

KAMS710006062023



**IN THE COURT OF THE ADDL. CIVIL JUDGE &  
JMFC., AT T.NARASIPURA**

**Present** : **Sri. Venkatesha.K.N.,** <sup>B.A. LL.B.</sup>  
Addl. Civil Judge & J.M.F.C.,  
T.Narasipura.

**Dated** : **This the 06<sup>th</sup> day of November, 2024.**

**O.S./104/2023**

**Plaintiff** : Sri.Mahadevappa,  
S/o Late Siddalingappa,  
Aged about 68 years,  
R/at Menasikyathanahalli Village,  
Bannur Hobli,  
T.Narasipura Taluk,  
Mysuru District.

(Represented by : Sri.S.C.S, Advocate.)

-V/S-

**Defendants** : 1. Smt.Sundramma,  
W/o Mahadevappa,  
Aged about 65 years,  
R/at No.355, 7<sup>th</sup> Cross,  
Vinayaka Extension,  
Nagarabavi, Bengaluru-72.

2. Smt.Rajamma,  
W/o Late Nagaraju,  
Aged about 42 years,

R/at Yadadore Village,  
Kasaba Hobli,  
T.Narasipura Taluk.

3. Sri.Shivakumara,  
S/o Siddappa,  
Aged about 40 years,  
R/at B.G Pura Village,  
Malavalli Taluk,  
Mandya District.

4. Smt.Pavithra,  
W/o Prakash,  
Aged about 35 years,  
R/at Channabasavaiahnahundi  
Village, Talakadu Hobli,  
T.Narasipura Taluk.

(Represented by : Sri.L.S., Advocate.)

**Parties to I.A. No.II.**

Applicant/ : Sri.Mahadevappa.  
Plaintiff

-V/S-

Opponents/ : Smt.Sundramma & others.  
Defendants

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**Parties to I.A. No.III.**

Applicants/ : Smt.Sundramma & others.  
defendants

-V/S-

Opponent/ : Sri.Mahadevappa.  
Plaintiff

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**COMMON ORDERS ON I.A.NO.II UNDER ORDER XXXIX  
RULE 1 AND 2 OF C.P.C. AND I.A.NO.III UNDER ORDER  
XXXIX RULE 4 OF C.P.C**

This is the I.A.No.II filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., seeking Temporary Injunction till pending disposal of the suit and I.A.No.III filed by the defendants under Order XXXIX Rule 4 of C.P.C., seeking to set aside the order of Temporary Injunction.

2. In I.A.No.II, it is stated for the reasons mentioned in the accompanying affidavit that, the defendants, their agents, servants or anybody acting on their behalf are to be restrained from alienating the suit/I.A. schedule properties until the final disposal of the suit.

3. In the accompanying affidavit, it is stated to treat the averments of plaint as a part of I.A.No.II. It is further stated that, defendant No.1 is the sister of plaintiff and defendant No.2 to 4 are the children of Boramma, who is the sister of plaintiff. The suit schedule properties are the ancestral joint family properties of plaintiff and defendants. The plaintiff and defendants are in joint possession and enjoyment over the suit schedule properties. The plaintiff is in possession and cultivation of the suit schedule properties. But the defendant No.1 colluded with defendant No.2 to 4 have got changed the Khatha of the suit schedule properties into her name behind the back of the plaintiff. Thereafter, the plaintiff requested the defendant No.1 for partition and

separate possession but the defendant No.1 neglected the same. Further, without the consent of the plaintiff, the defendant No.1 has illegally obtained the Khatha of the item No.1 to 3 of the suit schedule properties. Further, the Khatha of the item No.4 of the suit schedule property has been standing in the name of father of plaintiff. Further, there is no partition effected between the plaintiff and defendants till today. Hence, the plaintiff is also having 1/3<sup>rd</sup> share in the suit schedule properties. The defendants have no manner of right or interest over the schedule properties and the defendants are trying to sell the suit schedule properties to third parties. Hence, the plaintiff has filed the present suit for partition and separate possession. Further, if the application is allowed no prejudice to other side. Balance of convenience is in his favour. On the other hand, he will be put to great hardship and inconvenience which cannot be compensated in any manner. Accordingly, prays to allow the I.A.No.II.

4. On the other hand, on service of summons to defendants, they have appeared before the Court through their counsel. The opponents/defendants have filed an objections to the I.A.No.II and in their objections they have denied the allegations made in the I.A.No.II.

5. On the other hand the defendants have filed I.A.No.III under Order XXXIX Rule 4 of C.P.C., seeking to set aside the order of Injunction granted in this case by

dismissing the application filed under Order 39 Rule 1 and 2 of C.P.C by the plaintiff.

