



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

Dated this the 01st day of April 2024

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

B. Com., L.L.B.

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

O. S. No.219/2020

Plaintiffs

- : 1. Smt. Rajeswari G.V.
D/o Venkatesh G.R.
Aged about 32 years.
2. Smt. Manjula G.V.
D/o Venkatesh G.R.
Aged about 29 years.

Both are R/o Gamkaranahalli,
Puravara Hobli,
Madhugiri Taluk.

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

Vs/-

Defendants

- : 1. Sri. Venkatesh G.R.
S/o late Ramappa
Aged about 60 years
R/o Gamkaranahalli Village
Puravara Hobli,
Madhugiri Taluk.

Dead by LRs. D-1(a) Kalavathi
W/o Late Venkatesh G.R.
R/o Gamkaranahalli Village
Puravara Hobli,
Madhugiri Taluk.

The remaining LR's. are already recorded as plaintiff No.1 and 2 in the above case

2. Sri. Krishnappa
S/o Muniyappa
Aged about 56 years.
R/o Kondavadi Village,
Puravara Hobli,
Madhugiri Taluk.

(D-1(a) By Sri. M.S.P., Advocate)

(D-2 By Sri. K.V.S.K., Advocate)

I.A. No.II

Applicant : Rajeswari G.V. Plaintiff

Vs/-

Opponents : Venkatesh G.R. & another Defendants

* * *

**ORDER ON I.A.No.II FILED BY PLAINTIFF UNDER ORDER
XXXIX RULE 1 AND 2 R/w, SEC-151 OF C.P.C.**

The present application is filed by the plaintiffs are seeking order of temporary injunction restraining the defendants from maintain status quo order in respect of suit schedule property in any mode or manner till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff No-1 averred that, the suit schedule property is the ancestral and joint family property of themselves and defendant No-1. Further she contended that they are daughters of defendant No-1 and they are demanded to partition their share in the suit property and the defendant No-1 discloses that he has sold the suit

property under a sale agreement dated 26/11/2015 in favour of defendant No-2 and defendant No-1 not executed the sale deed so that reason the defendant No-2 filed the suit in O.S.No.27/2016 for specific performance of contract and said suit was ended into compromise and they are having 1/3rd share in the suit property 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 have got prima facie case and balance of conveyance lies in their favor. Hence she prays to allow this application.

3. On the other hand, summons served to the defendant No-1, but he did not appear before this court. Hence the defendant No-1 placed ex-parte. The defendant No-2 appeared through his counsel and filed a memo stated that the contents of written statement treated as objection to said application.

4. In the written statement the defendant No-2 contended that application filed by the plaintiffs are not maintainable either in law or facts. Further he contended that defendant No-1 and his brother by name Ganganna have owned and possessed the land bearing Sy.No.4/1, 9/1, 15/3, 18/4, 108/2, 108/9 and house property bearing Khaneshumari No.371. further he contended that defendant No-1 has sold the suit property in his favour an agreement of sale dated 26/11/2015 for his legal necessity and thereafter he did not execute the sale deed, so that reason he filed the suit in O.S.No.27/2016 and said suit was

ended into compromise and he is absolute owner of the suit property. Further he contended that the plaintiffs are not included the all the family properties and the suit of the plaintiffs is barred by law of limitation. Hence he prays to reject the said application.

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

6. 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 ?

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

Point No.1 and 3 : In the Negative.

Point No.2 : To the defendant No.2 if granted.

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

REASONS

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

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

10. On coming to the documents produce by the plaintiffs i.e., Genological tree, record of rights pertaining to suit property, Mutation extract, Xerox copy of the plaint, order sheet, compromise petition and compromise decree passed in O.S.No.27/2016. On the other hand defendant No-2 counsel filed memo with documents I,e, ten record of rights and certified copy of order sheet in Ex.No.47/2020.

11. On careful perusal of the entire material available on record the relationship of the plaintiff with defendant No.1 is not disputed, further it is not disputed fact that defendant No-2 purchase the of the suit property by agreement of sale and it is not disputed the defendant No-2 filed a suit in O.S.No.27/2016 against defendant No-1 for relief of specific performance of contract and said suit was ended into compromise and the execution petition is pending for consideration. Further as per record of rights pertains to land bearing Sy.No.4/1, 9/1A, 15/3, 18/4, 108/2 and 108/9 all these properties are jointly standing in the name of defendant NO-1 and one Shanthamma. Further the said facts discloses in M.R.No.H19/2014-15 and M.R.No.H4/2019-20.

12. Further the plaintiffs has not comes to court with clean hands because the plaintiff's family having another landed properties as per M.R.No.H19/2014-15 and M.R.No.H4/2019-20 and without included the said properties in this suit and the plaintiffs are filed this suit with regard to alienated property only by suppressing material facts.

13. 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 plaintiffs are succeeding in the case, i.e. entitlement for the reliefs sought, at this stage the documents produce by the plaintiffs have not made out prima-facie case in their favour and balance of conveyance lies in favour of defendant No-2 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 have not made out prima-facie case and balance of convenience lies in their favour. Therefore, if order of injunction is granted, irreparable loss and injury would be caused to the defendant No-2 rather than the plaintiffs. For these reasons, I answer point No.1 and 3 in 'Negative' and point No.2 as "to the defendant No-2 if granted".

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

ORDER

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

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 2024**)

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