

KAMS600002032022



O.S./22/2022

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

**Present  
Sri.A.SAMIULLA  
B.Sc., LL.B.,  
Senior Civil Judge,  
Periyapatna.**

**Dated: 31<sup>st</sup> Day of October 2022**

**OS.No.22 of 2022**

Sri.Ninganna.

***..... Plaintiff***

**V/s**

Sri.Thimmappa & Ors.

***.....Defendants***

**IA.No.1**

Sri.Ninganna

***....Applicant/Plaintiff***

**V/s**

Sri.Thimmappa & Ors

***.....Opponents/Defendants***

**Order on IA-1; u/O 39 Rule 1 & 2 r/w Section 151  
of CPC:**

Plaintiff moved this application seeking to issue

temporary injunction to restrain the defendants-1 to 5 from alienating suit properties in any manner till disposal of suit.

**2.** Defendant-1 resisted the application by adopting written statement averments as objections to the application.

**3.** Heard arguments.

**4.** Following points arise for consideration:

1. *Whether plaintiff proves that he 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

and separate possession by asserting that; plaintiff & defendants-2 to 6 are children of defendant-1. Suit properties are ancestral & joint family properties and there is no severance of joint status. Defendant-1 being Kartha of family is mis-managing the affairs. Hence, plaintiff demanded to effect partition & allot to his legitimate share but to no avail. Hence, suit is filed.

7. Defendant-1 filed written statement denying plaintiff averments and contended that; suit items-1 to 6 were purchased by defendant-2 in the name of defendant-1 as the defendant-2 was in service & also he was not holding agricultural land. Said lands belongs to defendant-2 as such he (D1) executed gift deed in favour of defendant-2. He contended that suit items-7 to 16 are already divided under oral partition and they are in possession of their respective shares. House at Makodu village was given to the plaintiff and

he is residing therein along with family members. Said house is in the name of defendant-1 despite it is not included in the plaint schedule. Among these grounds, he prayed to dismiss the suit.

**8.** Along with plaint; plaintiff filed the application at hand for the relief stated supra by stating facts set out in the plaint, which is objected by the defendant-1 by adopting the written statement averments as statement of objections, which are already stated *supra* and there is no need of repetition.

**9.** 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 him and balance of convenience lies in his favour.

**10.** Let us see whether plaintiff has established a prima facie case or not. Plaintiff produced documents viz., **i)** RTC extract of lands bearing Sy.No.4/4A, Sy.No.3/5, Sy.No.4/4B, Sy.No.2/3, wherein the name of defendant-1 finds a place at column No.9 & 12 (2) & the mode of acquisition is indicated as MR.No.3/96-97, purchase. **ii)** RTC extract of land bearing Sy.No.2/5 standing in the name of defendant-1; mode of acquisition is indicated as MR.No.66/89-90. **iii)** RTC extract of land bearing Sy.No.111/7 standing in the name of defendant-1; mode of acquisition is indicated as MR.No.35/92-93. **iv)** RTC extract of land bearing Sy.No.2/6 standing in the name of defendant-1; mode of acquisition is indicated as MR.No.45/80-81. **v)** RTC extract of land bearing Sy.No.40 standing in the name of defendant-1; mode of acquisition is indicated as MR.No.90/03-04. **vi)** RTC extract of land bearing

Sy.No.38/2E standing in the name of defendant-1; mode of acquisition is indicated as MR.No.44/80-81.

**vii)** RTC extract of land bearing Sy.No.38/2D standing in the name of defendant-1; mode of acquisition is indicated as MR.No.45/80-81. **viii)** RTC extract of land

bearing Sy.No.161/3 standing in the name of defendant-1; mode of acquisition is indicated as MR.No.45/80-81. **ix)** RTC extract of land bearing

Sy.No.149/1 standing in the name of defendant-1; mode of acquisition is indicated as MR.No.44/80-81.

**x)** RTC extract of land bearing Sy.No.141/1A standing in the name of defendant-1; mode of acquisition is indicated as MR.No.45/80-81. **xi)** RTC extract of land

bearing Sy.No.145/14 standing in the name of defendant-1; mode of acquisition is indicated as

MR.No.44/80-81. **xii)** RTC extract of land bearing Sy.No.144/18 standing in the name of defendant-1;

mode of acquisition is indicated as MR.No.45/80-81.

**xiii)** RTC extract of land bearing Sy.No.143/4 standing in the name of defendant-1; mode of acquisition is indicated as MR.No.45/80-81.

**11.** Defendants have not produced any documents.

**12.** Careful scrutiny of rival pleadings put forth by the parties to lis and the contents of documents produced by the plaintiff, one can see that; absolutely there is no dispute whatsoever with respect to the relationship of plaintiff and defendants. The main contention raised by the defendant-1 is that the suit items-1 to 6 belongs to defendant-2, who purchased the same in his (D1) name and subsequently, he has executed Gift deed in favour of defendant-2. He also contended that suit items-7 to 16 are already divided under oral partition. On the other hand plaintiff stated

that suit properties are ancestral and joint family properties and there is no severance of joint status. At the moment defendant-1 has not produced any document to support his case.

**13.** The facts asserted and denied by the parties to lis manifest that; at the moment plaintiff has demonstrated his right over the suit properties, as there is no dispute with regard to his relationship with the defendants. The only dispute crop up between the parties is about to whom the properties originally belongs to & whether there is severance of joint status or not. This fact in issue is to be adjudicated after full-fledged trial. By this it can be said without any hesitation that at this stage plaintiff has demonstrated a *prima facie* case against defendants by showing that he has right over the suit properties & a full-fledged trail is necessitated to resolve the real controversy

between the parties to suit. Dispute involved in the lis at hand cannot be decided at the threshold, which shows that there are triable issues involved in the suit, which requires a trial to decide the same. Hence, point-1 is answered in affirmative.

**14. Points-2 & 3:** These points are taken together for common discussion to avoid repetition of facts.

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

**16.** In the instant case; plaintiff sought preventive relief to restrain defendants from alienating suit properties. Findings on above point shows that at the moment plaintiff is having a prima facie case. Under these circumstances if defendants are not restrained from alienating the suit properties he 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 the 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 defendants. Accordingly, these points are answered.

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

**ORDER**

IA-I; u/O 39 R 1 & 2 r/w Section 151 CPC filed

by the plaintiff is allowed.

Defendants-1 to 5 are hereby temporarily restrained from alienating the suit properties i.e., lands bearing Sy.No.4/4A (10Gs), Sy.No.3/5 (2As 31Gs), Sy.No.4/4B (23Gs), Sy.No.2/3 (1A 5Gs), Sy.No.2/5 (18Gs), Sy.No.111/7 (29Gs), Sy.No.2/6 (18Gs), Sy.No.40 (2As 34Gs), Sy.No.38/2E (1A 35Gs), Sy.No.38/2D (1A 22Gs), Sy.No.161/3 (28Gs), Sy.No.149/1 (13Gs), Sy.No.141/1A (8Gs), Sy.No.145/14 (4Gs), Sy.No.144/1B (24Gs), Sy.No.143/4 (16Gs) & tobacco barn measuring 16 x 16 & license TBGR No.60-054-123 of Makodu Village, Ravanduru Hobli, Periyapatna Taluk in any manner pending disposal of suit.

No order as to costs.

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this 31<sup>st</sup> day of October 2022)

sd/-  
**(A.Samiulla)**  
**Senior Civil Judge,**  
**Periyapatna.**