

KATK810010332022



IN THE COURT OF ADDL. CIVIL JUDGE & JMFC.,AT: SIRA

Dated this the 24th day of February-2023

**PRESENT: Smt. Lakshmi.M.V.
B.A., LL.B.,
Addl. Civil Judge & JMFC., Sira.**

O.S. No112/2022

PLAINTIFFS:

1. Shivalingappa
S/o Late. Bommalingaiah,
Aged about 60 years,
2. Basaiah,
S/o Late. Bommalingaiah,
Aged about 58 years,

Both are R/at Pillahalli Village,
Hunjanalu Post, Kallambella Hobli,
Sira Taluk, Tumkuru District.

(By Sri.Jayaramaiah. Advocate)

/Vs/

DEFENDANTS:

1. Siddagangaiah S/o Late.Rangappa,
Aged about 40 years,
2. Shivakumara S/o Late.Rangappa,
Aged about 35 years,
3. Sakamma W/o Late.Rudraiah,
Aged about 66 years,



4. Siddagangamma
W/o Late.Nanjaiah,
Aged about 62 years,
5. Rajanna S/o Late.Doddaiah,
Aged about 40 years,
6. Gangamma W/o Late.Ningappa,
Aged about 62 years,
7. Shivakumar S/o Late.Ningappa,
Aged about 40 years,
8. Renukamma W/o Shivakumar,
Aged about 35 years,
9. Parvathamma W/o Late.Chikkanna
Aged about 58 years,
10. Gowramma W/o Late.Rudraiah,
Aged about 52 years,
Defendants No.1 to 10 are R/o
Pillahalli Village,
Hunjanalu Post, Kallambella Hobli,
Sira Taluk, Tumakuru District.
11. Chandramma W/o Mallikaiah,
Aged about 60 years,
Swagenahalli, Shettihalli Post ,
Kasaba Hobli, Madhugiri Taluk.

(Def.No.1,2,4,6 and 7 and



By Sri.S.K.G., Adv.,)
(Def.No.5 By J.A.Adv.,
Def.No.8 By M.G.Naveen Kumar.Adv.,)

Parties in I.A.

APPLICANTS : Shivalingappa and another (Plaintiff)

/Vs/

OPPONENTS : Siddagangaiah and others
(defendants)

ORDER ON I.A.No. I

I.A.I is filed by the learned counsel for the plaintiffs U/o 39 Rule 1 and 2 of CPC for seeking relief of Temporary Injunction, restraining the defendant No.8 , her agents , servants, or anybody acting on her behalf from alienating the suit schedule property till disposal of the suit.

2. The plaintiffs sworn to an affidavit in support of the application, wherein he has stated that, the averments of the plaint may be read as part and parcel of the affidavit. It is stated in the plaint that , the plaintiffs and defendants are



the co-parceners of Hindu Undivided joint family and the suit schedule property is an ancestral and joint family property of plaintiffs and defendants,

3. It is further submitted that, originally the suit schedule property along with other properties belongs to the joint family of plaintiffs and defendants, they have divided all the joint family properties except the suit schedule property, because they have borrowed a debt on the suit schedule property by executing a registered deed. But it was registered as sale deed, so that without clearance of the debt and rectification of deed it is not possible for them to divided the property. So that this property was not divided among the sharers at the time of division of other properties.

4. It is further submitted that, all the defendants have colluded and created some documents, further acting adverse interest of the family and its property, so that we have demanded to effect partition in the suit schedule property and



allot our separate share, for the same the defendants refused and neglected and further making hectic effort to alienate the suit schedule property to some one including our share with intend to defraud our right and also with an intend to get an unfair advantages from it.

5. It is further submitted that, all the defendants have colluded and created some documents with respect of suit schedule property. Inspite of it defendant No.8 her agents are making attempts to interfere with plaintiff's possession and enjoyment of suit schedule property. If interim relief is not granted as prayed for, plaintiffs will be put to irreparable loss and hardship. **With these avernments, the plaintiffs have sought for allowing I.A.I.**

6. The defendants have appeared through their counsel and defendant No.8 filed objections to I.A.I, wherein they have denied the contents of the affidavit sworn in support of the application as false, frivolous and vexatious one. It is



stated that the avernments of the written statement may be read as part and parcel of the statement of objections.

