



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC
AT MADHUGIRI**

Dated this the 1st day of April, 2023

Present :
SRI RAGHUNATHA GOWDA K.T.

B. Com., L.L.B.
Prl. Civil Judge & JMFC,
Madhugiri.

O.S.No.221/2019

Plaintiff : Sri. K.N. Jayaramu
S/o Narasimhaiah
Aged about 44 years
R/o Kavanadala Village,
Dodderi Hobli,
Madhugiri Taluk.

(By Sri. R.M., Advocate)

V/s

Defendants : 1. Sri. Narasimhaiah
S/o Late Narasappa
Since dead by LR.

a) Smt. Gangamma
W/o Late Narasimhaiah
aged about 80 years
R/o Kavanadala Village,
Dodderi Hobli,
Madhugiri Taluk.

2. Smt. Lakshminarasamma
D/o Narasimhaiah
W/o Muniraju
Aged about 55 years

3. Smt. Varalakshmi
D/o Narasimhaiah
W/o Lakshmana
Aged about 52 years

4. Sri. Sanjayakumar R.
S/o Raju
aged about 27 years

All are R/o Kavanadala Village,
Dodderi Hobli,
Madhugiri Taluk.

(D1, 2 & 4 By Sri. BHP., Advocate)
(D3 by Exparte)

I.A.No.II

Applicant : K.N. Jayaramu
V/s

Opponents : Narasimhaiah and others

* * *

ORDER ON I.A.No.II FILED BY PLAINTIFF UNDER ORDER

XXXIX RULE 1 AND 2 R/W SECTION 151 OF C.P.C

The present application is filed by the plaintiff seeking order of temporary injunction restraining the defendant No.1 and 4 and restraining them from alienating / encumbrance over the suit schedule properties in any mode or manner, till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff filed his affidavit he contended that he filed this suit against the defendants for relief of Partition and Separate Possession. Himself and defendant No.2 and 3 are sons and daughters of 1st

defendant, defendant No.4 is grandson of 1st defendant. They are constitute joint Hindu family, the suit schedule properties are joint family properties and they are in joint possession and enjoyment of the suit schedule properties. The suit schedule properties are standing in the name of defendant No.1 and 4 and taking undue advantage of the same they are trying to alienate the suit schedule properties in order to deprive his right in the suit schedule properties. Further he has contented that he has got prima-facie case and balance of conveyance lies in his favor and if the application is allowed no loss or harm caused to the defendant No.1 and 4. Hence, he prays to allow this application.

3. The suit summons was served to the defendants, the defendant No.3 did not appear before the court. The defendant No.1, 2 and 4 are appear through their counsel, in spite of sufficient opportunity given they did not file written statement nor objection to said application.

4. Heard. Perused the records placed before the court.

5. The points that arise for my consideration is as under :

- 1) Whether plaintiff has made out prima-facie case?
- 2) If injunction is granted or refused, to whom inconvenience will be caused ?
- 3) Whether irreparable loss and injury would be caused to plaintiff in case of not granting temporary injunction ?
- 4) What Order ?

6. My findings to the above points is as under :

Point No.1 and 3 : In the Affirmative

Point No.2 : To the plaintiff

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

R E A S O N S

7. **POINT No.1 TO 3** : For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

8. I have already narrated the pleadings of plaintiff in Para No.2. As noted above, the plaintiff has filed the present suit against the defendants seeking for relief of Partition and Separate Possession. On coming to the documents produced by the plaintiff i.e., Record of rights, Demand Register Extract and Genealogical tree.

9. On careful perusal of the documents produced by plaintiff, the plaintiff seeking for relief of Partition and Separate Possession of his share in the suit schedule properties. Admittedly the plaintiff is son of defendant No.1, defendant No.2 is wife of defendant No.1, defendant No.2 and 3 are the son and daughter of defendant No.1. Further the documents produced by the plaintiff i.e., record of rights pertaining to item No.1 of the suit property which is standing in the name of defendant No.2, item No.2 of the suit property which is standing in the name of defendant No.4. Item No.3 and 5 of the suit properties which are

standing in the name of defendant No.1 and item No.4 of the suit property which is standing in the name of defendant No.4. After service of summons the defendant No.1, 2 and 4 appear before the court but they did not file the objection to said application and they are not denied the contents of plaint averments.

10. Moreover at this juncture the court cannot decide that whether plaintiff is having right over the suit properties or not. The said fact will be adjudicated at the time of full fledged trial. Further the plaintiff seeking interim relief against defendant No.1 and 4 that not to alienate the suit schedule properties in any manner till the disposal of the suit. Moreover if the application is allowed no loss or hardship caused to the defendants and it will avoid multiplicity of proceedings and the relief sought by the plaintiff is equitable relief.

11. In-order to grant order of temporary injunction, 3 essential ingredients have to be fulfilled, Prima-facie case, balance of convenience and irreparable loss or injury. Prima-facie case includes maintainability of the suit and probability of plaintiff succeeding in the case, i.e. entitlement for the reliefs sought, at this stage the documents produce by the plaintiff have made out prima-facie case in his favour. If defendant No.1 and 4 are alienating suit schedule property, the rule of lis pendency will apply and it leads to multiplicity of proceedings. If the defendant No.1 and 4 are restrained from alienating the suit schedule properties till disposal of suit, no injustice would be caused to

them. On the other hand, it causes irreparable loss and injury to the plaintiff. Merits of the case cannot be decided at this stage. Considering the nature of suit and materials available on record, this court is of the opinion that plaintiff has made out prima-facie case and balance of convenience lies in his favour. Therefore, if order of injunction is not granted, irreparable loss and injury would be caused to the plaintiff rather than the defendant No.1 and 4. For these reasons, I answer point No.1 and 3 in 'Affirmative' and point No.2 as "to the Plaintiffs if not granted".

12. **POINT No.4** : For the above said reasons, I proceed to pass the following :

ORDER

I.A. No.II filed by plaintiff against defendant No.1 and 4 under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C. is hereby allowed.

Defendant No.1 and 4 are hereby temporarily restrained from alienating the suit schedule properties in favour of third person in any mode or manner till disposal of the suit.

Parties to bear their own costs.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in open court on this **01st day of April 2023**)

Sd/-
(Raghunatha Gowda K.T.)
Prl. Civil Judge & JMFC,
Madhugiri.