

KAMS400015022018



IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT K.R.NAGAR

PRESENT: **Sri. Aravindra.B.C., B.A., L.L.B.,**
Senior Civil Judge & JMFC
K.R.Nagar.

Dated this the 09th day of October, 2023

O.S./49/2018

- 1) **Smt. Manasa @ Rajeshwari A.M.,**
W/o Sathishkumar K.S.,
Aged about 33 years.
- 2) **Ranaveer K.S.,**
W/o Sathishkumar K.S.,
Aged about 2 years.

2nd plaintiff is minor
represented by his guardian
mother i.e., 1st plaintiff.

Both are R/at:
C/o Mohan,
House No.136, Maharana
Prathap road, 3rd Cross,
3rd Main road,
Hemavathi Nagar, Hassan.

.....Plaintiffs

(By Sri. S.N., Advocate)

-Versus-

- 1) **Sri. Sathish Kumar K.S.,**
S/o Late K.S.Sannathammegowda,
Aged about 39 years,
Panchayath Development Officer,
Thattakere Grama Panchayath,
Hunsur Taluk, Mysuru District.
- 2) **Smt. S.L.Manjula,**
W/o Late K.S.Sannathammegowda,
Aged about 58 years,
R/at: No.17236, Subhashanagara,
K.R.Nagar Town and Taluk,
Mysuru District.
- 3) **Dr. Chaithra,**
D/o Late K.S.Sannathammegowda,
W/o Kempu Huyilegowda,
Aged about 38 years,
R/at: Jayanagara, Bengaluru.

.....Defendants

(By Sri. H.N.S, Adv. for defendant No.1)
(Defendant No.2 and 3 dismissed)

Parties to I.A.No.X

Applicant : Sri.Sathishkumar
..... 1st defendant

-V/s-

Opponent : Smt.Manasa D. and
Another.
..... Plaintiffs

Provision under which the application is filed	Under Order 39 Rule 1 and 2 of CPC
Relief Sought for	Seeking the relief of stay the further proceedings.
The date on which the application is filed	08.12.2022
Number of the application	IA No.X
The date on which the objections are filed by the different opponents	05.04.2023
The date on which the orders were passed on the said application	09.10.2023

ORDER ON IA.No.X

This is an application filed by the defendant No.1/applicant Under Order 39 Rule 1 and 2 of Code of Civil Procedure for seeking the relief of stay the further proceedings of this case till disposal of G&W No.25/2021 on the file of Hon'ble II Addl. Senior Civil Judge and CJM, Mysuru.

2. The defendant No.1 sworn to an affidavit in support of the application, wherein he has stated that, the

plaintiff No.2 who is son of defendant Nos.1 has filed this suit against himself and his family members for the relief of partition and separate possession in respect of suit schedule properties, whereas he filed an application before Hon'ble II Addl. Senior Civil Judge and CJM, Mysuru in G&W No.25/2021 seeking custody of the plaintiff. The said application is pending for adjudication. Therefore, he prays for allow the application and stay the further proceedings of this case till disposal of above said petition.

3. On the other hand, the plaintiff has filed objection to the I.A.No.X. In the Objection Statement, they has contended that, the application filed by the defendant No.1 is not maintainable both in law or on facts and defendant No.1 has filed the present application with intention to drag on the proceedings of this court and also harass the plaintiff. Accordingly, he prays to reject the application.

4. Now the following points arises for consideration of this court:

1. Whether the defendant No.1 has made out prima-facie case for grant of temporary injunction, as sought for ?

2. Whether the balance of convenience lies in favour of the defendant No.1 ?

3. Whether the defendant No.1 will be put to irreparable loss and injury, if order of temporary injunction is not granted?

4. What order?

5. Heard the learned counsel appeared for the plaintiff and defendant No.1 and perused the materials available on record.

6. After going through the records and hearing the parties, the above points are answered as follows:

Point No. 1 : In the **Negative**

Point No. 2 : In the **Negative**

Point No. 3 : In the **Negative**

Point No.4 : As per final order
for the following :-

REASONS

7. **Point No.1 to 3:-** Since these points are interconnected, they are taken up together to avoid repetition of facts.

