

KAUK710019262021



**IN THE COURT OF THE ADDL CIVIL JUDGE AND
J.M.F.C., KUMTA**

PRESENT : Smt.Joyline Mendonca. B.A. LLB..

Addl. Civil Judge and J.M.F.C. Kumta

Dated this 13th day of September, 2022

ORIGINAL SUIT NO.48/2021

Plaintiff : Smt.Shashikala yane Aruna
Anant Kamat,

/ VS /

Defendants : Shri.Shridhar Mani Shanabhag
and others.

I.A.No.I

Plaintiff/Applicant : Smt.Shashikala yane Aruna
Anant Kamat,

(By Sri.N.M.N. Advocate)

/ VS /

Defendants/Opponents: 1.Shri.Shridhar Mani Shanabhag
aged about 62 years,
Rtd. Bank Employee (PNB)
R/at: Sharadha Bunglow,
Sector No.8, Near Aapla Bazar,
Thyro care Centre,

Agarwal Park, Airoli Navi,
Mumbai-400708.

2. Shri.Kashinath Mani Shanabhag,
aged about 68 years,
Rtd. Company Employee,
R/at: 1801, Tower No.5,
Regency Heights, Azad Nagar,
Near Brahmanand Pase I
Thane (West)- 400607.
3. Shri.Rohidas Mani Shanabhag,
aged about 79 years, Business,
R/at: Nehru Nagar, Nellikeri,
Kumta.

**(By Sri. P.G.H. Advocate to
defendant No.1 to 3)**

ORDERS ON I.A.NO.1

The counsel for plaintiff/applicant has filed I.A.No.1, under order XXXIX rule 1 and 2 of CPC seeking for an order of temporary injunction against the defendants No.1 to 3 to restrain them from alienating the suit schedule "A" properties till disposal of the suit.

2. In support of the application the plaintiff has filed affidavit stating that the suit "A" schedule properties are the ancestors properties, when such is the case, the defendants No.1 to 3 are obstructing the plaintiff in the enjoyment of the suit schedule properties and during the pendency of the suit trying to

sell or disposed the suit properties and enter into agreement with others. If the defendants No.1 to 3 succeeds in their work the main purpose of the suit is lost and there is all possibilities of eviction of plaintiff from the suit schedule properties. Hence the plaintiff has filed this application seeking of interim injunction to restrain the defendant No.1 to 3 from alienating the suit schedule properties till disposal of the suit. On these grounds, prayed to allow the application.

3. On the other hand defendant No.1 to 3 appeared through their counsel and filed objections to I.A.No.I. As the plaintiff is not a member of the family of defendants No.1 to 3, she does not have any right in the suit schedule properties. The defendant No.1 to 3 contended that plaintiff released her right as per release deed dated 20-10-2005 and as per the partition deed dated 03-08-2007 defendant No.1 to 3 got direct possession of the properties and plaintiff has no right to question the same. The defendants No.1 to 3 also contended that it is self acquired properties. The allegation and averments made in the application and affidavit are all false and hence prayed for dismissal with cost.

4. Heard the Learned respective counsels and perused materials placed on record.

5. The points that arises for my consideration are:

1. Whether the plaintiff has made prima facie case?
2. Whether the balance of convenience lies in favour of plaintiff ?
3. Whether the plaintiff will be put to irreparable loss and hardship, if I.A.No.I is not allowed as prayed for?
4. What order?

6. My answer to the above points are as under.

Point No.1: In the **Affirmative**

Point No.2: In the **Affirmative**

Point No.3: In the **Affirmative**

Point No.4: **As per the order below for**

the following

::REASONS::

7. Point No.1 to 3: I take these points all together for my discussion as the facts over laps and for the sake of convenience.

8. As could be seen from the contentions urged in I.A.No.I, at this stage without going into merits of the case and holding mini trial this Court has to considered aspect of prima facie case. At this stage

this Court makes it clear that, this Court is looking towards prima facie case. It is well settled principle of law that, at the time of disposing the temporary injunction application the Court cannot go into merits of the case and only to consider whether the plaintiff has made out prima facie case for granting of interim relief.

