

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,
AT PAVAGADA.

Dated this the 10th day of October – 2019.

Present :

Sri. Jagadeesh Biserotti, B.A, L.L.B, (Spl)
Prl. Civil Judge & JMFC,
PAVAGADA.

ORIGINAL SUIT No. 021 / 2019.

Plaintiff/s :1. Suvarnamma W/o Late Anjaiah,
Aged about 56 years.

2. Narasimha murthy S/o Late Anjaiah,
Aged about 56 years.

Both are R/o Nagalapura village,
Medigesh hobali, Madhugiri Taluk,
Tumakuru District.

(By Sri. M.M., Adv.)

/VS/

Defendant/s : 1. Mallakka W/o Late Govindappa,
Aged about 58 years and 11 others.

(By Sri. U.M., Adv., for D5, 8, 10, 11, 12)

(By Sri. G.C.M., Adv., for D7)

Defendant No.1 is abated.

Defendant No. 1 to 3 Ex-parte.

ORDERS ON I.A. 1 FILED U/O ORDER XXXIX RULE 1
AND 2 OF CODE OF CIVIL PROCEDURE

1. The learned counsel for the plaintiffs has filed I.A. No.I under order XXXIX rule 1 and 2 of CPC seeking to the grant of temporary injunction by restraining the defendant No.5, 8, 9 and 12 or their agents or any others persons authorized by them from alienating the suit schedule properties in favor of the third party, in any manner till disposal of the suit. The application is supported by affidavit of the plaintiff.
2. Brief facts of the case of the plaintiff:

It is averred in the plaint that, the plaintiffs and defendants are joint family members. The suit schedule properties are ancestral and joint family properties of plaintiffs and defendants. There is no partition in respect of the suit schedule properties, the plaintiffs are having legitimate share in the suit schedule properties. The defendants are taking the advantage of the kathas standing in their name, they are trying to alienate the suit schedule properties. The plaintiff are having 1/4th share in the suit schedule properties. On these avarments the plaintiff had prayed for relief of partition and separate possession as prayed in the plaint.
3. In the I.A. No.1 the plaintiff had stated that the suit schedule

properties are ancestral and joint family properties of plaintiffs and defendants, they are having legitimate share in the suit schedule properties and there is no partition between them in respect of the suit schedule properties. If the application is allowed no loss or hardship to the defendant No.5, 8, 9 and 12, otherwise the plaintiff will be put to irreparable loss and injustice. On these reasons the plaintiff has prayed to allow I.A. No.1.

4. After service of summons the defendant No.5, 7, 8, 10 to 12 are appeared through their learned counsels. The suit against defendant No.4 has been abated. Defendant No.1 to 3, 6 and 7 are placed ex-parte.
5. The learned counsel for defendant No.5, 8 and 12 has filed written statement and objections to I.A.No.1. The defendant No.5, 8 and 12 have denied that the plaintiffs and defendants are joint family members and the suit schedule properties are ancestral and joint family properties of plaintiffs and defendants. It is contended that since the date of partition the defendant No.5 to 9 and 12, are separately enjoying their respective properties allotted under the said partition, deed dated 25-3-1998. The defendant No.5 has purchased the property under registered sale deed dated 05-04-1999, since the date of purchase of property Sy.No.123/1 measuring 2 acres, he is in exclusive possession and enjoyment of the property. As per the partition the kathas

are also mutated. On these avarrments and other avarrments made in the written statement, they have prayed to dismiss the suit and as well as I.A.No.1.

6. The defendant No.7 has filed written statement, the defendant No.7 has admitted the plaint avarrements. He has prayed to decree suit by allotting the share to the defendant No.7.
7. Heard arguments on both sides, perused the records.
8. The following points arise for my consideration.

POINTS

- 1. Whether plaintiffs have made-out a prima facie case?**
- 2. Whether the balance of convenience lies in favour of plaintiffs?**
- 3. Whether plaintiffs would suffer irreparable loss or injury if the prayer of interim injunction were not granted?**
- 4. What order ?**

9. My findings to the above said points are as follow

Point No. 1: Affirmative.

Point No. 2: Affirmative.

Point No. 3: Affirmative.

Point No. 4: As per final order

REASONS

10. **Point No.1 to 3:-** These three points are inter linked with each other and requires common discussion in order to avoid the repetition of discussion. Therefore, these three points are discussed commonly.
11. I have already narrated both the parties contentions taken in the suit, above.
12. In support of the case of the plaintiffs, the plaintiffs have produced R.T.C. in respect of the the suit properties and Genealogical Tree. The defendant No.5, 8, 10 to 12 have produced certified copy of the R.T.C. and computerized R.T.C., Original two registered sale deeds dated 05-04-1999, Certified copy of the registered sale deed dated 08-01-1962, original unregistered partition deed dated 25-03-1998.
13. The plaintiffs have filed suit for the relief of partition and separate possession in respect of the suit properties. The plaintiffs have claimed that, the plaintiffs and defendants are joint family members, the suit schedule properties are ancestral and joint family properties of plaintiffs and defendants. It is further contended that the defendant No.5, 8, 9, 12 are trying to alienate the suit schedule properties. I have perused Genealogical Tree produced by the plaintiff. On perusal of the genealogical Tree of plaintiff, it appears that the parties of the suit are coming under the said

genealogical tree. The defendant No.5, 8, 12 have contended that, as per partition deed dated 25-03-1998 the properties are partitioned and they are in separate possession in respect of their shares. The plaintiffs have contended that there is no partition in respect of the suit properties. The plaintiffs have claimed that they are having 1/3rd share in the suit schedule property. The defendants have not admitted the relationship as contended by the plaintiff.

14. The plaintiffs have contended that, the suit properties are ancestral and joint family properties of the plaintiffs and defendants. Whether the suit properties are joint family properties or ancestral properties or self acquired properties, has to be appreciated after evidence placed by both parties. The contention of the defendants has to be appreciated after full pledged trail. The suit properties are subject matter of the suit, if the suit properties alienates by the defendant No.5, 8, 9 and 12, it will create the multiplicity of proceedings and it is necessary to avoid the multiplicity of proceedings. On the other hand, if the defendant No.5, 8, 9 and 12 are restrained from alienating suit schedule properties, there is no hardship or injustice to the defendant No.5, 8, 9 and 12, otherwise it will defeat the claim of the plaintiffs. The plaintiffs are seeking relief through the suit properties, hence it is just and necessary to consider the relief sought in IA.No.I to avoid the multiplicity of proceedings.

15. After perusing the pleadings and documents placed on record by the both parties. I hold that, the plaintiffs have made out a prima-facie case and balance of convenience lies in favor plaintiffs. When there is prima-facie and balance of convenience is in favour of plaintiffs, the plaintiffs are entitle for the temporary injunction. Hence, I answer **Point No.1 to 3 in affirmative.**

16. **Point No.4:-** In view of my findings on above points and having regard to the facts and circumstances of the case, I proceed to pass the following;-

ORDER

The I.A.No.I filed U/o 39 Rule 1 and 2 of CPC filed by the plaintiffs is hereby allowed.

The defendant No.5, 8, 9 and 12 or any other persons authorizes by them is hereby restrained from alienating the suit schedule properties in any manner till disposal of the suit.

No order as to cost.

(Dictated to Typist directly On-line in the computer typed by him, corrected by me and then pronounced it in open court this the 10th day of October - 2019)

**PRL.CIVIL JUDGE & J.M.F.C.,
PAVAGADA.**