



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT KUNIGAL**

Present:

Sri. Shrikanth Ravindra,
B.A.L, LL.M.,
Senior Civil Judge & JMFC,
Kunigal

O.S.NO.142 / 2021

Dated this the 28thDay of April, 2025

Plaintiff/s : K.N. Rajalakshmi
W/o. K.N. Nagaraja Shetty,
Aged about 70 years,
R/o. Near Sri. Kanyakaparameshwari
Temple, Doddapete, Kunigal.

(By Sri.T.M.S., Adv.,)

V/s.

Defendant/s: Jayaramashetty P.S.
S/o. Late P. Sundarashetty,
Aged about 72 years,
R/o. Near Sri. Kanyakaparameshwari
Temple, Doddapete, Kunigal.

(By Sri. C.K. Adv.,)



I.A.NO.III

APPLICANT :

K.N. Rajalakshmi

V/s.

OPPONENT:

Jayaramashetty P.S.

1.	<i>Provision under which the application is filed</i>	<i>Order 39 Rules 1 and 2 of CPC</i>
2.	<i>Relief sought for</i>	<i>Temporary Injunction</i>
3.	<i>The date on which the application is filed</i>	<i>19-08-2024</i>
4.	<i>Number of the application</i>	<i>IA No.III</i>
5.	<i>The date on which the objections are filed by different opponents</i>	<i>20-08-2024</i>
6.	<i>The date on which the orders were passed on the said application.</i>	<i>28-04-2025</i>

: ORDER ON I.A. NO.III

The plaintiff has filed this application seeking an ad-interim order of temporary injunction restraining the defendant, his agents, attorneys or



anybody claiming under or through him from alienating or encumbering the suit schedule property in any manner pending disposal of the suit.

2. The application is supported by an affidavit sworn to by the power of attorney holder of the plaintiff by name K.N. Nagarajashetty. In the affidavit, it is stated that the suit is for declaration that the plaintiff is the absolute owner of the suit schedule property and consequential relief of permanent injunction along with other incidental reliefs. It is further stated that the plaintiff and defendant are members of Hindu undivided family and the plaintiff was married to one Nagaraja Shetty of Kunigal who is the applicant herein.



3. It is further stated that the plaintiff and the defendant resided together and with an intention to arrange for the stay of the plaintiff and defendant at Kunigal itself, the kartha of the joint family of the plaintiff and defendant by name Nagashankara Shetty got purchased the suit schedule property in the name of the defendant vide a sale deed for a total consideration of Rs.10,000/-. At the time of execution of the sale deed, the defendant had under a family arrangement agreed that half portion of the suit schedule property would be given to the plaintiff as Arishina - Kumkuma or by way of Partition.

4. It is further stated that 1-1½ years prior to the death of Nagashankara Shetty, there was a family settlement between the plaintiff and the



defendant and the plaintiff was orally given half share in the suit schedule property and the said arrangement was also reduced to writing and the plaintiff is in possession of said half portion of the suit schedule property ever since. It is further stated that as the oral partition between the plaintiff and the defendant which was reduced to writing was not registered, katha of the suit schedule property was made out in the name of the plaintiff after payment of fees of Rs.1000/- to the Chief Officer of C.M.C. Kunigal.

5. It is further stated that after the katha of the suit schedule property was made out in the name of the plaintiff, she also constructed a house therein after obtaining license and she is living



therein. It is also stated that the defendant under the partition was allotted properties towards eastern side and western side to extents measuring East-West : 30 feet, North-South : 19 feet and East-West : 23 feet and North-South : 19 feet respectively while the plaintiff was allotted an extent measuring East-West : 53 feet, North-South : 19 feet at the middle.

6. It is also stated that the mortgage deed dated 04/08/2016 executed by the defendant, his wife and son in respect of suit schedule property mentions about existence of the house property of the plaintiff on the western side after a three feet galli and further refers to the said property to have been gifted to the plaintiff. It is also stated that the redemption deed dated 16/08/2007 has also similar



reference and when things stood thus the defendant with an intention to grab the suit schedule property from the plaintiff got instituted a suit through his daughter Shivaranjini for the relief of partition by including the suit schedule property standing in the name of the defendant in O.S.No.165/2012 and also challenged the katha of the suit schedule property standing in the name of the plaintiff before the court of the Assistant Commissioner and against the order passed therein, the plaintiff has preferred an appeal before the Deputy Commissioner and since the defendant on the basis of the orders passed by the court of the Deputy Commissioner is making attempts to alienate the suit property, the plaintiff was constrained to file the present suit.



