

**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 26th day of September, 2019.

O.S.No. 83/2019

Plaintiff/s : Kariyappa and another

-V/s-

Defendant/s : Basappa and others

I.A. No.1

Applicant/s : Kariyappa
.... 1st plaintiff

-V/s-

Opponent/s : Basappa and others
... defendants

I.A.

Applicant/s : Basappa
.... 1st defendant

-V/s-

Opponent/s : Kariyappa and another
... Plaintiffs

COMMON ORDERS ON I.A. No.1 DATED 04.07.2019
UNDER ORDER 39 RULE 1 & 2 OF CPC FILED BY THE
PLAINTIFFS
AND
I.A. DATED 18.09.2019 UNDER ORDER 39 RULE 4 OF
CPC FILED BY DEFENDANTS

The plaintiffs have filed I.A. dated 04.07.2019 U/o 39 Rule 1 and 2 of CPC seeking temporary injunction against the defendant No.1 from alienating or encumbering the schedule property pending disposal of the suit.

2. The grounds urged in the affidavit filed in support of the present application is that the suit is filed seeking for partition and separate possession of the property belonging to the father of the plaintiffs by name Kariputtaiah @ Kariputtappa who died 35 years back and his wife Siddamma died 25 years back and the properties are ancestral and joint family properties partible at the instance of the plaintiff but the defendant No.1 got changed the khata into his name in respect of suit item No.2 to 7 without the knowledge of the plaintiff and is trying to alienate the schedule property and is trying to

mutate suit schedule item No.1 into his name and the claim for share of the plaintiff is refused and hence, the suit and I.A. and prayed to allow the application.

3. The defendant No.1 filed I.A. U/o 39 Rule 4 of CPC seeking vacate ad-interim temporary injunction order and the said application is in nature of objections to I.A. No.1 filed by the plaintiff. In support of the application the defendant No.1 filed affidavit alleging that there is a prior partition deed dated 22.04.1991 between the plaintiff and defendants and Panchayath Palu Patti is also recorded and the suit is filed by not disclosing about the properties allotted to the share of the plaintiff and to knock of the suit item No.2 which is allotted to the share of the defendant No.1 and prayed to dismiss the I.A. and vacate the temporary injunction order.

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

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

1. Whether the plaintiff has made out prima facie case ?
2. Whether the balance of convenience lies in favour of plaintiff ?
3. Whether the plaintiff will be put irreparable injury if the temporary injunction is not granted ?
4. Whether the defendant No.1 has made out valid grounds for vacating the temporary injunction already granted ?
5. What order ?
6. The above points are answered as follows :-

Point No.1 to 3	:	Partly in the Affirmative
Point No.4	:	In the Affirmative
Point No.5	:	As per final order

for the following:-

REASONS

7. **Point No.1:-** The suit schedule item No.1 is bearing Sy No.112/2 measuring 2 acres 23 guntas. The RTC in respect of the said property stands in the name of the father of the plaintiff and separate extent is not mentioned in respect of the children of Kariputtaiah. The suit schedule item No.2 is Assessment No.49 measuring 15 x 60 ft. The said property stands in the name of Basappa,

the defendant No.1. In the very demand register extract produced by the plaintiff, the southern boundary is mentioned as shed of Kariyappa. The name of plaintiff is Kariyappa, is relevant. The western boundary is mentioned as house of Shivabasappa and *Galli*. The plaintiff No.2 is by name Shivabasappa. In the document produced by the defendant which is assessment register extract, the Assessment No.47 is mentioned in the name of plaintiff No.1, Kariyappa and the Assessment No.48 is mentioned in the name of plaintiff No.2 Shivabasappa. The suit schedule item No.3 to 7 though mentioned in the plaint schedule, the plaintiff has not produced the assessment extract or demand register extract pertaining to the said property and has not mentioned any assessment number. Hence, their availability is doubtful at this stage.

8. The plaintiff has claimed temporary injunction against the defendant from alienating or encumbering the schedule properties pending disposal of the suit. Even as

per the partition palu patti produced by the defendant, the suit schedule item No.1 does not fully belong to defendant No.1. Hence, in respect of suit schedule item No.1 a prima facie case is made out at this stage. In so far as suit item No.2 property is concerned, as the plaintiffs have not included assessment No.47 and 48 which stands in their respective names, prima facie case is not made out in respect of suit item No.2 property. The prima facie case is also not made out in respect of the other suit schedule properties, as the plaintiffs have not produced any documentary proof regarding existence of such properties. Therefore, Point No.1 is answered Partly in the Affirmative.

9. **Point No.2 & 3** :- In view of point No.1, if the temporary injunction is not granted in respect of suit schedule item No.1, the very purpose of the suit will be get defeated by reason of delay and if the defendant alienates the suit schedule item No.1, the very claim made by the plaintiff in the suit may get jeopardized. Hence, balance of convenience lies in favour of the plaintiff to this extent

only. Hence, plaintiffs will be put to irreparable injury if the temporary injunction is not granted in respect of suit schedule item No.1 property. In respect of suit schedule item No.2 to 7 are concerned, as the plaintiffs have failed to make out prima facie case in respect of those properties, temporary injunction cannot be granted. Hence, Point No.2 and 3 are answered Partly in the Affirmative in respect of suit schedule item No.1 only.

10. **Point No.4** :- In view of Point No.1 to 3, the temporary injunction already granted in respect of suit item No.2 property requires to be vacated. It is relevant to note that the ex parte temporary injunction order granted only in respect of suit item No.2 property, but not in respect of other items in the suit schedule properties. Hence, Point No.4 is answered in the Affirmative.

11. **Point No.5:-** In view of the findings on the points supra, this Court proceeds to pass the following:

ORDER

I.A. dated 04.07.2019 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed in part, in respect of suit schedule item No.1 only.

The defendant No.1 or the persons claiming through or under him are hereby restrained from alienating or encumbering suit schedule item No.1 property pending disposal of the suit, by way of order of temporary injunction.

The claim for temporary injunction in respect of other items of suit schedule properties is rejected.

I.A. dated 18.09.2019 filed by the defendant No.1 under Order 39 Rule 4 of CPC is hereby allowed.

The exparte temporary injunction granted in respect of suit item No.2 is hereby vacated.

(Dictated to the Stenographer, typed by her, corrected, initialed and then pronounced by me in open Court on this the 26th day of September 2019).

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

Order pronounced in the open court, vide separate order

ORDER

I.A. dated 04.07.2019 filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed in part, in respect of suit schedule item No.1 only.

The defendant No.1 or the persons claiming through or under him are hereby restrained from alienating or encumbering suit schedule item No.1 property pending disposal of the suit, by way of order of temporary injunction.

The claim for temporary injunction in respect of other items of suit schedule properties is rejected.

I.A. dated 18.09.2019 filed by the defendant No.1 under Order 39 Rule 4 of CPC is hereby allowed.

The exparte temporary injunction granted in respect of suit item No.2 is hereby vacated.

Senior Civil Judge, Nanjangud.