



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

: PRESENT :

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

DATED THIS THE 21st DAY OF AUGUST 2023

O.S.No.41/2021

PLAINTIFF:

Smt.Vijaya Lakshmi

(By Sri.K.N.G., Advocate)

V/S

DEFENDANTS:

1. Smt.Jayamma and Others.

**(Defendant Nos.1 to 5 are
exparte, Defendant No.6
is represented by Sri.S.H.,
Advocate and Defendant
No.7 is represented by
Sri.G.S., Advocate)**

IN I.A.NO.I

APPLICANT/PLAINTIFF :

Smt.Vijaya Lakshmi



V/S

OPPONENTS/DEFENDANTS:

1. Smt.Jayamma and Others.

ORDERS ON I.A NO.I

The above application i.e., I.A.No.I is filed on behalf of the applicant/plaintiff 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 properties pending disposal of this suit on merits.

2. The above application is supported with the affidavit of the plaintiff wherein she has submitted that the above suit is filed for the relief of partition and separate possession of her legitimate share in the suit schedule properties. That on 25.09.2002, the husband of the 1st defendant and father of plaintiff and defendants 2 to 5 by name P.Bheemaraju created Sale Deed dated 25.09.2002 in favour of 6th Defendant with respect to items 1



and 2 of the suit schedule property without her knowledge and consent and without providing her due and legitimate share therein. That afterwards, P.Bheemaraju along with defendants 2 to 5 have jointly sold the item Nos.3 and 4 of the suit schedule property in favour of Defendant No.7 through Registered Sale Deed dated 26.09.2003 behind back of the Plaintiff and without her knowledge and without providing her due and legitimate share in the suit schedule properties. That therefore, the said alleged sale deeds are null, void and ab-initio under law and it is not binding on my legitimate right and share in the suit schedule properties. That the katha of items 1 to 4 suit schedule properties transferred in the name of Defendants 6 and 7 and katha of 5th item of suit schedule property remained in the name of her father.

3. It is further submitted that, after knowing about the same in the month of January 2021, Plaintiff demanded the defendants to effect partition and to provide her due and legitimate share in the suit schedule properties, for which the



Defendants turned deaf ears. That the Defendant No.6 and 7 are making efforts to alienate the items 1 to 4 of the suit schedule property in favour of others with malafide and deliberate intention to deprive her from getting her due and legitimate shares therein and in such an event, she will be put to severe hardship, injury and injustice and it leads to multiplicity of proceedings. That, it is just and necessary to restrain the Defendant Nos.6 and 7 are anybody on their behalf from alienating the suit items 1 to 4 of suit schedule property to others in any manner pending disposal of the above suit. That the prima-facie case and the balance of convenience also lies in my favour. Hence she has filed this application and prayed to grant temporary injunction against the defendants.

4. On the other hand the defendant No.7 has filed objections and denied the entire averments made in the application and submitted that he has purchased Item No.3 property from defendant No.2 to 5 and father of the plaintiff by name Bheemaraju P. on 26.09.2003 and also purchased



Item No.4 on 23.09.2005. Hence, prayed to dismiss the application.

5. I have heard the arguments of learned advocate for the plaintiff/applicant and opponents/defendants on I.A. No.I. 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 ?

6. 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

7. **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.



8. The above application i.e., I.A.No.I is filed on behalf of the applicant/plaintiff 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 properties pending disposal of this suit on merits.

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

10. The plaintiff has claimed 1/5th share in the suit schedule properties. The defendant No.7 has filed written statement and claimed to be bonafide purchaser of item No.3 and 4 property. The said averments have to be proved by the defendant No.7. However, even the written statement of the defendant No.7 shows that defendant No.2 to 5 and father of the plaintiff, father of the defendant Nos.2 to 5 and husband of the defendant No.1 have executed those Sale Deeds and plaintiff has not put her signature on the said document.



Therefore, the plaintiff being a daughter of said Bheemaraju, can challenge the said Sale Deeds if no share was given to her.

11. The right of the defendant No.7 has to be decided only after conclusion of the trial. But till then the nature of the suit schedule properties shall be preserved without there being any further alienations. Now, the Plaintiff has filed this suit seeking partition in respect of the suit schedule properties, till the disposal of this suit, the suit schedule properties must be preserved as it is. Otherwise, it will lead to multiplicity of proceedings. The plaintiff has made out a arguable case before this court. Therefore, the plaintiff has made out a prima facie case for grant of temporary injunction. It is the plaintiff who will be put to irreparable loss and hardship if defendants alienates the suit schedule properties during the pendency of this suit. The balance of convenience lies in favour of the plaintiff. Therefore, in order to see that the suit schedule properties are preserve as it is, it is necessary to issue temporary injunction against the defendants as prayed for.



Accordingly, I have answered the **Point Nos.1 to 3 in the Affirmative**

12. **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.I filed by the plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Civil Procedure Code is hereby allowed.

The defendants, their agents or anybody claiming under them are hereby temporarily restrained from alienating the suit schedule properties pending disposal of this suit on merits.

(Dictated to the Typist Copyist on computer, then corrected, initialed and pronounced by me in the open court on this the **21st day of August 2023**)

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