

KAMS600000302023



O.S./16/2023

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AT
PERIYAPATNA**

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

**Senior Civil Judge,
Periyapatna.**

Dated: 9th Day of November 2023

OS.No.16 of 2023

Plaintiff:

Smt.Jeevarathnamma.

Versus

Defendants:

Smt.Padmakumari & Anr .

IA.No.1

Applicant/plaintiff.

Smt.Jeevrathnamma.

Versus

Opponent/defendants.

Smt.Padmakumari & Anr.

Provision under which IA is filed	u/Order 39 Rules 1& 2 of CPC
Relief sought for	Temporary Injunction
Date of filing of application	05.01.2023
Application No.	1
Date of filing objection	17.08.2023
Date of order	09.11.2023

ORDER ON IA.No.1 U/O 39 RULE 1 & 2 CPC

Plaintiff moved this application seeking to restrain the defendants from alienating suit properties in any manner pending disposal of suit.

2. Defendants resisted the application by adopting the written statement averments as objections.

3. Heard arguments.

4. Following points arise for consideration:

1. *Whether plaintiff proves that she has got a prima facie case?*
2. *In whose favour the balance of convenience lies?*
3. *To whom the irreparable loss will be caused?*
4. *What order?*

5. Findings to the above points are as under;

Point-1: Affirmative.

Point-2: In favour of plaintiff.

Point-3: To the plaintiff.

Point-4: As per below for the following;

REASONS

6. Point-1: At the outset; suit is filed for partition & separate possession of plaintiff's half share in the suit properties by asserting that; she and the defendant-1 are daughters of deceased Puttappagowda, who died in the year 1986. Puttappagowda married Devamma, who is mother of plaintiff. Thereafter, without consent of Devamma, he married Gowramma, who is mother of defendant-1. Devamma died in the year 1960. Gowramma died in the year 2006. Suit properties are ancestral properties in which plaintiff and defendant-1 are having equal share despite defendant-1 illegally sold suit item-7 in favour of defendant-2; said alienation is not binding on plaintiff. Hence, suit is filed.

7. Defendant-1 filed written statement denying plaintiff averments in toto, and inter alia contended that;

the joint status between plaintiff and defendant-1 severed under plau parikat/partition deed dated 01.03.87. Since then they are in separate possession and enjoyment of their respective shares. At the time of division the family was in debt and defendant-1 has undertaken to clear the debts, as such more extent of land is allotted towards her share. During his lifetime Puttegowda gave 16As 33Gs of land in Sy.No.87 of Bekya village in favour of husband of plaintiff, due to this also more extent of land was allotted towards the share of defendant-1. For legal necessity she sold suit item-7 in favour of defendant-2 in the year 2015. Among these grounds she prayed to dismiss the suit.

8. Defendant-2 filed written statement contending that; for legal necessity the defendant-1 and her family members sold suit item-7 in his favor under a registered sale deed dated 25.03.15. After purchase he

has developed the land. Plaintiff has no right over said land. Hence, he prayed to dismiss the suit.

9. Along with plaint; plaintiff filed the application at hand for the relief stated *supra* by stating the facts set out in the plaint, which are already stated *supra*; no need of repetition. Defendants objected the application by adopting written statement averments which are stated above.

10. The settled position of law is that; to seek discretionary relief of temporary injunction plaintiff must satisfy the Court with respect to the existence of a *prima facie* case, irreparable injury likely to be suffered by her and balance of convenience lies in her favour.

11. Let us see whether plaintiff has established a *prima facie* case or not. Plaintiff has produced

documents viz., **i)** RR5 & RR6 of suit properties. **ii)** RTC extract of suit properties, wherein the lands are standing in the names of plaintiff and defendant-1 & the mode of acquisition is indicated as inheritance. Suit item-7 is in the name of defendant-2 and the mode of acquisition is indicated as purchase.

12. Defendants have not produced any document.

13. Careful scrutiny of rival pleadings put forth by the parties to lis and the contents of documents produced by them, one can see that; there is no dispute about the relationship of plaintiff and defendant-1 as well as the nature of suit properties. The only dispute is that; plaintiff claims that there is no severance of joint status whereas defendant-1 contended that joint status severed under partition dated 01.03.87. But at the moment she has not produced any document to prima facie establish her

contention. The fact in issue i.e., whether joint status severed or not is to be adjudicated after full-fledged trial; it cannot be decided at the threshold.

14. In the backdrop of factual situation at hand one can say that; at the moment the plaintiff *prima facie* demonstrated that she has right over the suit properties. Whether sale deed executed in favour of defendant-2 by defendant-1 is binding on the plaintiff or not is to be decided after trial.

15. At the moment the discussion *supra* manifest that the plaintiff has demonstrated the existence of a *prima facie* case by showing that she has right over the suit properties and there are triable issues involved in the lis. Hence, point-1 is answered in affirmative.

16. Points-2 & 3: These points are taken together

for common discussion to avoid repetition of facts.

17. Temporary injunction is a preventive relief and its purpose is to preserve status quo in respect of the subject matter of the suit.

18. In the instant case; plaintiff sought preventive relief to restrain the defendants from alienating suit properties. Findings on above point show that at the moment plaintiff demonstrated the existence of a *prima facie* case in her favour. Under these circumstances if the defendants are not restrained from alienating suit properties the plaintiff will be subjected to hardship because it will result in the multiplicity of proceedings and same would adversely affect the right of the party seeking injunction on ultimately succeeding in the suit. In that event plaintiff will be subjected to irreparable injury which cannot be compensated by any means, as such Court

interference is necessary to protect plaintiff from injury, which is irreparable. Under these circumstances comparative mischief or inconvenience likely to be caused from withholding injunction will be greater than by granting it. Thus, the balance of convenience also tilts in favour of plaintiff against the defendants. Accordingly, these points are answered.

19. Before parting let us consider another contention raised by the defendants i.e., if temporary injunction order is granted then they will not be in a position to raise loans to cultivate the suit lands & also plaintiff obstruct their possession. On the other hand plaintiff argued that; if the defendants allowed to avail loans on suit land then they will raise huge loans to defraud her right over the suit properties.

20. The contention raised by the plaintiff is not

tenable because what ever the agricultural loans raised by the defendants for the cultivation of suit lands will bind only on them and said loans are no way a hurdle for the plaintiff to claim her right over the suit properties. It is need less to say that the loans to be raised are binding only on the defendants and not to the right of plaintiff over the suit properties if any.

21. Point-4: By virtue of above findings, Court proceeds to pass the following;

ORDER

IA-1; under Order 39 R 1 & 2 of CPC filed by the plaintiff is allowed.

Defendants are hereby temporarily restrained from alienating the suit properties i.e., lands bearing Sy.No.7 (8As 16Gs), Sy.No.12 (3As 34Gs), Sy.No.13 (28Gs), Sy.No.14 (1A 13Gs), Sy.No.17

(5As 26Gs), Sy.No.64/2/2 (20Gs) of Bekya Village, Kasaba Hobli, Periyapatna Taluk & Sy.No.50 (6As 32Gs) & Sy.No.55/2 (2As 1G) of Vadlimanuganahalli Village, Hanugodu Hobli, Hunsuru Taluk till further orders.

It is made clear that this order will not restrain the defendants from availing agricultural loans on the suit lands. And also this order is not related to the possession of parties over the suit lands.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, corrected and initialed by me & then pronounced in the open Court on 09.11.23).

sd/-

(A.Samiulla)
Senior Civil Judge,
Periyapatna.