

KATK810032352024



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

Dated this the 5th Day of August 2026

PRESENT: NARASIMHAMURTHY.A
B.A.,LL.B.,
Prl. Civil Judge & JMFC., Sira.

O.S. No.445/2024

PLAINTIFF: 1. Kum. Jeevitha D/o Sathisha .K.
 Aged about 6 years,
 R/at Bhuthakatanahalli village,
 Gowdagere Hobli, Sira Taluk.

Minor represented by her N/G and
mother Smt. Vedavathi. B.C.

W/o Sathisha.K.

Aged about 34 years,

R/at Bhuthakatanahalli village,
Gowdgere Hobli, Sira Taluk.

(By Sri. J.A., Advocate)

/Vs/

DEFENDANTS: 1. Sri. Kamanna S/o Late Kyathappa,
 Aged about 80 years,
 R/o Mooganahalli village,
 Kasaba Hobli and others.

(By Sri. B.R.,Advocate for D.3,5)
(D.1,2,4,6 Exparte)

**:I.A.No.II/2024:****APPLICANT : Vedavathi B.C.****V/s****OPPONENTS : Kamanna and Others****:ORDER ON I.A.No.II:**

The plaintiff has filed an application under Order XXXIX Rule 1 and 2 of CPC., praying to restrain defendant No.1 and 2 from alienating, mortgaging, Gift, Will, Sale agreement and encumbering the suit schedule property in favour of any body till disposal of the suit.

2. In the accompanying affidavit of the interim application, plaintiff has averred that the mother of minor plaintiff is the legally wedded wife of defendant No.6 and their marriage was solemnized on 19.08.2018 at Bhuthakatanahalli village, Gowdagere Hobli, Sira Taluk. Out of their wedlock the minor plaintiff was born. Thereafter defendant No.6 has neglected the minor plaintiff and her mother, thereby they were forced to live with the parental house of the mother of minor plaintiff. Defendant No.1 to 6 have not provided any basic necessities to the minor plaintiff. Eventhough defendant No.6



has filed the application in M.C. No.4935/2022 against the mother of minor plaintiff seeking the relief of divorce. The suit schedule properties are the Hindu Undivided Joint family properties of minor plaintiff and defendants and they are in joint possession and enjoyment of the same.

3. The plaintiff further submitted that suit schedule properties were acquired by defendant No.1 through registered partition deed dated 15.07.1991 effected between defendant No.1 and his brothers. Defendant No.1 to 6 are colluding with each other are trying to alienate the suit schedule properties to third person, in order to defraud the rights of minor plaintiff over the suit schedule properties. When the mother of minor plaintiff demanded to allot the share of minor plaintiff in the suit schedule properties, defendants have denied to do so. Hence, prays to allow the application.

4. Per contra, defendant No.3 and 5 have filed written statement and they have denied the plaint averments. Further submitted that the application filed by the minor plaintiff is not maintainable in law. Since there was already a civil suit filed in respect of suit schedule properties, the said



suit was decreed. As per the decree the parties were compromised the same. The father of minor plaintiff by name K. Sathish S/o Kamanna who is defendant No.6 in this case has executed the relinquishment deed dated 14.03.2024 in favour of all the family members by receiving an amount from all the family members. The defendant No.6 who is the father of minor plaintiff has received an amount from defendant No.1 to 5 and he has relinquished his right over the suit schedule properties in favour of defendant No.1 to 5. Hence, the minor plaintiff cannot claim her rights over the suit schedule properties. There is no such right survive and remained to the minor plaintiff. Hence, prayed to dismiss the application.

5. Heard and perused the materials placed before me .

6. The points that arise for my consideration are as follows;

1. Whether the applicant/plaintiff has made out a prima-facie case for the grant of TI as prayed?
2. Whether the balance of convenience lies in favour of Plaintiff?



3. Whether irreparable loss would be caused to the applicant/plaintiff, if the instant interlocutory application is not allowed?
4. What Order?
7. My findings to the above points are as follows;

POINTS No.1-3: In the Affirmative

POINT No.4 : As per final order for the following;

REASONS

8. **POINTS No.1 TO 3:** These points are taken together for common discussions and to avoid the repetition of facts.

