

**IN THE COURT OF II ADDITIONAL CIVIL JUDGE AND
JUDICIAL MAGISTRATE FIRST CLASS AT KUNDAPURA**

**Present: Sri. Chandrashekhar Banakar., B.A., LL.B., LL.M.,
II Addl. Civil Judge & J.M.F.C.,
Kundapura.**

Dated this the 13th day of August, 2018

O.S. No. 349/2017

Parties to I.A. No. II:

Applicant: 1) Babu Bhandari, 65 years,
2) Raghu Bhandari, 63 years,
3) Sujatha, 40 years,

residing at Kanyana, Kanyana Post & Village,
Kundapura Taluk.

(By Advocate Sri/Smt. H.A.S.)

//Vs//

Opponents: 1) Smt. Rajeevi, 44 years,
D/o Late Nagu,
W/o Vittal Bhandary,
R/o Puradala Village and Post,
Gadikoppa, Shimooga Taluk and District.

2) Lolakshi, 42 years,
D/o Late Nagu,
W/o Ganapathi Bhandary,
R/o Adagalale, Sullalli Post,
Karuru Hobli, Sagar Taluk,
Shimoga District.

(By Advocate Sri/Smt. T.B.S.)

Parties to O.S. No. 349/2017:

Plaintiff : Babu Bhandari and 2 others

//Vs//

Defendants : Rajeevi and another

ORDER ON I.A. NO. II

The plaintiffs/applicants have filed I.A. No.II under Order 39 Rule 1 and 2 and section 151 of CPC praying this Court to issue an order of temporary injunction against the defendants, their agents, anybody else claiming through them from alienating or creating charge over the suit "A" schedule properties till the disposal of this suit.

2. The above application of the plaintiffs is supported with affidavit of the 1st plaintiff, wherein it is stated that the defendants are intended to alienate and to create charge over the suit "A" schedule properties. The defendants have no right to alienate and to create charge over the suit schedule properties. If the defendants are allowed to do their act, then it will cause multiplicity of suit and proceedings. Accordingly, prayed to issue an order of T.I. against the defendants till the disposal of the suit.

3. On the other hand, the defendants have filed the written statement but not filed objection to present application. Even though sufficient time granted to file their objection to the present application, the defendants failed to file their objection to the application, hence this court has taken the objection to the I.A.No. II of the defendants as not filed.

4. I have heard the arguments of learned Advocate for the plaintiffs and learned Advocate for defendants remained absent.

5. The points which are arise for my consideration are:
- 1) Whether the applicants/ plaintiffs in I.A. No.II make out a prima facie case for the grant of temporary injunction against the opponents/ defendants?
 - 2) Whether the applicants/ plaintiffs in I.A. No.II prove that the balance of convenience lies in their favour?
 - 3) Whether the applicants/ plaintiffs in I.A. No.II prove that they will be put to great loss and hardship if T.I. is not granted?
 - 4) What order?

6. By considering the materials on record, my answers to the above points are as follows:

Point Nos.1 to 3: in the affirmative

Point No.4: as per final order, for the following:

R E A S O N S

7. **Point Nos.1 to 3 :** These points taken together as they are inter linked with each other.

8. The plaintiffs have filed this suit against the defendants for the relief of partition. The plaintiffs have prayed for the relief of temporary injunction against the defendants in I.A. No.II in order to restrain the defendants, their men from alienating and creating charge over the suit "A"

schedule properties. The defendants have not filed their objection and learned advocate for the defendants remained absent.

9. The plaintiffs in order to prove their contentions produced RTCs pertaining to the suit "A" schedule properties, copy of settlement deed and copy of mutation register. On perusal of the RTC, it appears that one Lolkshi bin Nagu Hengasu is in actual possession of the suit schedule properties. The said Lolkshi is none other than mother of the defendants. On perusal of the mutation register, prima facie it appears that the suit schedule properties are mutated in the name of one Devi Hengasu. The said Devi Hengasu is none other than predecessor of the plaintiffs' and defendants' family. In this case, the defendants have admitted their relationship with the plaintiffs. So, on careful perusal of the mutation entries, it appears that the suit schedule properties are ancestral joint family properties and the plaintiffs also have their share over the suit schedule properties. However, to prove this aspect, a full fledged trial is required.

10. In *The State of Karnataka and others v/s S. Venkatraj* reported in AIR 1975 KANT 119, the Hon'ble High Court of Karnataka has held that,

“The object of an interim injunction is to keep thing in status quo, so that if at the hearing the plaintiff obtains judgment in his favour, the defendants will have been prevented from dealing with the property in such a way as to make that

judgment ineffectual. The party who seeks the aid of the court in that behalf must as a rule, be able to satisfy the court on three points;

- A. That there is a serious question to be tried at the hearing and there is a probability that he is entitled to the relief sought by him, or in other words, that he has a prima facie case to go to the trial.**
- B. That the court's interference is necessary to protect him from that species of injury which the court calls irreparable before his legal right is established at the trial.**
- C. That the comparative mischief o the inconvenience which is likely to arise from withholding the injunction will be grater than that which is likely to arise from granting it.”**

11. As the present suit is for the relief of partition and plaintiffs themselves admitted that the defendants have also having right, title and interest over the suit schedule properties. So, based on the above principles, a full fledged trial is required to adjudicate the case on hand. At present maintaining status quo is very much necessary to adjudicate the case. In this case, the balance of convenience lies in favour of both the parties. Hence, till the disposal of the suit, if both the parties are directed to maintain statusquo , no hardship will be caused to the plaintiffs or defendants. Hence, I have answer the above points are in partly affirmative.

12. Point No.4: In view of findings on point Nos. 1 to 3, I proceed to pass the following:

ORDER

I.A. No. II filed by the applicants/ plaintiffs under Order 39 Rule 1 and 2 and Section 151 of CPC is hereby partly allowed.

Both the parties are directed to maintain statusquo with regard suit "A" schedule properties till the disposal of the suit.

The parties are directed to bear their own cost.

(Typed and signed by me and then pronounced in the open Court on this 13th day of August, 2018)

(Chandrashekhar Banakar)
II Addl. Civil Judge & J.M.F.C.,
Kundapura

SNT/-