

**IN THE COURT OF THE CIVIL JUDGE & JMFC, AT  
SIDDAPUR.**

**PRESENT**

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,  
CIVIL JUDGE & JMFC,  
SIDDAPUR.**

**Dated this the 15<sup>th</sup> day of October, 2024**

**O.S. No.27/2024**

**Plaintiffs: Jaya W/o Manjunath Goudar and  
others**

**(By Shri M G H Adv.)**

**V/s**

**Defendant: Manjunath S/o Irappa  
Goudar**

**(By Shri N M N Adv.)**

**I.A.No.II**

**Applicant : Jaya W/o Manjunath Goudar  
and others**

**V/s**

**Opponent: Manjunath S/o Irappa  
Goudar**

**ORDER ON I.A.NO.II FILED UNDER ORDER 39 RULE 1**  
**AND 2 C.P.C.**

The plaintiff has filed this application, seeking this Court to issue an order of temporary injunction, restraining the defendant, from alienating or creating any charge over the suit A schedule property, pending disposal of the suit.

**2. In the accompanying affidavit, the plaintiff has sworn to the following averments :**

The plaintiff no. 1 is the mother of the minor plaintiff no. 2 and 3. further that the defendant is the husband of plaintiff no. 1 and father of plaintiff no. 2 and 3. the suit schedule properties were ancestral properties and the same has fallen to the share of the defendant in a partition effected amongst family.

**2.1** After the death the father of defendant, the defendant became the manager of the joint family and had obtained huge loans against the schedule properties causing create hardship to the plaintiffs. Such being the case in the year 2024 a registered partition deed was effected between the defendant and his mother and sisters. Accordingly the suit schedule properties have fallen to the share of the defendant. Further that, the partition was effected without the knowledge of the plaintiff. It is alleged that the defendant has refused the basic needs of the plaintiffs and he is making attempts to alienate the suit schedule properties to 3<sup>rd</sup> parties. If the defendant alienates the suit

schedule properties the plaintiffs will be put to great hardship. Hence this application.

- 3.** While on the other hand, upon appearance of the Defendant through his counsel, he has filed his written statement along with memo seeking to adopt the Written Statement as Objections to the application. The defendant has admitted the relationship between the plaintiffs and himself and has categorically denied all the averments made in the plaint. It is contended that, the plaintiffs and the defendant are residing in the same house and are leading a happy life. Further that the defendant is daily labour and he is taking care of the plaintiffs and his age old mother, with the income derived by him. His mother is 70 years old and she is suffering from various ailments and the responsibility to take care of his mother is on the defendant. Such being the case the plaintiff no. 1 has been refusing to take care of the age old mother of the defendant. Further that, the plaintiffs do not like that, the defendant is taking care of his mother. Since, the defendant refused to send his mother to her daughters house the plaintiffs by instigation of others have filed this false suit. Further that there is no prima facie case and balance of convenience does not arise in favour of the plaintiffs. Hence sought to dismiss the application.
- 4.** Heard both sides and perused the material placed on record, along with the documents produced by both the

parties decisions relied upon by the defendant and the photographs.

5. Upon hearing the arguments of both side and perusing the materials placed on record, the following points would arise for my consideration:

### **POINTS**

1. Whether the plaintiffs have made out a prima facie case?
2. Whether the balance of convenience lies in favour of plaintiffs?
3. Whether the plaintiffs will be put to irreparable loss or hardship, if injunction is not granted?
4. What Order ?

6. The findings 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

For the following :

### **REASONS**

7. **Point No.1** : As the averments made in the affidavit annexed to the application and the averments of the written statement adopted as objections to the application, are detailed at the inception of this order, this court shall

without repeating the same, delve into the dispute on hand by appreciating the facts and circumstances of the case.

