

**ORDERS**

Heard the learned Counsel for the plaintiff. Perused the materials on record.

2. On perusal of records it reveals that, the instant suit is filed by the plaintiff seeking relief of declaration that the alienation made in respect of Sy.No.600/5 measuring 0-6-0 out of which 0-3-0 of Kumta village made in favour of Sri. Mahesh Ratnakar Shet by Sri. Purushottam Nagappa Pai and the alienation made in respect of 2-0-0 in Sy.No.9/8 of Santgal village of Kumta taluk by defendant no.1 in favour of defendant no.5 is not binding upon the plaintiff and also plaintiff sought for partition and separate possession of her 1/4th share in plaint 'A', 'B', 'C', 'D' schedule properties. It is the specific case of the plaintiff that, the suit schedule properties are acquired by her father Sri. Purushottam Nagappa Pai by utilizing the joint family funds and the defendant no.1 is her mother and defendant nos.2 and 3 are her brothers and defendant nos.4 and 5 are the purchasers of portion of the suit schedule properties. The plaintiff has contended that, without her knowledge, her father has alienated Sy.No.600/5 measuring 0-3-0 in favour of defendant no.4 and plaintiff came to know about the said fact recently and said Sy.No.600/5 is the ancestral property of plaintiff's family and hence, the said alienation made by her father in favour of defendant no.4 is not binding upon her to the extent of her

share in the said properties. The plaintiff has also pleaded that, without her knowledge the defendant no.1 has sold Sy.No.9/8 of Santgal village measuring 2-0-0 in favour of defendant no.5. Even, the said property is ancestral family property of the plaintiff and hence, the said alienation made by the defendant no.1 in favour of defendant no.5 is also not binding upon her share.

3. The plaintiff has also pleaded that, when she approached the defendant no.1 and sought for amicable partition of the suit schedule properties, she has declined to give her share to her and the defendant no.1 is making false claim on the basis of created Will and according to the plaintiff during his lifetime, her father has not at all executed any Will in favour of defendant no.1 as contended by the defendant no.1 and hence, she has got 1/4th right in the suit schedule properties.

4. The plaintiff has filed I.A.No.I under Section 151 of CPC requesting the Court to take the case on board since the matter is emergent and I.A.No.II is filed under Section 151 of CPC seeking dispensation of prior issuance of notice to the defendants and I.A.No.III is filed under Order 39 Rule 1 and 2 of CPC seeking to pass an ex parte order of temporary injunction to restrain the defendant no.1 from alienating the properties as mentioned in I.A.No.III till disposal of the suit. It is the specific contention of the plaintiff that, the defendant no.1 is intending to alienate the remaining extent of the property as mentioned in I.A.No.III and in case the defendant no.1

succeeded in alienating the said properties as mentioned in I.A.No.III, she will be put to untold hardship and she has also stated that, she has made out prima facie case in her favour and there exist balance of convenience in her favour and in case the application is not allowed and prohibitory order is not passed, she will be put to untold hardship which cannot be compensated in terms of money

5. Along with the plaint, the plaintiff has furnished R.T.C. Extracts pertaining to the suit schedule properties and Mutation Register Extracts. Through I.A.No.III the plaintiff sought an ex parte order of temporary injunction to restrain the defendant n.1 only from alienating the remaining extent of the property comprised in Sy.No.600/5 measuring 0-3-0 and Sy.No.9/8 measuring 2-0-0 as mentioned in I.A.No.III. The plaintiff has not sought any relief in respect of portion of the suit schedule property which was already alienated in favour of defendant nos.4 and 5. Taking into consideration the facts and circumstances of the case on hand and the documents on record, the Court is of the opinion that, at this stage the plaintiff has made out existence of prima facie case in her favour. Further, the materials on record also reveals that, in case the defendant no.1 is not restrained from alienating the portion of the suit schedule properties as mentioned in I.A.No.III, the plaintiff may put to hardship, in case those properties were alienated during pendency of the suit. The Court is of the opinion that, the plaintiff has made out existence of prima facie case in her favour and balance of convenience also lies in her favour and the Court is also of the opinion that, if interim order as sought in I.A.No.III

is not granted, the plaintiff may put to loss and hardship which cannot be compensated in terms of money. Hence, the Court opines that, prior issuance of notice to the defendants has to be dispensed with and accordingly, I.A.Nos.I and II are allowed and the Court proceed to pass the following :-

### **ORDER**

The defendant no.1 or any persons claiming through or under her are hereby restrained from alienating the immovable property comprised in Sy.No.600/5 measuring 0-6-0 out of which 0-3-0 of Kumta village and Sy.No.9/8 measuring 2-0-0 of Santgal village as mentioned in I.A.No.III in favour of any one in any manner and the defendant no.1 is also restrained from mortgaging the above said properties in favour of any Bank, Co-operative Society or any Financial Institutions in any manner by way of grant of an exparte order of Temporary Injunction.

The above nature of order shall be in force till next date of hearing only.

The plaintiff is hereby directed to comply mandatory provisions of Order 39 Rule 3(a) of CPC.

Office is hereby directed to issue certified copy of exparte Order of Temporary Injunction to the plaintiff, only

if sufficient process fee is paid and compliance is made by the plaintiff.

Issue emergent suit summons to the defendant nos.1 to 3 and notice on I.A.No.III to the defendant no.1, if sufficient process fee is paid.

Call on 24-5-2022.

Senior Civil Judge, Kumta.

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