



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

Dated this the 01st day of February 2024

**PRESENT :
SRI RAGHUNATHA GOWDA K.T.**

B. Com., L.L.B.

**Prl. Civil Judge & JMFC,
Madhugiri.**

O. S. No.490/2019

Plaintiffs : 1. Sri. V.L.Mahesha,
S/o late Lakshminarayana,
Aged about 31 years.

2. Sri. V.L.Rakesha,
S/o Lakshminarayana,
Aged about 26 years.

Both are R/at
Veerachinnenahalli Village,
Medigeshi Hobli, Madhugiri Taluk.

Now R/at #321, 6th Cross,
Andrahalli Main Road,
Mayura nagara, Hegganahalli,
Bengaluru – 560091.

(By Sri. P.R., Advocate)

Vs/-

Defendants : 1. Sri. Lakshminarayana,
S/o late Karethimmaiah,
Aged about 60 years,
Working as a High School Master.

2. Sri.Govindaraju,
S/o lateKarethimmaiah,
Aged about 55 years.

3. Smt. Vijayalakshmi,
W/o Govindaraju,
Aged about 42 years.
4. Sri. Thimmaiah,
S/o late Muddaiah,
Aged about 69 years.
5. Sri. M.Rangappa,
S/o late Muddaiah,
Aged about 65 years.

All are R/at Veerachinnenahally,
Medigeshi Hobli, Madhugiri Taluk,
Tumkur District.

(D1 By Sri. T.D., Advocate)

(D2 By Sri. G.B.H., Advocate)

(D3 By Sri. S.R.R., Advocate)

(D4 & 5 by Sri. G.R., Advocate)

I.A. No.I

Applicant : V.L.Mahesha **Plaintiff**

Vs/-

Opponents : Lakshminarayana & others **Defendants**

* * *

**ORDER ON I.A.No.I FILED BY PLAINTIFF UNDER ORDER
XXXIX RULE 1 AND 2 OF C.P.C.**

The present application is filed by the plaintiffs are seeking order of temporary injunction restraining the defendants, their agents, servants or anybody claiming under them from alienating in respect of suit schedule properties in any mode or manner till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff No.1 averred that, the plaint averments kindly be read as part and parcel of this affidavit.

3. The plaint averments disclose that the plaintiffs are filed this suit against the defendants for the relief of partition and separate possession of their share in the suit schedule properties. Further they are contended that the original propositus by name Muddaiah had three sons namely Karethimmaiah, Thimmaiah (Defendant No.4) and M.Rangappa (Defendant No.5). The said Karethimmaiah died leaving behind the defendant No.1 to 3 and the plaintiffs are sons of defendant No.1.

4. Further they are contended that the suit properties are the ancestral and Hindu undivided joint family properties of themselves and defendants and they are in joint possession and enjoyment of the same and there is no division the suit properties. Further they are contended that on the basis of inheritance the suit properties are standing in the name of defendants in M.R.No.H1/2014-15, M.R.No.H2/2014-15, M.R.No.H6/2008-09. Further they are contended that land bearing Sy.No.18/a of the suit property acquired by the defendant No.3 in the joint family funds and his name was appears in the said property and item No.23 of the suit property is self-acquired property of defendant No.1.

5. Further they are contended that defendant No.1 being school teacher and he had second marriage with one Navya without obtaining divorce from first wife and they are the children's of 1st wife of defendant No-1 by name Lalithamma. Further they are contended that during the pendency of the suit the defendants are filed the suit in O.S.No.138/2020 before the Additional Senior Civil Judge. Madhugiri for partition and separate possession and said suit was ended into compromise and in the said suit they are not parties to the suit and the compromise decree passed in the said suit is not binding on their share.

6. Further they are contended that now the defendants are taking undue advantage of the same they are trying to alienate the suit properties in order to deprive their right and and if the defendants are not prevented they will suffers irreparable loss if the application is allowed no loss or hardship caused to the defendants and they are got prima facie case and balance of conveyance lies in their favors. Hence they pray to allow this application.

