

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
KUNIGAL.

-.PRESENT:-

Sri. Lakshmi Narasimha R.V. B.A.L., LL.B.,
Prl. Civil Judge & JMFC., Kunigal

Dated this the 1st day of DECEMBER 2023.

O.S. NO.173/2022

PLAINTIFFS : Smt.Lakshmidevi and
another

V/s.

DEFENDANTS : Sri.Veeranna

I.A. No. I

Plaintiff/Applicant : Smt.Lakshmidevi and
another

V/s.

Defendants/Opponents : Sri.Veeranna

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C

The plaintiffs have filed this application under order
XXXIX Rule 1 and 2 of CPC praying this court to pass an
order of an ad-interim temporary injunction restraining

defendant No.1 and 2 from removing the soil or alter the nature of the suit schedule property item No.6 and 7 till the disposal of the suit.

2. In the affidavit annexed along with the application, plaintiff No.1 has averred that they have filed the present suit for the relief of partition and separate possession. The suit schedule properties are ancestral properties of plaintiffs and defendants and no partition has been effected till this day. After demise of husband of plaintiff No.1 by name Shivarudra, defendant No.1 and 2 are trying to change the nature of property by removing the soil. The plaintiffs have got prima-facie case and balance of convenience in their favour. If the application is not allowed, they will be put to irreparable loss and injury. Hence prayed to allow the application.

3. Upon the service of summons, the defendants have appeared before the court through their counsel. Defendant

No.1 to 3, 9, 13 and 14 have filed written statement cum objections to the application. It is contended that, the propositus by name Veerabhadraiah and Siddamma had 10 children. Whereas, the plaintiffs have shown only 9 children. They have not made the children of deceased Gangalakshamma as parties to the suit. The suit schedule properties are ancestral and joint family properties of plaintiff and defendants and they are in 1/10th share each. Defendant No.2 has spent more than Rs.10 lakh for development of item No.7 property and he has also dug the borewell. The plaintiffs are liable to pay their respective share amount before taking the share. Accordingly, prayed to dismiss the application.

4. On basis of the application, plaint, written statement and documents on record, the following points that arise for the determination of this court.

1. Whether the plaintiffs have made out prima-facie case in their favour?

2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will be put to great hardship and irreparable loss if, order of temporary injunction is not granted ?
4. What order ?

5. Heard arguments. Perused the application, affidavit, objections and records placed before this court.

6. My finding on above points are as follows:-

Point No.1 : In the *Affirmative*

Point No.2 : In the *Negative*

Point No.3 : In the *Negative*

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

::REASONS::

7. **Point No.1 to 3** : Since these points are inter connected with each other, they are taken together for the discussion in order to avoid the repetition of the facts and

circumstances.

8. The plaintiffs have filed the present suit for the relief of partition and separate possession in respect of the suit schedule properties. The defendants in the written statement have categorically admitted that, the suit schedule properties are the ancestral and joint family properties. The only contention is that, the plaintiffs have not made the Lrs of said Gangalakshamma who is also one of the daughters as parties to the suit. Further, defendant No.2 has contended that, he has invested a sum of Rs.10 lakh and developed item No.7 property. At this stage, the plaintiffs have made out prima-facie case in their favour.

9. Further, mere proving prima-facie case does not suffice to hold in favour of the plaintiffs. In the case on hand, the plaintiffs have sought for the interim relief to restrain the defendants from removing the soil and change the nature of suit. It is settled position that, in a suit for partition all the

joint family members hold the joint possession of the properties. Further, if the land is kept intact, it is possible that, it may get barren. In that event, no person would be in a position to enjoy the fruits of yield. If the plaintiffs succeed in the suit, their claim with respect to the accounts is not vanished. On the other hand, if the agricultural activities is not made in the suit schedule properties, it is the plaintiffs as well as defendants would suffer loss and injury. On the other hand, the right of plaintiffs in so far as accounts is concerned is protected under the provisions. Under these circumstances, this court is of the opinion that, though plaintiffs have made the prima-facie case, they have failed to prove the balance of convenience and also the loss and injury if the application is not allowed. On the other hand, it is plaintiffs as well as defendants would be put to irreparable loss and injury if the application is allowed. According Point No.1 is answered in the affirmative and Point No.2 and 3 are answered in the ***Negative.***

10. Point No.4:: For the above discussed reasons, this court proceeds to pass the following:

::ORDER::

IA No.I filed by the plaintiffs
under order XXXIX Rule 1 and 2 of
C.P.C. is hereby dismissed.

No order as to costs.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 01st day of December, 2023]

Sd/-
Prl. Civil Judge and JMFC,
Kunigal.