

IN THE COURT OF THE CIVIL JUDGE & JMFC, INDI

:PRESENT:

Sri. Altaf Husensab Khanaganvi,
B.com,LL.B,
Civil Judge & JMFC, Indi

Original Suit No.31/2019

Dated this 5th day of April 2022

PLAINTIFFS:

1. Rajashree W/o Anil Kade
And another

- Versus -

DEFENDANTS:

1. Basappa S/o Bapuray Amagond
And others

==

I.A. NO.I

1. Rajashree W/o Anil Kade
And another

**Applicants/
Original Plaintiffs**

V/s

1. Balasaheb S/o Revappa Amagond
2. Dada S/o Basagond Kamagond

**Opponents/
Original Defendants
No.4 to 6**

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Plaintiffs by Sri. M.K.J Adv.

Defendant No.1 by Sri. S.B.N Adv.

Defendant No.2 *Ex-parte*.

Defendant No.4 by Sri. M.H.K Adv.

Defendant Nos.5 & 6 by Sri. R.R.K Adv.

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ORDER ON I.A.NO.I

The plaintiffs have filed IA No.I under Order 39 Rule 1 and 2 of CPC praying for granting exparte temporary injunction against the defendant Nos.4 to 6 restraining them from transferring suit properties bearing Sy.No.68/3 measuring 4 acres 09 guntas, Sy.No.68/4 measuring 2 acres 14 guntas situated at Havinal village by way of sale, gift, will or any other mode till disposal of the suit.

2. I.A is accompanied with sworn affidavit of the plaintiffs wherein it is submitted that the suit properties are joint family properties of plaintiffs and defendant Nos.1 to 3 and plaintiffs have got 2/5th share in the suit land. Further submitted that, there is no partition effected in respect of suit lands but the defendant Nos.4 to 6 taking disadvantage of their name appearing the record of rights trying to alienate the suit property. The defendant Nos.4 to 6 are not absolute owner of suit lands and they have no right to alienate the suit property. Hence, prays to allow the application.

3. In response to the suit summons issued by this court defendant No.5 & 6 put in their appearance through their counsel and filed their written statement and adopted the written statement as objection to IA No.I. In the written statement defendants have admitted the relationship of plaintiff and defendant Nos.1 to 3. Further specifically denied that the suit properties are joint family properties. It is submitted that, originally land bearing Sy.No.68/2

was standing in the name of Bapuray Gireyappa Amagond and he effected partition. In the said partition 09 acres 6 guntas was given to the defendant No.1 which was numbered as 68/2B. The said Survey number is renumbered as 68/3. The land bearing Sy.No.68/3 measuring 6 acres 32 guntas was transferred by the Basappa Amagond in favour of his legally wedded wife Mahadevi under family arrangement. The defendant No.2 sold the said land in favour of defendant No.5 for sale consideration of Rs.2,11,000/- under registered sale deed dated 03.02.2012. On the said sale deed defendant No.1 has also put his signature as witness.

4. Further it is contention of the defendants that defendant Nos.1 and 2 have sold the suit property in favour of defendant No.5 for their family necessity and said consideration amount was utilized for the marriage of plaintiffs and legal debts. After purchase of the said land defendant No.5 has made improvements by spending huge amount. The defendant No.5 and 7 are bonafide purchaser of the suit lands and plaintiffs have filed this suit against the in order to harass the defendants. The suit lands have been sold by the defendant Nos.1 and 2 as a Karta of the family and for the benefit of the plaintiffs. Therefore, there is no cause of action arose to plaintiffs to file this suit. Hence, on these grounds prays to dismiss the application.

5. Heard on both side and perused the records placed before the court.

6. The points that arise for my consideration are
- 1) Whether the plaintiffs shown that they have got prima facia case?
 - 2) Whether the plaintiffs shown that the balance of convenience lie in their favour?
 - 3) Whether the plaintiffs shown that irreparable loss will be caused to them if TI is refused?
 - 4) What Order?

