

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

-PRESENT-

SUNIL KUMAR M.S.

B.A., LL.B.

Civil Judge & JMFC, Indi.

Dated this the 25th Day of November, 2024

Original Suit No.159/2021

PLAINTIFF/S:

1. **Kamalabai W/o. Gangu Chavan and others.**

-V/s-

DEFENDANT/S:

1. **Shankar S/o. Rekhu Lamani @ Chavan and others.**

I.A.NO.I

Applicants/Plaintiffs:

1. **Kamalabai W/o.Gangu Chavan,**
Age: 65 Yrs., Occ: H.H.Work,
R/o. Horti L.T.No.2, Tq:Indi, Dist: Vijayapur.
2. **Bhagubai W/o.Sakaram Rathod,**
Age: 40 Yrs., Occ: H.H.Work,
R/o. Hadalasang L.T.No.5,
Tq:Indi, Dist: Vijayapur.
3. **Bebi @ Beti W/o.Sanju Rathod,**
Age: 38 Yrs., Occ: H.H.Work,
R/o. Kamati L.T., Tq:Kamati, Dist: Solapur.

- 4. Ujwal W/o.Gork Rathod,**
Age: 35 Yrs., Occ: H.H.Work,
R/o. Kamati L.T., Tq:Kamati, Dist: Solapur.

(By Sri. S.S.P., Adv.,)

-V/s-

Opponents/Defendants-

- 1. Shankar S/o.Rekhu Lamani @ Chavan,**
Age: 70 Yrs., Occ: Agril,
R/o. Horti L.T.No.2, Tq: Indi, Dist: Vijayapur.
- 2. Dhanasing S/o.Rekhu Lamani @ Chavan,**
Age: 58 Yrs., Occ: Agril,
R/o. Horti L.T.No.2, Tq: Indi, Dist: Vijayapur.
- 3. Pandit S/o.Shankar Lamani @ Chavan,**
Age: 40 Yrs., Occ: Agril,
R/o. Horti L.T.No.2, Tq: Indi, Dist: Vijayapur.

(By Sri. S.L.N., Adv. for D-1 to 3)

In which provision the application is filed	Application U/o.39 Rule 1 and 2 of CPC
The relief sought to be claimed	Temporary Injunction against the defendants No.3 from alienating the suit properties.
Date of application	06.07.2021
Number of application	I
Date of objection	16.04.2024.
Date of order	25.11.2024

ORDERS ON I.A.NO.I

This is an application filed by the plaintiffs under order 39 Rule 1 and 2 of CPC for seeking temporary injunction order against the defendant No.3 restraining him from alienating or encumbering the suit properties bearing Sy.No.483/5 measuring 05-acres 22-gunthas and Sy.No.477/1 measuring 03-acres 20-guntas situated at Horti village, Tq: Indi, till pending disposal of the suit.

2. **The Brief facts of the plaintiff and defendants case are as follows:-**

The plaintiff No.1 in her affidavit annexed to this application has stated that, the plaintiffs No.1 is the wife and plaintiffs No.2 to 4 are daughters of deceased-Gangaram. The deceased-Gangaram was brother of defendants No.1 and 2 and defendant No.3 is the son of defendant No.1. The suit properties are joint family properties of plaintiffs and defendants. The suit properties Sl.No.1, 3 and 4 had come to the father-in-law of plaintiff No.1 in the family partition. The suit property Sl.No.2 has been purchased by father-in-law of plaintiff No.1 by utilizing the income from other suit

properties. The plaintiffs and defendants had been consisting Hindu joint family and the joint family is having suit properties. The plaintiffs submit that, they and defendants are joint owners and in joint possession of the suit properties. The husband of plaintiff No.1 had died leaving behind him the plaintiffs as his legal heirs, so the plaintiffs are having 1/3rd legitimate share in the suit properties. The plaintiffs further submits that, the defendant No.3 by taking disadvantage of the old age of father-in-law of plaintiff No.1 had managed to create bogus gift deed in respect of suit properties Sy.No.477/1 measuring 03-acres 20-gunthas and Sy.No.483/5 measuring 03-acres 22-gunthas in his favour. The defendant No.3 playing fraud on father-in-law of plaintiff No.1 had got created the alleged gift deed dated: 20.09.2016, is null and void and not binding on the plaintiffs 1/3r share in the suit properties. The plaintiffs further submits that, father-in-law of plaintiff No.1 by name Reku Lamani had died leaving behind him the plaintiffs and defendants No.1 and 2 as his legal heirs. Now the suit properties Sl.No.3 and 4 are standing in the name of defendant No.3, by taking

disadvantage of his name appearing in the record of rights of suit properties Sl.No.3 and 4, he is trying to alienate the suit properties Sl.No.3 and 4. Therefore, the plaintiffs approached and requested the defendants to allot their legitimate share in the suit properties, but the defendants denied the same and threatened to alienate the suit properties. Hence, the plaintiffs have filed the present suit alongwith this application.

