

PRESENT: *Sri.Felix Alphonse Anthony,
B.A. L. L.L.B.,
Prl., Civil Judge and J.M.F.C.
Channapatna
(Holding concurrent charge of
Addl Civil Judge and J.M.F.C.,
Channapatna)*

O.S.NO.250/2015

 V/s

DEFENDANTS:

1. *Sri.Muddalingegowda,
S/o Late.Molleningegowda,
Aged about 55 Years,*
2. *Smt.Puttachannamma,
W/o Muddalingegowda,
Aged about 48 Years,
Both are residents of Makali*

*Village, Malur Hobli, Channapatna
Taluk, Ramanagara District.*

*(Defendant No.1 represented by
Sri.T.M.L., Advocate, Defendant
No.2 represented by Sri.P.T.D.,
Advocate)*

I.A.No.2

<i>Between</i>	<i>Rank in I.A</i>	<i>Rank in Suit</i>
<i>Smt.M.Shivalingamma</i>	<i>Applicant</i>	<i>Plaintiff</i>

A N D

<i>Sri.Muddalingegowda and One</i>	<i>Opponents</i>	<i>Defendants</i>
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ORDERS ON I.A. NO.2

- 1. The plaintiff filed the present I.A/application under Order XXXIX Rule 1 and 2 of C.P.C., R/w section 151 of C.P.C., praying the court to grant an order of Temporary Injunction in her favour and against the defendant restraining the defendants, their men, agents, servants, supporters, followers or anybody claiming through them from alienating or getting the katha of the suit schedule properties changed into the name of third person pending disposal of the suit.*

2. *In the affidavit filed by the plaintiff stated that the suit schedule properties are the ancestral properties and that the plaintiff and the defendant No.1 are having rights over the same and that the defendant No.1 is not having any independent right title or ownership over the same and that the defendant No.1 behind the back of the plaintiff is making hectic efforts to change the katha of the suit schedule properties into the name of the third person and that if the defendant No.1 succeeds in his attempts the plaintiff will be deprived of her rights and among these grounds prays for allowing the I.A by granting an order of Temporary Injunction in her favour.*
3. *On the other hand the defendant No.1 filed his written statement and memo adopting the written statement as objections to I.A., and has resisted the I.A. In the written statement the defendant denied the contents of the plaint and the I.A., and has further contended that the I.A., is not maintainable and the same is liable to be dismissed and has further contended that the father of the defendant No.1 Molleningegowda*

had five children namely Shivalingegowda, Ningamma, Kadamma, Muddalingegowda i.e, defendant No.1, and Masthamma and that the said Shivalingegowda and Kadamma died unmarried and that the sisters of the defendant No.1 were already given in marriage and that the said Ningamma died during the year 2011. That the said Ningamma even after the marriage was residing with the father of the defendant No.1 and hence the mother of the defendant No.1 Kempamma had executed a registered GIFT deed in favour of the said Ningamma with regard to item No.1, 1 acre in item No.2 and 8 guntas in item No.4 and that during the life time, the said Ningamma was in possession of the said lands and after her death her husband and children are in possession of the said lands. The defendant No.1 further contended that after one month of the marriage the wife of the defendant No.1 i.e. the defendant left the defendant No.1 and started residing in her parents house and since from 1988 she is residing separately and thereafter the defendant No.1 married one Lakshamma @ Boramma and due to the said wedlock the

defendant No.1 is having 4 children and that the plaintiff is not having any right over the suit schedule properties and that the suit is bad for non joinder of necessary parties and among these grounds prays for dismissal of the I.A., with costs.

4. *Further the defendant No.2 though appeared before the court through her counsel, inspite of sufficient opportunity has not filed her written statement and objections. Hence the same has been taken has not filed.*
5. *I have heard the arguments of the plaintiff and the defendant No.1.*
6. *In view of the above pleadings and materials placed on record and after hearing the arguments of the plaintiff and the defendant No.1, the points that arise for my consideration are:*

1. ***Whether the plaintiff has made out Prima facie case for grant of Temporary Injunction?***

2. ***Whether the Balance of Convenience lies in favour of the plaintiff?***

3. Whether the plaintiff would be put to irreparable loss and injury if Temporary Injunction is refused?

4. What Order?

6. My answers to the above points are as hereunder:

<u>POINT NO.1:</u>	<i>IN THE AFFIRMATIVE</i>
<u>POINT NO.2:</u>	<i>IN THE AFFIRMATIVE</i>
<u>POINT NO.3:</u>	<i>IN THE AFFIRMATIVE</i>
<u>POINT NO.4:</u>	<i>AS PER THE FINAL ORDERS</i>

For the following reasons...

REASONS

POINT NO.1:

7. In the present I.A., filed by the plaintiff for grant of Temporary Injunction, the plaintiff stated that the suit schedule properties are the ancestral properties and that the plaintiff and the defendant No.1 are having rights over the same and that the defendant No.1 is not having any independent right title or ownership over the same and that the defendant No.1 behind the back of the plaintiff is making hectic efforts to change the katha of the suit schedule properties into the name of the third person and that if the defendant No.1 succeeds in

his attempts the plaintiff will be deprived of her rights and among these grounds prays for allowing the I.A by granting an order of Temporary Injunction in her favour.