6. In the accompanying affidavit, it is stated to treat the averments of written statement as a part of I.A.No.III. It is further stated that, the plaintiff has claiming false share in item No. 1 to 3 of the schedule properties. The plaintiff is very well aware being the elder son of the family that schedule item No.1 to 3 are the exclusive properties of defendant No.1. Further stated that, her father has executed the Gift Deed in her favour and gifted the item No.1 & 2 of the suit schedule properties. Further stated that, item No.3 of the suit schedule property is her self acquired property and same has been purchased under registered Sale Deed for valuable sale consideration. The plaintiff is having only 1/3<sup>rd</sup> share in the item No.4 of the schedule property. The plaintiff has filed the present suit in order to grab the properties of the defendants. There is no prima facie case, balance of inconvenience tilt in favour of the plaintiff, rather the defendants have made out prima facie case, balance of convenience in their favour. Hence, the application of the plaintiff is not maintainable either in law or on facts and there is no prima facie case. Hence, prays to dismiss the I.A.No.II with costs and prays to allow the I.A No.III.

7. On the other hand, the opponent/plaintiff has filed an objections to the I.A.No.III as stated in the I.A.No.II.

Further stated that, the reasons mentioned in the I.A.No.II are the part and parcel of objections to I.A.No.III. Hence, prays to dismiss the I.A No.III with cost.

8. Heard on both sides and perused the materials available on record.

9. Now the points that will arise for my consideration are:-

1. Whether the applicant/plaintiff has got a prima-facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff suffer irreparable loss and injury if the T.I. is refused?
4. Whether the applicant/defendant has made out sufficient grounds to allow the I.A.No.III?
5. What Order?

10. My findings to the above points are as under:-

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|------------|---|---|
| Point No.1 | : | In the <b>Affirmative</b> .             |
| Point No.2 | : | In the <b>Affirmative</b> .             |
| Point No.3 | : | In the <b>Affirmative</b> .             |
| Point No.4 | : | In the <b>Negative</b> .                |
| Point No.5 | : | As per the Order<br>for the following:- |

**:: R E A S O N S ::**

11. **Point No.1 to 4:-**

For the sake of convenience and to avoid the repetition of facts, I have taken these Point No.1 to 4 together for discussion in Order to avoid repetition of facts.

12. In this case, I have completely gone through the entire suit file. This is the suit filed by the applicant/plaintiff for the relief of partition and separate possession. In I.A.No.II, it is stated for the reasons mentioned in the accompanying affidavit that, the defendants, their agents, servants or anybody acting on their behalf are to be restrained from alienating the suit/I.A. schedule properties until the final disposal of the suit. In the accompanying affidavit, it is stated to treat the averments of plaint as a part of I.A.No.II. It is further stated that, the suit schedule properties are the ancestral joint family properties of plaintiff and defendants. Further contended that, the plaintiff and defendants are having equal right and share over the suit schedule properties. The defendant No.1 has illegally changed the Khatha of the suit schedule properties into her name behind the back of the plaintiff in order to grab the suit schedule properties. Further contended that, the defendants are trying to alienate the suit schedule properties in favour of third parties. Further, if the suit schedule properties are alienated it will effect the right of the plaintiff and it will lead multiplicity of proceedings. Hence, the plaintiff has prima facie case and balance of convenience. Accordingly, prays to allow the I.A.No.II.

13. On the other hand, the opponents/defendants have filed I.A.No.III seeking to set aside the order of Injunction granted in this case by dismissing the application filed

under Order 39 Rule 1 and 2 of C.P.C by the plaintiff. In the accompanying affidavit it is stated that, father of the defendant No.1 has gifted the item No.1 & 2 of the suit schedule properties in her favour. Further, defendant No.3 has purchased the item No.3 of the suit schedule property and hence, item No.1 to 3 of the suit schedule properties are the absolute properties of defendant No.1. Further contended that, the plaintiff is having share in only item No.4 of the suit schedule property. Hence, the plaintiff has no prima facie case and balance of convenience. Accordingly, prays to allow the I.A.No.III and dismiss the I.A No.II.

14. During the course of arguments, the learned counsel for plaintiff submitted that, the plaintiff has made out prima facie case and balance of convenience. Therefore, it is necessary in the interest of justice and equity to allow the I.A.No.II.

