

**IN THE COURT OF THE CIVIL JUDGE & JMFC,
HARAPANAHALLI.**

Present: SMT. B.G.SHOBHA, M.A., LL.B.,
Civil Judge & JMFC, Harapanahalli

Dated this the 23rd Day of August 2019

O.S. NO.165/2018

Plaintiff/s : Bangera Hanumantha & others.

(Rept. by Sri. T.V.S. Advocate)

-V/s-

Defendant/s : Bangera Ramappa & others.

(Exparte)

I.A. No. I

Applicant/s : Bangera Hanumantha & others.

-Vs.-

Respondent/s : Bangera Ramappa & others.

**ORDERS ON I.A. NO. I U/O.39 RULE 1 & 2 R/W. SEC.151
OF CPC**

This application is filed U/O.39 Rule 1 and 2 R/w
Sec.151 of CPC with a prayer to grant an ad-interim order of
exparte temporary injunction restraining the defendants from

alienating the suit schedule property in any manner till pending disposal of the suit.

2. The said application is accompanied with affidavit sworn by the plaintiff No. 1 wherein he has stated that suit schedule property is their ancestral property. They are children of defendant No. 1. Suit schedule property originally belongs to their grand father by name Hanumappa. After his death it wa standing in the name of defendant No. 1 through pavathi varasu. The plaintiffs and defendant No.1 are in joint possession of said property. The defendant No. 1 is in a habit of consuming Alcohol and other bad habits. The defendant No.2 to 5 by colluding with each other by taking advantage of weakness of the defendant No.1 are trying to obtain khata in their name with respect to the suit schedule property. They have obtained revenue documents in their name which are concocted one. Hence said documents are not binding on the plaintiffs. The defendant No. 2 to 5 have no manner of right, title, interest and

possession over the said property. The plaintiffs approached the defendant No.1 to effect partition but he denied the same. If the application is not allowed the plaintiffs will be put to irreparable loss and legal injury. On the other hand no prejudice would be caused to the defendants. Hence prayed to allow the application.

3. Per contra, the said application is resisted by the defendant No. 4 by filing memo by adopting the written statement as objection to said application wherein he has contended that the plaintiffs and defendants are the family belongs to Bangera. The original proposition is one Huchhappa S/o Hanumappa. He had 4 children namely Dodda Hanumappa, Sanna Hanummappa ,Bheemappa and Thimmappa. The family of Bangera were having more than 40 acres of land at Arasanalu Village. They have orally divided said properties about very long years ago and residing separately by enjoying their respective shares. As per their convenience some of the persons have sold the property and

some persons have purchased some properties. The children of Dodda Hanumappa namely Hanumappa, Huchhappa, Chandrappa, and Santhappa are enjoyment of the property which was belonging to their father. Among them 3 brothers of Santhappa have given suit schedule property for expenses of his marriage as per custom of village. He is in cultivating said property for a period of about 25-30 years. The family of Hanumappa, Huchappa and Chandrappa tried to interfere with his possession recently. Hence said Santhappa has divided said property as 4 share and given to his 3 brothers. The defendant No.1 who is family member of Sanna Hanumappa has obtained katha in his name by taking advantage of name mentioned wrongly in RTC as Hanumappa. After came to the knowledge of said fact the family members of defendant No.2 to 5 approached defendant No.1, though said property is belonging to them again obtained sale deed from the defendant No.1 and got changed

katha in their name. In order to harass these defendants, the defendant No.1 is colluding with the plaintiff, filed this suit.

4. Heard argument on both sides.

5. On perusal of the materials placed before the court, the following points that arise for my determination are:-

1. Whether the plaintiff has made out prima facie case for grant of temporary injunction ?
2. Whether the plaintiff proves balance of convenience lies more in his favour ?
3. Whether the plaintiff proves irreparable loss will be caused more to him, if temporary injunction is not granted ?
4. What order ?

