

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC, INDI.**

-PRESENT-

**DEVARAJU H.R.
B.A., LL.B.
Additional Civil Judge & JMFC, Indi.**

Dated this the 18th Day of November, 2022

Original Suit No.128/2022

PLAINTIFF:-

1. Smt.Channamma W/o Channappa Hunchyal.

(By Sri. R.S.M., Advocate)

V/S

DEFENDANT:-

1. Sri.Sharanappa S/o Ningappa Gabbur & others

(Sri. R.R.K, Advocate for defendant No.1 to 7)

(Sri.S.S.R., Advocate for defendant No.8 & 9)

I.A. NO. I

APPLICANT/Plaintiff :

**1. Smt.Channamma W/o Channappa Hunchyal,
Age: 52 years, Occ: H.H.work,**

R/o Kanamadi, Tq: Indi, Dist: Vijayapura.

V/S

OPPONENTS/ Defendant No.1 to 9:

- 1. Sri. Sharanappa S/o Ningappa Gabbur,
Age: 75 years, Occ: Agriculture,
R/o Tadavalaga, Tq: Indi, Dist:Vijayapura.**
- 2. Smt. Basavva W/o Sharanappa Gabbur,
Age: 55 years, Occ: H.H.work,
R/o Tadavalaga, Tq: Indi, Dist:Vijayapura.**
- 3. Smt.Roopa |W/o Mallikarjun Tadalagi,
Age: 36 years, Occ: H.H.work,
R/o Tadavalaga, Tq: Indi, Dist:Vijayapura.**
- 4. Smt. Ambavva W/o Ramu Bagewadi,
Age: 30 years, Occ: H.H.work,
R/o Tonashyal, Tq: Indi, Dist:Vijayapura.**
- 5. Sri. Mallikarjun S/o Sharanappa Gabbur,
Age: 26 years, Occ: Student,
R/o Tadavalaga, Tq: Indi, Dist:Vijayapura.**
- 6. Smt.Gangabai W/o Shivanand Jambagi,
Age: 24 years, Occ: H.H.work,
R/o Tadavalaga, Tq: Indi, Dist:Vijayapura.**
- 7. Sri. Sainath S/o Sharanappa Gabbur,
Age: 20 years, Occ: Student,
R/o Tadavalaga, Tq: Indi, Dist:Vijayapura.**
- 8. Sri.Basappa S/o Siddappa Byali,
Age: 75 years, Occ: Agriculture,
R/o Tadavalaga, Tq: Indi, Dist:Vijayapura.**

**9. Sri. Siddappa S/o Basappa Byali,
Age: 25 years, Occ: Agriculture,
R/o Tadavalaga, Tq: Indi, Dist:Vijayapura.**

ORDERS ON I.A.NO.I

The plaintiff has filed this interim application under order 39 Rule 1 and 2 of C.P.C for seeking temporary injunction against the defendant No.9 restraining him from alienating the suit schedule property by way of gift, mortgage, transfer, relinquishment or exchange or in any manner till the pending disposal of the present suit.

2. The plaintiff in her affidavit annexed to this application has stated that, herself and defendants are the members of the Hindu undivided joint family, and they are the joint owners of the suit schedule property. The propositus by name Ningappa Gabbur and his wife Gangavva had 3 sons and 4 daughters namely Paravva, Malasiddappa, Lachavva, Guravva, Basappa, Sharanappa and Basavva. The said Paravva and Lachavva were died. The said Paravva, Lachavva and Guravva are relinquished

their rights over the suit schedule property. Thereafter, Malasidda, Basappa and Sharanappa was effected the partition in long back. The plaintiff is the daughter of defendant No.1. Her father had two wives namely Gurubai and Basavva, who is the defendant No.2 herein. The 1st wife of her father was also died. She is the daughter of defendant No.1 through his 1st wife namely Guravva. The defendant No.2 is the 2nd wife of defendant No.1. The defendant No.3, 4 and 6 are the daughters of defendant No.1 and 2. The defendant No.5 and 7 are the sons of defendant No.1 and 2 and defendant No.8 and 9 are the purchasers of the suit schedule property. The defendant No.1 to 7 are in joint possession of the suit schedule property bearing Sy.No.175/*/2A measuring 2 acres 08 guntas. Now the said property was includes land bearing Sy.No.175/*/2 measuring 2 acres 28 guntas situated at Tadavalaga village of Indi taluka.