15. On the other hand, the learned counsel for defendants has also argued that, the plaintiff has not at all placed any documents before the Court to show that the item No.1 to 3 of the suit schedule properties are the ancestral joint family properties of plaintiff and defendants. Therefore, the relief of injunction cannot be granted to a person who has not at all having right and share in the suit schedule properties. Moreover, the present I.A. is filed only to grab the suit schedule properties and harass the defendants. Therefore, it is clearly found that the plaintiff

has no prima facie case and balance of convenience. Accordingly, prays to reject the I.A.No.II with cost.

16. After perusal of the entire case file including I.A.No.II and III and accompanying affidavits and objections to I.A.No.II and III and after hearing on both sides on I.A.No.II and III, I have also gone through the Order XXXIX Rule 1 of C.P.C. which reads as follows:-

“Cases in which temporary injunction may be granted. Where in any suit it is proved by affidavit or otherwise-

(A) That any properties in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongly sold in execution of a decree, or

(B) That the defendant threatens, or intends to remove or dispose of his properties with a view to defrauding his creditors,

(C) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any properties in dispute in the suit,

The Court may by order grant temporary injunction to restrain such act or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the properties or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any properties in dispute in the suit as the

Court thinks fit, until the disposal of the suit or until further orders.”

Further I have also gone through the provision of Order XXXIX Rule 4 of C.P.C. which reads as follows:-

**“4. Order for injunction may be discharged, varied or set aside.-** Any Order for an injunction may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an Order for injunction has been passed after giving to a party an opportunity of being heard, the Order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the court is satisfied that the Order has caused undue hardship to that party.”

17. At this juncture, since the plaintiff prayed for temporary injunction and defendants have prayed to vacate the interim order. Now let me see whether the plaintiff has

made out prima facie case, balance of convenience lies in his favour or whether irreparable injury will be caused to the plaintiff if temporary injunction is refused. Further let me see whether the defendants have made out grounds to discharge/set aside the order of temporary injunction and they have to made out the changed circumstances or they have made out the order of temporary injunction has caused undue hardship to the defendant. After careful scrutiny of the provision of Order XXXIX Rule 1 of C.P.C., and provision of order XXXIX Rule 4 of C.P.C., entire case file and documents produced by the plaintiff as well as defendants, it is mandatory rule that the plaintiff has to show by placing affidavit and other materials that he has prima facie case to obtain the relief of temporary injunction.

18. In this case, the I.A.No.II filed to restrain the defendants from alienating the suit schedule properties until the final disposal of the suit. It is the case of the plaintiff that, the suit schedule properties are the ancestral joint family properties of plaintiff and defendants. The defendant No.1 has been colluded with defendant No.2 to 4 and she has got changed the Khatha of the item No.1 to 3 of the suit schedule properties in order to grab the suit schedule properties. Further, the defendants are trying to alienate the suit schedule properties in favour of third parties. Further, the defendants are not having absolute right or interest over the suit schedule properties and they are trying to alienate the suit schedule properties. The

plaintiff in support of his case placed the documents of R.T.C extracts, Khatha extracts, Acknowledgment, Death Certificates and Encumbrance Certificate. On perusal of R.T.C extracts it reveals that, originally item No.1 & 2 of the suit schedule properties were standing in the name of father of plaintiff. Further reveals that, in the year 2008-09 the defendant No.1 has got changed the Khatha of the item No.1 & 2 of the suit schedule properties in her favour as per M.R No.136/2008-09. Further reveals that, Khatha of the item No.3 of the suit schedule property has been standing in the name of defendant No.1. Further reveals that, the Khatha of the item No.4 of the suit schedule property has been standing in the name of father of the plaintiff. On perusal of Acknowledgment it reveals that, the plaintiff has lodged the complaint against defendant No.1 in Bannur Police Station. On perusal of Death certificates which reveals that, father of plaintiff was died on 10.01.2009 and mother of plaintiff was died on 21.11.2022.

19. On the other hand, the defendants have disputed the nature of the suit schedule properties. Further contended that, the father of the defendant No.1 has gifted the item No.1 & 2 of the suit schedule properties in favour of defendant No.1 and executed the Gift Deed. Further contended that, the defendant No.1 has purchased the item No.3 of the suit schedule property. Hence, item No.1 to 3 of the suit schedule properties are self acquired properties of defendant No.1. Hence, the plaintiff have no manner of right

