

**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C. HUNSUR.**

**PRESENT: Sri.Girish Chatni, B.A., LL.B (Spl).**  
Civil Judge & J.M.F.C,  
Hunsur.

**Dated this the 28<sup>th</sup> day of February, 2019**

**O. S. No.418/2015**

**PLAINTIFFS** : Smt.Nethravathi and others

**: Vs.:**

**DEFENDANTS** : Marigowda and others

**I.A. No.1**

**APPLICANT** : Smt.Nethravathi .....plaintiff No.1  
(By Sri.L.K.J., Advocate)

**: Vs. :**

**OPPONENTS** : Marigowda and others

(D1 to 4 By Sri.C.D. , Advocate)  
(D5 and 6 by Sri.B.A.S.,Advocate)

**ORDERS ON IA.NO.1 FILED U/O XXXIX RULE 1 AND 2 OF**  
**C.P.C.**

This application is filed by the plaintiff No.1 under Order XXXIX Rules 1 and 2 of C.P.C., seeking for the relief of ad-interim temporary injunction against the defendants, restraining them, from alienating the suit schedule properties in any way until pending disposal of the suit.

2. That it is averred in the affidavit annexed to the application sworn in to by the plaintiff No.1 that, defendant No.1 is the father-in-law of the plaintiff and father of defendant Nos.2 and 3. Defendant No.2 is the mother-in-law of the plaintiff No.1. Defendant No.5 is the purchaser of the item No.4 of the suit property and defendant No.6 is the son of defendant No.5 who has purchased property from defendant No.1. It is further contended that the suit schedule properties are the ancestral and joint family properties of plaintiffs and defendant Nos.1 to 4 originated from late Karigowda, which are the granted land to him. Such being the case, after the death of the husband of the plaintiff No.1, defendant Nos.1 to 4 have dragged the plaintiffs out of their home and the plaintiff No.1 requested the defendant Nos.1 to 4 to effect 1/4th share in the share of their husband, to which defendants have denied for the same. It is further contended that behind the back of the plaintiffs item No.4 of the suit property has been alienated in favour of defendant No.5 and the said sale transaction is not binding on the share of the plaintiffs. It is further contended that the plaintiff No.1 by doing coolie work is maintaining the plaintiff Nos.2 and 3. Therefore, the plaintiff No.1 without any alternative have filed the present suit and has contended that she has made out a prima facie case, balance of convenience lies in her favor and irreparable loss will cause to her, if T.I is not granted as sought by her. Hence, prayed to allow the I.A.

3. In response to the suit summons, the defendants have appeared through their respective counsels and defendant Nos.1 to 4 have filed memo treating the written statement as objections

to I.A.No.1. Defendant No.5 has filed his detailed written statement.

3(a). Defendant Nos.1 to 4 have contended that item No.1 and 2 of the suit properties are the granted land to the defendant No.1 and are the self acquired properties. Item No.4 of the suit property has been purchased by him and thereafter he has sold the same in favour of defendant No.5 and as of now defendant No.6 is in possession over the same. Item No.5 is the self acquired property of defendant No.3. Item No.3 of the suit property is the self acquired property of defendant No.2. As such, the children cannot seek partition in the self acquired properties during the life time of their father. Accordingly, prayed to dismiss the application.

3(b). Defendant No.5 has admitted the averments made in the para No.3 of the plaint and has denied the entire averments made in the plaint in toto and has specifically contended that item No.4 of the suit property is the self acquired property of the defendant No.1 and on 22.03.2004 has purchased the same from the defendant No.1 and thereafter under the partition on 31.10.2006 the said property has fallen to the share of defendant No.6. Therefore, the plaintiffs are not having any share over the item No.4 of the suit property and prayed for dismissal of the suit along with I.A.No.1.