3. Per contra, the defendant No.3 has filed his written statement and he has filed memo by adopting the contention of the written statement as objections to the I.A.No.I filed by the plaintiffs.

4 The defendants No.3 in his written statement has denied entire allegations of the facts made by the plaintiffs. The defendant No.3 has contended that, the suit properties are not joint family properties nor ancestral properties, it is the self acquired properties of father-in-law of plaintiff No.1. Therefore, the plaintiffs have no right to claim in the suit properties. The defendant No.3 further contended that, father-in-law of plaintiff No.1 by name Rekhu Lamani, he

became the absolute owner of the suit property. The said Rekhu Lamani is having good health and healthy. Therefore, on the good faith and love and affection, the said Rekhu has executed a registered gift deed on 20.09.2016 in favour of defendant No.3 in respect of suit properties Sy.No.477/1 and 483/5. The defendant No.3 not played any fraud it is well knowledge of the plaintiffs and public at large, hence the said gift deed is not binding upon the plaintiffs. The defendant No.3 further contended that, the plaintiffs are no way concern to the suit properties nor one Rekhu Lamani, hence the suit of the plaintiffs is not sustainable under law. The defendant No.3 further contended that, the suit properties are self acquired properties of Rekhu Lamani and it is not joint Hindu family properties nor ancestral properties. Hence, the plaintiffs have no right, interest over the suit properties. Hence, the defendant No.3 pray for dismiss the application.

5. Heard arguments and perused the materials available on record.

6. The following points that arise for consideration of this Court are as under:

1. Whether the plaintiffs/applicants have made out *prima-facie* case?

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

3. Whether the plaintiffs will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?

4. What Order?

7. My answers 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:-

: R E A S O N S :

8. **Point No.1:**It is the specific case of the plaintiffs that, the suit properties are joint family properties of the plaintiffs and defendants. The plaintiffs have specifically contended that, they are having 1/3rd share in the suit properties. The plaintiffs further contended that the defendant No.3 is trying to alienate the suit properties bearing Sy.No.483/5 and Sy.No.477/1 to knock off the rights of the plaintiffs, Hence, plaintiffs pray for granting temporary

injunction restraining the defendant No.3 from alienating the said suit properties.

9. On the other defendant No.3 denied that suit properties are joint family properties of the plaintiffs and defendants. Further contended that, suit properties are self acquired properties of the father-in-law of plaintiff No.1. The father-in-law of plaintiff No.1 executed gift deed in favor of defendant No.3. Hence, the plaintiffs do not have rights in the suit properties. Hence, prays for rejection of the application.

10. At this stage without going into the merits of the case, hold a mini trial. This court has to consider the aspect of prima-facie case. Now at this stage, this court makes it very clear that this court is looking towards prima-facie case and not prima-facie title. It is well settled principles of law that at the time of disposing the temporary injunction application, the court cannot go into prima-facie title and only to consider whether the plaintiff has made out prima-facie case for granting interim relief.

11. The primary purpose of granting interim relief is the preservation of things in dispute till legal rights and

claims of the parties before the court are adjudicated. In other words, the object of making an order regarding relief is to evolve a workable formula and demands of the situation, Keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice likely to be caused to the plaintiff if the relief is refused and injury and prejudice likely to be caused to the defendant if relief is granted. The underlying object of granting temporary injunction is to maintain and preserve the status-quo at the time of institution of proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of party to prevent future possible injury.

12. The power to grant temporary injunction is at the discretion of the court. This discretion, however should be exercised reasonably, judicially and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

13. The First rule is that the applicant must make how to prima-facie case in support of the right claimed by

him. The court must be satisfied that there is bona-fide dispute raised by the applicant, that there is strong case for trial which needs investigation and decide on merits and on the facts before the court there is probability of applicant being entitle to the relief claimed by him. The existence of a prima-facie right and infraction of such right is a condition precedent for grant of temporary injunction.

