

**IN THE COURT OF THE II ADDL. CIVIL JUDGE &
J.M.F.C., AT KANAKAPURA**

**PRESENT : Smt.Hemashree D.
B.A.L., L.L.B.,**

**II Addl. Civil Judge and JMFC,
Kanakapura.**

Dated this the 19th day of December 2015

OS.No.21/2015

Between:

Plaintiff: Siddaramu @ Kullegowda

V/s

Defendants: Gaviyappa and another

ORDER ON IA- I

The plaintiff has sought for an interim order to restrain the 2nd defendant from alienating the suit schedule property to others.

1. It is stated by the plaintiff that the suit schedule property is the joint family property of himself and the 1st defendant and the plaintiff has got half share in the same. However, neglecting the legitimate share and right of the

plaintiff, the 1st defendant sold the suit schedule property in favour of the 2nd defendant on 17-02-1997 and the said fact came to his knowledge when the 2nd defendant obstructed in his agricultural operations. Hence, the plaintiff has sought for grant of temporary injunction against the 2nd defendant.

2. The 2nd defendant filed his written statement and memo to adopt the averments therein as objection to the present application. The 2nd defendant denied that the suit schedule property is the joint family property of the plaintiff and 1st defendant. It is his contention that the suit schedule property is the self acquired property of the 1st defendant and the same was sold to him on 17-02-1997. Since, the date of purchase, he is in cultivation of the suit schedule property. However, he could not change the khata of the property in his name. Taking advantage of the khata standing in the name of the 1st defendant, the plaintiff has filed a false suit.

3. Heard arguments and perused the materials on record.

4. The following points arise for my consideration:-

1. Whether the plaintiff proves that Prima facie case exists in his favour?
 2. Whether the balance of convenience lies in favour of the plaintiff?
 3. Whether irreparable injury will be caused to the plaintiff if the interim relief is not granted?
 4. What Order?
5. My answers to the above points are as follows:-
- Point No.1:-** In the Affirmative
- Point No.2:-** In the Affirmative
- Point No.3:-** In the Affirmative
- Point No.4:-** As per final order for the following.

REASONS

6. POINT NO.1: It is the case of the plaintiff that the suit schedule property is the joint family property and he has got half share in the same. Per contra, it is contended by the 2nd defendant that the suit schedule property was the self acquired property of the 1st defendant and he sold the same to him, as per Sale Deed dated: 17-02-1997. The relationship of the plaintiff with the 1st defendant is not disputed by the 2nd defendant. The plaintiff has produced the genealogy and the RTC's in

respect of the suit schedule property standing in the name of the 1st defendant. It is also admitted that the suit schedule property is sold by the 1st defendant in favour of the 2nd defendant. The copy of the said sale deed is also produced. It is argued by the Learned Counsel for the plaintiff that the suit schedule property was granted by the government in the name of the 1st defendant when he was in the joint family. On the other hand, the Leaned Counsel for the 2nd defendant argued that the suit schedule property is the absolute property of the 2nd defendant by virtue of the Sale Deed dated: 17-02-1995. Thus, the question whether the suit schedule property is the joint family property or the self acquired property becomes a question of trial. If there is any alienation of the suit schedule property and if later the plaintiff is able to establish his right then his property right will be prejudiced leading to multiplicity of proceedings. However, if the 2nd defendant is restrained from alienating the suit schedule property no hardship would be caused to him. The suit being one for partition, until the right of the parties are ascertained, I deem it fit to restrain any alienation of the suit schedule property. Thus, prima facie case exists in

favour of the plaintiff. Accordingly **Point No.1 is answered in the Affirmative.**

7. **POINT NO.2 AND 3:** The plaintiff is able to show that prima facie exists in his favour. The balance of convenience also lies in his favour, and if the interim relief is not granted the plaintiff will be put to irreparable injury. Accordingly **Point No.2 and 3 are answered in the Affirmative.**

8. POINT NO.4: In view of the above discussion, I proceed to pass the following;

ORDER

IA-I filed U/o XXXIX rule 1 & 2 R/w Sec.151 CPC is allowed.

Defendant No.2 is restrained from alienating the suit schedule property till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer, typed by her and corrected and pronounced by me in the open court on this 19th day of December 2015).

(HEMASHREE .D)
II Addl. Civil Judge, &.J.M.F.C.
Kanakapura.

ORDER

IA-I filed U/o XXXIX rule 1 & 2 R/w Sec.151 CPC is allowed.

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No order as to cost.

**(HEMASHREE .D)
II Addl. Civil Judge, &.J.M.F.C.
Kanakapura.**