7. On the other hand, the defendant No.1 appeared through his counsel and filed objection to said application contended that the application filed by the plaintiffs are not maintainable either in law or facts. Further he contended that himself and defendant No.2, 4 and 5 are divided the suit properties in O.S.No.139/2020 and the item No.23 of the suit property is not belongs to himself

and said property belongs the Govindaraju and item No.B properties are belongs defendant No.3 and she has purchased by raising loan from S.B.I and H.D.F.C. Bank and Sy.No.18/a of the suit property is belongs to defendant No-3 and the plaintiff are entitle only 1/3rd share in his share and he is not alienate the suit properties. Hence he prays to reject the said application.

8. On the other hand, the defendant No.4 and 5 are appeared through their counsel and filed objection to said application contended that the application filed by the plaintiffs are not maintainable either in law or facts. Further they are contended that plaintiff are sons of 1st wife of defendant No.1, item No.22 and 23 of the suit properties are self-acquired properties of defendant No.3 and they are not intended to alienate the suit properties and they are agriculturist except the agriculture work they are no source of income. Hence they pray to reject the said application.

9. Heard both counsel. Perused the I.A., affidavit, and records placed before the court.

10. The points that arise for my consideration are as under :

1. Whether plaintiffs have 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 plaintiffs in case of not granting temporary injunction ?

4. What Order ?

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

Point No.1 and 3 : In the Affirmative,

Point No.2 : To the Plaintiffs if not granted.

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

REASONS

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

13. I have already narrated the pleadings of plaintiffs and defendant No.1, 4 and 5 in Para No.2 to 8 respectively. As noted above, the plaintiffs are filed the present suit against the defendants seeking for relief of partition and separate possession.

14. On coming to the documents produce by the plaintiffs i.e., Genological tree, record of rights pertaining to 'A' suit properties are jointly standing in the name of defendant No.1, 2 and 4, further the mother of plaintiffs by name Lalithamma filed a maintenance petition against defendant No.1 in C.Mis.No. 207/2017 and also filed P.C.R No.40/2018. Mutation registers and B extracts of 'B' schedule properties are standing in the

name of defendant No.3. Akarbhand, Hudbust, Notice. Per contra defendant No.1 counsel produce the Final decree copy, M.C.No.12/2016, certified copy of order sheet, plain and compromise petition filed in O.S.No.138/2020.

15. On careful perusal of the entire material available on record the relationship of the plaintiffs with defendant No.1 is not disputed, further it is not disputed fact that the plaintiffs are not parties to in O.S.No.138/2020. Further during the pendency of the present suit the defendant No.1,2,4 and 5 are entered into compromise the schedule property. Further the defense of the defendants that item No.22 and 23 of 'A' schedule and 'B' schedule properties are the self-acquired properties of defendant No.3 but the plaintiff are contended that out of the joint family nucleus the said properties purchased in the name of defendant No.3. As per sale deed produce by the defendants that item No.22 of the suit property purchased in the name of defendant No.3 and item No.23 of the suit property purchased in the name of defendant No.2.

16. Further at this juncture on the basis of compromise decree the defendants are filed application for Hadubust and certainly there is chances for alienate the suit properties. Such being the case if the defendants are alienates the suit properties the plaintiffs will causes irreparable loss and it will cannot be compensated in terms of money. Moreover, the plaintiffs are seeking equitable relief of restrain the defendants to alienate the

suit properties. Further at this juncture prima-facie plaintiffs are established that they are has got prima-facie case and balance convenience lies in their favor.

17. 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 plaintiffs are made out prima-facie case in their favour. If defendants are alienating schedule properties the rule of lis pendency will apply and it leads to multiplicity of proceedings. If the defendants are restrained from alienating the 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 plaintiffs. 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 plaintiffs are made out prima-facie case and balance of convenience lies in their favour. Therefore, if order of injunction is not granted, irreparable loss and injury would be caused to the plaintiffs rather than the defendants. For these reasons, I answer point No.1 and 3 in 'Affirmative' and point No.2 as "to the Plaintiffs if not granted".

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

ORDER

I.A. No.I filed by plaintiffs against defendants under Order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

Defendants, their agent, servants or anybody claiming under them is hereby temporarily restrained for alienating the 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 February 2024**)

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