

KAMS500001052020



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : Sri. Ganapathi Prashanth.M, B.A., LL.B.,
Senior Civil Judge, Nanjangud.

Dated : This the 20th day of December 2021.

O.S.No.22/2020

Plaintiff/s : Ningamma

-V/s-

Defendant/s : H.G.Mahadevappa and others

I.A.

Applicant/s : Uddandappa
.... 4th defendant

-V/s-

Opponent/s : Ningamma
... Plaintiff

**ORDER ON I.A. DATED 23.11.2021 UNDER ORDER 39
RULE 4 OF CPC FILED BY DEFENDANT**

The defendant No.4 has filed I.A. dated 23.11.2021
U/o 39 Rule 4 of CPC seeking to vacate the exparte

temporary injunction order passed by this court which is extended from time to time.

2. The plaintiff filed objections.

3. Heard. Perused the pleadings and materials placed on record.

4. The points that arise for consideration are as follows:-

1. Whether the defendant has made out valid grounds for vacating the temporary injunction already granted ?

2. What order ?

5. The above points are answered as follows :-

Point No.1 : In the Negative

Point No.2 : As per final order
for the following:-

REASONS

6. **Point No.1**:- In the affidavit filed in support of the present application, it is pleaded by the defendant No.4 that the suit is filed seeking partition and separate possession and the temporary injunction order is obtained restraining the defendants from alienating the suit

properties and the caveat filed by defendant No.4 was not noted by the court and hence the court be pleased to vacate the exparte temporary injunction order.

7. The objections of the plaintiff is that the suit properties are the joint family properties and there is no partition in the family and the value of the landed properties have gone up and the defendants have got mutated khata in the RTC in collusion with revenue officials. The defendants are trying to alienate the properties and if the present application is allowed they would certainly sell the property and it will lead to unnecessary complications and prayed to dismiss the I.A.

8. From the above it is relevant to note that the defendant No.4 is claiming that he had filed caveat petition and the same was not noted by the office, for which the court has also passed exparte temporary injunction and hence the same requires to be vacated. No other grounds

are urged in the affidavit to vacate the temporary injunction on merits of the defence, prima facie at this stage. Therefore, whether the grounds urged is sufficient enough or whether it is established prima facie at this stage has to be considered.

9. The office has categorically noted that no caveat is filed by any of the defendants. It is also relevant to note that name of the defendant No.4 Uddandadppa is not at all found in the Case Information System, the software used by this court for registration, adjournment and disposal etc, of the cases. Moreover, the defendant No.4 has not furnished the caveat copy in the present suit so as to establish the grounds urged prima facie at this stage. This is one aspect of the matter.

10. Even if it were to be assumed for a moment for the sake of arguments that the applicant/defendant No.4 had filed a caveat and the court passed exparte order in this regard to the caveat filed by him, the said aspect must

have been raised immediately after the appearance of the defendant on 20.03.2020 by filing the memo opposing for extension of temporary injunction. Only on that ground alone it would be equitable to vacate the temporary injunction after more than 13 adjournments, when the present application came to be filed. Therefore, it is proper that the I.A. No.1 is disposed of on merits and the temporary injunction order granted earlier extends from time to time.

11. With abundant precaution, it is clarified that if at all the defendant No.4 has got any ground to object the extension of temporary injunction on the merits is claimed, such grounds may be pleaded and putforth in the affidavit filed in support of the I.A. U/o 39 Rule 4 of CPC, whereafter, the matter can be decided on merits of the claim. Fact remains, that the grounds urged are insufficient and not established so as to Point No.1. Hence, Point No.1 is answered in the Negative.

12. **Point No.2:-** In view of the findings on the point No.1 supra, this Court proceeds to pass the following:

ORDER

I.A. dated 23.11.2021 filed by the defendant No.4 under Order 39 Rule 4 of CPC is hereby dismissed.

(Dictated to the Stenographer, transcribed by her, corrected, initialed and then pronounced by me in open Court on this the 20th day of December 2021).

(Ganapathi Prashanth.M)
Senior Civil Judge, Nanjangud.

**Order pronounced in the open
court, vide separate order**

ORDER

I.A. dated 23.11.2021 filed
by the defendant No.4 under
Order 39 Rule 4 of CPC is
hereby dismissed.

Senior Civil Judge, Nanjangud.