

KAMS600021582022



O.S./163/2022

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

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

**Senior Civil Judge,
Periyapatna.**

Dated: 8th Day of September 2023

OS.No.163 of 2022

Plaintiff:

Smt.Meenakashi.

V/s

Defendants:

Sri.Cheluvegowda & Ors.

IA.No.1

Applicant/plaintiff.

Smt.Meenakashi.

V/s

Opponent/defendants.

Sri.Cheluvegowda & Ors.

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.

2. Defendants-1 & 3 resisted the application by filing objection statement.

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 and separate possession by asserting that; propositus Cheluvegowda (D1) had two wives Sharadamma (mother of plaintiff and defendant-2) and Kempamma (mother of defendants-3 & 4); they constituted joint family; suit properties are ancestral and joint family properties and there is no severance of joint status.

When such being the fact; defendants-1 to 3 colluding together with an intention to defraud her legitimate share have executed gift deed in favour of defendant-4 as per MR.No.H6/21-22, which is not binding on her. She demanded to allot her legitimate share but to no avail. Hence, suit is filed.

7. Defendants-1 to 3 resisted the suit by filing written statement denying plaint averments in toto and inter alia contended that; plaintiff is not having right to file suit; genealogy shown in the plaint is false. They denied that defendant-1 had two wives and plaintiff is daughter of first wife Sharadamma, who is not the wife of defendant-1. They denied that suit properties are ancestral & joint family properties. They contended that suit item-1 is the self-acquired property of defendant-1. Suit item-2 is allotted to the share of defendant-1 in family partition effected between him and his brothers. Defendant-1 has

executed gift deed in favour of defendant-4 in respect of suit item-2. Among these grounds, they 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 defendants-1 & 3 by filing statement of objections, wherein written statement averments are reiterated, 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 her and balance of convenience lies in her favour.

10. Let us see whether plaintiff has established a

prima facie case or not. Plaintiff has produced documents viz., **i)** RTC extracts of lands in Sy.No.138/2 (4As 1G), Sy.No.102 (13.08Gs) & Sy.No.107/1 (7.08Gs), wherein the name of propositus Cheluvegowda (D1) is forthcoming at column No.9 & 12 (2). **ii)** RTC extract of land in Sy.No.135/6 (16Gs) wherein the name of defendant-4 finds a place at column No.9 & 12 (2) and mode of acquisition is indicated as MR.No.H6/21-22 by way of gift. **iii)** MR.No.H6/21-22 wherein 16Gs of land in Sy.No.135/6 was mutated in the name of defendant-6 by rounding off the name of propositus Cheluvegowda. **iv)** MR.No.4/87-88 wherein name of Cheluvegowda was mutated to the land in Sy.No.138/2. **vi)** Old RTC extract of land in Sy.No.107 wherein name of Thimmaiah i.e., father of Cheluvegowda is forthcoming.

11. Defendants-1 & 3 have produced documents

viz., **i)** Copy of unregistered relinquishment deed said to have been executed by Sannakarigowda and Narasegowda in favour of Cheluvegowda in respect of lands in Sy.No.138/2. **ii)** MR.No.4/87-88. **iii)** MR.No.H6/21-22. **iv)** Old RTC extracts of land in Sy.No.102. **v)** G-tree **vi)** School certificates of defendants-3 & 4.

12. Careful scrutiny of rival pleadings put forth by the parties to lis and the contents of documents produced by them, one can see that; the defendants-1 & 3 specifically denied the relationship of plaintiff with defendant-1. They denied that Sharadamma is 1st wife of defendant-1 and the plaintiff and defendant-2 are his daughters. They contended that the 1st wife name of defendant-1 is Chennamma who is issue-less.

13. Defendants-1 to 3 denied the very relationship of plaintiffs and also the nature of suit item-1. But at the moment they have not produced any document, which *prima facie* demonstrate their contention. On the other hand, at the moment the documents *supra* produced by the plaintiff *prima facie* demonstrated that she is having right over the suit properties. Dispute crop up between the parties to lis with respect to the relationship as well as nature of suit properties is to be adjudicated after a full fledged trial. Said fact in issue cannot be decided at the threshold.

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

affirmative.

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

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

17. In the instant case; plaintiff sought preventive relief to restrain the defendants from alienating suit properties. Findings on above point shows 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 said 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.

18. 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. On the other hand plaintiff argued that; if the defendants allowed to avail loans on suit lands then they will raise huge

loans to defraud her legitimate share in the suit properties.

19. 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 share in the suit properties if any. It is need less to say that the loans to be raised are binding only on the share of defendants and not to the share of plaintiff if any.

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

ORDER

IA-1; u/O 39 R 1 & 2 r/w Section 151 CPC filed by the plaintiff is allowed.

Defendants are temporarily restrained from alienating the suit lands bearing Sy.No.138/2 (4As

1G), Sy.No.135/6 (16Gs) of Harilapura village & Sy.No.102 (13.08Gs), Sy.No.107/1 (7.08Gs) of Kiranalli village, Ravanduru Hobli, Periyapatna Taluk respectively in any manner pending disposal of suit.

It is made clear that this order will not restrain the defendants from availing agricultural loans on 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 08.09.23).

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