



**IN THE COURT OF THE SENIOR CIVIL JUDGE &  
J.M.F.C., AT CHANNAPATNA.**

**BEFORE**

**SMT.SHUBHA, B.A.L., L.L.B.,**  
Senior Civil Judge & JMFC.,  
Channapatna.

**Dated this the 26<sup>th</sup> day of July 2023**

**O.S.No.20/2020**

**PLAINTIFF :**

Kumari Hamsa M.A. D/o M.C.  
Anand 11 years, Minor repre-  
sented by Natural guardian  
mother Smt.Rohini.

**(By Sri.G.S. Advocate)**

**V/S**

**DEFENDANTS :**

Smt.Vasanthamma and others

(D-1 to 9 by Sri.B.M.K.S.  
Advocate, D-10 and 11:  
Exparte)

**I.A.No.XIII**

**APPLICANT/ PLAINTIFF :**

Kumari.Hamsa



**V/S**

**OPPONENTS/DEFENDANTS :**

Smt.Vasanthamma and others.

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**ORDER ON I.A NO.XIII**

The above application i.e., I.A.No.XIII is filed on behalf of the minor plaintiff/applicant through her natural guardian/mother Under Order XXXIX Rule 1 and 2 read with Section 151 of Civil Procedure Code praying this court to pass temporary injunction order to restrain the defendants their agents or anybody claiming under them from alienating the suit schedule Item No.9 to 12 properties pending disposal of this suit on merits.

2. The above application is supported with the affidavit of the natural guardian of minor plaintiff wherein she has submitted she is the wife of 5<sup>th</sup> defendant and mother of minor plaintiff she has filed this suit for partition and separate possession of minor plaintiff.



3. It is further submitted that the suit schedule properties are ancestral and joint family properties of original propositus M.B.Chandru @ Chandregowda and after his death his wife and children have got the Pavathi khata and there was no division took place among the defendants.

4. It is further submitted that minor plaintiff and herself when they were residing in the house of defendants they have deserted them and not provided any accommodation for their food and shelter etc and thrown them out from the house, hence she is residing with her parents and her parents are looking after the welfare of education expenses of her minor daughter. Since the defendant No.5 has deserted her and she has filed this suit for partition, the defendants are trying to alienate the suit schedule Item No.9 to 12 properties. Hence she has filed this application and prayed to grant temporary injunction against the defendants.

5. On the other hand the defendant Nos.1 to 9 have filed objections and contended that the application is not maintainable in law or on facts and



same is filed to harass them. The plaintiff has no right, title or interest in the schedule property since the same is self acquired property of grand father of plaintiff and class-1 legal heir i.e., defendant No.5 is still alive hence the prayer made by the plaintiff to allot the share and application is filed to restrain them from alienating the entire suit schedule property is not maintainable. If the application is allowed, they will be put to irreparable loss and injury. Hence, prayed to dismiss the application.

6. I have heard the arguments of learned advocate for the plaintiff/applicant and opponents/defendants on I.A. No.XIII. Now the points that arise for my consideration are:

### **POINTS**

- 1) Whether the plaintiff has made out a prima facie case for grant of Temporary Injunction ?
- 2) Whether the balance of convenience lies in favour of the plaintiff ?
- 3) Whether the plaintiff will be put to irreparable loss and injury if temporary injunction is not granted ?
- 4) What order ?



7. My findings to the above points are as follows:-

Point Nos.1 to 3 : In the Affirmative  
Point No. 4 : As per the final order  
for the following :

### **REASONS**

8. **POINT NOS.1 TO 3:-** These points are interrelated to each other, in order to avoid repetition of the facts they are taken up together.

9. The above application is filed by the plaintiff praying this court to pass an order of temporary injunction to restrain the defendants, their agents or anybody claiming under them from alienating the suit schedule Item No.9 to 12 properties pending disposal of this suit on merits.

10. The affidavit averments of plaintiff and the objections of the defendants are already stated in the above paragraphs.

