

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

PRESENT

SRI. BASAVARAJ

BSW., LL.M

Addl Civil Judge and JMFC,
Shahapur

O.S.No.180/2020

Dated this the 06th day of February, 2024

Between:

1. Kamalakshi W/o Sangayya Dasabalmath

...Plaintiff/s.

-//Versus//-

1. Anusuya and Others.

...Defendant/s.

IA No.13

1. Anusuya W/o Parmayya Hiremath

...Org. Defendant No.1/ Applicant.

-//Versus//-

1. Gurushantayya S/o Parmayya Hiremath
2. Revansiddayya S/o Parmayya Hiremath
3. MAhadevayya S/o Parmayya Hiremath
4. Sharanamma W/o Rajashekrayya Ganachari
5. Nirmala W/o Gurushantayya

6. Shashikala W/o Mahadevayya

...Org. Defendants No.2 to 7/ Opponents.

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Applicant by Sri MNP Advocate

Opponents by Sri.LSK Advocate

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: ORDER ON IA NO.13
FILED U/O.XXXIX RULE 1 & 2 OF CPC.

I.A No.13 is filed by the defendant No.1 U/o.39 Rule 1 & 2 of C.P.C with a prayer to grant Temporary Injunction against the defendant No.2 to 7 restraining them from alienating, mortgaging, leasing or any mode of transferring the suit schedule A properties till the disposal of suit.

2. In the accompanying affidavit filed in support of the application, it is contended that, the suit schedule properties are the ancestral properties of parties to the suit, the plaintiff and defendants No.1 to 7 are jointly cultivating the same. No partition is effected between the plaintiffs and defendants No.1 to 7, the suit land Sy No.86 and suit plot No.19-19 are the ancestral properties of plaintiff and defendants No.1 to 7, now the defendants No.2 to 7 are trying to alienate the said properties to Andhra people only with an intention to deprive the right of the defendant No.1 in the same. If the defendants

No.2 to 7 succeed in their attempt, defendant No.1 will be put to heavy loss and it leads to multiplicity of litigation, the defendant No.1 has made out prima-facie case and balance of convenience and irreparable injury leans in her favour and prays to all the application as sought for.

3. On the other hand, the defendant No.2 & 6 have filed objections to IA No.13 by contending that, suit properties at SL No.5 to 10 & 13 are the self acquired properties of defendant No.2. They are never in joint possession of all the properties, the plaintiff and defendants No.1, 3 to 5, 7 colluding each other have filed this application, already the plaintiff has filed similar petition U/o. 39 Rule 1 & 2 of CPC which came to be dismissed, the defendant No.1 has not made out any prima-facie case, balance of convenience and irreparable loss in her favour and prays to reject the application.

4. Heard both side counsel on IA No.13.

5. The following points that arise for my consideration are as under:

POINTS

1. Whether the defendant No.1 has made out prima-facie case?

2. Whether the defendant No.1 proves that the balance of convenience is in her favour?

3. Whether the defendant No.1 proves that, if T.I is not granted irreparable loss would be caused to her?

4. What order?

6. My answers to the above points are as follows;

ANSWERS

Point No.1 : In the Negative,

Point No.2 : In the Negative,

Point No.3 : In the Negative,

Point No.4 : As per order, for the following,

REASONS

7. Point No.1 to 3:-Perused the earlier order on IA No.I which came to be dismissed on 18.11.2022 wherein the plaintiff had sought the relief of temporary injunction against the defendant No.6 in respect of suit land Sy No.112 and 113/3 which are the properties mentioned in Schedule A properties. Now the defendant No.1 is seeking to restrain the defendants No.2 to 7 from alienating the suit schedule A properties on the ground that, the suit schedule A properties are ancestral and joint family properties of plaintiff and defendants No.1 to 7. In the para 4 of the affidavit annexed to this application the

defendant has contended that “ the contents of WS be read as part and parcel of this affidavit”. In view of the same, on perusal of the para No.6 of the written statement filed by the defendant No.1, she has admitted that “in reply of para No.6 of the plaint, it is true and correct, hence it is not disputed”. In view of the same the contents of para No.6 of the plaint and para No.6 of the written statement of the defendant No.1 are one and the same. At this stage the defendant No.1 has not produced any documents to show that suit properties are ancestral properties having purchased in the name of defendants No.2, 3, 4 & 7 by her husband Paramayya during his life time out of joint family fund and by selling land Sy No.36/A. So the defendant No.1 failed to make out prima-facie case, balance of convenience and irreparable injury lies in her favour. When the defendant No.1 failed to make out prima facie case, the balance of convenience and irreparable injury tilt more on the defendant No.6 & 7. Under the circumstances, if T.I is granted, it would cause more hardship to the defendant No.2 & 6 rather than the plaintiff. Hence, I answer points No.1 to 3 in the ***Negative***.

8. Point No.4: In view of my discussion held above, I proceed to pass the following.

ORDER

I.A.No.13 dated 24.05.2023 filed by the defendant No.1 U/o.39 Rule 1 & 2 of CPC is hereby dismissed.

No order as to costs.

(Directly dictated to the typist on computer, corrected and then pronounced by me in the Open Court on this the 06th day of February, 2024)

(BASAVARAJ)
Addl Civil Judge and JMFC.
Shahapur