8. *On the other hand the defendant No.1 filed his written statement and memo adopting the written statement as objections to I.A., and has resisted the I.A. In the written statement the defendant denied the contents of the plaint and the I.A., and has further contended that the I.A., is not maintainable and the same is liable to be dismissed and has further contended that the father of the defendant No.1 Molleningegowda had five children namely Shivalingegowda, Ningamma, Kadamma, Muddalingegowda i.e, defendant No.1, and Masthamma and that the said Shivalingegowda and Kadamma died unmarried and that the sisters of the defendant No.1 were already given in marriage and that the said Ningamma died during the year 2011. That the said Ningamma even after the marriage was residing with the father of the defendant No.1 and hence the mother of the defendant No.1*

Kempamma had executed a registered GIFT deed in favour of the said Ningamma with regard to item No.1, 1 acre in item No.2 and 8 guntas in item No.4 and that during the life time, the said Ningamma was in possession of the said lands and after her death her husband and children are in possession of the said lands. The defendant No.1 further contended that after one month of the marriage the wife of the defendant No.1 i.e. the defendant left the defendant No.1 and started residing in her parents house and since from 1988 she is residing separately and thereafter the defendant No.1 married one Lakshamma @ Boramma and due to the said wedlock the defendant No.1 is having 4 children and that the plaintiff is not having any right over the suit schedule properties and that the suit is bad for non joinder of necessary parties and among these grounds prays for dismissal of the I.A., with costs.

9. *Further the defendant No.2 though appeared before the court through her counsel, inspite of sufficient opportunity has not filed her written*

statement and objections. Hence the same has been taken has not filed.

- 10. In the light of the above said contentions of the parties, it is pertinent to note that the plaintiff has contended that the suit schedule properties are the ancestral properties of the plaintiff and the defendant No.1. On the other hand the defendant No.1 has not denied the same. Thus it is very clear that the suit schedule properties are the ancestral properties of the plaintiff and the defendant No.1.*
- 11. Further the defendant No.1 has contended that his mother Kempamma had executed a registered GIFT deed in favour of Ningamma item No.1, 1 acre in item No.2 and 8 guntas in item No.4 and has produced the copy of the said GIFT deed and has vehemently argued that the said Ningamma was the absolute owner of the said properties and that the plaintiff has got no right over the same. on the other hand the plaintiff relied upon the documents produced by her and contended that the katha of the suit schedule properties still stand in the name of the said Kempamma and thus the suit schedule properties are still the joint family*

properties and that she is having right over the same.

12. *In the light of the above, on perusal of the copy of the GIFT deed though it appears that the said Kempamma executed a GIFT deed in favour of Ningamma, on perusal of the R.T.C., pahanis produced by the plaintiff it appears that the katha of the suit schedule properties still stands in the name of the said Kempamma. Thus at this stage of the proceedings since the katha stands in the name of the said Kempamma, doubt arises in the minds of the court as to whether there was any acceptance of the said GIFT by the said Ningamma or not. The acceptance or otherwise is the matter of evidence.*
13. *Admittedly the katha of the suit schedule properties stand in the name of the said Kempamma and the apprehension of the plaintiff is that the defendant No.1 may get the katha changed into the name of third person by alienating the same. at this stage of the proceedings it appears that all the suit schedule properties are the joint family properties of the*

plaintiff and the defendant No.1. Further the defendant denied the contentions of the plaintiff and has contended that the plaintiff has got no right over the same. Since the defendant No.1 has denied the very right of the plaintiff over the suit schedule properties, doubt arises in the minds of the court that the defendant No.1 may alienate the suit schedule properties in favour of third person, in which event the right of the plaintiff will be affected. Further if there is any such alienation, the same leads to multiplicity of the proceedings. Hence in order to avoid the same it is just and necessary to pass some restraint order.

14. *Thus from the documents produced by the plaintiff and the defendant No.1 and on perusal of the same it is very clear that the plaintiff has established prima facie case at this stage of the proceedings. Hence I am of the opinion that the plaintiff is entitled to interim relief. Accordingly I answer the **POINT NO.1 IN THE AFFIRMATIVE.***

POINTS NO.2 AND 3:

15. *As discussed above at this stage of the proceedings the plaintiff has established her right over the entire suit schedule properties. Thus at this stage of the proceedings it appears that the balance of convenience lies in favour of the plaintiff. Further no hardship would be caused to the defendants if the order of Temporary injunction is granted. Further if the temporary injunction is not granted as prayed for, the plaintiff would be put to much hardship and inconvenience. Accordingly I answer **POINT NO.2 AND 3 IN THE AFFIRMATIVE.***

POINT NO.4:

16. *In view of the above findings, I proceed to pass the following Order:*

ORDER

The I.A.No.2 filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., R/W section 151 of C.P.C., is hereby allowed.

Accordingly the defendants are restrained from alienating the suit schedule properties or changing the katha of the suit schedule properties in favour of third person pending disposal of the suit.

No orders as to costs

(Dictated to stenographer, transcribed by her, the transcript corrected by me and then pronounced in the open court on this the 21st day of November 2016)

***(Felix Alphonse Anthony)
Prl Civil Judge and J.M.F.C,
Channapatna
(Holding concurrent charge of
Addl Civil Judge and J.M.F.C.,
Channapatna)***

(Order pronounced in the open court)

ORDER

The I.A.No.2 filed by the plaintiff under Order XXXIX Rule 1 and 2 of C.P.C., R/W section 151 of C.P.C., is hereby allowed.

Accordingly the defendants are restrained from alienating the suit schedule properties or changing the katha of the suit schedule properties in favour of third person pending disposal of the suit.

No orders as to costs

(Vide Separate order)

*Prl Civil Judge and J.M.F.C,
Channapatna
(Holding concurrent charge of
Addl Civil Judge and J.M.F.C.,
Channapatna)*

