

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
GUBBI.**

**Present: Smt. RADHA.S, B.A., LL.M.,
Prl. Civil Judge & JMFC.,
Gubbi.**

Dated on this 15th day of July 2020.

O.S.No. 275/2019

Plaintiff : Shamanthakumari D/o
Late Siddalingaiah W/o Sadashivaiah,
Aged about 43 years, R/o Dodderi Village,
Bellavi Hobli, Tumakuru Taluk.

(By Sri.J.K.A., Advocate)

V/s

Defendants: 1. Vishalamma W/o Late Siddalingaiah,
Aged about 68 years,
R/o Kaggere Village,
Doddanaravangala Post, Bellavi Hobli,
Tumakuru Taluk. and others.

(D2 to 4 Sri.N.M.S., Advocate and
D1 Ex-parte)

Applicant : Shamanthakumari

V/s

Opponent : Vishalamma and others

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.

**ORDERS ON I.A.NO.I FILED UNDER ORDER XXXIX RULE
1 AND 2 OF CPC BY THE PLAINTIFF**

1. This is an application filed by the plaintiff requesting the court to pass an order of temporary injunction against defendants, to restrain them their agents, servants or anybody acting on their behalf from alienating the suit schedule properties to anybody in any manner till the disposal of the suit.

2. Out of 4 defendants, only defendant Nos. 2 to 4 have appeared in the present case and rest of the defendants are placed as Ex-Parte. The defendant No. 2 has filed objection to present application.

3. On the bases of application and objection filed by the both parties, the following points would arise for my consideration.

4. The points that arise for my consideration are;

1. Whether the plaintiff has made out prima-facie case?

2. Whether balance of convenience lies in favour of plaintiff?

3. Whether irreparable loss and injury would be caused to plaintiff if temporary injunction is not granted?

4. What order ?

5. Heard both sides and perused case records.

6. My answer to the above points as under;

Points No. 1 to 3 : In Affirmative

Point No. 4: as per the following reasons.

::REASONS::

7. Point No.1 to 3 : These points are taken together for common discussion as they are interlinked to each other to avoid repetition of facts. Admittedly, plaintiff has filed this suit against defendants for the relief of partition and separate possession in respect of the suit schedule properties.

8. In the affidavit accompanying to this application, the plaintiff has stated that, the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants and they are in joint possession and enjoyment of

the same. The suit schedule properties were standing in the name of plaintiff's father viz Siddalingaiah and he was in possession and enjoyment over the suit schedule properties. After the death of plaintiff's father, the plaintiff and defendant No. 1 and plaintiff's brother viz Ashwathkumar were continued in possession and enjoyment of the suit schedule properties. After the demise of plaintiff's brother, the plaintiff and defendants continued in possession over the suit schedule properties. Till today there is no partition between the plaintiff and defendants. The khatas pertaining to suit schedule properties are standing in the name of defendant Nos. 1 and 2. When the plaintiff came to know that, the defendants are misusing the income of the suit schedule properties, she demanded the defendants to allot her share in the suit schedule properties but the defendants refused to allot the same, hence this suit is filed by the plaintiff along with present application. On these grounds the plaintiff sought to allow the present application.

9. On the other hand the defendant No. 2 has filed objections to present application wherein the defendant No. 2 has completely denied the case of the plaintiff, and contended that, the suit schedule properties are not the ancestral and joint family properties of the plaintiff and defendants. The plaintiff's father had sold his ancestral property to others to meet out the marriage expenses of the plaintiff. Under oral partition the remaining portion of land in suit item No. 1 was given to the husband of 2nd defendant after her marriage. Since the day of oral partition, 2nd defendant and her husband are in possession and enjoyment over the said land. The suit schedule properties are not ancestral and joint family properties of plaintiff and defendants as such, the plaintiff is not entitled to any share in the suit schedule properties. On these grounds the defendant No. 2 prayed to dismiss the suit as well as present application.

10. I have gone through the pleadings of both parties and documents available on records, the plaintiff in support of her

contention has produced G-tree, xerox copy of death certificate, form No. 11 (rule-30) and RTCs, these documents prima-facie shows that, the plaintiff has made out prima facie in her favour at this stage. And the genuineness of the documents cannot be seen at this stage, that can be seen at the time of trial. If defendants alienated suit properties the rule of lis-pendense will apply and it leads to multiplicity of proceedings. If the defendants are restrained from alienating the suit property till disposal of suit no injustice would be caused to defendants, otherwise it causes irreparable loss and injury to the plaintiff. The merit of the case cannot be decided at this stage. More over the defendants except pleadings have not even produced any documents to disprove the claim of the plaintiff. Considering the nature of the suit and materials available on record I am of the opinion that plaintiff has made out prima-facie case and balance of convenience lies in her favour. Therefore, if order of injunction is not granted, irreparable loss and injury would be caused to the plaintiff

rather than the defendants. For these reasons I answer point No.1 to 3 in Affirmative.

11. Point No.4 : For the above said reasons I proceed to pass the following order;

O R D E R

I.A.No.I filed Under Order XXXIX
Rule 1 and 2 of CPC by the plaintiff is
hereby allowed.

Defendants, their agents, servants
or anybody acting on their behalf are
hereby restrained from alienating the suit
schedule properties to anybody in any
manner till the disposal of the present suit.

Cost of this I.A. shall follow the final
result of the suit.

(Dictated to the stenographer directly on computer, corrected by me then the Stenographer has taken print out, after taking printout corrected, signed and then order pronounced by me in open court on 15th day of July 2020.)

(Smt. Radha.S)
Prl. Civil Judge & JMFC.,
Gubbi.