



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
AT MAGADI.

:-Present:-

Sri. Shrinivasa K.R. B.A.L., LL.M.,
Prl. Civil Judge & JMFC.,
Magadi.

Dated this the 05th day of December, 2024

OS No.04/2024

PLAINTIFF : Hithaishree D/o Mahesh.V.S,

:V/s:

DEFENDANTS : Sri.Siddappa S/o Late Muddappa
and others.

I.A. No. I

APPLICANT/
PLAINTIFF : Hithaishree D/o Mahesh.V.S,
Aged about 11 years,

Plaintiff is minor hence,
represented by her natural
guardian her mother by name
Smt.Pushpalatha.V. W/o Mahesh.V.S.

Residing at Kempaiahnadoddi Village,
Halaguru Hobli,
Malavalli Taluk, Mandya District.

(By Sri. M.K.P.S., Advocate) :Vs:



**OPPONENTS/
DEFENDANTS**

- DEFENDANTS** :
1. Sri.Siddappa S/o Late Muddappa,
Aged about 73 years,
 2. Sri.Srishylamalikarjuna S/o Siddappa,
Aged about 45 years,
 3. Mahesh.V.S. S/o Siddappa,
Aged about 42 years,

Residing at Veeragowdanadoddi Village,
Madbal Hobli, Magadi Taluk,
Ramanagara District.

(D-1 and 3 Rep. By Sri.R.T., Advocate)
(D-2 Rep. By Sri. K.R.R., Advocate)

ORDER ON IA.NO.I FILED U/O 39 RULE 1 AND 2 OF CPC

The plaintiff has filed application U/O 39 rule 1 & 2 CPC with a prayer to restrain the defendants, their agents and their servants or anybody from not to alienate the suit schedule property and creating encumbrance over the suit schedule property. The application filed in respect of land bearing Sy.No.14/1 measuring 7.01.00 guntas situated in Anchikuppe Village, Magadi Taluk.



2. The application is supported with an affidavit sworn by the plaintiff stating that, the suit schedule property is the ancestral property of plaintiff and defendants. The defendant No.1 is the grand father of plaintiff and till today partition not effected between plaintiff and defendants. The defendants by colluding with each other have obtained decree in O.S.No.36/2016 as per compromise petition dated 16.02.2016 to deprive the share of plaintiff. The plaintiff requested the defendants to effect partition and to allot the share of plaintiff but, the defendants refused to effect the partition. The defendants are making hectic attempt to alienate the suit schedule property. Hence, prays to allow the application.

3. The defendants not filed objection hence, objection taken as not filed.

4. The plaintiff counsel submits argument taken as head.



5. Upon hearing arguments and materials placed on record, following points that arise for my consideration:

1. Whether plaintiff has made out a prima-facie case?
2. Whether balance of convenience lies in favour of plaintiff ?
3. Whether irreparable injury and hardship would cause to the plaintiff, if temporary injunction is not granted ?
4. What order?

6. My answer to the above points are as under.

Point No. 1 to 3 : In the ***Negative.***

Point No. 4 : As per order
for the following;

REASONS

7. **POINT No.1**: Law relating to grant or refusal to grant temporary injunction has been culled out by the Hon'ble Supreme Court of India in ***AIR 1999 SUPREME COURT 3105***



(Colgate Palmolive (India) Ltd., v. Hindustan Lever Ltd.,) it is held as under:

“Civil P.C. (5 of 1908), O. 39,R.1:

Certain specific considerations to be noted 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 therefor; (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 others; (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 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 general public which can or cannot be compensated otherwise.”

8. Keeping in mind the well settled legal principles regarding granting or refusal for granting Temporary Injunction enunciated in the above cited decision, let me advert to consider the case of the parties. The plaintiff has filed suit for the relief of partition and separate possession.

9. The contention of the plaintiff is that, the suit schedule property is the ancestral property of plaintiff and defendants. The defendants obtained collusive decree as per compromise petition and the said decree is not binding to the plaintiff. Hence, prays to allow the application.



10. The plaintiff in support of his contention has produced the genealogical tree, RTC extracts and certified copies of order sheet, plaint and decree of O.S.No.36/2016. The contention of the plaintiff is that, the defendants by colluding with each filed suit for partition and separate possession in O.S.No.36/2016 and in the said suit the defendants have filed compromise petition dated 16.02.2016 and obtained collusive decree. Whether the defendants by colluding with each obtained decree or not has to be adjudicate with proper evidence, hence, at this junction the contention of the plaintiff is not acceptable. On perusal of records the plaintiff has not established prima-facie case by placing prima-facie materials. The prima-facie case is totally different from prima-facie title. Defendants have challenged the prima-facie material placed by plaintiff. Under the circumstances, I am of the opinion that plaintiff has not made



out prima-facie case in his favour. Accordingly, I answer point No.1 “in the ***Negative***”.

12. **POINT No.2 and 3:-** These points are taken up together for discussion for the sake of convenience. The person who approaches the court for equitable remedy of temporary injunction, besides making out strong prima-facie and must necessarily show that balance of convenience lies in favour and shall also satisfy that irreparable loss and hardship would be caused to him/her, which can not be compensated in terms of money. Therefore, it is incumbent upon the plaintiff to show that the balance of convenience lies in his favour.

13. In considering the question of balance of convenience the court has to consider to whom more hardship or inconvenience would be caused. In the present case the defendants are in possession of suit schedule property. Whether the defendants have obtained decree fraudulently or not has to be adjudicate. Therefore, if temporary injunction is



granted the defendants would be put to loss and hardship. Has discussed supra plaintiff has not established prima-facie. Accordingly, I answer points 2 and 3 in the ***Negative***.

14. **POINT No. 4:** In view of my findings to points No.1 to 3, I am of the considered opinion that, plaintiff has not made out prima-facie case. Besides this the plaintiff has not established that balance of convenience lies in his favour and irreparable injury would be caused to him, if an order of temporary injunction is denied. Therefore, the plaintiff is certainly not entitled for the relief of temporary injunction. Accordingly, I proceed to pass the following;

ORDER

I.A. No.I filed by the plaintiff under Order XXXIX Rule 1 & 2 R/w Section 151 of CPC, is hereby rejected.

No order as to cost.

(Directly dictated to Stenographer directly on the Computer, typed by her, then corrected and pronounced by me in the open Court on this the **05th day of December, 2024.**)

**Prl. Civil Judge & JMFC,
Magadi.**