6. My answer on the above points is:

Point Nos.1 to 3 : In the Affirmative;
Point No.4 : As per the final order,
for the following;

REASONS

7. Point Nos.1 to 3:- Since these points are inter-linked each other and to avoid repetition of facts and circumstances took up for common discussion.

On perusal of the contention urged by both parties and material available on record, it appears that plaintiffs have filed this suit for the relief of partition and separate possession of the suit schedule property. According to them suit schedule property is their ancestral property. The plaintiffs and defendants have jointly acquired the said property. During the life time of their grand father by name Hanumappa was in possession said property. After his death the defendant No. 1 being his son got mutated in his name through Pavathi Varasu.

8. In order to prove the allegation of the plaintiffs they have produced documents such as mutation extracts, RTC extracts, revenue tax paid receipts and genealogical tree. In order to substantiate the contention of defendant No.2 to 5, they have produced documents such as genealogical tree,

RTC extracts, 4 xerox copy of sale deeds and copy of order of Deputy Tahasildar. On perusal of records it appears that there is dispute regarding ancestral property. The documents produced by both parties disclose that suit schedule property standing in the name of defendant No.1. However whether suit schedule property is ancestral property of plaintiffs and defendants ? has to be decided. At this stage said fact cannot be decided, it requires full fledged trial.

9. It is settled principle of law that a party who approaches the Court has to establish prima facie case. Grant of interlocutory injunction is discretionary remedy and in exercise of judicial discretion granting or refusing to grant injunction, the Court will have to take following principles.

1. Whether a person seeking temporary injunction has made out prima facie case ?
2. Whether balance of convenience lies in his favour i.e. whether it could cause greater inconvenience to him if injunction was not granted ?

3. Whether a person seeking temporary injunction would suffer irreparable injury if injunction was not granted ?

Among aforesaid conditions at-least two conditions should be satisfied by the party. Mere proof of one of the three conditions does not entitle for the party to obtain temporary injunction. In the instant suit the plaintiffs stated that the defendants are trying to alienate the suit schedule property. When the RTC in respect of suit schedule property stands in the name of defendant No.1 there is every chance for alienating the suit schedule property. If the defendants have alienate the suit schedule property it will leads to multiplicity of proceedings. Protection of status of the subject matter is required for adjudicate the matter effectively. If temporary injunction is granted no hardship will be caused to the defendants. If temporary injunction is not granted defendants may alienate the suit schedule property.

10. The plaintiff filed this suit for partition. Under such circumstance if the defendants alienate of the suit

schedule property it will defeat the purpose of filing of the suit. However the defendant No. 2 to 5 have filed memo stating that they will not alienate the suit schedule property till disposal of the suit. But the defendant No. 1 was placed *ex parte*. Hence restraining him is necessary to alienate the suit schedule property by passing order on this application. The plaintiff has established *prima facie* case. As such if the defendants alienate the of schedule property certainly the plaintiffs will be put to irreparable loss and injury. The balance of convenience also lies more in his favor. In view of the above discussion this court is of the opinion that the application filed by the plaintiff deserves to be allowed. Accordingly point Nos.1 to 3 are answered in the **affirmative**.

11. Point No.4:- For the above reasons, I proceed to pass the following;

ORDER

**IA No. I U/O.39 Rule 1 and 2 R/w Sec.
151 of CPC filed by the plaintiffs is hereby
allowed.**

**The defendants are temporarily
restrained from alienating the suit schedule
property till pending disposal of the suit.**

*(Dictated to the stenographer direct on computer, revised, corrected and then
pronounced by me in the open court on 23rdth day of August, 2019)*

(B.G.SHOBHA)
Civil Judge & JMFC,
Harapanahalli.

(Orders pronounced in the open court vide separate order)

ORDER

IA No. I U/O.39 Rule 1 and 2 R/w 151 of
CPC filed by the plaintiffs is hereby allowed.

The defendants are temporarily restrained
from alienating the suit schedule property till
pending disposal of the suit.

Civil Judge & JMFC,
Harapanahalli.