11. The plaintiff has claimed  $\frac{1}{2}$  share in the  $\frac{1}{6}^{\text{th}}$  share of her father i.e., defendant No.5.



12. In this case, considering the documents produced by the plaintiff, this court has already granted temporary injunction in respect of other properties. As discussed in the said order, the documents clearly shows that after filing of this suit, the defendant Nos.1 to 6 have got partitioned the suit schedule properties as per the Registered Partition Deed dated 13.03.2020 which was registered on 17.03.2020. The plaintiff has filed this suit on 26.02.2020. In the said Partition deed the above parties have described the suit schedule properties as ancestral joint family properties. Therefore, there are prima facie materials to prove that the suit schedule properties are joint family properties. Even though they have mentioned the nature of the properties as ancestral joint family properties (ಪಿತ್ರಾರ್ಜಿತ), but in their written statement they have denied the said fact. The defendants have contended in the IA No.10 at para No.9 that the suit schedule properties are the self acquired properties of his father. Having taken such a contention filed one application Under/Sec. 151 of CPC seeking permission to sell Item No.1 of property. If it is the



contention of defendants that the properties are self acquired properties why they have filed IA No.XI seeking permission to sell the said property.

13. In this case the Sale Deed dated 08.08.2019 and Sale Agreement dated 13.05.2022 shows that the above defendants are in a hurry to sell the joint family properties portion by portion. The alleged partition deed shows that in order to deprive the share of the minor plaintiff the defendant No.5 has retained only meager share in the alleged partition deed. The prima-faice materials shows that there is no equitable partition in respect of the suit schedule properties. The Defendant Nos.1 to 6 have during the pendency of the suit entered into a partition which is challenged by the Plaintiff by way of amendment. The Plaintiff has stated that while filing the above suit stated that she was not aware of the above properties. The Plaintiff has produced the M.R. extract and RTCs relating to Item Nos.9 to 12 properties which were standing in the name of propositus M.B.Chandru and later it was transferred into the name of Vasanthamma defendant No.1



herein. Therefore, there is every chance of defendants alienating the item Nos.9 to 12 properties during the pendency of the suit. It is pleaded on behalf of the defendant No.1 that she is suffering from cancer as such she wanted to sell the suit schedule properties, but the said aspect cannot be considered at this stage by considering the attitude of the defendants. The defendants who have prayed for equity have not done equity to the plaintiff. The person who seeks equity must do equity to others. In this case the defendants in order to avoid giving share to the plaintiff got partitioned the properties without the knowledge of the plaintiff and they have allotted only meager share to the defendant No.5. There is a mischievous attitude exhibited by the defendant No.5 especially. Therefore no equity can be given to the defendant No.1. The right of the minor plaintiff is involved in this suit. Therefore if the defendants alienate any portion of the suit schedule property, the minor plaintiff will be put to irreparable loss and hardship.



14. Therefore, in this case the plaintiff has made out a prima facie case for issuance of temporary injunction against the defendants. In this case the balance of convenience lies in favour of the plaintiff. It is the plaintiff who will be put to hardship if temporary injection is not granted. Accordingly, I have answered the **Point Nos.1 to 3 in the Affirmative.**

15. **POINT NO.4** :- In view of my findings given on Point Nos.1 to 3 for the reasons discussed herein above paragraphs, I proceed to pass the following:

### **ORDER**

The I.A.No.XIII filed on behalf of the plaintiff Under Order XXXIX Rule 1 and 2 read with Section 151 of C.P.C. is hereby allowed.

The defendants, their servants or anybody acting on their behalf are temporarily restrained from alienating, encumbering or creating any charge over the suit schedule Item Nos.9 to 12



properties or any portion there of, in favour  
of third parties till the disposal of this suit.

(Dictated to the Typist Copyist on computer, corrected &  
initialed and then pronounced by me in the open court on this  
the **26<sup>th</sup> day of July 2023**)

(SHUBHA)  
**Senior Civil Judge & JMFC.,  
Channapatna.**