7. It is further submitted that, the defendant No.8 has filed as suit against her husband, mother-in-law and sister-in-law seeking maintenance before the Hon'ble Civil Judge and JMFC., Sira in O.S.143/2009. The said suit was decreed as per compromise petition dated:18-06-2009. This defendant's husband and her mother-in-law and sister-in-law have agreed to give suit schedule property which they succeeded through Lingappa who is the father of this defendant's husband to the defendant for her maintenance. Hence, from the date of decree this defendant No.8 is in peaceful possession and enjoyment of the suit schedule property. This defendant No.8 has also entered in to an agreement to sell the suit property and sold the suit schedule property in favour of one K.R.Yogananda S/o Rudrappa on dt:09-03-2022. Now the said K.R.Yogananda S/o Rudrappa



is in peaceful possession and enjoyment of the suit schedule property. The plaintiffs and other defendants have no manner of right, title , over the suit schedule property.

8. It is contended that the plaintiffs have not made out prima-facie case , balance of convenience does not lies infavour of the plaintiffs and if the temporary injunction is granted infavour of the plaintiffs , the defendant No.8 will be put to irreparable loss and hardship. **With these contentions, the defendants No.8 has sought for dismiss of I.A.I .**

9. The defendant No.8 has filed I.A.No.2 U/o 39 Rule 4 of CPC and prayed to vacate the interim order passed against the defendant in this case.

10. The defendant No.8 sworn to an affidavit stated that, the plaintiffs have filed this suit suppressing all the real facts filed this suit along with application U/o 39 Rule 1 and 2 of CPC and got obtained the TI order illegally, only with an



intention to get monetary benefit and to cause loss and harassment to defendant No.8. Hence, defendant No.8 prayed to allow the application.

11. The plaintiffs counsel filed objection to I.A. No.2 contending that, the application is not all maintainable either in law or on facts. It is contended that, the plaintiffs have filed this suit against the defendant for Partition and Separate Possession over the suit schedule property, since the suit schedule properties are ancestral and joint family properties of both plaintiffs and defendants, The defendant No.8 was already alienate the portion of the suit schedule property, same without obtaining the consent of the other family members or without allotting their legitimate share over the suit schedule properties. Hence, the I.A filed by the defendant No.8 seeking to vacate the expert temporary injunction which was passed by this Hon'ble court against the defendants has not to alienate suit schedule properties till next date of



hearing, the order extend to till today. Hence, the application is not at all maintainable and the same may be dismissed.

12. Heard the arguments of the learned counsel appearing for the parties and perused the materials on record.

13. The following points that would arise for my consideration;

1. Whether the applicant has made out prima-facie case for grant of Temporary Injunction as sought for ?
2. Whether the balance of convenience lies in favour of the plaintiffs ?
3. Whether the plaintiffs will be put irreparable loss and hardship , if I.A.II is not allowed?
4. Whether the defendant No.8 has made out grounds to vacate the order U/o 39 Rule 1 and 4 of CPC ?
4. What Order?

14. My answers to the above points are as follows –

- Point No.1– In **Affirmative**,
- Point No.2– In **Affirmative**,
- Point No.3– In **Affirmative**,



Point No.4- **In Negative**
Point No.5- As per the final order for
the following;

REASONS

15. POINT No.1 : This suit is filed by the plaintiffs against the defendant No.8 for seeking the relief of Partition and Separate Possession. This court has carefully perused materials on record in order to ascertain prima-facie case.

16. At this stage without going in to the merits of case and holding mini trial, this court has considered the aspect of prima-facie case. At this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima-facie title and only to consider whether the plaintiff has made out a prima-facie case for granting interim relief.



17. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused; and injury and prejudice likely to be caused to the defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.



18. The power to grant temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

19. The first rule is that the applicant must make out a prima-facie case in support of the right claimed by her. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by her. The existence of a prima-facie right and infraction of such right is condition precedent for grant of Temporary Injunction. By considered the materials on record this court is of the opinion that the plaintiff has made out prima-facie case and she is entitled for the equitable relief of Temporary Injunction.