3. The plaintiff further submits that, the defendant No.8 and 9 are doing money lending business at Tadavalaga village. Hence, defendant No.8 has managed to

take the defendant No.1 under his influence by advancing the loan and got registered the document in favour of him as sale deed on 13.04.2004. But no consideration has been paid to the defendant No.1. Thereafter, defendant No.8 has got khata into his name as per M.R.No.129/2003-04 on the basis of sale deed dated 13.04.2004. But they have no rights over the suit schedule property as the plaintiff and defendant No.1 to 7 are having equal share over the suit schedule property. The defendant No.1 has not been having legal necessity to alienate the suit schedule property and at the time of sale deed defendant No.4 to 7 are minors, without legal necessity the defendant No.1 was sold out the property in favour of defendant No.8. Now defendant No.8 has relinquished his rights in favour of defendant No.9. Hence, khata of the suit schedule property stands in the name of defendant No.9. Now defendant No.9 is trying to alienate the suit schedule property to the 3rd person on the basis of the khata stands in his name. Hence, she has filed the present suit along with this interim application.

4. The plaintiffs further submit that she has made out a prima-facie case and balance of convenience lies in her favour, if this application is not allowed much hardship would cause to her. Hence, prays for allow the application as prayed.

5. Per contra, the defendant No.8 and 9 have filed memo by adopting the contents of the written statement of defendant No.8 as objection to I.A.No.1 filed by the plaintiff.

6. The defendants have contended that, the suit filed by the plaintiff is not maintainable either in law or facts. The plaintiff has filed the present suit with malafide intention. Hence, prays for dismiss the suit. Further they have contended that, in the year 2004 the defendant No.1 has approached the defendant No.8 and offered to purchase the suit property. The defendant No.1 was in need of money for marriage of defendant No.3 and 4. Hence, considering the humanity the defendant No.8 has accepted the offer of the defendant No.1 and purchase the suit schedule property for Rs.71,000/- and 3 tola of gold to

the defendant No.1. As per the agreement, the defendant No.1 has executed the sale deed in favour of defendant No.8 before the Sub Registrar Indi, in the presence of attesting witnesses. Ever since date of registration of the sale deed defendant No.8 is in actual possession and cultivation of suit property. After purchase of the suit property the defendant No.8 was constructed the house in the suit schedule property, and he is residing in said house along with his family members. The defendant No.8 is the bonafide purchaser of the suit schedule property. The defendant No.1 to 7 are colluding with each other, and they have filed the suit in O.S.No.345/2007 before the Hon'ble Civil Judge, (Jr.Dn), Indi,. The said suit was dismissed on 1.12.2016 with cost. Now the plaintiff was colluded with the defendant No.1 to 7 and she has filed I.A.No.IV in O.S.No.345/2007 on 16.06.2016. The said application was dismissed. The plaintiff is not at all having rights over the suit schedule property. The defendant No.8 has purchased the suit schedule property for valuable sale consideration. Hence, he has relinquished his rights in favour of his sons

i.e., defendant No.9. Hence, plaintiff has not made out prima-facie case, balance of convenience lies in favour of defendant No.8 and 9. Hence, he prays for dismiss the application with exemplary cost.

7. Heard both sides and perused the available materials on record.

8. The following points arise for the consideration of this Court;

1. Whether the plaintiff/applicant has made out *prima-facie* case?

2. Whether the balance of convenience lies in favour of the plaintiff?

3. Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction as prayed for?

4 What order ?

9. My answer to the above points are as follows;

Point No:1. **In the Affirmative.**

Point No:2. **In the Affirmative.**

Point No:3. **In the Affirmative.**

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

REASONS

10. Point No 1 : It is the case of the plaintiff that, suit schedule property is the ancestral property of plaintiff and defendant No.1 to 7. Her father defendant No.1 having two wives namely Guravva and Basavva. The plaintiff is the daughter of defendant No.1 through his 1st wife namely Guravva and defendant No.3 to 7 are the children of defendant No.1 through his 2nd wife, who is the defendant No.2. The defendant No.1 addicted to bad habits without legal necessity he has sold the suit schedule property in favour of defendant No.8 on 13.04.2004 without consideration. It is the main contention of the plaintiff that, suit schedule property is the ancestral and joint family property of plaintiff and defendant No.1 to 7. The defendant No.1 has acquired the said property through his ancestors. The defendant No.1 has no salable interest to

sell the suit schedule property in favour of defendant No.8. In spite of it, he has sold the suit schedule property in favour of defendant No.8 along with her share over the suit schedule property. In turn the defendant No.8 has relinquished his rights over the suit schedule property in favour of defendant No.9. The plaintiff has demanded her share over the suit schedule property but the defendant No.1 to 7 have refused to effect partition. Hence, she has filed the present suit along with this application.