14. On perusal of the documents produced by both the parties and considering the rival contentions it becomes clear that, Originally, the suit property bearing Sy.No.483/5 was in the name of Chatru Fakira Lamani ,who is the father of Reku that is propositus of plaintiffs and defendants. After the death of Chatru Fakira Lamani his sons by name Reku and Thavar, succeeded to the said suit property. Furthermore, on perusal of Ex.P.10 it is very clear that suit properties bearing Sy.No.438 and Sy.No.483/1 are standing in the name of plaintiffs and defendants. Further, the plaintiffs and defendants are joint Hindu family members. Furthermore, the plaintiff contended that the suit properties are joint family properties of plaintiffs and defendants.

Additionally, the plaintiff No.1 is the wife and plaintiff No.2 to 4 are children of deceased Gangaram, who is the son of propositus Reku. Further defendant no.1 and 2 are the brothers of deceased Gangaram. Moreover, the Gangaram, defendant No.1 and 2 are the Class-1 legal heir to Reku Lamani. Additionally, the plaintiffs are the Class-1 legal heir to deceased Gangaram. Further, the counsel for the defendants argued before the court that, suit properties are not joint and ancestral properties of plaintiffs and defendants. Further, the counsel for the defendants argued before the court that, suit properties are self acquired properties of Reku. Reku is the absolute owner and he gifted the suit properties bearing Sy.No.483/5 and Sy.No.477/1 to defendant No.3. Further, the plaintiffs contended that, being the wife and children of deceased Gangaram, they are having 1/3 rd share together in the suit properties. To decide the contentions of both parties, a full fledged trial is required. At this stage, it cannot be concluded whether the suit properties are joint family properties of plaintiffs and defendants or not

and also suit properties is the self acquired properties of Reku Lamani or not.

15. However, on perusal of the pleading of both the parties and documents produced by parties, it could be gathered that suit properties bearing Sy.No.483/5 and Sy.No.477/1 are standing in the name of defendant No.3. At this stage, on perusal of the pleadings and documents, nothing is forthcoming from the records, which renders the suit of the plaintiffs as false, frivolous and vexatious. The learned counsel for the defendants not brought to the notice of the court anything to show that the suit of the plaintiffs is barred by any law or false and vexatious. The dispute between the parties is to be decided only after trail. At this stage, the plaintiffs have made out a triable case. Therefore, this court has come to the conclusion that, plaintiffs have made out prima-faice case for grating of TI, at this stage. Hence, point No.1 is answered in the **Affirmative**.

16. **Point No. 2 and 3:** Since these points are inter-related, therefore they are taken together for common consideration.

17. On perusal of the pleadings and documents produced by the plaintiffs and upon considering the application and objections of the both parties, it is clear at this stage that suit properties bearing Sy.No.483/5 and Sy.No.477/1 standing in the name of defendant No.3. If the defendant No.3 is allowed to alienate the said properties to third parties or allowed to create charge over the said properties, then the very purpose of filing this suit by the plaintiffs will be frustrated and it also leads to multiplicity of proceedings. Therefore, if the defendant No.3 is allowed to sell the suit properties bearing Sy.No.483/5 and Sy.No.477/1, then it is plaintiffs who will be put to irreparable loss and injury. If the temporary injunction is not granted, the comparative inconvenience will also be caused to the plaintiffs. On the other hand, if temporary injunction is granted, no hardship or prejudice will be caused to the defendant No.3. Therefore, this court has come to the conclusion that, in order to preserve the suit properties bearing Sy.No.483/5 and Sy.No.477/1 till the rights of the parties are decided on merits, it is just and necessary to

restrain the defendant No.3 from alienating the suit properties. In view of above discussion, this court has come to the conclusion that it is a fit case, wherein discretion under Order 39 Rule 1 and 2 of C.P.C is to be exercised in favour of the plaintiffs. Hence, I answered point No.2 and 3 in the **Affirmative**.

18. **Point No.4:** For the foregoing reasons and evidence on point No.1 to 3, I proceed to pass the following.

ORDER

I.A.No.1 filed by the plaintiffs under Order 39 Rule 1 and 2 of C.P.C is hereby allowed.

By an order of temporary injunction, defendant No.3 is hereby restrained from alienating the suit properties, till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her corrected by me and then pronounced in the open court on this the 25th day of November, 2024)

(SUNIL KUMAR M.S.)
Civil Judge and J.M.F.C., Indi