- 8.** It is not in dispute that, the plaintiff no.1 is the wife and plaintiff no. 2 and 3 are the children of the defendant. However, the defendant denies the suit schedule properties are joint family and ancestral properties of the plaintiffs and defendant.
- 9.** The plaintiffs claim that, the suit schedule properties have fallen to the share of the defendant under a registered partition deed dated 30-12-2023. hence, the said properties are the joint family and ancestral properties of the plaintiffs. The plaintiffs have produced the photo copy of the registered partition deed.
- 10.** Upon perusal of the partition deed produced by the plaintiffs it can be seen that, the defendant and mother and sisters have effected partition with respect to their joint family properties. Further that, joint family properties have been mutated to there name through inheritance as per MR No. H -13 /2011-12.
- 11.** It is settled law that, the share, which a co-parcenor obtains on partition of ancestral property , is ancestral property as regards his male and female issues. They take an interest it in by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male or female issues. As regards other relations i.e., the wife or other relations, it is separate and if the co-parcenor

dies without living his issues, it passes to his heirs by succession in accordance with **Section 8 of Hindu Succession Act**. Further that a partition with respect to any other property other than the ancestral property shall become the separate property of the person acquiring the same under partition.

- 12.** In the partition deed produced by the plaintiffs it is mentioned that the properties are joint family properties of defendant and his family. However it is also mentioned that, the defendant and his family member acquired the same through inheritance. When a property has been passed down to four generation without being divided then the property in the hands of the fourth generation becomes ancestral property. In other words a person inheritance property from his three immediate paternal ancestors holds it and must hold it, in coparcenay with his sons, son's sons, son's son's sons and also his daughter, daughter's daughter's daughters, but as regards other relations, he holds it , and is to entitled to hold it as his absolute property.
- 13.** Therefore, irrespective of whether the suit schedule properties are joint family or ancestral properties , the plaintiff No. 1 does not have or cannot have any interest over the suit schedule properties till the life time of the defendant. However the plaintiff no. 2 and 3 being the male and female issues of the defendant will have a right over the suit schedule properties if they are ancestral properties even if a partition that has been effected and the

same is fallen to the individual name of the defendant. To ascertain whether the suit schedule properties are ancestral properties a property trial is necessary. If in case, it is proved by the plaintiffs that the suit schedule properties are the ancestral properties then the plaintiff no. 2 and 3 shall have equal rights along with the defendant. Hence, this court is of the clear opinion that the plaintiffs have made out a prima-facie case which requires a proper adjudications of disputes between the plaintiff no. 2 and 3 and the defendant. Accordingly this court answers **Point No. 1** in the **Affirmative**.

- 14. Point No. 2 and 3:** As these points interlinked with each other, they taken together for common discussion to avoid repetition of fact and circumstances and for the sake of brevity.
- 15.** The plaintiffs have already established a prima-facie case, However, mere because the plaintiffs have established a prima- facie case will not make them entitled for the relief of temporary injunction, unless they prove that, the balance of convenience lies in their favour and if the injunction is not granted they will be put to irreparable loss .
- 16.** As already discussed above if the plaintiffs are successful in establishing their suit schedule properties are the ancestors properties of the plaintiff no. 2 and 3 and defendant, there will be entitled to a share in the same. Hence, if the defendant alienates the suit schedule

properties, than if the plaintiffs succeed in establishing the ir rights, it will lead to multiplicity of proceeding and caused inconvenience to the plaintiffs rights. Further, it will be also lead to an irreparable loss to the plaintiff no. 2 and 3. however on the other hand, if the defendant is restrained from alienating the suit schedule properties no hardship or irreparable loss will be caused to the defendant. Accordingly, this court answers point nO. 2 and 3 in the Affirmative.

**17. Point No 4 :** In view of the finding on Point No.1 to 3, this court proceeds to pass the following:

#### **ORDER**

I.A.No. II filed by the plaintiffs U/Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

The defendant is restrained from alienating or creating any charge over the suit **A** schedule properties, till disposal of the suit.

**(Dictated to the Stenographer directly on the computer, computerized by him and order then, revised and corrected by me, print out taken by him and then pronounced in the open court on this the 15<sup>th</sup> day of October, 2024.)**

**(BHARATH CHANDRA K.S)  
CIVIL JUDGE & JMFC  
SIDDAPUR.**



**(Order pronounced in the open Court today vide its separate order)**

**ORDER**

I.A.No. II filed by the plaintiffs U/Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

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**Civil Judge and JMFC**

**Siddapur**