

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 1st day of April, 2017

O. S. No.494/2015

PLAINTIFF/S : Smt.Leelavathi

: Vs. :

DEFENDANT/S : Sri.Sannabeeregowda & others

I.A. No.I

APPLICANT : Smt.Leelavathi

(By Sri.Nuthan Kumar B.K., Advocate)

: Vs. :

OPPONENTS : Sri.Sannabeeregowda & others

(D1 to D5 – Exparte)
(D6 by Sri.RSM, Advocate)

ORDERS ON IA.NO.I FILED U/O 39 RULE 1 AND 2 OF
C.P.C.

This application is filed by the plaintiff under Order XXXIX Rules 1 and 2 of C.P.C., seeking the relief of ad-interim temporary injunction against defendants, restraining them or their agents, servants, family members or anybody acting on their behalf from alienating and changing khata of the suit schedule property in any manner, till pending disposal of the suit. The suit is filed in respect of the dry land bearing Sy.No.210 measuring 1 acre (Poded 210/1) of Mallinathapura Village, Bilikere Hobli, Hunsur Taluk, Mysore District. (Herein after referred to as "suit property")

2. That it is averred in the affidavit annexed to the application by the plaintiff that, the plaintiff and defendants No.2 to 5 are the children of defendant No.1. That, the suit property is the ancestral and joint family property of her grand father Late Devarahatti Halegowda and as per oral partition, the suit property has fallen to the share of defendant No.1. It is further contended that on 15.11.2015, a panchayat was held at Mallinathpura and the plaintiff in the presence of her relatives, elders, demanded her legitimate 1/6th share in the suit property. The defendant No.1 in the said panchayat has said that he has sold the suit

property to defendant No.5 and has utilized the amount for his own purpose. It is further contended that the RTC of the suit property is running in the name of defendants and with an intention to grab the right of the plaintiff, the defendants are making hectic efforts to alienate the suit property. It is further contended that she has made out pima-facie case and balance of convenience lies in her favor. Hence, prayed to allow the I.A filed by her.

3. That, in response to the suit summons and IA, the defendants No.1 to 5 have not appeared, they were placed exparte. Defendant No.6 appeared before the court through his counsel and filed written statement. Inspite of opportunities he has not filed any objections to I.A.No.1.

4. The contents of the written statement of defendant No.6 are that, he denied the entire averments made in the plaint in toto. He has admitted the alienation of suit property in his favour and contended that suit filed by the plaintiff is barred by law of limitation, as per Sec.6 of the Hindu Succession Act. The defendant No.6 has not admitted the relationship of plaintiff and her father and relationship with other defendants and has admitted that suit property is the ancestral property of defendant No.1 and the description of the suit property is wrong. It is further contended that,

as per the letter dated 29.06.2007 from Indian Oil Corporation Limited, the defendant No.6 was appointed as the dealer to run petrol bunk on the suit property and is paying taxes to the panchayat and has obtained license. It is further contended that, the defendant No.1 sold the suit property to meet the expenses of his daughter, which is evident from the recital mentioned in sale deed dated 12.03.2004. It is further contended that, since from the date of purchase, it is the defendant No.6, who is in lawful possession and enjoyment of the suit property uninterruptedly as absolute owner. It is further contended that there are other ancestral properties of the defendant No.1, which are not included in the suit and the plaintiff ought to have filed the objections at the time of changing revenue records, has not objected and after lapse of ten years filed this suit. Hence, prayed to dismiss the suit.

5. Heard the advocates appearing for the plaintiff and defendant No.6 and perused the documentary evidence produced before this Court.

6. 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 has made out a prima-facie case?

2. Whether the balance of convenience lies in favor of the plaintiff?

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

4. What order?

7. 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

8. **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 therefor; (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.”

9. 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. That, this is the suit filed by the plaintiff for partition and separate possession against the defendants. It is the contention of the plaintiff that she has got her legitimate 1/6th share in the suit property, which is ancestral and joint family property. That on 15.11.2015 a panchayat was held at Mallinathapura, wherein the plaintiff has demanded her share, to which the defendant No.1 has said that for his own purpose has sold the suit property to the defendant No.6. Without any alternative, the plaintiff has filed this suit.

10. To substantiate the prima-facie case, the plaintiff has produced G-Tree, Certified copy of the M.R.extranct, RTC extract, E.C. with respect to the suit property, sale deed dated 12.03.2004.

11. Per contra, the defendant No.6 has not filed any objections to the I.A.No.1, but he contended in the written statement that the defendant No.1 for his legal necessity,

i.e., for performing marriage of his daughter, has sold out the suit property to him, that as per the letter dated 29.06.2007, the defendant No.6 was appointed as dealer from the Indian Oil Corporation Ltd., to run Petrol bunk on suit property and since then, he is paying taxes to the panchayat and he has also obtained the license. Hence, he has contended that plaintiff is not entitled for any share interference he suit property and prayed to dismiss the suit.

12. The plaintiff has filed the suit for partition and separate possession against the defendants. It is the contention of the plaintiff that she has got her legitimate 1/6th share in the suit property, which is ancestral and joint family property. That on 15.11.2015 a panchayat was held at Mallinathapura, wherein the plaintiff has demanded her share, to which the defendant No.1 has said that for his own purpose has sold the suit property to the defendant No.6. Without any alternative, the plaintiff has filed this suit and at this stage the plaintiff has contended that the defendants are making hectic efforts to alienate the suit schedule property, hence, prayed that she has made out prima facie case and balance of convenience lies in her favour and irreparable loss will cause to her if this application is not allowed and there will be a multiplicity of proceedings. More over, the defendant No.6 has put in appearance but not chosen to file any objections to the I.A.No.1 as such on perusal of the documents, plaint averments, contents of the

I.A.No.1 and written statement filed by the defendant No.6, at this stage, the plaintiff has made out a case for trial and there are triable issues to be decided between the parties. In view of the discussions made above the plaintiff has made out prima-facie case to grant ad-interim temporary injunction in her favor. Accordingly, I answer this point in the **Affirmative**.

13. **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 them, 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 her favor.

14. 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 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 than the defendants. Accordingly, I answer points 2 and 3 in plaintiff's favor, in the Affirmative.

15. **POINT No. 4**: In view of my findings to points 1 to 3, I am of the considered opinion that, plaintiff has made out prima facie case and also made out a fit case for trial. Besides this the plaintiff 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 is certainly entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

ORDER

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

Consequently, the defendants, their servants, representatives or relatives or anybody acting on their behalf are hereby restrained by way of temporary injunction from alienating and changing of khata of

the suit property for a period of three months, from the date of this order.

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 1st day of April, 2017)

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

Order pronounced in the open
court (vide separate order)

ORDER

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

Consequently, the
defendants, their servants,
representatives or relatives or
anybody acting on their behalf are
hereby restrained by way of
temporary injunction from
alienating and changing of khata
of the suit property for a period
of three months, from the date of
this order.

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

No order as to the costs.

Civil Judge & JMFC.,
Hunsur.

Parties are hereby directed
to appear before the court for
the examination of parties as
provided under Order 10 of
CPC.

Call on for the same by
17.04.2017.

Civil Judge & JMFC.,
Hunsur.

