

KARN420019492022



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

**PRESENT: SMT.DHANALAKSHMI.M. B.A.L., LL.B.,  
Addl.Civil Judge & JMFC,  
Magadi, Ramangara District.**

**Dated: This 24<sup>th</sup> day of August, 2023**

**O.S.NO.50/2022**

**PLAINTIFFS**

- : 1. Sri.Hanumamma  
W/o Nanjundaiah,  
Aged about 74 years,  
Residing at Matada Palya,  
Agalokote Post, Kasaba  
Holbi, Magadi Taluk,  
Ramangara- 562120.
2. Smt.Nanjamma  
W/o Krishnappa,  
Aged about 57 years,  
Residing at Matada palya,  
Agalokote Post, Kasaba  
Holbi, Magadi Taluk,  
Ramangara- 562120.
3. Sri.Nanjegowda.N  
S/o Late Nanjudaiah,  
Aged about 54 years,

KARN420019492022



Residing #32/1,  
Rathnanagar,  
Chikkagollarahalli,  
Bengaluru North,  
Bengaluru-560091.

4. Sri.Narasimha Murthy  
S/o Late Nanjudaiah,  
Aged about 49 years,  
Residing at #80 1<sup>st</sup> main,  
SVG Nagar,  
Moodalapalya,  
Nagarbhavi main road,  
Bengaluru.

**(By Sri.T.R.K Advocate)**

**-Vs-**

**DEFENDANT**

:

Sri.E.Balakrishna  
S/o Late Eraiah,  
Aged about 61 years,  
Residing at No.153,  
2<sup>nd</sup> Block,  
Jooganahalli,  
Rajajinagar,  
Bengaluru-560010.

**(By Sri.R.K.R. Advocate)**

KARN420019492022

**I.A.No.I**

**APPLICANT** : Smt.Hanumamma  
**OPPONENT** : Smt.Jayalakshamma @  
Jayamma

**ORDER ON I.A No.I UNDER ORDER XXXIX RULE 1 and 2**  
**R/w Sec.151 CODE OF CIVIL PROCEDURE**

This application is filed by Plaintiff under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 praying to grant interim order of temporary injunction restraining the defendants, their agents and GPA holders, their legal heirs, their henchmen not to interfere or not to disposes the plaintiffs with respect to the suit schedule properties, pending disposal of the above suit, in the interest of justice and equity and at present the case is at the stage of Plaintiff evidence.

2. The plaintiff has filed affidavit along with the application wherein he sworn that, he has filed a suit for partition and separate possession. The Plaintiff stated that, the family members of Nanjaiah and his legal heirs have made partition

KARN420019492022



dated 18.10.1966, several properties among there suit schedule properties Sy,No.205/1 was retained by the father in law and mother in law of the first plaintiff. One Chikkamma the mother said Nanjundaiah was acquired the suit schedule property by virtue registered partition dated 18.10.1966.

After the death of Chikkamma and Nanjaiah there was no partition made with respect to suit schedule property. But Defendant No.1 without partition as mortgaged the suit schedule property to an extent of 10 guntas and in this regard the defendant No.1 was also executed simple sale deed in favour of K. Kempalingaiah. The said K. Kempalingaiah was also executed registered sale deed dated 30.07.1984 in favour of one Smt.Jayamma @ Jayalakshamma.

The defendants are trying to disposes the plaintiff and making hectic attempt to create the false and frivolous documents. If the Defendants disposes the plaintiff, she will be expose to immense hardship and un-recoverable injury. Hence, Plaintiff prays to allow the present application.

KARN420019492022



3. In response, the defendant, through their counsel, appeared and filed memo to treat written statement as objection to I.A. No.I, denying that the averment made in the Plaint are false, frivolous and vexatious. It is contended that, there was a partition between children of Nanjaiah under partition Deed dated 18.10.1966 in the said partition one N.Kapanaiah got 18 guntas, Hanumappa got 17 guntas and N.Parvathi got 17 guntas and out which 18 guntas of the property came to the share of Kapanaiah had previously mortgaged in favour of Narasegowda dated 05.04.1944 and same as been cancelled as per the letter of affidavit of H.Krishnappa under Shara dated 14.05.1958 confirm the same as per assistant court Ramanagara, sub-division under order consent Tahashildar registered a case and passed the order in RRT CR 122/2016-2017 dated 06.06.2016 and clearly upheld that as per the affidavit H,Krishna, this property belongs to Hanumakka.

As per the partition, defendant No.2 got the revenue documents as per MR no.170/1984-1985 measuring to an extent of 18 guntas since from the partition, Defendant No.1

KARN420019492022



got the possession and enjoyment of the suit schedule property. But the plaintiffs has stated to an entire extent in the schedule plaint and that Nanjundaiah purchased the entire property of the defendant No.1's ancestral and joint family properties. But, they have not incorporated the same in this case, the plaintiffs making claims about only the suit schedule property, is not correct and highly illegal and these only intent to grab the suit schedule property.

It is submitted that the plaintiff have not approached this Hon'ble court with clean hands and the plaintiffs are in no way concerned with the suit schedule property. The plaintiffs are trying to make unlawful gain from the Defendant's No.1 and 2 and the suit schedule property. Hence, Defendant prays to reject the present application.

