

**N 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 19th Day of October, 2024

Original Suit No.543/2022

PLAINTIFF/S:

- 1. Rajashree B. Pujari and others.**

-V/s-

DEFENDANT/S:

- 1. Bhusappa S. Pujari and others.**

I.A.NO.II

Applicants/Plaintiffs:

- 1. Rajeshree D/o. Bhusappa Pujari,**
Age: 25 Yrs., Occ: HH work,
R/o. Tamba, Tq: Indi, Dist: Vijayapur.
- 2. Laxmikant S/o. Bhusappa Pujari,**
Age: 22 Yrs., Occ: Agril,
R/o. Tamba, Tq: Indi, Dist: Vijayapur.
- 3. Jayashree D/o. Bhusappa Pujari,**
Age: 18 Yrs., Occ: HH work,
R/o. Tamba, Tq: Indi, Dist: Vijayapur

(By Sri. S.L.N., Adv.,)

-V/s-
Opponent/Defendant-7:-

- 1. Suresh S/o Shrishail Hanchanal,**
 Age: 50 Yrs., Occ: Agril,
 R/o. Tamba, Tq: Indi, Dist: Vijayapur.

(Sri. S.V.K., Adv. for D-7)

ORDERS ON I.A.NO.II

This is an application filed by the plaintiff under order 39 Rule 1 and 2 of CPC for seeking temporary injunction order against the defendant No.7 restraining him from alienating the suit property bearing Sy.No.68/1*/2 measuring 06-acres 12-gunthas situated at Tamba village, Tq: Indi, by way of gift deed, exchange, mortgage, any other mode of transfer, 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 defendants No.1 and 2 are father and mother of plaintiffs and defendant No.3,

the defendant No.3 is the minor son of defendants No.1 and 2 and brother of plaintiffs. The defendants No.4 to 7 are the alleged purchasers of the suit land. That the plaintiffs and defendants No.1 to 3 are Hindu joint family members. The suit property is the ancestral joint family property of plaintiffs and defendants No.1 to 3. The plaintiff No.1 further submits that, the mother and defendant No.1 and Somaraya were effected the partition accordingly the revenue authority effected MR No.3064/2002-13, thereafter the defendant his brother effected the podi as per the consolidation all lands Sy.No.68/1, 68/2 and 68/3 are gathered one land and effect the entire land 12-acres 29-guntas, phot kharab 5 guntas as per the waradi. The land Sy.No.68/1 measuring 06-acres 16-guntas phot kharab 03-guntas net area 06-acres 13-gunthas has been allotted to the Somaraya and Sy.No.68/2 measuring 06-acres 12-gunthas has been allotted to defendant No.1 as per MR No.52/2011-12. The plaintiff No.1 further submits that,

the defendant No.1 is an innocent and agriculturist, but due to bad friendship he addicted to bad habits like drinking and gambling, taking disadvantages and using influence over the defendant No.1, paying the cash for his bad habits in the alcohol condition the defendant No.4 got and created false and fabricated documents i.e., sale deed in his name by giving threat to his wife i.e., defendant No.2 and taken forcible signature on the sale deed, without paying narrated consideration on amount and got the sale deed dated: 02.03.2012 on the basis and forged and created document. But the possession is in the lands of plaintiffs and defendants No.1 to 3, but illegal sale deed the revenue authority effected MR No.H24/2012-13. The defendant No.1 has no family necessity nor any domestic purpose the defendant No.1 taken the hand loan. That the defendant No.4 with an intention defeat the claim of plaintiffs and defendants No.1 to 3 to dupe and gulp up the properties and without amount possession sold out the suit land to

defendant No.5 as per MR No.H172/2013-14 without family necessity the alleged sale deed is not binding upon the share of plaintiffs. The plaintiff further submits that, in the year 2017 the defendant No.5 to defeat the claim of plaintiffs legitimate share in the suit land with an intention sold out the suit land to defendant No.6 as per bogus sale deed without possession, accordingly the revenue authority effected MR No.H68/2017-18. That the defendant No.6 sold out the suit land to defendant No.7 without possession by the alleged bogus sale deed, accordingly the revenue authority effected MR No.H67-2019-20. The plaintiffs got knowledge about the illegal transactions and dupe the plaintiffs share. The plaintiff further submits that, the defendant No.1 has no right to sell the suit land, because it is not a self acquired property nor family financial necessity to the family of plaintiffs. The suit property is the ancestral property of plaintiffs and defendants No.1 to 3, but now the defendant No.7 by taking his name appeared in the suit

property and he is trying to alienate the suit property with an intention to defeat the claim of plaintiffs. Hence, the plaintiff has filed the present suit along with this application.

