

IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC, INDI.

PRESENT: Sri. KOTEPPA KAMBLE, B.Com., L.L.B.,
Senior Civil Judge & JMFC, Indi

Dated : 21th day of November 2024

O.S.NO. 101/2019

Plaintiff:

1. Smt. Sunanda W/o Dundappa Biradar

V/s

Defendant:

1. Sri. Balasaheb Hanamanth Choragi.
(Since deceased through his L.Rs)

Parties to IA No.7.

Applicant:

1. Smt. Sunanda W/o Dundappa Biradar
(By pleader Sri. V.G.Kulkarni)
V/s

Opponents:

1. Sri. Balasaheb Hanamanth Choragi.
(Since deceased through his L.Rs)
(By pleader Sri.S.V.Kulkarni)

**ORDER ON IA.No.VII I FILED UNDER ORDER XXXIX RULE 1
& 2 C.P.C.**

1. This application is filed when the matter is set down by the
plaintiff/ Applicant praying for an order of temporary

injunction restraining the Defendant/ Opponents from alienating the suit properties to others, till the disposal of suit.

2. The Plaintiff filed her affidavit in support of the application, wherein, she has deposed that the suit properties land bearing Sy.No.159/*/*, Sy.No.160/*/5, Sy.No.175/*/*, VPC.No.48 and 161 (Same are more fully described in affidavit para No.3. Herein after referred to a suit properties) It is further deposed that, the suit properties are the ancestral and joint family properties of herself and defendants. They are in join possession and enjoyment of suit properties. The defendant recently died leaving behind his wife and daughter. The L.Rs of defendant taking undo advantage of death of defendant they are trying to alienate the suit property to others in order to duke the legitimate share of plaintiff. It is further deposed that recently she came to know about the rumors of a alienation by the L.Rs of defendants. If the defendants alienated the suit properties she will be suffered irreparable which cannot be compensated in terms of money further she deposed that she is having prima facia

case and balance of convenience is lies upon her favor.
Hence, prays for allowing the application.

3. The defendants/ Opponents filed their objection to IA inter-alia denying the allegations made in the applications. It is contended that, the defendant is brother of plaintiff the defendant has died during pendency of the suit due to Covin pandemic. It is further contended that they have filed detailed written statement with a specific contention that the plaintiff has relinquished her right over the suit properties in favor of defendant by way of registered relinquishment deed on 01.06.2018 as such she is not having any right, title, interest and possession over the suit properties. It is further contended that the plaintiff in order to give harassment and filed the present suit. Hence, prays for dismissal of the IA.

4. Heard both side.

5. Upon hearing arguments and on perusal of materials placed on record, following points that would arise for my consideration:

1. Whether the plaintiff is having a prima-facie case?

2. Whether the balance of convenience is in favour of plaintiff?
 3. Whether the plaintiff would suffer irreparable injury if her prayer temporary injunction is not granted?
 4. What order?
6. My 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 order; for the following
- REASONS**
7. **POINT No.1:-** It is case of the plaintiff that the suit properties are the ancestral and joint family properties of herself and defendant. They are in joint possession and enjoyment of suit properties. The plaintiff is having half share in the suit properties. The defendants that is the L.Rs of defendant are trying to alienate the suit properties to others without their being actual partition by meets and bounds. The plaintiff in support of her contention produced ROR of Sy.No.159/*/* measuring 5 acre 25 gunta which is jointly standing in the name of plaintiff and defendant in

the year 2019-19. She further produced the ROR of the same land which is standing in the name defendant. His name as been mutated as per relinquishment on 08.08.2018. Further she produced earlier records of suit properties and mutation extracts which disclose at this stage that same are the joint family properties of plaintiff and defendant.

8. On the contrary, the defendants produced in all 30 documents which are ROR mutations earlier hand written RTC and other documents. Further the defendants produced photo copy of one relinquishment deed said to have been executed by the plaintiff in favor of defendant on 01.06.2018 in the said relinquishment deed it was mentioned only two lands not in respect of other properties. The defendants have never disputed about the nature of suit properties and relation between the parties. However, the defendants are relied upon more particularly on relinquishment deed said to have been executed by plaintiff. The plaintiff is denying alleged relinquishment deed stating that it has been obtained under fraud, therefore it requires trial accordingly the issues were framed. The alleged relinquishment deed is required to be

proved during the course of trial. At this stage it is necessary to preserve the suit properties as it is so as to enable the parties to get relief and to get execute if executable decree is passed. As such the plaintiff is having prima facia case to go for trial.

9. In considering the question of balance of convenience the court has to weigh to whom more hardship would be caused. If the temporary injunction is granted to plaintiff and ultimately if the suit is dismissed, no hardship would be caused to defendants. If the temporary injunction is not granted and defendants are allowed to alienate the suit properties to others than the purpose of temporary injunction would be defeated and nature of the suit properties will be changed which would be irreversible by the time suit is disposed of. Therefore, balance of convenience tilts in favor of plaintiff. Further, more hardship would be caused to the plaintiff than the defendants, if defendants are permitted to go on with alienating the suit properties. If the temporary injunction as sought by the plaintiff is not granted the defendants would be successful in achieving their intention. In such an event, the plaintiff would be deprived of the enjoyment of

suit properties and her share their in, which can not be measured in terms of money. Hence, I am of the considered opinion that the plaintiff has made out prima-facie case and she would be put to irreparable injury which can not be compensated in terms of money. Therefore, I answer point No.1 to 3 in the affirmative.

10. **POINT No.4** :-In view of the reasons assigned above, I proceed to pass following

ORDER

IA.No.7 filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC, is hereby allowed.

Pending disposal of suit, the defendants or any body claiming under them are hereby restrained from alienating the suit properties till disposal of the suit

No order as to costs.

(Dictated to typist directly on computer, then corrected and pronounced by me in the open Court on this the 21th day of November, 2024)

**(KOTEPPA KAMBLE),
Sr. Civil Judge & JMFC,
Indi.**