7. It is also stated that the plaintiff will be put to great hardship and inconvenience which cannot be compensated by any means if the application is not allowed and on the other hand the defendant will not suffer in any way if the application is allowed. It is also stated that the balance of convenience and prima-facie case is also in favour of the plaintiff. On these grounds, it is prayed that the application be allowed.

8. After institution of the suit, suit summons came to be issued to the defendant. The defendant filed objections to the application and submitted that the application is not maintainable under law or on facts and submitted that suit schedule property measuring East-West : 105 feet and North-South : 19



feet was purchased by the defendant vide a sale deed and the katha of the same was made out in his name on the basis of the said sale deed and he is in possession and enjoyment of the suit schedule property ever since. It is also submitted that except for the defendant herein no other persons have any right, title or possession over the suit schedule property and as such, the application from the plaintiff deserves to be dismissed.

9. Heard both sides on the application and perused the materials on record.

10. The following points arise for my consideration:



POINTS

1. Whether the plaintiff has made out a prima facie case ?
2. Whether the plaintiff proves that the balance of convenience lies in her favor ?
3. Whether the plaintiff establishes that she would be put to irreparable loss and injury if temporary injunction as prayed for under I.A.No.III is not granted ?
4. What order ?

11. My answers to the above 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
for the following;



R E A S O N S

12. **POINT No.1:-** It is settled law that the grant of relief of temporary injunction is a discretionary relief. The burden is on the plaintiff to establish by evidence that there exists a prima facie case in his favour. Prima facie case only means that the contentions which the plaintiff has raised require consideration on merits and are not liable to be rejected summarily. If a person is to get entitled to the relief of temporary injunction, he has to not only show that he has a prima facie case but also establish that the balance of convenience lies in his favor and that irreparable loss and injury which cannot be compensated in terms of money would be caused to him in the event the injunction sought is



refused. With these legal principles with regard to grant and refusal of temporary injunction, it is now relevant to find out whether the plaintiff herein has fulfilled the aforementioned requirements for grant of the relief of temporary injunction.

13. It is the specific case of the plaintiff that herself and the defendant are sister and brother respectively and they were living together at Kunigal and the suit schedule property was purchased in the name of the defendant vide a sale deed for consideration of Rs.10,000/- and at the time of execution of the said sale deed the defendant had agreed that half of the suit schedule property would be given to the plaintiff as arashina kumkuma or by way of partition and accordingly 1 – 1½ years prior



to the death of the kartha of the family of the plaintiff and the defendant by name Nagashankara Shetty, there was a family arrangement and in the said family arrangement half portion of the suit schedule property measuring East-West : 53 feet and North-South : 19 feet came to be orally allotted to the plaintiff herein while the property measuring East-West : 30 feet and North-South : 19 feet situated on the eastern side and property measuring East-West : 23 feet and North-South : 19 feet situated on the western side of the property orally allotted to the plaintiff came to be allotted to the defendant herein.

14. It is also contended that the Katha of the property allotted to the plaintiff was made out in her



name and she has constructed a house thereon and when things stood thus, the defendant got filed a suit in O.S.No.165/2012 through his daughter P.J. Shivaranjini for partition and separate possession by including the suit schedule property and challenged the Katha standing in the name of the plaintiff before the Assistant Commissioner in MUN (A) 3/2013-14 and since Katha standing in the name of the plaintiff came to be set aside by the Assistant Commissioner an appeal came to be preferred by the plaintiff herein before the court of the Deputy Commissioner in MUN (A) 02/2017-18 and the said appeal also came to be dismissed on the ground that the dispute is civil in nature.



