

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

**Dated this the 07<sup>th</sup> day of August 2019**

**PRESENT :**

**SRI ABDUL RAHIMAN. A. MULLA**

*B.A.L, L.L.B (Hons.)*

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

**O.S.No.261/2018**

- PLAINTIFFS :**
1. Narasimhappa S/o late  
Giddappa, aged about 45 years
  2. Siddappa S/o late  
Giddappa, aged about 40 years
  3. Ramanjinappa S/o late  
Giddappa, aged about 35 years
  4. Lakshminarasappa S/o late  
Julappa, aged about 43 years
  5. Kadarappa S/o late  
Julappa, aged about 40 years
  6. Chinnakka W/o late  
Siddappa, aged about 65 years

All are R/o Kanthanahalli  
Village, I.D.Halli hobli,  
Madhugiri taluk.

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

**Vs/-**

**DEFENDANTS :** 1. Nagamma W/o Late  
Narasimhappa, aged  
about 76 years

2. Kadaramma W/o Late  
Sanjeevappa, aged  
about 65 years

Both are R/o Kanthanahalli  
Village, I.D.Halli hobli,  
Madhugiri taluk.

(Defendant No.1 By Sri. B.N.M., Advocate)  
(Defendant No.2 Exparte)

**I.A.No.I**

Applicant : Narasimhappa .... 1<sup>st</sup> Plaintiff

**Vs/-**

Opponents : Nagamma & others .... Defendants  
\* \* \*

**ORDERS ON I.A. No.I FILED BY PLAINTIFFS**  
**UNDER ORDER 39 RULE 1 AND 2 OF C.P.C**

This application is filed by plaintiffs seeking order of temporary injunction restraining defendants, their agents, servants or anybody claiming under them from alienating the 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 they have filed this suit against defendants for partition and separate possession and suit schedule properties are joint

family properties of them along with defendants, but katha and pahani of suit schedule properties are standing in the names of Narasimhappa and Sanjeevappa, who are husbands of defendant No.1 and 2 respectively. Taking advantage of joint names of both husbands of defendant No.1 and 2 appearing in RTC extracts of suit schedule properties, defendants are trying to alienate the same in favour of third parties in order to defeat and defraud the rights of plaintiffs in suit schedule properties. If the same is allowed, plaintiffs would be put to hardship and injustice and amongst these grounds, prayed to allow the application.

3. After issuing of suit summons to defendants, defendant No.2 remained ex-parte, whereas defendant No.1 filed her written statement and objections to the application denying the entire averments of the plaint and contended that during the year 1959-60, Tahasildar, Madhugiri granted suit schedule item No.1 in favour of husband of defendant No.1 Narasimhappa under darakasth and also issued grant certificate. On the basis of grant, mutation came to be accepted in the name of Narasimhappa

vide M.R.No.3/1959-60. Ever since the date of grant, husband of defendant No.1 was in exclusive possession of suit item No.1 property and after his death, defendant No.1 is in possession and enjoyment of the same and amongst these grounds, prayed to dismiss the application with costs.

4. Heard, perused the records placed before the court.

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

- 1) Whether prima-facie case and balance of convenience lies in favour of the plaintiffs ?
- 2) To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same ?
- 3) What Order ?

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

Point No.1 .... In the Affirmative,

Point No.2.... To the plaintiffs in case of refusing to grant temporary injunction,

Point No.3 .... As per final order for the following :

### **REASONS**

7. **POINT No.1 and 2** : For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

8. It is the specific contention of plaintiffs that they along with defendants are in joint possession and enjoyment of suit schedule properties, as the same are joint family properties. As katha and pahani of suit schedule properties are standing in joint names of husbands of both defendants, they are trying to alienate the suit schedule properties in favour of third parties with an intention to defeat and defraud the rights of plaintiffs. In support of their contention, plaintiffs have produced genealogical tree, RTC extracts pertaining to suit schedule properties, endorsement given to Tahasildar and three death certificates.

9. On the contrary, defendant No.1 contended that suit item No.1 is self acquired property of her husband, which was granted to him under darakasth and also issued grant certificate. After his death, she is in possession and enjoyment of the same. In

support of her contention, defendant No.1 produced in all 4 documents i.e., photocopy of index of land, record of rights, certified copy of RTC of land owners and receipt for payment of assessment.

10. On perusal of pleadings and documents produced by both parties, prima facie the RTC extracts pertaining to item No.1 property stands in the name of husband of defendant No.1 and suit item No.2 stands in the name of husband defendant No.2. It is the specific contention of defendant No.1 that suit item No.1 property is self acquired property of her husband and after his death, she is in possession of the same.

11. In this case, there is dispute regarding status of properties i.e., whether they are joint family properties or self acquired properties. Prima facie, the documents produced by defendant No.1 at this stage of the case does not go to show that whether suit item No.1 was granted in the name of defendant No.1 on behalf of joint family or not and prima facie, it can be seen that no partition has been effected between

plaintiffs and defendants with respect to suit schedule properties till this date.

12. In order to grant an order of temporary injunction, 3 essential ingredients have to be fulfilled. The documents produced by plaintiffs prima-facie goes to show that suit schedule properties are standing in joint names of husbands of both defendants. If the suit schedule properties are alienated during the pendency of the suit, it would lead to multiplicity of proceedings and suit schedule properties may not be available for partition and both plaintiffs and defendants may not enjoy the fruits of suit schedule properties at disposal of the case. As plaintiffs have made out prima-facie case, balance of convenience also lies in their favour. If temporary injunction as prayed by plaintiffs is not granted, it would cause irreparable loss and injury to plaintiffs, rather than defendants. Hence for the above said reasons, I answer point No.1 in the 'affirmative' and point No.2 as 'irreparable loss and injury would be caused to plaintiffs in case of refusing to grant temporary injunction'.

13. **POINT No.3** : For the reasonings and findings given to point No.1 and 2, I proceed to pass the following :

**ORDER**

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

Defendants, their agents, servants or anybody claiming under them are hereby restrained by an order of temporary injunction from alienating the suit schedule properties in any mode or manner till disposal of the suit.

(Typed to my dictation by the Stenographer directly on computer, then corrected, printout taken, signed by me and then pronounced in the open court on this **07<sup>th</sup> day of August 2019**)

(Abdul Rahiman A. Mulla)  
Prl. Civil Judge & JMFC,  
Madhugiri.