7. My answers to the above points are

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

8. **Point No.1:-** This is suit filed by the plaintiffs against the defendants claiming that they have got 2/5th share in the suit properties. According to the plaintiffs, the suit properties are joint family property of plaintiffs and defendant Nos.1 to 3. According to plaintiffs land bearing Sy.No.68/3 measuring 4 acres 09 guntas, Sy.No.68/4 measuring 2 acres 14 guntas are joint family properties of the plaintiffs and defendant Nos.1 to 3. The defendant No.1 addicted to bad vices. Therefore, sold 2 acres 14 guntas of land to the defendant No.4 and created unregistered relinquishment deed in favour of defendant No.2 and relinquished his right in respect of suit

land bearing Sy.No.68/3. Thereafter, the defendant No.2 alienated the suit property bearing Sy.No.68/3 in favour of defendant No.5. The said transaction are not binding on the shares of the plaintiffs. Further it is case of the plaintiffs, defendant No.5 has relinquished his right in favour of defendant No.6. Therefore, the defendant Nos.4 to 6 are no way concerned to the suit land and they are not bonafide purchaser of suit lands. The plaintiffs were came to know about sale deed and relinquishment. Thereafter, the approached to the defendant Nos.1 and 2 and requested them to allot their shares. On these grounds plaintiffs are claiming that they have got share in the suit schedule properties.

9. On the other hand, defendants have denied the claim of the plaintiffs and submitted that, they are bonafide purchaser of suit land. The defendant Nos.1 and 2 jointly alienate the suit properties for their family necessities. It is contention of the defendants that plaintiffs have no right to claim share in the suit properties. Hence, defendants have prayed for dismissal of the suit.

10. On perusal of pleadings and documents placed before the court plaintiffs are claiming their right over the suit properties stating that these properties are joint family property of plaintiffs and defendant Nos.1 to 3 and they have got 2/5th share in the suit schedule properties. On the other hand, defendants have admitted the relationship of plaintiffs and defendant Nos.1 to 3. Further it is

denied that, plaintiffs are having share in the suit properties. It is case of defendants that, defendant Nos.1 and 2 have jointly sold suit property in favour of defendant No.5 for their family necessities. Out of the said consideration amount marriage of plaintiff were performed.

11. On perusal of material placed before the court both parties have produced record of rights, mutation entries, sale deeds in respect of the suit properties. On the face of these records, it appears that suit properties are standing in the name of defendant Nos.4 to 6. Both parties have produced sale deed copy of land bearing Sy.No.68/3 totally measuring 9 acres 6 guntas out of it 2 acres 14 guntas alienated by the defendant No.1 in favour of defendant No.4. The sale deed copy of land bearing Sy.No.68/3 totally measuring 9 acres 6 guntas out of it 6 acres 32 guntas alienated by the defendant No.2 in favour of defendant No.5. Another sale deed is produced by the plaintiffs in respect of land bearing Sy.No.68/3 measuring 6 acres 32 guntas executed by the defendant No.5 in favour of defendant No.6.

12. On the other hand, defendants have also produced copy of said sale deeds and mutation entries in respect of suit lands, as well as produced 15 photographs in respect of suit lands. It is claimed by the plaintiffs that all these properties are joint family properties and defendant No.1 has alienated these properties for his

bad vices. There is no explanation regarding relinquishment made by defendant No.1 in favour of defendant No.2 who being mother of plaintiffs. Further the plaintiffs have not explained about the defendant No.2 sold out the suit property. The defendant Nos.1 and 2 have not opposed the claim of the plaintiffs. As far as records are concerned defendant Nos.4 to 6 acquired the title over the suit property under registered sale deed and their names were came to be entered under various mutation entries which have not been challenged by the plaintiffs. The photographs produced by the defendants reveals that, the defendants are use and enjoyment of the suit properties. Therefore, at this juncture entitlement of the right over the suit property cannot be decided at the inception of this suit it requires full pledge of trial. On face of records the plaintiffs have not got prima facie case. The subject matter of suit is entitlement of the share. In case defendants have sold out the suit property certainly it applies provisions of Sec.52 of Transfer of Property Act. Therefore, there is no any ground to pass temporary injunction. Hence, I answer point No.1 in the Negative.

13. **Point No.2:** Mere showing the prima facie does not suffice to grant temporary injunction it must be shown that plaintiff has got balance of convenience, if TI is refused more loss will be caused to the plaintiff. The basic principle of interlocutory injunction is to protect the plaintiff against injury by violation of his right for

which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The said ratio laid down by the Hon'ble Apex Court in **M/S Gujarat Pottling Co.Ltd. & Ors vs The Coca Cola Co. & Ors 1995 (5) SCC 545**. It is well settled principle of law that granting of temporary injunction 3 factors have to be satisfied which are prima facie case, balance of convenience and irreparable loss. In **Dalpat Kumar And Anr. vs Prahlad Singh And Ors. AIR 1993 SC 276** Hon'ble Apex court explained these facts as follows. (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