or share in the item No.1 to 3 of the suit schedule properties. Further contended that, the plaintiff is having right and share in the item No.4 of the suit schedule property only. The plaintiff has filed the present suit in order to knock of the suit schedule properties. The defendants in support of their case placed the documents of original Sale Deed dated:19.08.1978, unregistered Gift Deed dated:06.02.2003, R.T.C extracts and Acknowledgment. On perusal of Sale Deed dated:19.08.1978 it reveals that, the said Sale Deed dated:19.08.1978 has been standing in the name of defendant No.1. Further, on perusal of unregistered Gift Deed dated:06.02.2003 it reveals that, M.S.Siddalingappa has executed unregistered Gift Deed in favour of defendant No.1 and gifted the item No.1 & 2 of the suit schedule properties in favour of defendant No.1. Further on perusal of R.T.C extracts which reveals that, item No.1 to 3 of the suit schedule properties have been standing in the name of defendant No.1. Further, as per law registered Gift Deed has to be executed in order to gift the properties in favour of any one. But the defendant No.1 has claimed the exclusive right over the item No.1 & 2 of the suit schedule properties based on unregistered Gift Deed. Further, the plaintiff has filed the present suit for the relief of Partition and Separate Possession and contended that, the suit schedule properties are the ancestral joint family properties of plaintiff and defendants. On the other hand, the defendant No.1 has contended that, item No.1 to 3 of the suit schedule properties are her self acquired properties.

Hence, the said contention of both parties required full pledged trial. Further, if the temporary injunction is not granted in favour of plaintiff it will lead multiplicity of proceedings if the defendants alienate the suit schedule properties in favour of third parties. Further, if the temporary injunction is not continued definitely it will cause irreparable loss and injuries to the plaintiff. Hence, in my opinion, the plaintiff has made prima facie case to have the relief claimed in I.A.No.II.

20. Since, the relief under Order XXXIX Rule 1 and 2 of C.P.C. is equitable and discretionary, if this I.A. is not allowed, the great injustice to be caused to the plaintiff. Therefore, in my considered opinion, in the interest of justice and equity, if this I.A. is allowed, no hardship will be caused to the defendants rather it helps in smooth going trail of the case. Therefore, in my opinion, the plaintiff has made prima facie case to have the relief claimed in I.A.No.II. Otherwise, the loss which caused to the plaintiff from allowing the I.A.No.III can not be compensated. In the interest of justice and equity, it is necessary to allow the I.A.No.II. Hence, this court of the opinion that, the plaintiff has made out prima facie case to allow this I.A.No.II. However, the parties are at liberty to prove their case during the trail.

21. As far as the balance of convenience and irreparable injury, it is clear that the defendants are

agitating their remedy over the suit properties that is to be decided during trial stage. In order to mitigate the risk of injustice, the relief by way of injunction could be granted to plaintiff. If I.A. is not allowed, injury caused to plaintiff could not be compensated in terms of damages. Upon weigh of need of injunction and balance of convenience, the balance of convenience tilt in favour of plaintiff. On considering the proportionate injuries to either parties, it is clear that, the plaintiff could not be adequately compensated if injunction is refused.

22. Without prejudice to the merits of the case, at this juncture, it is clear that by looking into the case of the plaintiff, he has made out prima facie case and balance of convenience tilt in favour of plaintiff and if temporary injunction is not granted, no hardship or injury will be caused to the defendants. On the other hand, the defendants have not made out grounds or changed circumstances to have the relief claimed in I.A.No.III. This Court is of the opinion that, the plaintiff has shown that, he will suffer from irreparable injury if I.A. is not allowed against the defendants. Thus, it is not feasible to set aside the exparte temporary injunction. Further, I am of the opinion that, the defendants have not made out sufficient grounds to allow this I.A.No.III. However, the parties are at liberty to prove their case during the trail. Accordingly, **Point No.1 to 3** are answered in the '**Affirmative**' and **Point No.4** is answered in the '**Negative**'.

23. **Point No.5:-** In the light of the above discussion, I proceed to pass the following:-

**:: O R D E R ::**

I.A.No.II filed by the applicant/plaintiff under Order XXXIX, Rule 1 and 2 of C.P.C. is hereby **Allowed.**

I.A.No.III filed by the applicant/defendants under Order XXXIX, Rule 4 of C.P.C. is hereby **rejected.**

Accordingly, the exparte temporary injunction granted in favour of plaintiff is hereby continued till further order.

Further, the defendants, their agents, servants or anybody acting on their behalf are to be restrained from alienating the suit/I.A. schedule properties until the final disposal of the suit.

No order as to costs.

[Fed to the computer to my dictation by the stenographer after verified by me, print taken by her and after signed by me, pronounced in the open Court dated this the 06<sup>th</sup> day of November, 2024.]

**(Venkatesha.K.N.)**  
**Addl. Civil Judge & J.M.F.C.,**  
**T.Narasipura. \*\***