



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

**Present:**

**Sri. Sandeep S. Reddy, B.A., LL.B.,  
Addl. Senior Civil Judge & JMFC., Magadi**

**DATED: THIS THE 18<sup>th</sup> DAY OF APRIL, 2024**

**O.S.No. 376/2023**

**Plaintiff** : Smt. Chinnamma

(By **Sri. S.G.U.** Advocate)

---V/s---

**Defendants** :. Sri. Ravikumar & Ors.,

**(D9 Exparte)**

**(D11 to 13 by Sri. N.R.S. Advocate)**

**(D1, 2, 4 to 6 & 8 by Sri. M.H.V. Advocate)**

**ORDER ON IA NO.I**

The plaintiffs have filed I.A.No.I U/O.39 R.1 & 2 of C.P.C., praying for ad-interim order of injunction restraining the defendants from alienating or encumbering the suit schedule properties in any manner till disposal of the suit.

2. The aforesaid suit is filed by the plaintiff praying for the relief of partition, declaration, permanent injunction and consequential reliefs.



3. In the accompanying affidavit to the I.A.No.I the plaintiff state that, one Sri. Hanumabhovi was the absolute owner of the suit schedule property. That, Sri. Hanumabhovi had three sons by names Sri. Hanumabhovi, Thimma @ Thimmabhovi and Venkata @ Venkatabhovi. That, after the death of Sri. Hanumabhovi the children of Hanumabhovi was cultivating the ancestral property. That, the mortgage deed dated: 17.12.1928 was registered by Sri. Hanumabhovi in favour of Narsigowda for a period of 15 years. That, the Hanumathovi, Thimmabhovi and Venkatabhovi had died leaving behind their legal heirs. That, Hanumabhovi had children by name Errabhovi and Thimmabhovi. That, plaintiff is the daughter of Errabhovi and rest of the defendant No.1 to 10 are the legal heirs of Hanumabhovi. That, defendant No.1 to 10 had inherited the suit schedule properties as the ancestral and joint family properties. That, the family of the plaintiff and defendant No.1 to 10 were very poor and taking advantage of the plaintiff and defendant No.1 to 10s' poorness, the mortgagee Narasimhegowda and his legal heirs have got transferred the entire boundary of the suit schedule properties in their names. That, the Narasimhamurthy the grand-son of Narsigowda had executed a registered sale deed dated: 17.09.1999 in favour of defendant No.15 to 17 illegally and another sale deed dated: 15.03.2022 in favour of defendant No.13 & 14. That, the plaintiff and defendant No.1 to 10 are the



owners of suit schedule properties and that the mortgage period is over. That, the third party interest created is not binding on the plaintiff and hence the plaintiff is entitled for share in the suit schedule properties. Hence, the plaintiff has sought for the relief of injunction as prayed above.

4. The defendants No.11 to 13 have filed the written statement and have contended that, the claims made by the plaintiff are not correct. Only the relevant portion of the written statement necessary for the sake of discussion will be herein discuss. The defendants No.11 to 13 states that, plaintiff is not entitled for partition and the aforesaid is not maintainable. The defendants have further stated that, the plaintiff is falsely claiming the relationship. That, the suit filed by the plaintiff seeking for the redemption of mortgage dated: 17.12.1928 is not maintainable and is barred Law of Limitation. That there is joint status or possession of the property by the plaintiff. That, the defendant No.11 to 13 are in possession of the schedule property and that they are the absolute owners of the suit schedule property. Hence, defendants pray for dismissal of the aforesaid application.

5. Heard learned counsel for plaintiff and defendants on I.A.No.1.



6. Considering the contentions of the counsel, following points arise for my consideration.

1. Whether plaintiffs have made out prima-facie case for grant of temporary injunction?
2. Whether balance of convenience is in favour of the plaintiffs?
3. Whether plaintiffs suffer irreparable injury if temporary injunction is not granted?
4. What order?

7. My findings for the above points are as follows.

- Point No.1: In the negative,  
Point No.2: In the negative,  
Point No.3: In the negative,  
Point No.4: As per final order.  
For the following,

**REASONS**

8. **POINT NO.1:-** The plaintiff has filed the aforesaid suit seeking for partition. The plaintiff has also sought for the declaration, declaring that the plaintiff and defendants No.1 to 10 are the absolute owners of suit schedule properties by ordering redemption of mortgage entered through mortgage deed dated: 17.12.1928.

9. The plaintiff has filed the aforesaid suit after the lapse of hundred years from the date of mortgage. As per the said mortgage deed the period of mortgage was fifteen years. The plaintiff has not stated the reason for not getting the said mortgage redeemed after fifteen years. The plaintiff has



only stated that, the mortgaged could not be redeemed as plaintiff and defendants were very poor. The poorness of a person cannot stop the clock of limitation. The reason stated by the plaintiff with respect to the redemption of the mortgage cannot be accepted.

10. The aforesaid suit is filed by the plaintiff seeking the relief of partition. The said suit is filed in the form of a partition suit seeking for redemption of a mortgage deed executed on 17.12.1928. The said redemption of mortgage after a period of more than 30 years is barred by limitation. Hence, the main relief in the aforesaid suit is still not prima-facie proved by the plaintiff.

11. The Hon'ble Supreme Court of India in *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, (1995) 5 SCC 545 at page 574 has stated as under;

***"43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests — (i) whether the plaintiff has a prima-facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be***



*taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See: Wander Ltd. v. Antox India (P) Ltd. [1990 Supp SCC 727] , (SCC at pp. 731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial."*



12. Thus, it can be seen from the aforesaid facts Judgement and the facts of the present case that, if the defendants have already alienated the schedule properties.

13. Hon'ble Supreme Court of India in APMC V/s. Girdaribai Ramjibai AIR 1997 SC 2674 had stated as under;

***“...a temporary injunction can be granted only if the person seeking injunction has a concluded right capable of being enforced by way of injunction.”***

14. Even in the present case there is doubt regarding the limitation in filing of the aforesaid suit. Hence, I answer point No.1 in the negative.

15. **Point No.2:-** The plaintiff has not made out prima-facie case as discussed above.

16. The Hon'ble Supreme Court of India in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1 : 1999 SCC OnLine SC 774 at page 13:

***24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the***



*merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:*

*(i) extent of damages being an adequate remedy;*

*(ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason thereof;*

*(iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;*

*(iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;*

*(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;*

*(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;*

*(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.*



17. Thus, it can be seen from the aforesaid facts and from the Judgement of Hon'ble Supreme Court of India that, the amount of injury that the defendants would suffer, would be more than the plaintiff. Hence, following the aforesaid judgement I hold, balance of convenience lies in favour of defendants and I answer point No.2 in the negative.

18. **Point No.3:-** If the alienations are allowed to be made, then the plaintiffs would not suffer much greater hardship. The plaintiff has not made out prima-facie case. Hence, I answer point No.3 in the Negative.

19. **POINT NO.4:** In view of reasons on point No.1 to 3, I proceed to pass the following,

**ORDER**

**IA No.I filed U/O.39 Rule 1 and 2 of C.P.C.,  
filed by plaintiff is hereby rejected.**

**Parties to bear their own cost.**

**Call on for issues by 01.06.2024.**

(Dictated to the Typist, transcribed & typed by her, corrected by me and then pronounced in the open court on this the **18<sup>th</sup> day of April, 2024.**)

**(Sandeep S. Reddy)**

**Addl. Sr. Civil Judge & JMFC.,  
Magadi.**