

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

Dated this the 1st 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. 511/2018

PLAINTIFF : J.U.Harish Babu S/o Ugrappa
aged about 11 years, Minor
Represented by mother Chithamma
W/o Ugrappa, aged about 36
Years, R/o R.Gollahalli,
Medigeshi hobli, Madhugiri taluk.

(By Sri. P.C.K.R., Advocate)

Vs/-

DEFENDANTS : 1. Ugrappa S/o Veeranna
aged about 40 years
2. Eranna S/o Juladasappa
aged about 76 years
Defendants 1 & 2 are
R/o R.Gollahalli, Medigeshi
hobli, Madhugiri taluk.
3. Smt.Balamma W/o Aswathappa
aged about 38 years
R/o Pulamachi village
I.D.Halli hobli, Madhugiri taluk.

(By Sri. V.R.R., Advocate)

I.A. No. II

Applicant : J.U.Harish Babu, Minor represented
by natural guardian mother
Smt.Chithamma
.... Plaintiff

Vs/-

Opponents : Eranna and another Defendant No.2 & 3

* * *

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

This application is filed by plaintiff seeking order of temporary injunction restraining defendant No.2 and 3, their agents, servants or anybody from alienating the suit schedule properties in favour of third parties in any mode or manner pending disposal of the suit.

2. In the affidavit annexed to the application, minor guardian of plaintiff averred that they have filed this suit against defendants for the relief of partition and separate possession in respect of suit schedule properties. That minor plaintiff is her son along with defendant No.1 and he is grand son of defendant No.2 and they along with defendant No.1

and 2 constitute members of Hindu undivided joint family. The suit schedule properties are ancestral joint family properties of minor plaintiff and defendant No.1 and 2 and they are in joint possession and enjoyment of the same. As katha and pahani of suit schedule properties stood in the name of defendant No.2, he has executed registered gift deed dated 13-02-2012 in favour of his daughter defendant No.3, but katha and pahani of suit schedule properties are still standing in the name of defendant No.2. Now defendant No.2 in collusion with defendant No.3 are attempting to alienate the suit schedule properties in favour of third parties in order to defeat and defraud the right of minor plaintiff over the same and amongst other grounds, prayed to allow the application.

3. Defendants filed their written statement denying the entire averments of the plaint and admitted that defendant No.2 has executed registered gift deed in favour of defendant No.3 on 13-02-2012 and on the same day, delivered possession to defendant No.3. Further contended that defendant No.1 decided to left the company of mother of plaintiff

and hence the birth of minor plaintiff does not arise at all and he is not the son of defendant No.1. Earlier plaintiff and his mother had filed a suit before this court in O.S.No.451/2012 in respect of same subject matter, which was disposed of on merits on 08-08-2018. As per Section 11 of CPC, as the matter is decided, question of entertaining another suit does not arise at all, hence this suit is hit by principles of res-judicata and amongst other grounds, prayed to dismiss the application.

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 plaintiff ?
- 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 Negative,

Point No.2.... To defendant No.2 and 3
in case of granting
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 case of plaintiff that they along with defendant No.1 and 2 constitute members of Hindu undivided joint family and suit schedule properties are ancestral joint family properties of minor plaintiff along with defendant No.1 and 2. Now defendant No.2 executed registered gift deed in favour of defendant No.3 on 13-02-2012 and since katha and pahani of suit schedule properties are standing in the name of defendant No.2, he along with defendant No.3 are attempting to alienate the suit schedule properties in favour of third parties in order to defeat and defraud the right of minor plaintiff over the same.

9. In support of their contention, plaintiff produced in all five documents i.e., RTC extracts pertaining to suit schedule properties, M.R. No.07/2007-08 and M.R.No.11/2000-01, RTC extract pertaining to Sy.No.45/6 for the year 1997-98 till 2001-02 and certified copy of registered gift deed.

10. On the contrary, it is the contention of defendants that minor plaintiff is not the son of defendant No.1 and earlier plaintiff and his mother had filed suit in O.S.No.451/2012 with respect to same subject matter, which came to be disposed of on 08-08-2018 and hence this suit is hit by principles of res-judicata.

11. In support of their case, defendants produced in all six documents i.e., photo copy of judgment and decree passed in O.S.No.451/2012, photo copy of registered gift deed, photo copy of endorsement given in case No.RRT(Dis) No.41/2011-12, photo copy of Annexure-B, photo copy of voters list and photo copy of ration card.

12. It is pertinent to note that plaintiff has suppressed the fact about filing of O.S.No.451/2012

in this suit. The question with respect to suit schedule properties being ancestral joint family properties of plaintiff along with defendant No.1 and 2 requires evidence and at this stage of the case, same cannot be adjudicated by holding a mini trial.

13. No doubt, defendants have admitted about execution of registered gift deed by defendant No.2 in favour of defendant No.3 in respect of item No.1 property. That does not go to show that suit schedule properties are ancestral joint family properties of plaintiff and defendant No.1 and 2. Prima facie on perusal of documents and pleadings, it goes to show that plaintiff has not approached this court with clean hands and suppressed the aspects about filing of suit by them against defendants in O.S.No.451/2012. It appears that only with an intention to grab an order from the hands of this court, plaintiff might have suppressed that aspect.

14. Plaintiff prima facie at this stage of the case has nowhere made out believable grounds to show that defendant No.2 and 3 are attempting to alienate the suit schedule properties to third parties and admittedly as per the say of plaintiff himself, the

katha and pahani of suit schedule properties are standing in the name of defendant No.2 till today, hence question of alienating the suit schedule properties by defendant No.2 does not arise at all, as mutation in the name of defendant No.3 as per registered gift deed is not yet accepted.

15. Prima facie at this stage of the case, in order to grant temporary injunction, plaintiff has failed to fulfill three essential ingredients i.e., prima facie case, balance of convenience and irreparable loss and injury. The plaintiff has suppressed the fact about filing and disposal of suit in O.S.No.451/2012 and prima facie it goes to show that plaintiff has not approached this court with clean hands in order to seek an order of temporary injunction. If at all, temporary injunction order as prayed by the plaintiff is granted, irreparable loss and injury would be caused to defendant No.2 and 3, rather than plaintiff. The question with respect to suit schedule properties being ancestral joint family properties requires full fledged trial and same cannot be adjudicated at this stage of the case. Hence for the above said reasons, I answer point No.1 in the 'Negative' and point No.2 as

‘irreparable loss and injury would be caused to the defendant No.2 and 3 in case of granting temporary injunction’.

16. **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. II filed by plaintiff under Order 39 Rule 1 and 2 of C.P.C. is hereby rejected.

Parties to bear their own costs.

The interim ex-parte temporary injunction order dated 17-12-2018 is hereby vacated.

(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 **1st day of August 2019**)

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