14. Considering these basic principles and factual matrix placed before the court it is contention of the plaintiff that all the properties are joint family properties of the plaintiff and defendant Nos.1 to 3 and they have got 2/5th share in the suit properties. The plaintiffs have come up with the application that defendant Nos.4 to 6

are intending to alienate suit properties without allotting their shares. Therefore, they are praying for restraining the defendant Nos.4 to 6 from alienating suit properties which are standing in the name of defendant Nos. 4 to 6. On the other hand, it is contended by the defendant Nos.4 to 6 that, the defendant Nos.1 and 2 alienated the suit properties for their family necessities and performing marriage of plaintiffs. The defendant Nos.4 to 6 acquired the title under registered sale deed and their names were came to be entered by virtue of mutation entries which have not been challenged by the plaintiffs. Therefore, without touching merit of the case and basing on the records placed before the court if TI is refused no loss will be cause to the plaintiffs. Moreover, if the TI is granted the defendant Nos.4 to 6 would sustain injuries. Therefore, in order to avoid complications and comparative of the case of the plaintiff and defendants. The plaintiffs have not got prima facie case, balance of convenience do not lie in favour plaintiffs.

15. Considering the material placed before the court TI is refused no injury would be caused to the plaintiffs if granted more harm or injury would be caused to the defendants. Further it is basic principle of law that the party has sought injunction, he has to satisfy that comparative hardship or mischief or inconvenience which is likely to be caused if TI is refused and said injury is granter than that which is likely to be caused to other side. Therefore, considering the

material placed before the court plaintiffs have not satisfied that comparative, mischief or loss or inconvenience would likely to be caused to the plaintiffs if TI is refused and no grater hardship or grater loss caused to the plaintiffs if TI is granted. Under these facts and circumstances it appears that balance of convenience is lies in favour of the defendant Nos.4 to 6. Therefore, I am inclined to answer the point No.2 in the Negative.

16. **Point No.3:** As I have already come to the conclusion that plaintiffs have no prima facie case, balance of convenience lies in favour of the defendant Nos.4 to 6. It is contention of the defendants that the suit property sold by the defendant Nos.1 and 2 for their family necessity. It is significant to note that, the suit properties are standing in the name of defendant Nos.4 & 6 and the defendant Nos.5 and 6 are produced as many as 15 photographs in which it can be seen water tank, grown grapes, tin shed. The defendant Nos.4 to 6 acquired the title over the suit property by virtue of sale deed which have been executed by the defendant Nos.1 and 2. Further it appears that, the signature of defendant Nos.1 and 2 appearing in the both sale deeds. Considering the material placed before the court if the TI is granted more loss or hardship would be caused to the defendant Nos.4 to 6 rather than plaintiffs. It is basic principle of law that injunction must be granted for preventing wrong and preserving the rights of the party and protect right which is recognized by the law

should be protected. Further it is basic principle of law that injustice should be protected by restraining such kind of act recognized by the law.

17. In the instant case the plaintiffs are seeking restraining the defendants from alienating the suit properties. If the defendants are restrained their right will be curtailed and they have shown prima facie document regarding possession of the suit properties. If the TI is not granted no loss would be caused to the plaintiffs.

18. In view of point No.1 and 2 plaintiffs have no prima facie case as well as balance of convenience not lies in their favour. Considering these material facts if TI is granted more loss will be caused to defendant Nos.4 to 6. If the defendant Nos.4 to 6 are restrained it will curtail the right of the defendant Nos.4 to 6. during the pendency of this suit defendants alienate the suit properties certainly the provisions of Section 52 of Transfer of Property Act can be invoked. Thus, the plaintiffs have efficacious remedy against the defendant Nos.4 to 6 in case alienation made by them. Therefore, if TI is granted more loss will be caused to defendant Nos.4 to 6. Considering these facts and circumstances, I am inclined to answer point No.3 in the Negative.

19. **Point No.4:-** For the above said discussion and reasons I am inclined to proceed to pass the following.

ORDER

I.A No.I filed by the plaintiffs under Order 39

Rule 1 and 2 of CPC is hereby rejected.

TI order dated 17.01.2019 is hereby vacated.

No order as to costs.

(Dictated to stenographer, transcribed by her, corrected, signed & then pronounced by me in open court on 5th day of April 2022)

(Altaf Husensab Khanaganvi)
Civil Judge & JMFC, Indi.