3. Per contra, the defendant No.7 has filed his written statement and contended that, the defendant No.7 purchased suit property from defendant No.6. It is further contended that, originally suit property bearing Sy.No.68 measuring 12 acres 29 Guntas is in ownership of Siddappa Pujari. In the year 1980 the said Siddappa Pujari effect partition between himself and his two sons, namely Somaraya and Bhoosappa. In the year 1983 Siddappa relinquished his right over the suit property bearing Sy No.68/1 measuring 4 acres 29 guntas in favour of his wife Rukmabai. In the year 2002, the defendant No.1, Rukmabai and Somaraya effected the phodi as per the consolidation the all lands,namely Sy.No.68/1, 68/2/ and 68/3 were merged into one land, resulting in a total of 12-acres and 29-gunts. They have

subsequently re-partitioned the merged land. The land Sy.No.68/2 measuring 06-acres-12 guntas has been allotted to the defendant No.1, accordingly revenue authority effected M.R. No.52 dated 25.07.2011. Further contended that, on 02.03.2012, defendant No.1 sold the suit property to defendant No.4 due to his family necessity and his children education. In the year 2014, the defendant No.4 sold the said property to defendant No.5. Further contended that, on 10.01.2018, defendant No.5 sold the suit property to defendant No.6. On 06.08.2019, defendant No.6 sold the suit property to defendant No.7. Further the defendant No.7 is the owner of suit property though sale. Further suit is bad for law of limitation. Hence, the defendant No.7 pray for dismiss the application.

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

5. 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?

6. 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 :

7. **Point No.1:** It is the specific case of the plaintiffs that, the suit properties are Hindu undivided joint family properties of the plaintiffs and defendants No. 1 to 3. The plaintiffs have specifically contended that, they are having 1/6th share each in the suit property. The plaintiffs further contended that, the defendant No.7 is trying to alienate the same to knock off the rights of the plaintiff, Hence, plaintiff pray for granting temporary

injunction restraining the defendant No.7 from alienating the suit property bearing Sy.No.68/1*/2 measuring 06-acres 12-Guntas.

8. On the other hand, defendant No.7 contended that the land Sy No.68/2 measuring 06 acres 12 guntas has been allotted to the defendant No.1, accordingly revenue authority effected M.R.No.52 dated 25.07.2011. Thereafter, the defendant No.1 sold the said property to defendant No.4, the defendant No.4 sold the said property to defendant No.5, the defendant No.5 sold the said property to defendant No.6 and defendant No.6 sold the said property to defendant No.7. Therefore, the defendant No.7 is the absolute owner of suit property. Hence, prays for rejection of the application.

9. 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.

10. 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.

11. 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.

12. 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.

13. On perusal of the documents produced by both the parties and considering the rival contentions it becomes clear that, partition was effected between the defendant No.1, Rukmabai and his brother Somaraya. In the said partition, Sy.No.68/2 measuring 6 acres 12 guntas was allotted to defendants No.1. Thereafter, defendants No.1 sold the suit property to defendant No.4. Furthermore, the plaintiffs contended that, the suit property is Hindu Undivided Joint family property. Additionally, the plaintiffs and defendant No.3 are the sons and daughters of defendants No.1 and 2. Moreover, the plaintiffs are the Class-1 legal heir to the defendant No.1. Further, the defendant No.7 contended that, suit property is not ancestral property of plaintiffs. Further argued that suit is hit by principles of law of limitation and suit for partition is not maintainable without seeking cancellation of sale deeds. Further defendant No.7 admitted that, originally the suit properties were in the name of Shiddappa, who is the grandfather of the

plaintiffs and defendants No.3. Further, the plaintiff contended that, being the daughters of defendant No.1, they are having 1/6th share each in the suit property. Further contended that, defendant No.7 is the bonafide purchaser of suit property. To decide the contentions of both parties, a full fledged trial is required. At this stage, it cannot be concluded whether the suit property is the self acquired property of defendant No.1 or Hindu Undivided Joint family property of both the plaintiffs and defendants No.1 to 3.

14. However, on perusal of the pleading of both the parties and documents produced by parties, it could be gathered that suit property is standing in the name of defendant No.7. At this stage, on perusal of the pleadings and documents, nothing is forthcoming from the records, which renders the suit of the plaintiff as false, frivolous and vexatious. The learned counsel for the defendant No.7 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 trial. 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.**

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

16. 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 standing in the name of defendant No.7. If the defendant No.7 is allowed to alienate the said property to third parties or allowed to create charge over the said property, 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.7 is allowed to sell the suit

properties, 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.7. Therefore, this court has come to the conclusion that, in order to preserve the suit property till the rights of the parties are decided on merits, it is just and necessary to restrain the defendant No.7 from alienating the suit property. 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 plaintiff. Hence, I answered point No.2 and 3 in the **Affirmative**.

17. **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.II 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.7 is hereby restrained from alienating the suit property bearing Sy No.68/2 measuring 06 acres 12 guntas, 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 19th day of October, 2024)

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