

KAMS500001052020



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

**Present :** **Sri. Kamalaksha D., B.A., LL.B.,**  
Senior Civil Judge & J.M.F.C.,  
Nanjangud.

**Dated this the 3<sup>rd</sup> day of December 2024**

**O.S./22/2020**

**Plaintiffs** : Ningamma and others

**-V/s-**

**Defendants:** H.G.Mahadevappa and others

**I.A. XIII**

**Applicant** : Jyothi  
....defendant No.11  
(By Sri. N.M., Adv.)

**-V/s-**

**Opponents** : H.G.Mahadevappa and others  
...plaintiffs  
(By Sri. M.A.S., Adv.)

**ORDER ON I.A. XIII UNDER ORDER 39**  
**RULES 1 & 2 OF CPC**

The defendant No.11 has filed this application for temporary injunction to be issued against the defendants No.2 to 6 and proposed defendants No.20 and 21 and their agents, servants, henchmen or anybody acting on their behalf, restraining them from alienating the application schedule properties till disposal of the suit.

2. According to the defendant No.11, the properties of Sy.No.401/2 measures 2 acres and Sy.No.401/3 measures 1 acre 38 guntas are the disputed properties. The defendants No.2 to 6 and proposed defendants No.20 and 21 are trying to alienate the suit schedule properties. It is further submitted that, the defendants No.2 to 6 by joining hands with the Revenue Department by falsifying the documents have changed the khatha into their names in the revenue documents. As such the plaintiffs filed the suit for the same reason and also maintained an application under Order 39 Rules 1

and 2 of C.P.C. and ad-interim exparte injunction was granted in favour of the plaintiffs against the defendants and later on after all the defendants came on record at the time of hearing on the same application, at that point of time the defendants No.2 to 6 have filed a memo dated 02.12.2022 that they will not be alienating the application schedule properties for a term of 4 months and this being the subject matter necessary orders were passed by restraining the defendants No.2 to 6, not to alienate the application schedule properties for a term of 4 months. It is further submitted that, such being the case when the application is pending before this court, the defendants No.2 to 6 have sold the application schedule property No.1 in favour of Sanjay Kumar H.K. and Anitha K.J. dated 25.10.2024. As such the application filed by the plaintiffs is pending to implead these two persons in this suit. It is further submitted that, the defendants No.2 to 6 are eagerly trying to alienate the application schedule property No.2 in favour of the same purchasers. Suppose

injunction is not granted it will cause hardship to the defendant No.11. Hence, prays to allow the application.

3. The defendants No.2 to 6 filed objections stating that, the applicant contends baseless allegation against them, because they have not sold the property as alleged by the defendant No.11. The plaintiffs already filed the application under Order 39 Rules 1 and 2 C.P.C. and it is pending for consideration and the plaintiffs have not filed any fresh application on the allegation of recent disposal of the suit schedule properties. Therefore, the defendants No.2 to 6 have explained that the 11<sup>th</sup> defendant filed application with false narration. Hence, pray to reject the application.

4. Heard the arguments. Perused pleadings and materials placed on record. The points that arise for my consideration are:

1. Whether the defendant No.11 proves prima-facie case to grant temporary injunction ?

2. Whether the defendant No.11 further prove that balance of convenience lies in her favour?
3. Whether irreparable injury will cause to the plaintiffs if temporary injunction is rejected?
4. What order ?
5. The above points are answered as follows :-

Points No.1 to 3 : In the affirmative

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

### **REASONS**

6. **Point No.1** :- The suit is filed for partition and separate possession in the year 2020. As rightly submitted by the learned counsel for the defendants No.2 to 6 an application under Order 39 Rules 1 and 2 of C.P.C. is pending filed by the plaintiffs and the defendants No.2 to 6 have filed memo stating that they will not alienate the suit schedule properties for the period of next 4 months. The learned counsel for the defendant No.11 argued and produced xerox copy of registered sale deed dated 15.10.2024 stating that already defendants No.2 to 6 and

proposed defendants have sold item No.1 application schedule property in favour of Sanjay Kumar H.K. and Anitha K.J. The said document shows that, the 3<sup>rd</sup> defendant i.e., Nanjappa and his children jointly sold the item No.1 of application schedule property in favour of Sanjay Kumar H.K. and Anitha K.J. On perusal of the said document shows that, the sold property is one of the schedule properties. The said transaction definitely shows the further intention of other defendants to sell the suit schedule properties even before ending of dispute.

7. Temporary injunction application can be filed either by plaintiff or defendant. Therefore, if application is filed by one of the defendants i.e., the 11<sup>th</sup> defendant that cannot be rejected on the ground that it is filed by only the defendants. The produced document i.e., sale deed by the 11<sup>th</sup> defendant shows the attempt of the defendants to sell the suit schedule properties in future also. Therefore, prima-facie case is proved. Hence, **point No.1** is answered **in the affirmative.**

8. **Points No.2 and 3:** These points are taken together for discussion. Suppose temporary injunction is not granted, it would definitely cause hardship to the plaintiffs and other defendants including the 11<sup>th</sup> defendant, because already the 3<sup>rd</sup> defendant and his family members sold one of the items of the properties in favour of Anitha K.J. and Sanjay Kumar H.K. The name of the purchasers yet to be impleaded in the plaint, because the defendant No.3 created hardship to the plaintiffs and other defendants to implead the purchasers as necessary parties. Suppose temporary injunction is not ordered it would definitely help the defendants to sell further more properties and that loss cannot be compensated by way of compensation in terms of money. Hence, irreparable injury and balance of convenience also lies in favour of the defendant No.11. Hence, points No.2 and 3 are answered **in the affirmative.**

9. **Point No.4:-** In view of the findings on the above points, this Court proceeds to pass the following:

**ORDER**

I.A.XIII filed by the defendant No.11 under Order XXXIX Rules 1 and 2 CPC is allowed.

The defendants No.2 to 6 and proposed defendants No.20 and 21 or anybody acting on their behalf are restrained from alienating the application schedule properties in any manner by way of temporary injunction till disposal of the suit.

No order as to cost.

*(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 3<sup>rd</sup> day of December 2024).*

**(Kamalaksha D.)**  
Senior Civil Judge & J.M.F.C.,  
Nanjangud.