

**IN THE COURT OF THE SR. CIVIL JUDGE, H.B.HALLI**  
**AND ITINERARY SENIOR CIVIL JUDGE,**  
**HUVINAHADAGALI.**

**Dated this the 3<sup>rd</sup> day of July 2020.**

**PRESENT: SRI. B.C. CHANDRASHEKAR., B.A., LL.B.**  
Senior Civil Judge & J.M.F.C., H.B.Halli  
Itinerary Senior Civil Judge, Huvinahadagali.

**O.S. No. 13/2019**

**Plaintiff/s :** .. Sri Patil Gurubasavanagouda  
**V/s**  
**Defendant/s** .. Smt.Patil Neelamma and Ors.

**Parties to I.A. No.VI**

**Applicant/s:** ... Sagar  
S/o Patadaiah Hiremath  
**And**  
**Opponent/s** ... P.Gurubasavanagouda &Ors.

\* \* \* \*

**ORDERS ON IA No.VI U/O 39 RULE 1 AND 2 R/W**  
**SEC.151 OF CPC**

This is an application filed by the defendant No.9 praying to grant temporary injunction against the plaintiff, defendant No.1 to 8 and their henchman not to obstruct the peaceful possession, enjoyment and cultivation of the property No.5 and 8 of the suit properties till disposal of the suit.

2. Application has been supported with the affidavit of defendant No.9 and he has sworn to that the plaintiff has filed this suit with collusion of defendant No.1 to 8. But he is a bonafide purchaser of the item No.5 and 8 of the suit properties having purchased in the year 2010-11 under the registered sale deed. after purchase the land he has invested the huge amount for the development of the properties and dug the borewell and erected electricity pumpset for irrigation of the land. Without any legal rights share the plaintiff has filed this false and vexatious suit to harass him and to grab the illegal gratification by him. The plaintiff, defendant No.1 and 8 have already filed a suit in OS 74/14 and OS 103/15 against himself and others. The defendant No.3 being the plaintiff in O.S. 103/15 with defendant No.8 has withdrawn by imposing conditions by the Hon'ble Court. Now they are intending to dispossess him and obstruct to his peaceful possession, enjoyment and cultivation of the said properties by force.

3. The plaintiff and defendant No.1 to 8 have already entered into a family settlement (palupatti) to resolve their family dispute in the year 2000 itself and the same has effected and mutated in their names. Some of the members have alienated their properties. If the TI is not granted the plaintiff and defendant No.1 to 8 and henchman will be cause loss and prejudice. Hence the defendant No.9 filed this

application praying to pass an order of temporary injunction against the plaintiff, defendant No.1 to 8 and their henchman not to obstruct the peaceful possession, enjoyment and cultivation of the property No.5 and 8 of the suit properties till disposal of the suit, otherwise much injustice will be caused to him.

4. Per contra the plaintiff has filed the detailed objection on IA by contended that the application filed by the defendant No.9 is false, vexatious and not maintainable either in law or on facts and it is liable to be rejected. The plaintiff has totally denied all the affidavit averments as false. The plaintiff has contended that he has filed the suit for partition and separate possession of his legitimate share in the suit properties after attaining the majority. When he was the minor the defendant No.1 to 8 have illegally without legal necessities squandered away the undivided joint family properties. The defendant No.9 to 13 are absolutely strangers and not concerned to the suit properties and they are claiming as a alleged purchasers, but they have no title or interest in the properties. There is no partition between the father of the plaintiff with other joint family members. The alleged transaction with respect to item No.5 and 8 is not binds on the plaintiff.

5. The defendant No.9 and his father have created the alleged sale deed with respect to item No.5 and 8 of the

properties to knock of the legitimate share of the plaintiff. The suit properties are in joint possession and enjoyment of plaintiff, defendant No.1 to 8 till today. The defendants have created the fake documents in their favour. Hence the application of the defendant No.9 for TI does not arise. The IA filed by the defendant No.9 is not maintainable in the suit of the plaintiff and it is liable to be rejected. The cause of action of suit for partition and cause of action for defendant No.9 to seek temporary injunction is totally distinct and different. The defendant No.9 has no prima facie case, balance of convenience and irreparable loss in his favour. Accordingly the plaintiff prayed to dismiss the application.

6. Heard the arguments.

7. On the basis of the above the following points are arise for my consideration.

**POINTS**

1. Whether the defendant No.9 has established the prima facie case?
2. Whether the defendant No.9 has established that the balance of convenience lies in his favour?
3. Whether the defendant No.9 has established that much injustice will be caused to him if IA is rejected?
4. What order?

