

**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.174/2024

Dated this the 22nd day of January, 2025

Between:

1. Nagamma W/o Mahesh Rotanatgi

...Plaintiff/s.

-//Versus//-

1. Bhimabai W/o Devindrappa Rotanatgi and Ors.

...Defendant/s.

IA No.1

1. Nagamma W/o Mahesh Rotanatgi

...Org. Plaintiff/ Applicant.

-//Versus//-

1. Bhimabai W/o Devindrappa Rotanatgi and Ors.

...Org. Defendants/ Opponents

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Applicant by Sri RND Advocate

Opponents By Sri SS Advocate

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ORDER ON IA NO.1
FILED U/O.XXXIX RULE 1 & 2
R/w Sec.151 OF CPC.

I.A.No.1 is filed by plaintiff U/o.39 Rule 1 & 2 of C.P.C
with a prayer to grant Temporary Injunction against defendants

No.1 to 4 restraining them alienating the suit lands Sy No.189 to the extent of 25 guntas out of 01 acre 13 guntas, Sy No.190 to the extent of 07 guntas out of 00 acre 25 guntas, Sy No.243 to the extent of 12 acres 19 guntas, Sy No.244/1 to the extent of 01 acre 36 guntas out of 11 acres 36 guntas all situated at Tadibidi village, Tq: Wadagera till the disposal of suit by contending in the affidavit that, suit properties are joint family and ancestral properties previously standing in the name of the father of plaintiff, after his demise, the suit lands are nominally transferred in the name of defendant No.1, deceased Basawaraj and deceased Devindrappa who is the real brothers and brother's wife of plaintiff, no partition is effected in between plaintiffs and defendants till today, defendants taking undue advantage of their names entered in the RORs of suit properties are trying to alienate the same, hence the present application.

2. On the other hand, defendant No.1 prayed to adopt the contents of written statement as objections to this IA. It is contended that, suit is bad for non inclusion of all family properties and suffering from non joinder of necessary parties mis-joinder of parties. hence prayed to reject the application.

3. Heard both side counsel on IA No.1.

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

POINTS

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

2. Whether the plaintiff proves that the balance of convenience is in her favour?

3. Whether the plaintiff proves that, if T.I is not granted irreparable loss would be caused to her?

4. What order?

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

ANSWERS

Point No.1 : Affirmative

Point No.2 : Affirmative

Point No.3 : Affirmative

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

REASONS

6. **Point No.1 to 3:**-The plaintiff has filed this suit for specific performance of contract in respect of suit lands, I have perused the records. This is the suit of plaintiff for partition and separate possession in respect of above suit properties, by contending that, the suit properties are the ancestral and joint family properties of parties to the suit, she has share in the suit properties, the defendants are trying to alienate the same by

taking undue advantage of their name appearing in the suit properties. On perusal of the RORs of suit lands, it reveals that, suit properties are ancestral and joint family properties of parties to the suit. Under these circumstances, if the defendants succeed in their attempt, plaintiff would be put to hardship and it leads to multiplicity of litigation. However the question of non inclusion of necessary parties and non joinder of necessary parties and mis-joinder of necessary parties are all matter of trial, at this stage, plaintiff has made out prima-facie case in her favour and balance of convenience and irreparable injury leans in her favour, hence I answer points No.1 to 3 in ***Affirmative***.

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

ORDER

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

Defendants No.1 to 4 are hereby temporarily restrained by way of Temporary Injunction from alienating or any mode of transfer in respect of suit lands defendants No.1 to 4 restraining them alienating the suit lands Sy No.189 to the extent of 25 guntas out of 01 acre 13 guntas, Sy No.190 to the extent of 07 guntas out of 00 acre 25 guntas, Sy No.243 to the

extent of 12 acres 19 guntas, Sy No.244/1 to the extent of 01 acre 36 guntas out of 11 acres 36 guntas all situated at Tadibidi village, Tq: Wadagera till disposal of the suit.

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 22nd day of January, 2025)

(BASAVARAJ)
Addl Civil Judge and JMFC.
Shahapur