20. The suit is filed by the plaintiffs against the defendants for seeking relief of Partition and Separate Possession. This court has carefully perused materials on record in order to ascertain prima-facie case. The defendant No.8 is disputing possession of the suit schedule property. On perusal of the RTC and M.R. stands in the name of Kallaiah S/o Nanjaiah, who is Grand-father of plaintiffs.

21. The defendants are disputing the absolute right and Possession of the plaintiffs suit properties, it cannot be decided at this stage it needs trial. But on prima-facie materials produced by the plaintiffs the M.R. and RTC stands in the name of Grand-father of plaintiffs and long possession from 1979 to 2021-22. It clearly goes to show that the properties stand in the name of Grand-father of the plaintiffs. At this stage court by considering the materials on record is of the opinion that, the plaintiffs have made out



prima -facie case. **With these observations , this court has answered Point No.1 -in the Affirmative.**

22. POINT No.2 & 3 : Point No.2 & 3 are inter-connected. Hence, in order to avoid the repetition of facts , the above said points are taken up for common discussion.

The second condition for granting interim injunction is that, the balance of convenience must be in favour of the applicant. In other words , the court must be satisfied that the comparative mischief , hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be grater than that which is likely to be caused to the opposite party by granting it. The existence of the prima-facie case alone does not entitle the applicant for a Temporary Injunction. The applicant must further satisfied the Court about the third condition by showing that she will suffer irreparable injury, if the injunction has prayed is not granted



and there is no other remedy open to her by which she can protect herself from the consequences of apprehended injury.

23. The plaintiffs have sought for the relief of partition and separate possession and their by temporarily restraining the defendant No.8 her agents, or anybody acting on behalf from alienating the suit schedule properties till the disposal of the suit.

24. The important aspect to be noted is that, if the defendant No.8 is alienating the suit schedule properties to anybody the plaintiffs will be put to hardship. Hence, this court is of the opinion that the balance of convenience lies infavour of the plaintiffs and if the Temporary Injunction is not granted infavour of the plaintiffs , then the plaintiffs will be put to irreparable loss and hardship. **With these observations, this court has answered Point No.2 and Point No.3 in the Affirmative.**



25. Point No.4:- In view of the discussion on point No.1 to 3, it is proved that, the plaintiffs have to prove alienate the portion of the suit schedule property by defendant No.8. Therefore the plaintiffs have made out prima-facie case against the defendant No.8. Hence, the order of Temporary Injunction granted infavour of the plaintiffs restraining the defendant No.8 or her agents or servants or anybody acting on her behalf from alienating the suit schedule property has not to be vacated. Hence I answer point No.4 in **Negative**.

26. POINT No.5: For the aforesaid discussion on Point No.1 to 4, this court proceeds to pass the following;

ORDER

I.A.No. I filed by the Learned Counsel for the plaintiffs U/O. XXXIX Rule 1 & 2 of CPC is hereby allowed.

By way of granting Temporary Injunction, infavour of the plaintiffs, the defendant No.8 , her agents or anybody



acting on her behalf from alienating the suit schedule properties till the disposal of the suit.

I.A.No. II filed by the Learned Counsel for the defendant No.8 U/O. XXXIX Rule 4 of CPC is hereby rejected.

No order as to cost.

For steps to D3, 9 to 11 and steps to Proposed defendant No.12.

Call on: 21-03-2023.

(Directly dictated to the stenographer on computer, computerized and printout taken by her, then corrected and pronounced by me in the Open Court on **24-02-2023**).

(Lakshmi.M.V.)
Addl. Civil Judge & JMFC.,
Sira.



**Order pronounced in the open
court (Vide separate Order)**

ORDER

I.A.No. I filed by the Learned Counsel for the plaintiffs U/O. XXXIX Rule 1 & 2 of CPC is hereby allowed.

By way of granting Temporary Injunction, infavour of the plaintiffs, the defendant No.8 , her agents or anybody acting on her behalf from alienating the suit schedule properties till the disposal of the suit.

I.A.No. II filed by the Learned Counsel for the defendant No.8 U/O. XXXIX Rule 4 of CPC is hereby rejected.

No order as to cost.

For steps to D3, 9 to 11 and steps to Proposed defendant No.12.

Call on: 21-03-2023.

**Addl. Civil Judge & JMFC.,
Sira.**