4. Heard on both sides.

5. Now the points that arise for the consideration of this court are as follows:

KARN420019492022



**1. Whether the Plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for?**

**2. Whether the balance of convenience leans in favour of the Plaintiff?**

**3. Whether the Plaintiff will be put to irreparable loss and hardship, If IA is not allowed?**

**4. What order?**

6. The findings of this court on the above said points are as under:-

**Point No.1** : In the **Affirmative.**  
**Point No.2** : In the **Affirmative.**  
**Point No.3** : In the **Affirmative.**  
**Point No.4** : As per the final order or the following:-

### **REASONS**

7. **POINT NO.1** :- This application is filed by Plaintiff under Order 39 Rule 1 & 2 read with Section 151 of Code of Civil Procedure, 1908 praying to grant interim order of temporary injunction restraining the defendants, their agents and GPA holders, their legal heirs, their henchmen not to

KARN420019492022



interfere or not disposes the plaintiffs with respect to the suit schedule properties, pending disposal of the above suit, in the interest of justice and equity.

### **SCHEDULE**

All the piece and parcel of immovable property bearing agricultural land bearing new and Survey No. 205/1B, situated at Agalakote Village, Kasaba Hobli, Magadi Taluk and measuring an extent of 1 acre 12 guntas including 0-01 guntas karab bounded on:

- East by : Property belongs to Channappa.
- West by : Property of Kempamma.
- North by : property of Narasegowda Bin Nanjundaiah.
- South by : Property of Kempamma.

8. In the light of the arguments canvassed by the learned counsels for the parties, this court has carefully perused the list of documents produced by the parties. The list of documents of plaintiff consists of copy of the family tree, copy of partition deed dated 18.10.1966, copy of record of rights in the Sy.No.

KARN420019492022



205/1B of the year 2021-2005, copy of sale deed bearing No.1203/85-25.

9. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

10. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and

KARN420019492022



prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendant if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

11. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

12. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being

KARN420019492022



entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

13. The plaintiff claims that the suit schedule property was retained by the father in law and mother in law of the plaintiff and suit schedule property is the ancestral joint family property. The Defendant No.1 without partition mortgaged the suit schedule property to an extent of 18 guntas and also executed simple sale deed in favour of one K. Kempalingaiah and the same was executed in favour Smt.Jayamma @ Jayalakshamma under registered sale deed dated 30.07.1984. As suit schedule property is the ancestral joint family properties of the plaintiff and Defendants prima facie all joint family members will be having right, title and interest over the suit schedule property. Moreover the defendants tried to interference the plaintiff's lawful and peaceful possession and enjoyment of suit schedule property and even 3<sup>rd</sup> parties are visiting the suit schedule property and trying to disposes the plaintiff's from suit schedule property.

KARN420019492022



14. On perusal of the materials on record, it appears that the parties have not disputed their relationship. On the contrary according to the defendants there was already previous partition between the parties. Per contra defendant has not placed any documents to disbelieve the version of plaintiff. All these aspects require trial at the later stage and at this stage it is not feasible to discuss the merits of the case.

15. The case of the plaintiff is the suit schedule property originally belongs to father in law and mother in law of Plaintiff No.1 and after the death without partition with respect to suit schedule property, the defendant No.1 mortgage the property to an extent of 18 guntas and also executed simple Sale Deed in favor of Smt.Jayamma. The Plaintiff states that she is in the possession and enjoyment over the same. The plaintiff has produced Family Tree, Partition Deed, Record of rights, Certified Copy of Sale Deed. At this stage this court of the opinion that Defendants have failed to disprove the prima facie case as averred by the plaintiff. This court is of the opinion that the plaintiff has made out prima facie case hence the equitable relief of temporary injunction has to be granted in his favour.

KARN420019492022



Hence in order to protect the interest of the parties, this court is of the opinion that Plaintiff has made out prima facie case.

**Accordingly I answer Point No.1 in the Affirmative.**

16. **Point No.2 and 3**: The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

17. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

KARN420019492022



18. After considering the materials on record it appears to this Court that the Plaintiff have made out prima-facie case and this being the state of affairs if the equitable relief of Temporary Injunction is not granted infavour of the Plaintiff then more mischief and hardship will cause to the Plaintiff than the mischief and hardship will cause to the Defendant if Temporary Injunction is not granted infavour of the Plaintiff. Further this Court is of the opinion that if the Defendant interfere the suit schedule property. Hence by considering all these facts and circumstances of the case this Court is of the opinion that the balance of convenience leans in favour of the Plaintiff and if the equitable relief of Temporary Injunction is not granted infavour of the Plaintiff, then the Plaintiff will be put irreparable loss and hardship and the same cannot be compensated in terms of money. **Accordingly I answer Point No.2 and Point No.3 in the Affirmative.**

19. **Point No.4:** For the aforesaid reasons this court proceed to pass the following ,

KARN420019492022

**ORDER**

- I.A No.I filed by the plaintiff  
under Order 39 Rule 1 and 2 of  
C.P.C. is hereby Allowed.

(Dictated to the stenographer, typed directly on computer, script corrected, signed and then pronounced by me in the open court, this the 24<sup>th</sup> day of August, 2023)

**(Smt.Dhanalakshmi.M)**  
**Addl.Civil Judge & JMFC,**  
**Magadi.**