9. The primary purpose of granting the interim relief is preservation of the things in dispute till legal rights and conflicting claimants of the parties before the Court are adjudicated.

10. This Court in order to consider the prima facie case has clearly perused plaint averments, affidavit filed in support of application and documents.

11. On perusal of the materials on record it shows that plaintiff has filed the present suit for the relief of partition and separate possession. The plaintiff by filing I.A.No.I sought for the relief of temporary injunction to restrain the defendants No.1 to 3 from alienating suit schedule properties till disposal of the suit. The plaintiff has produced the documents viz., RTC extract, Mutation extract, Original Will dated 26-04-1984, form No.7, Patta, House tax paid receipt and other documents pertaining to the suit properties. On perusal of the documents furnished by the plaintiff, she appears to be in possession of the properties and the

said documents prima facie substantiate the contention of plaintiff.

12. It is pertinent to note that, interim injunction is to be possessed on sound principles of law including a prima facie case, irreparable loss injury and balance of convenience. The plaintiff has filed this above numbered suit claiming that suit schedule properties are ancestral properties of her and defendants. It is urged in affidavit that defendants No.1 to 3 is trying to alienate the suit properties. In such case Court has to take into consideration about plaintiff legal share in the suit schedule properties and should not permit the nature of the properties being change, which also includes alienating or transfer of the properties in dispute.

13. In the objections the defendant No.1 to 3 asserted that suit properties are the self acquired properties of defendants No.1 to 3. So at this juncture it can be held that until the legal rights of the plaintiff and defendants in the suit schedule properties are finally decided by preliminary decree, the defendants No.1 to 3 are to be restrain from alienating suit properties to 3rd parties.

14. When the entire materials placed on record is considered, it is evident that there is triable issue. This

is a fit case to go for trial. The disputed documents need to be proved by leading cogent evidence in accordance to law. It is the preservation of suit properties that, holds paramount importance at this stage. Therefore, until the rights of the parties litigating is effectively and conclusively adjudicated, the suit properties required to be preserve from further alienation.

15. For the discussion made above, I hold that, as there is triable issue in this case, the plaintiff has made out a prima facie case. The balance of convenience also leans in favour of the plaintiff. In the event temporary injunction is refused and the suit properties is alienated to others, in that event the right of the plaintiff and the subsequent purchaser would be put to detriment.

16. If the suit properties is alienated it would certainly lead to multiplicity of proceeding. In order to avoid such an eventuality it would be in the interest of justice that, the suit properties be persevered until the rights of the litigating parties in respect of the suit properties effectively adjudicated. The temporary injunction is necessary for preserving the suit properties. In the even temporary injunction is granted no such hardship or irreparable loss or injury would be

caused to be defendant No.1 to 3. Therefore, exercising the discretion vested in this court, I find it just and proper to restrain defendant No.1 to 3 from alienating the suit properties. **Hence I answer Point No.1 to 3 in the affirmative.**

17. Point No.4: In view of the foregoing observation and discussion, this Court proceed to pass following.

ORDER

I A No I filed by the plaintiff U/o XXXIX Rule 1 and 2 of CPC is hereby allowed.

The defendants No.1 to 3 are hereby restrained by the order of temporary injunction from alienating suit schedule properties by way of sale, mortgage, loan, and gift in any manner till the disposal of the suit.

No order as to cost.

(Dictated to the Stenographer directly on computer, typed by him corrected by me and then pronounced in the open court on this 13th day of September, 2022)

sd/-

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

**(Order pronounced in the open
court vide separate order)**

O R D E R

I A No I filed by the plaintiff U/o XXXIX Rule 1 and 2 R/w Sec. 151 of CPC is hereby allowed.

The defendants or their agents or anybody claiming under them are hereby restrained, by an order of temporary injunction, from putting up construction of any kind over the suit property, pending disposal of the suit.

The order of temporary injunction will be in subsistence for a period of one year from the date of this order.

No order as to cost.

**Addl. Cviil Judge & JMFC.,
Kumta.**