8. My answer to the above points as hereunder:

Point No.1 : In the negative,

Point No.2 : In the negative,

Point No.3 : In the negative,

Point No.4 : As per final order  
for the following:

### **REASONS**

9. **Point No.1 to 3:** Since these points are interlinked with each other, they have taken together for common discussion. This is a suit for partition and separate possession filed by the plaintiffs by contending that schedule properties are the ancestral and joint family properties. Further contended that the defendant No.9 to 13 are claiming as a purchaser, but they have created the documents. After institution of the suit the defendants have put their appearance and filed the written statement. At this juncture the defendant No.9 has filed this IA praying to grant the temporary injunction to restrain the plaintiff and others from interference into his peaceful possession and enjoyment of item No.5 and 8 of the properties.

10. It is needless to say that in order to grant the relief of temporary injunction, there should be a prima facie case, balance of convenience and much injustice will be caused to the defendant No.9 if IA is rejected. It is settled principle of law that fair chances of succeeding the case itself is not a

prima facie case, but there should be a fact in issue required to be answered by the court.

11. The plaintiff claiming that the suit schedule properties are the ancestral and joint family properties and till today there is no partition between the family members. But the defendant No.9 contending that he is the purchaser of item No.5 and 8 of the properties having purchased in the year 2000 itself. Thus this application is only with respect to item No.5 and 8 of the suit properties bearing Sy. No.177/1 measuring 4.85 acres and Sy. No.179 measuring 6.84 acres. In order to prove the prima facie case and balance of convenience the defendant No.9 has produced the mutation extracts and RTC extracts. On perusal of the same they are disclosing that by virtue of the partition the khatha of the property in Sy. No.177/1 measuring 4.85 acres has been transferred in the name of defendant No.9 vide M.R. No.T156/2017-18. Similarly by virtue of the sale transaction the khatha of the property in Sy. No.179 measuring 6.84 acres of the property has transferred in the name of defendant No.9 vide M.R. No.93/2011-12.

12. The defendant No.9 further produced the tax paid receipt, copy of the IA No.9 filed in O.S. 74/14, order sheet and vakalaths in the said suit. On perusal of the entire documentary evidence it appears that the name of defendant

No.9 has entered into in the revenue documents with respect to item No.5 and 8 of the properties as above. The plaintiff has specifically contended that the purchaser have created the documents and till today all the suit properties are in joint possession and enjoyment of the properties. The defendant No.9 has not averred in his affidavit from whom he had purchased the properties. But on perusal of the written statement averments the defendant No.9 has contended that the suit properties are originally belongs to one Patil Channabasavanagouda the propositor of the plaintiff and defendant No.1 to 8. This is the specific contention that in the family partition item No.5 and 8 of the properties are fallen to the share of Sanganagouda Patil. After his death, his wife Smt. Latha Patil has sold the item No.5 and 8 of the properties in his favour under the sale deeds. Thus this defendant claiming to be the owner of the properties. Prior to purchase, the said properties were the ancestral properties of plaintiff and defendant No.1 to 8. Under such circumstances as contended by the defendant No.9 prior to partition or alienation, the said properties were the joint family properties. If at the defendant No.9 has established the earlier partition in the family and alienation by Latha Patil the defendant No.6 herein is for the family and legal necessities, the item No.5 and 8 of the properties became the properties of defendant No.9. If he failed to prove the partition in the family as well as alienation is for the family

and legal necessities, the suit properties became the joint family properties in the hands of plaintiff.

13. By considering the said fact in issue between the parties, I once again carefully gone through the materials available on record. The defendant No.9 has just produced the RTC extracts which are disclosing that his name has entered into in the RTC extracts, but virtually the defendant No.9 has not at all produced any documents to show about the family partition as well as the item No.5 and 8 of the properties have been sold away by the seller for the family and legal necessities. Virtually the defendant No.9 has not at all produced atleast the sale deed to figure out about the right and title of the seller and family or legal necessities. Thus all these things have to be figure out only at the time of trial. In the absence of any documents this court is unable to accept that there is a prima facie case and balance of convenience in favour of the defendant No.9. When the defendant No.9 has failed to establish the prima facie case and balance of convenience and his possession has to be figure out only at the time of trial even IA is rejected no injustice will be caused to him.