It is made clear that, at this stage only whatever observation made below and opinion expressed are only for the purpose of disposal of this I.A. These observations shall not carry any weigh in the final disposal of this case.

9. Admittedly, there is no dispute between the plaintiff and defendants in respect of their relationship. The mother of minor plaintiff stated that suit schedule properties are the ancestral properties of plaintiff and defendant No.1 to 6. The minor plaintiff and her mother was neglected by defendant



No.1 to 6, thereby defendant No.1 to 6 are trying to alienate the suit schedule properties in favour of third person in order to defraud the rights of minor plaintiff over the suit schedule properties.

10. On contrary, defendants have taken contention that defendant No.6 is the father of minor plaintiff, he has relinquished his right over the suit schedule properties in favour of defendant No.1 to 5. Hence, minor plaintiff has no right over the suit schedule properties. Accordingly the application is not maintainable.

11. Having heard from both the counsels and perused available materials on record, it is clear that the suit schedule properties are the ancestral properties of minor plaintiff and defendant No.1 to 6. The available materials on record clearly goes to show that suit schedule properties are standing in the name of defendant No.1 who is the father of defendant No.3 to 6 and husband of defendant No.2. Further they have submitted materials to show that suit schedule properties are the ancestral properties of minor plaintiff and defendant No.1 to 6.

12. As contention taken by defendant No.3 and 5 that



defendant No.6 has relinquished his right over the suit schedule properties in their favour, they have not produced any supportive documents in order to show that defendant No.6 has relinquished his right. In the absence of the same, the version of defendant No.3 and 5 is not believable at this stage. The minor plaintiff being the coparcener, she will be entitled to the legitimate share over the suit schedule properties. At this stage, if the application is not allowed, minor plaintiff will be put to great hardship and suit schedule properties will be alienated. At the same time, no hardship will be caused to the defendants. Moreover, the hardship lies in favour of minor plaintiff. Accordingly, the minor plaintiff has shown prima facie in her favour.

13. The materials available before this court, at this stage prompts this court to adopt halt and proceed approach. While considering the relief sought with the plaintiff in the instant application as per the settled principle of law that, one who seeks description relief of Injunction must come to the court with clean hands. The plaintiff has approached this court with valid grounds. Thus, the law is clear that the possession of the suit schedule properties is main consideration while considering the application U/o 39 rule 1



and 2 of CPC. At this stage, it is imperative on this court to hold that the plaintiff has made out prima-facie case which is sufficient to grant the discretionary relief of T.I.

14. In so far as, the hardship is concerned from the facts and circumstances of case on hand, it appears that the plaintiff will be put to greater hardship if T.I. is not granted. If T.I. is not granted, then there will be chances of another flank of litigation being opened up between the parties, which may result in unnecessary burden on plaintiffs. On the other hand, if the relief of Injunction is granted, no hardship will be caused to the defendants. Hence, looking from any angle the comparative hardship is more on the plaintiff rather than defendants. Likewise the balance of convenience also lies in favour of plaintiff.

15. From the above discussion, it is quite obvious that the plaintiff has made out prima-facie case for the grant of T.I. as prayed and also to prove other two statutory ingredients. Accordingly, this court answered **Points No.1 to 3 in the Affirmative.**

16. **POINT No.4:** Since the plaintiff has made out the prima-facie case on proving hardship and balance of



convenience, plaintiff is entitle to discretionary on equitable relief of T.I. as prayed. Hence, for the reasons this court proceed to pass the following:

ORDER

I.A No.II filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC., is hereby allowed.

Issue temporary Injunction against defendant No.1 and 2 from alienating, mortgaging and encumbering the suit schedule properties till disposal of this suit.

No order as to cost.

(On my dictation transcribed and typed by the stenographer printout taken by her, then corrected and pronounced by me in the open court on 05th Day of August 2026)

Sd/-
(NARASIMHAMURTHY.A)
Prl. Civil Judge and J.M.F.C.,
Sira.