

KAYG200021512023



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

PRESENT
SHOBHA, B.Sc. LLB.
Prl.Civil Judge and JMFC.,
Shahapur

O.S.No.127/2023

Date of order : 5th Day of October, 2023

Between:

1. Hampangouda S/o Sahebgouda Biradar Patil.
...Plaintiff/s.

-//Versus//-

1. Bheemarayagouda S/o Sahebgouda Birdar Patil.
...Defendant/s.

IA No.I

1. Hampangouda S/o Sahebgouda Biradar Patil.
...Org. Plaintiff/ Applicant.

-//Versus//-

1. Bheemarayagouda S/o Sahebgouda Birdar Patil.
...Org. Defendant No.1/ Opponent.

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Applicants by Sri. MRB Advocate

Opponent by Sri. HRP Advocat

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: ORDER ON IA NO.I
FILED U/O.39 RULE 1 & 2 OF CPC :

I.A No.I is filed U/o 39 Rule 1 & 2 of C.P.C seeking
Temporary Injunction against the defendant restraining him



from alienating the suit properties bearing land Sy No.8/2 measuring to the extent of 29 guntas, Sy.No.8/3 Measuring 08 guntas Sy.No.7 measuring 13 guntas situated at village Kyatnala Tq:Wadegera Dist: Yadgir till the disposal of suit in the interest of justice.

2. In the accompanying affidavit, it is submitted that, suit properties are ancestral properties, item No.2, 3 that is Sy.No. 8/2, 8/3 and 7 are nominally standing in the name of defendant; plaintiff and defendant are real brothers among each other, their parents have expired the suit property land Sy.No.7 is also standing in name of defendant, item No.4 is nominally standing in the name of plaintiff, there is no partition taken place between the plaintiff and defendant; they are the joint owners and possessors of the suit property cultivating and enjoying them jointly. It is further stated that defendant is addicted to bad habits and trying to sell the suit lands item No.2 and 3 by taking undue advantage of his name entered in the ROR, if the defendant succeeds the plaintiff will lose his legitimate share in the suit properties. Plaintiff requested defendant not to do the illegal act but defendant has not heeded to his request, plaintiff requested defendant to give his share in the suit properties to which defendant refused hence the cause of action arose to the plaintiff to file the case and the present application is filed seeking temporary injunction against the defendant.



3. Notice on IA No.I and suit summons was issued to the defendants, in pursuance to the said notice and summons Sri. HRK advocate has filed vakalath for defendant, WS is filed, memo is filed to treat WS as objections to IA No.1. In the WS it contended that the measurement of the suit properties, boundaries are not correct, the relationship is admitted it is further admitted that the suit properties are ancestral properties but denied that item No.1 is nominally standing in the name of plaintiff and item No.2, 5, 7 and 3 are nominally standing in the name of defendant, item No.4 is nominally standing in the name of plaintiff and defendant jointly, it is denied that plaintiff and defendant are joint owners and possessors cultivating the suit lands jointly, defendant has further contended that plaintiff , defendant and others sisters have orally partitioned around 20 years back in the suit properties and non suit properties, further stated that the suit is bad for non-joinder of necessary parties and non inclusion of all the properties in the suit, and prayed to dismiss the suit.

4. Heard the counsel for plaintiff and defendant.

5. The points that arise for my consideration are as follows;

Points

Point No.1: *Whether the plaintiff has made*



out prima-facie case?

Point No.2: *Whether the plaintiff prove that the balance of convenience is in his favour?*

Point No.3: *Whether the plaintiff prove that, if T.I is not granted irreparable loss would be caused to him?*

Point No.4: *What order?*

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

Point No.1 : In Affirmative

Point No.2 : In Affirmative

Point No.3 : In Affirmative

Point No.4 : As per order.

REASONS

7. **Point No.1 to 3:**-This is the suit of plaintiff for partition and separate possession; plaintiff in support of his case has produce the of the RORs in land Sy.No.8/2, 8/3 standing in the name of defendant; the ROR in land Sy.No.7 is standing in the name of defendant, the plaintiff is seeking temporary injunction in respect above said properties standing in the name of defendant. It is the contention of the plaintiff that the said properties are ancestral properties of plaintiff and defendants, on the other hand defendant has produced the RORs in land Sy.No.1/1, Sy.NO.136/2, Sy.No.6, Sy.No.8/1, Sy.No.8/3, Sy.No.8/2, Sy.No.292/2, Sy.No.123/5 and khatha extract in



respect of property bearing No.2/59/1/2 standing in the name of plaintiff to show that the other properties are not included, it is further contention of defendant that the sisters are not made party to the suit and the suit is bad for non-joinder of necessary parties. It is specifically stated by plaintiff that defendant is trying to alienate the suit properties in order to fulfill his needs which are illegal, whether the plaintiff proves that the suit properties are ancestral properties and whether the defendant proves that there was already a partition in the family and suit is bad for non-joinder and non inclusion of necessary parties and properties can be determined only after a full fledged trial, at this stage if TI is not granted great irreparable loss will be caused to the plaintiff if the suit properties are alienated and there will be multiplicity of proceedings, at this stage plaintiff has made out grounds to grant temporary injunction.

9. One of the principal consideration that is to be taken into account for grant of injunction is balance of convenience or inconvenience. The other is existence of prima-facie case. The question involved in the present case in hand would be whether the plaintiffs have got share in the suit property or not. The all said facts are to be determined at the full fledged trial. If the T.I. is not granted, it would lead to multiplicity of proceedings and cause damage to the plaintiffs. Hence I am of the opinion that irreparable loss would be caused to the plaintiffs if T.I. is not



granted. Hence I answer point No.1 to 3 in the ***Affirmative***.

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

ORDER

I.A.No.I filed U/o.39 Rule 1 & 2 of CPC is hereby allowed.

The defendant is hereby temporarily restrained from alienating the suit properties bearing land Sy. No.8/2 measuring to the extent of 29 guntas, Sy.No.8/3 Measuring 08 guntas Sy.No.7 measuring 13 guntas situated at village Kyatnala Tq:Wadegera dist: Yadgir till disposal of the suit.

No order as to costs.

(Directly dictated to the Stenographer on computer, corrected and then pronounced by me in the Open Court on this the 05th day of October, 2023)

**(Shobha)
Prl Civil Judge and JMFC.
Shahapur**