11. The counsel for the plaintiff has argued that, plaintiff is having her legitimate share over the suit schedule property. The defendant No.1 had no legal necessity to sell the suit schedule property in favour of defendant No.8. In turn the defendant No.8 has relinquished his right in favour of defendant No.9. If defendant No.9 has alienated the suit schedule property it creates hardship to the plaintiff. Hence, prays for allow the application.

12. The plaintiff in support of her case has furnished RTC extract of the suit schedule property

wherein it appears that, khata of the suit schedule property stands in the name of defendant No.9. Further she has furnished M.E.No.1999, wherein it appears that, defendant No.1 has acquired the suit schedule property by way of warsa. Hence, it is clear that suit schedule property is not the self acquired property of defendant No.1. Hence, it prima facie appears that, plaintiff is having her legal rights over the suit schedule property.

13. It is the main contention of the defendant No.8 and 9 that, plaintiff is not a member of joint family. The defendant No.1 has sold out the suit schedule property for marriage of defendant No.3 and 4. The defendant No.1 has sold the suit schedule property for his legal necessity. Hence, prays for reject the application.

14. The question before me is that, whether the defendant No.1 has sold out the suit schedule property for his legal necessity or not is the subject matter of trial. Because, to determine the legal necessity of defendant No.1 trial is required. Till that it is necessary to protect the interest of the plaintiff over the suit schedule property. It

is relevant to note here decision reported in **ILR 2004 KAR 4076** (between **Fakirasab V/s Syedusad and others**) wherein our Hon'ble High Court of Karnataka at Para No.9 has held that;

“It is well settled that while considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status quo so that it would be available to the plaintiff if he ultimately succeeds in the suit”.

15. As per ratio laid down in the above said decision the plaintiffs would not be put irreparable loss and their rights over the schedule property should be protected. It is relevant to quote here one more decision reported in **ILR 2007 KAR 1214** (between **T.K. Gowramma V/s K.**

Raviprasanna) wherein our Hon'ble High Court of Karnataka has held that;

“The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object 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”.

16. As per ratio laid down in the above said decision object of the temporary injunction is to protect the plaintiffs against injury by violation of her legal right for which she could not be adequately compensated. In the instant case the plaintiff has furnished relevant documents to establish their *prima-facie* case. Therefore, it is just and necessary to protect the interest of the plaintiffs over the suit schedule property. In view of these observations, I hold point No.1 in the **Affirmative**.

17. Point No 2 and 3 : Since these points are inter-related to each other I have taken up together for my common discussion in order to avoid repetition of facts and findings.

18. It is the contention of the plaintiff that, if defendant No.9 alienate the suit schedule property including her share, if defendant No.9 alienates the suit schedule property it creates multiplicity of proceedings and hardship to her. If he alienates the suit schedule property she lost her rights over the suit schedule property. On perusal of the records it appears that, khata of the suit schedule property stands in the name of the defendant No.9. If defendant No.9 alienates the suit schedule property on the basis of the khata stands in his name hardship causes to the plaintiff. Hence, I am of the opinion that, balance of convenience and hardship causes to the plaintiff. Hence, I hold point Nos. 2 and 3 in the **Affirmative.**

19. Point No.4 :- On above made discussions on points No.1 to 3, this court proceeds to pass following:-

ORDER

**I.A.No.I filed by the plaintiff
under order 39 rule 1 and 2 of CPC is
hereby allowed with cost.**

**Consequently, defendant No.9 is
hereby temporarily restrained from
alienating the suit schedule property
by way of gift, sale, mortgage,
relinquishment or any other mode to
anybody till pending disposal of the
present suit.**

*(Dictated to Stenographer, transcribed and typed
by her, corrected and then pronounced by me, in the
open Court on this the 18th day of November-2022.)*

(DEVARAJU H.R.)
Addl Civil Judge and J.M.F.C.,
Indi.