14. It is very significant to note here that in a suit for partition filed by the plaintiff, the defendant No.9 has filed the application under Order 39 rule 1 and 2 of CPC. The

counsel for the defendants in support of their claim have relied upon a decision of division bench of Hon'ble High Court of Karnataka reported in *ILR 2014 Kar 6025* in between *Smt. Shakuntalamma and others vs. Smt. Kanthamma and others*. Wherein the lordship of Hon'ble High Court in para-33 of the decision it is held as hereunder:

*33. The correct legal position as is clear from the statutory provision is as under:*

*(i) Both the plaintiff and the defendant can maintain an application U/o XXXIX Rule 1(a) of the Code for the reliefs set out in the said provision;*

*(ii) Insofar as relief under Order XXXIX Rule 1 (b) and (c) is concerned, such a relief is available only to the plaintiff and the defendant cannot maintain an application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact that his right to such relief arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit. However it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39 Rule 1(b) and (c) of the Code.*

*(iii) In cases which do not fall under Order XXXIX Rule 1 of the Code, the Court has the inherent jurisdiction to grant the relief of injunction in its discretion, if it is satisfied that such an order is necessary to meet the ends of justice or to prevent abuse of process of the court and nothing in this Code shall limit or otherwise affect such inherent power of the court.*

As per the dictum of Hon'ble High Court both plaintiff and defendant can file application under Order 39 rule 1(a) of CPC for the relief as set out in the said provision. But the

relief under Order 39 rule 1(b) and (c) are only available to the plaintiff and the defendant cannot maintain such application in the suit filed by the plaintiff. But it is open for the defendant to file separate suit and to seek the relief under Order 39 rule 1(b) and (c) of CPC. At this juncture it is benefit to refer the provision of Order 39 rule 1 of CPC.

*Order-XXXIX, Rule-1. Cases in which temporary injunction may be granted.- Where in any Suit it is proved by affidavit or otherwise—*

*(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or*

*(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,*

*(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.*

As per the provision of 39 rule 1(a) of CPC if any property in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of the decree, court may grant the temporary

injunction. By keeping the above provision I carefully gone through the prayer of the defendant No.9 in IA No.VI under Order 39 rule 1 and 2 of CPC. The defendant No.9 specifically praying to grant the temporary injunction to restrain the plaintiff and defendant No.1 to 8 not to obstruct his peaceful possession, enjoyment and cultivation of item No.5 and 8 of the properties. This relief is not comes within the purview of Order 39 rule 1(a) of CPC.

15. Further as per the provision of 39 rule 1(b) if there is a threatens or intends to remove or disposed off the property with a view to defrauding his creditors/plaintiff the court may grant the temporary injunction. As per the provision of 39 rule 1(c) of CPC if there is a threats by the defendant to dispossess the plaintiff or otherwise cause injury with respect to property in dispute the plaintiff can file the application and the court may grant the temporary injunction. As stated above the prayer of the defendant No.9 is that there is a threat for his peaceful possession and enjoyment and in order to avoid the same, he sought the TI not to obstruct his peaceful possession, enjoyment and cultivation of the properties. Accordingly this prayer is comes within the purview of the provision of 39 rule 1(c) of CPC. As per the dictum of Hon'ble High Court in the referred decision the defendant No.9 cannot file such application for the relief under Order 39 rule 1(c) of CPC. The defendant No.9 can file

the IA only under Order 39 rule 1(a) of CPC. But the prayer of the defendant No.9 is not under 39 rule 1(a) of CPC. However it is open for him to file a separate suit against the plaintiff and seek the relief as sought for. Accordingly at the outset very application itself is not maintainable and liable to be dismissed. In view of the detailed discussion made above there is no prima facie case and balance of convenience in favour of the defendant No.9 and no much injustice will be caused to him if IA is rejected. Hence I answered point No.1 to 3 in the negative.

16. **Point No.4:** For the aforesaid reasons and discussions, I proceed to pass the following:

**ORDER**

IA No.VI under Order 39 rule 1 and 2  
r/w Sec.151 of CPC filed by the  
defendant No.9 is hereby dismissed.

No order as to costs.

(Dictated to the typist on computer and corrected by me, then pronounced in the open court on this the 3<sup>rd</sup> day of July 2020)

**(B.C. CHANDRASHEKAR)**  
Sr. Civil Judge & JMFC. H.B.Halli,  
Itinerary Sr. C.J., Huvinahadagali.

(Order on IA No.VI pronounced in open court vide separate orders).

**ORDER**

IA No.VI under Order 39 rule 1 and 2 r/w Sec.151 of CPC filed by the defendant No.9 is hereby dismissed.

No order as to costs.

Call on

**Sr. Civil Judge, H.B.Halli &  
Itinerary Sr.C.J., Huvinahadagali.**