

**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 2nd day of March 2016

OS.No.363/2015

Between:

Plaintiffs : Smt. Lakshmi & another

V/s

Defendants : Sri. D.M.Shivanna & others

ORDER ON IA- I

The plaintiff has sought for an interim order to restrain the defendants or anybody claiming under them from alienating the suit schedule property to 3rd persons.

1. It is stated that the plaintiffs and the defendants constituted hindu un divided joint family in joint possession and enjoyment of the suit schedule properties which are their ancestral joint family properties. They along with defendants have equal right and share over the schedule properties. The defendants colluding with each other illegally changed the khata of the item No.1 to 5 properties in favour of the 1st defendant and they are trying

to alienate the properties in favour of 3rd persons. Hence, the plaintiffs have sought to restrain the defendants from alienating the schedule properties.

2. On appearance the defendants filed their written statement and filed a memo to adopt the written statement as objections to the present application. It is admitted by the defendants that the suit schedule properties are the ancestral properties which originally belonged to the propositus Chikkachudegowda. The plaintiffs to knock of the properties have given false foundries. The plaintiffs are not in possession of the properties. The female folk is not made as parties and therefore the suit is barred for non joinder of necessary parties. The defendants have not made any attempt to alienate the suit schedule properties as they are not the kathedars. Hence prayed to dismiss the application.

3. Heard arguments and perused the materials on record.

4. The following points arise for my consideration:-

1. Whether the plaintiffs prove that Prima facie case exists in their favour?
2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether irreparable injury will be caused to the plaintiffs 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 plaintiffs that they constituted Hindu joint family and the suit schedule properties are their ancestral properties. They are in joint possession and enjoyment of the same. The defendants colluding with each other illegally changed the katha of item No.1 to 5 in the name of the 1st defendant. The defendants neglecting the share of the plaintiffs are trying to alienate the suit schedule properties to 3rd persons. The defendants, on the other hand, admit their relationship and that the suit schedule properties are the ancestral properties. It is their contention that when the properties are not divided among the original propositus and his brothers there is no question of seeking partition by the plaintiffs. Further when they are not the kathedars, there is no question of any alienation of the properties by them.

7. To establish their claim, the plaintiffs have produced the genealogy which show that one Chikkachudegowda @ Motegowda is the original propositus. The plaintiffs are the wife and son of the propositor's first son Shrikanta. The defendants are the other sons of the propositus. it is pertinent to note that there is no dispute as to the relationship of the parties. Thus the plaintiffs have prima facie shown the joint family status of the parties. The plaintiffs have also produced the RTC standing in the name of the propositus and the first defendant which reveal that the properties are the joint family properties. It is also admitted by the parties that there is no division of the family properties among them. Thus the plaintiff have prima facie shown that the suit schedule properties are their family properties and they have got assertable rights over the same as the wife and son of the propositus. Thus, prima facie case exists in favour of the plaintiffs. Accordingly point No.1 is answered in the Affirmative.

8. POINT NO.2 AND 3: To avoid repetition of facts both the points are taken up for discussion. It is stated by the plaintiffs that the defendants are trying to alienate the suit schedule property. Per contra, the defendants have stated that they never tried to alienate the properties. At this stage the plaintiffs have prima facie shown their rights

over the suit schedule properties. Therefore they are entitled to protect their rights. Any alienation will cause prejudice to their rights. In the event of any alienation the plaintiffs will be put to irreparable injury leading to multiplicity of proceedings. The balance of convenience also lies in favour of the plaintiffs. Accordingly, Point No.2 and 3 are answered in the Affirmative.

9. 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.

The defendants, their agents, servants or anybody on their behalf are restrained from alienating the suit schedule properties in favour of 3rd persons till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, typed by her and corrected and pronounced by me in the open court on this 2nd day of March 2016).

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

