



**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 26th DAY OF FEBRUARY 2024

O.S.NO.166/2023

PLAINTIFF:

Sri.M.C.Papegowda.

(By Sri.S.S., Advocate)

V/S

DEFENDANTS:

Smt.Puttachannamma and Others.

**(Defendant Nos.1 to 8 are
represented by Sri.B.G.,
Advocate and Defendant No.9
is exparte)**

IN I.A.NO.I & II

APPLICANT/PLAINTIFF :

Sri.M.C.Papegowda.

**V/S****OPPONENTS/DEFENDANTS:**

Smt.Puttachannamma and Others.

Date of filing of I.A.No.I & II	24.08.2023		
Date of Order	17.02.2024		
Duration of I.A.No.I & II	Year/s 00	Month/s 05	Day/s 25

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

ORDERS ON I.A.NO.I & II

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 an Order of temporary injunction against the Defendants, their agents, their relatives, GPA Holder to restrain them from putting up construction in the suit schedule Item No.1 property.



The above application i.e., I.A.No.II 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 an Order of temporary injunction against the Defendants to restrain them from alienating the suit schedule properties.

2. The above applications are supported with the affidavit of the plaintiff, wherein he has submitted that he has filed this suit seeking the relief of partition in respect of suit schedule properties. That himself and Defendants are the Members of undivided joint family. That he has got equal share in respect of the suit schedule properties. When such being the case, the Defendants are now trying to put up a building in the Item No.1 property. Hence, the Plaintiff has prayed for an order of temporary injunction against the Defendants in I.A.No.I.

3. In the I.A.No.II, the Plaintiff has prayed for an order of temporary injunction against the Defendants to restrain them from alienating the suit schedule properties. The Plaintiff has



contended that if the Defendants alienates the suit schedule properties to others, it will lead to multiplicity of proceedings. On the other hand, if this application is allowed, no hardship will be caused to the Defendants. Hence, the Plaintiff has prayed to allow the above application.

4. On the other hand the defendant Nos.1 to 8 have filed a memo for having adopted the Written Statement as objections to the I.A.Nos.I and II and submitted that they have constructed a cemetery for their mother as a love and affection, for which the Plaintiff cannot object. That the Plaintiff was a KSRTC Official and he has acquired site in Vijayapura, Devanahalli, Bengaluru and Ramanagara and he never resided with them. That the Plaintiff is a adopted son of Kariyappa and Puttahonnamma, Rayasandra Village, Kanakapura Taluk and from the date of adoption, he was resided along with their adopted parents. That the suit schedule item No.1 & 2 properties are stood in the name of their mother Deveramma. That they have spend a huge amount to develop the said land. That at no point of time Plaintiff has invest



the amount and participated the agricultural work. That the suit schedule Item No.3 property was acquired by their father for the family settlement between the Channegowda and his brother. That the said property was cultivated by the Defendants. That the property allotted in the name of Channegowda. By oversight Defendant No.9 name was inserted in the revenue document. That the said 9th Defendant no right over the suit schedule Item No.3 property. That the suit item No.4 property was purchased property of the father of the Plaintiff. That after the death of the father, Defendant Nos.2, 4, 6 and 7 are constructed a RCC Mangalore Tiled House and AC Sheet house in that land. That the suit schedule Item No.5 property is purchased by the 2nd Defendant and is a exclusive property of the Defendant No.2. That the Plaintiff or other Defendants have no right over the schedule property. That the Defendants 2, 4, and 6 are only look after their father and mother. That the suit schedule properties are exclusive property of the Defendants. That there is no any joint nucleus status. That the Plaintiff have no semblance of



right over the suit schedule properties. 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 & II. 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 in respect of I.A.No.I and II?
- 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 as prayed in I.A.No.I and II, 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 an Order of temporary injunction against the Defendants, their agents, their relatives, GPA Holder to restrain them from not to put up any construction in the suit schedule Item No.1 property.

9. The above application i.e., I.A.No.II 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 an Order of temporary injunction against the Defendants to restrain them from alienating the suit schedule properties.



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

11. In this case, the Plaintiff has produced Mutation Register Extract as per IHC 22/2001-02 in which clearly shows that Plaintiff, Defendant No.2 Shivalingaiah, Defendant No.4 Siddalingaiah, Defendant No.6 Nagesh are the male children of Channegowda. In the said Mutation Register Extract, names of daughters of Channegowda is not mentioned. But the said document prima-facie shows that Plaintiff is the son of said Channegowda. In the said Mutation Register Extract, there is no reference with regard to the adoption of Plaintiff by Kariyappa and Putta Honnamma. However, the RTC was mutated in the name of Deviramma after the death of Channegowda. The Krushi Pass Book of Channegowda also clearly shows that the Plaintiff is the son of said Channegowda and Deviramma. There are absolutely no documents to prove the adoption of Plaintiff by said Kariyappa. Therefore, without there being any proof regarding said



adoption, the Plaintiff has to be treated as a joint family member of Channegowda and Deviramma.

12. In this case, the documents produced by the Defendants as well as Plaintiff clearly shows that already there is a construction made in the suit schedule property. It is contended by the Defendants that they have constructed a cemetery for their mother as a love and affection, for which the Plaintiff cannot object. The Defendants have further contended that the Plaintiff was a KSRTC Official and he has acquired site in Vijayapura, Devanahalli, Bengaluru and Ramanagara and he never resided with them. The contentions taken by the Defendants regarding adoption has to be proved by them by giving sufficient evidence. Now, the Plaintiff has produced a prima-facie materials to show that he is a member of the family of Defendants. Therefore, if any changes are made in the suit schedule property by way of construction or alienation, it will lead to multiplicity of proceedings. It is settled principle of law that none of the sharer is entitled to claim a particular share in the joint family property. In this case the rights



of the parties is not yet decided. Therefore, the suit schedule properties must be preserved as it is till the rights of the Plaintiff and Defendants are decided. Therefore, the construction if any to be made in the suit Item No.1 property has to be stopped and the Defendants must be restrained from alienating the suit schedule properties to avoid multiplicity of proceedings. Hence, I am of the opinion that the Plaintiff has made out a prima —facie case for issuance of temporary injunction against the Defendants.

13. In this case, the Plaintiff who will be put to irreparable loss and hardship, if the Defendants alienates the suit schedule properties or makes a construction in the suit Item No.1 property. Accordingly, I have answered the **Point Nos.1 to 3 in the Affirmative**

14. **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, their relatives, GPA Holder are hereby temporarily restrained from making construction in the suit schedule Item No.1 property pending disposal of this suit on merits.

The I.A.No.II filed on behalf of the applicant/plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of Civil Procedure Code is hereby allowed.

The Defendants 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 **26th day of February 2024**)

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