15. It is further contended that on the basis of the order passed by the Assistant Commissioner and Deputy Commissioner, the defendant is attempting to alienate the suit property to the prejudice of the plaintiff constraining her to file this application. The defendant on the other hand claimed absolute ownership and possession over the suit schedule property on the basis of the sale deed and denied the other contentions of the plaintiff in toto.

16. A perusal of the materials on record indicates that there is no dispute with regard to the fact that the plaintiff is the younger sister of the defendant herein. It is a specific case of the plaintiff that the suit schedule property felt to her share in an oral partition between her and the defendant



which was subsequently reduced to writing and the khatha of the suit schedule property was accordingly mutated in her name. In proof of the above contention of the plaintiff, the plaintiff has furnished the copy of the Panchayath parikath deed dated 04/08/2006 which appears to have been executed between the plaintiff and the defendant herein.

17. A perusal of the said partition deed would indicate that the plaintiff herein vide the said partition deed is allotted property bearing assessment No.1078/126 to an extent measuring East-West: 53 feet and North-South:20 feet which is the suit schedule property. Further, a perusal of the schedule of the properties mortgaged by the defendant and others and redeemed thereafter



vide the the registered mortgage deed dated 04/08/2006 and the registered redemption deed dated 16/08/2007 respectively would show existence of the house property of the plaintiff on the western side and eastern side of the properties of the defendant.

18. Though the genuineness of the unregistered panchayath parikath/ family arrangement dated 04/08/2006 is to be ascertained only after a full-fledged trial, the recitals of the registered mortgage deed and redemption deed referred above and executed by the defendant himself clearly speak of existence of the house property of the plaintiff in between the properties of the defendant. Under the circumstances, more



particularly when the mortgage deed and redemption deed allegedly executed by the defendant are registered documents, notwithstanding the fact that the khatha of the suit schedule property standing in the name of the plaintiff was cancelled by the Assistant Commissioner and the said order came to be challenged by the plaintiff herein before the court of the Deputy Commissioner in MUN (A) 02/2017-18 and the said appeal also came to be dismissed as the matter was civil in nature, the plaintiff, at this stage, appears to be in possession of the suit schedule property on the strength of the panchayath palupatti dated 04/08/2006. Under such circumstances, at this stage, this court is of the opinion that the plaintiff has made out a prima -



facie case in her favour. Accordingly, point No.1 is answered in the affirmative.

19. **POINTS NO.2 AND 3:-** Both these points are taken up together for common discussion for the sake of brevity and to avoid repetition of facts and discussion.

The plaintiff alleges that the defendant is trying to alienate the suit schedule property. Since the plaintiff is claiming right over the said property by virtue of the said property having been allotted to her orally under a family arrangement which was thereafter reduced to writing, if the defendant No.1 succeeds in alienating the suit schedule property as alleged by the plaintiff, the rights of the plaintiff over the said property would be prejudiced and it would lead to multiplicity of proceedings and the plaintiff in



the opinion of this Court would therefore suffer irreparable loss and injury which cannot be compensated in terms of money. Also, the comparative hardship which the plaintiff would suffer if an order of temporary injunction as prayed for by the plaintiff is not granted in her favor is more than the hardship the defendant No.1 would suffer if an order of temporary injunction is granted in favor of the plaintiff and therefore the balance of convenience also lies in favor of the plaintiff. Hence, this Court is of the opinion that the plaintiff has also established that she would suffer irreparable loss and injury if an order of temporary injunction is not granted in her favor and the balance of convenience also lies in favor of the plaintiff. Accordingly, these two points are also answered in the **'Affirmative'**.



20. **POINT NO.4:-** In view of the reasons and discussion made under Points No.1 to 3, this court proceeds to pass the following:

ORDER

I.A.No.III filed by the plaintiff U/O.XXXIX Rules 1 and 2 of CPC is hereby allowed.

The defendant, his agents, attorneys or anybody claiming under or through him are hereby restrained by an order of temporary injunction from alienating or encumbering the suit schedule property in any manner pending disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, transcribed, computerized by him, corrected and then pronounced in the Open Court on this the 28th day of April, 2025).

Sd/-
(Shrikanth Ravindra)
Senior Civil Judge & JMFC,
Kunigal.