till his death. He was passed away on 25.2.2012. After his death Smt. Akkayamma was managing the family as a kartha till her death and she is passed away on 19.9.2021. During the life time of Sri. Sannappajigowda, he had invested some amount in two fixed deposits with the Karnataka Bank, Kottegala branch and the said deposit certificates are 31901500201028501 and 3191500201028601 for a period of one year and he continued the renewal of the same till his death. After the death of Sannappjigowda the said fixed deposits were transferred to the name of his wife Akkayamma and she also got renewed the same from time to time. Due to death of her sons, she made the 1st defendant who is the only son living at the time and she had appointed 1st defendant as nominee to the said deposits. The deposits matured on 20.12.2024. The maturity amount of the fixed deposit bearing certificate No. 31901500201028501 is Rs.2,33,398/- and Maturity amount of the fixed deposit bearing certificate No. 3191500201028601 is Rs.30,99,116/-. The said fixed deposits are made by the said Sanappajigowda during his life

time and now the same is maturing on 20.12.2024. All the children of late Sannappajigowda have got equal right over the above said deposits and they are entitle for equal share in the schedule fixed deposit amount. The 1st defendant knowing very well that he and all the plaintiffs are entitled for equal share in the fixed deposit amount, he intentionally trying to withdraw the amount without the knowledge and consent of the plaintiffs. After knowing the said acts of the 1st defendant, the plaintiffs questioned him, the 1st defendant gave evasive answer and he is behaving like he is the only person entitled to get entire amount. Then they contacted the 2nd defendant and made request that they are also having equal share in the said amount and not to pay the amount to the 1st defendant. But the 2nd defendant asked them to get an stay order not to disburse the said amount to the 1st defendant. That the plaintiffs are unable to restrain the 1st defendant from withdrawing the schedule fixed deposit amount from the 2nd defendant bank without the order of this court. Hence the application.

6. Per contra the defendant No.1 has appeared through his counsel and filed his objection and stated that the application is not maintainable either in law or on facts. It is stated that the plaintiffs while issuing legal notice to the defendants on 9-12-2024, the plaintiffs themselves stated that a decree was passed between the plaintiffs and defendants. Being the legal heirs of Sannappajigowda and Akkayamma, the plaintiffs and defendants got partitioned all the movable and immovable properties of the family vide judgment dated 22-1-2015. However, the plaintiffs suppressed the said fact and did not mention anywhere in their plaint. Even in the plaint the plaintiffs did not mention the issuance of legal notice sent to the defendants dated 9-12-2024. The

plaintiffs have stated that the plaintiffs and defendants are the members of joint family. If that is true they did not add the immovable properties of the family in the suit but only with an intention to harass this defendants they filed the suit seeking for share in the suit schedule deposit amount. Hence, the suit is not in accordance with law and as such not maintainable. That the amount deposited by father of defendant No.1 is legally belonging to the 1st defendant only. The defendant being a nominee to the schedule amount he is entitled to secure entire amount as per law.

It is further submitted that the plaintiffs have not produced any documents regarding the facts that the deceased Sannappajigowda and Akkayamma declared that the schedule amount to be given to their 3 sons after the the expire of the stipulated time. As stated in the affidavit the defendant No.1 is the absolute beneficiary of the schedule fixed deposit amount deposited with the defendant No.2. The plaintiffs No.1 to 11 have no any legal right or any share in the said amount. The defendant No.1 is not the member of joint family consisting the plaintiffs and he is not living in the joint family. The plaintiffs and defendant No.1 are living separately since 25 years. Inspite of that the plaintiffs have filed the false suit in order to grab the plaint schedule amount. The suit of the plaintiffs filed for partial partition is not maintainable. On these and other grounds, the defendant No.1 prayed to dismiss the application with cost.

7. In the light of the above rival contention of the parties I have gone through the materials available on record and also relevant provision of law with respect to ad-interim temporary injunction as provided U/O 39 Rule 1 and 2 of CPC. There is no doubt that the grant of interim injunction under the said provision,

is rests with the discretion of the trial court. However, it is also incumbent upon the court that it should exercise the discretionary power judiciously and with utmost caution. Here, in the case on hand, the above referred records *prima facie* discloses that the suit schedule amount was kept in fixed deposit by the mother of the plaintiffs No.5, 6 and 11, defendant No.1 and mother-in-law of plaintiff No. 1 and 8, grand mother of plaintiffs No.2 to 4, 7, 9 and 10. It is also not disputed that previous to above deposit the amount was kept by plaintiffs and 1st defendant's predecessor Sannappajigowda. It is also admitted that the plaintiffs did not seek any partition in the immovable properties and they are not denying the partition of the joint family properties between the legal heirs of Sannappajigowda and Akkayamma during their life time. It is a settled law that nominee is generally not entitled to the entire bank deposit amount excluding other legal heirs of the depositors. The nominee has act as a trustee, responsible for distributing the funds to the legal heirs of the deceased according to the law of succession are under a valid Will. However, in the case on hand, at this pre-trial stage defendant No.1 is claiming exclusive right over entire suit schedule deposit amount.

8. This attitude of the defendant No.1 sounds strange when all are admitting that the suit schedule amount originally deposited by plaintiffs and this defendant's predecessor Sannappajigowda. Admittedly both Sannappijigowda and Akkayamma died intestate with respect to the schedule amount. Therefore, the conduct of the defendant No.1 claiming exclusive right over the suit schedule amount creates a doubt in the mind of the court with respect to bonafide intention on the part of the defendant No.1. under such circumstances it appears that the plaintiffs have made out prima-facie case in their favour. However,

the contentions and rival contentions raised by the parties need trial and at this pre-matured stage, this court cannot come to any conclusion which favours the claim of the defendant No.1 as contended in his objection.

9. In the back ground of above stated materials, here I just wanted to reiterate that 'While considering an application for injunction, it is well-settled, that the courts would pass an order thereupon having regard to :(i) *Prima facie* case (ii) Balance of convenience (iii) irreparable injury. 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.

10. It is most 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. Injunction 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.

11. Considering the above said aspects, this court opined that the subject matter of the suit should be kept intact till determination of the rights of the parties. Therefore, I came to conclusion that it is just and necessary to protect the suit schedule amount by way of granting temporary injunction against the defendants as sought in the instant application so that the dispute with respect to claim of the plaintiffs in the suit schedule amount must see its logical end. Under the above stated facts and circumstances I answer the **Point Nos.1 to 3 in the Affirmative.**

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

ORDER

I.A No. I filed by the plaintiffs under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Defendant No.2 is temporarily restrained from releasing the suit schedule amount in favour of defendant No.1 or anybody on his behalf in any manner till further orders.

In the given circumstances I passed no order as to costs.

(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 25th April 2025).

(Zaibunnisa)
Pri. Senior Civil Judge & JMFC
Hunsur