4. Heard the advocates appearing for the plaintiff and defendants and perused the materials on record.

5. On going through the pleadings, I.A.No.I and written statement the points which arose for my consideration are as under:

**1. Whether the plaintiff No.1 has made out a prima-facie case?**

**2. Whether the balance of convenience lies in favor of the plaintiff No.1?**

**3. Whether the plaintiffs will be put to great hardship and injury in case if TI is not granted?**

**4. What order?**

6. My findings on the above points are as follows:

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** :- Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in ***AIR 1999 SUPREME COURT 3105 (Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,)*** it is held as under:

**"Civil P.C. (5 of 1908), O. 39,R.1:**

***Certain specific considerations to be noted in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the Court, since the issue of grant of injunction usually, is at the***

***earliest possible stage so far as the time frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:- (i) Extent of damages being an adequate remedy; (ii) Protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason thereof; (iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others; (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case-the relief being kept flexible; (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties case; (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant; (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."***

8. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above-cited decision, let me advert to consider the case of the parties. It is the contention of the plaintiff No.1 that she claims to be the natural guardian of plaintiff Nos.2 and 3 and also the wife of deceased Mohan who is the son of the defendant No.1 and the suit properties being ancestral and joint family properties, she claims the share of the plaintiffs over the suit property. In support of her contentions the plaintiff No.1 has produced G.Tree, death certificate, M.R., RTC., Sale deed.

9. The plaintiffs have filed the present suit for the relief of partition and separate possession their share in the suit properties. On perusal of the written statement filed by the defendant Nos.1 to 5, they have contended that the suit schedule properties are the self acquired properties of defendant Nos.1 to 3 and the defendant No.5 has purchased item No.4 from defendant No.1. As such, between his family members there was a partition. Accordingly, the item No.4 was fallen to the share of defendant No.6. The counsel for the defendant Nos.1 to 4 have produced copy of M.R., Saguvali chit, grant certificates, sale deeds and RTC. At this stage, the plaintiff No.1 has made out a case for trial and there are triable issues to be decided between the parties and if the application is not allowed, there will be multiplicity of proceedings. In view of the discussions made above, the plaintiff No.1 has made out prima-facie case to grant ad-interim temporary injunction in his favor. Accordingly, I answer this point in the **Affirmative**.

10. **Point Nos.2 and 3:** These points are taken up together for discussion for the sake of convenience.

The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must necessarily show that balance of convenience lies in favor and shall also satisfy that irreparable loss and hardship would be caused to her, which can not be compensated in terms of money. Therefore, it is incumbent upon the plaintiff to show that the balance of convenience lies in his favor.

11. In considering the question of balance of convenience the court has to consider to whom more hardship or inconvenience would be caused. If temporary injunction is granted and if ultimately the suit is dismissed, the defendants would not be put to loss and hardship. As discussed supra plaintiff No.1 has very well established prima-facie case. If an order of temporary injunction is not granted, the defendants will be successful in alienating the suit property. In such an event the plaintiff would be left nowhere. Therefore, balance of convenience and comparative hardship is more on the plaintiff No.1 than the defendants. Accordingly, I answer points 2 and 3 in plaintiff's favor, in the **Affirmative**.

12. **POINT No. 4**: In view of my findings to points 1 to 3, I am of the considered opinion that, plaintiff No.1 has made out prima facie case and also made out a fit case for trial. Besides this the plaintiff No.1 has also established that balance of convenience lies in her favor and irreparable injury would be caused to her, if an order of temporary injunction is denied. Therefore, the plaintiff No.1 is certainly entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

### **ORDER**

I.A. No.1 filed by the plaintiff No.1 under Order XXXIX Rule 1 & 2 of C.P.C., is hereby allowed.

Consequently, defendants are hereby restrained from alienating the suit schedule properties in any manner by way of ad-interim

temporary injunction for the period of two months.

Parties are hereby directed to co-operate for the speedy disposal of the case.

No order as to the costs.

(Directly dictated to the stenographer on computer, typed by her corrected by me, then pronounced in the Open Court this the 28<sup>th</sup> day of February 2019)

**(Girish Chatni)**  
**Civil Judge & JMFC.,**  
**Hunsur.**

Order pronounced in the open  
court (vide separate order)

**ORDER**

I.A. No.1 filed by the plaintiff  
No.1 under Order XXXIX Rule 1 &  
2 of C.P.C., is hereby allowed.

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are hereby restrained from  
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Parties are hereby directed to  
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disposal of the case.

No order as to the costs..

**Civil Judge & JMFC.,  
Hunsur.**

For issues by 02.03.2019.

**Civil Judge & JMFC.,  
Hunsur.**