8. The plaintiff has filed the suit for the relief of partition and separate possession against the defendant No.1 and her sisters with respect to the suit schedule properties. According to plaintiff, the suit schedule properties are the ancestral and joint family properties of the plaintiff. On the other hand, the defendant No.1 taken contention that, the suit schedule properties are not the joint family properties of plaintiff and defendants, whereas the suit schedule properties are the self acquired properties of 2nd defendant and her husband Sanna Thimmegowda. Hence, the plaintiff is not entitled any relief as sought for.

9. Before appreciating the rival contentions of the parties, this court glance the provision of under Order 39 Rule 1 and 2 which reads as under:

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Order-XXXIX, Rule-1 - Cases in which temporary injunction may be granted
-Where in any Suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,

the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.

Order-XXXIX, Rule-2. Injunction to restrain repetition or continuance of breach.- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a

like kind arising out of the same contract or relating to the same property or right.

(2) The court may by Order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.

10. On plain reading of the above provision, it makes clear that, the temporary injunction may be granted by a court in the following cases:

a) where any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree or

b) where a defendant threatens, or intends to remove or disposal of his property with a view to defrauding his creditors or

c) where a defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit or

d) where a defendant is not to commit a breach of contract or other injury of any kind or

e) where a court is of the opinion that the interest of justice so requires.

11. Keeping in view of the rival contentions raised by the parties, now this court proceed to discuss towards the legal aspects of the temporary injunction in which circumstances court may grant temporary injunction and what are the ingredients looked into at the time of granting temporary injunction. Therefore, this court turn attention regarding the legal principles of injunction, the court could keep in mind regarding the established principles of law at the time of deciding the temporary injunction order. Hence, this court draw an attention towards the legal principles of temporary injunction.

12. It is pertinent to note that, the Civil Procedure Code for seeking temporary injunction has been provided Under Order 39 Rule 1 and 2 of CPC. The object of

interlocutory injunction is to protect the parties against the injury by violation of their rights, for which he could not be adequately compensated in damages recoverable in the action in the uncertainty resolved in his favour at the trial. The same principles taken from reported decision of Hon'ble Apex Court in the case of ***Gujarat Bottling Co. Ltd. & others V/s The Coca Cola Co. & others reported in 1995 (5) SCC 545***, it is observed that, for grant of temporary injunction three factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss and injury.

13. In the present case on hand, the defendant seeking the relief of for stay the further proceedings of this case till disposal of G&W No.25/2021 which pending Hon'ble II Addl. Senior Civil Judge and CJM, Mysuru. Therefore, the defendant No.1 ought to have file application under Section 10 of CPC for stay the proceedings. But, the defendant No.1 has filed an

application under Order 39 Rule 1 and 2 of CPC. No doubt, the defendant can maintain an application under Order 39 Rule 1 and 2 of CPC where any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree. In this case the plaintiff has not damaged, wasted or alienated the suit schedule property. Hence, the application filed by the defendant No.1 is not maintainable in this aspect.

14. It is relevant to refer the Section 10 of CPC which provides that, no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in having jurisdiction to grant the relief claimed. In the present case on hand, the G&W filed by the defendant

No.2 is subsequent to filing of the present suit. Further, the defendant has not stated anything regarding the issue in both suits are one and the same. In this view also the present application filed the defendant is not maintainable. Accordingly the defendant No.1 has not made any reasonable grounds to allow the application. Accordingly, it needs to be rejected. With these observations, this court answered **Point No.1 to 3 in the Negative.**

15. **Point No.4** : For the above discussion on point No.1 to 3, this court proceed to pass the following:

ORDER

I.A.No.X filed by the defendant
No.1 under order 39 Rule 1 and 2 of
CPC is rejected on cost of Rs.500/-.

*[Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the Open Court on this the **09th day of October, 2023]***

(ARAVINDRA B.C)
SENIOR CIVIL JUDGE & JMFC.,
K.R.NAGAR.