

**IN THE COURT OF SENIOR CIVIL JUDGE AND J.M.F.C.,
BADAMI, AT : BADAMI.**

PRESENT

Sri.V.Hanumanthappa
M.A.LL.B.,
Senior Civil Judge and JMFC, Badami.

O.S.No.290/2022

Dated this the 26th day of October 2023

1. Smt. Sumitra W/o Bharamappa Shellikeri

...Plaintiff

- Versus -

1. Smt. Ragavva W/o Hanamanth @ Sanna
Hanamappa Muchchalagudda
And others.

.... Defendants

PARTIES TO I.A.No.I

1. Smt. Sumitra W/o Bharamappa Shellikeri
Age: 36 Years, Occ: Household Work,
R/o Inam Hanamaneri, Tq: Badami,
Dist: Bagalkot.

...Applicant/Plaintiff

- Versus -

1. Smt. Ragavva W/o Hanamanth @ Sanna
Hanamappa Muchchalagudda
Age: 58 Years, Occ: Household Work
R/o Yaragoppa S.B., Tq: Badami,
Dist: Bagalkot And others

....Opponents/Defendant No.1

ORDER ON I.A.No.I

This application filed by the plaintiff against the defendants
Under Order 39 Rule 1 & 2 of CPC, seeking an order of temporary
injunction restraining the defendants from alienating the suit

properties of RS No.105/1 measuring 03A-30Gts and RS No.105/2A measuring 1 Acre of Yaragoppa S.B. of Badami Taluka till disposal of the suit.

2. This application supported with an affidavit sworn by the plaintiff contending that, she is the daughter of the defendant No.1, the defendant No.2 is her full sister. The name of the defendant No.3 is appears in the revenue documents of the suit properties and hence he is made as formal party to the suit. The suit schedule properties mentioned in schedule "B" are the ancestral properties of the plaintiff and defendant No.1 and 2, they are in joint possession and enjoyment of the same. The plaintiff is having her legitimate share in the suit properties. But the defendant No.1 denied to allot her share and attempting to mortgage in the suit property and attempting to create charge. Hence, she has filed the suit for partition and separate possession and also filed the present application. If the application is not allowed the plaintiff will be put to hardship, balance of convenience lies in favour of the plaintiff. Hence, she prays for allowing the application.

3. The defendant No.1 and 2 have filed their written statement and a memo to consider the avermetns of the written statement as objections to I.A.No.I. In the written statement they have admitted the relationship. They have taken specific defence that the husband of the defendant No.1 Hanamappa have incurred heavy debts of Rs.6,00,000/- to meet marriage expenses of the plaintiff and defendant No.2 and also for his medical expenses. Therefore the plaintiff and defendant No.1 and 2 are liable to discharge the

said debt. Accordingly the plaintiff is also liable to pay her share of debt. As pious obligation unless the said debt is discharged, the plaintiff is not entitled to her share. Though the plaintiff stated that she is entitled to her 1/3rd share but she is entitled to 1/3rd share out of ½ share of his father in the suit properties. As the defendant No.3 is also entitled to his ½ share in the suit property which is reflected in ME No.2821. Accordingly pray for dismissal of the suit as well as application.

4. I have heard arguments and perused material available on record.

5. The following points would arise for my consideration.

- 1 Whether the plaintiff has made out prima facie case?
- 2 Whether the balance of convenience lies in favour of the plaintiff?
- 3 Whether the plaintiff will be put to hardship in the event of not granting the relief of temporary injunction ?
- 4 What order ?

6. Upon perusal of the pleadings and documents produced by the both parties and after hearing the arguments of the respective counsels my answers to 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:

REASONS

7. **Points No.1 to 3 :-** These points are inter related with one another, hence, I have taken up these points together for common discussion to avoid repetition of the facts.

An injunction is a judicial remedy by which a person is ordered to refrain from doing or to do a particular act or thing. It is a remedy of equitable nature not available in common law. Injunction can be granted as a decree on adjudication of a suit. It can also be granted during the pendency of suit when it is called a temporary injunction. The power to grant an injunction during the pendency of a suit without finally adjudicating the rights of the parties thereto flows from the provisions of Sec.94 of the Civil Procedure Code. From the opening words of Sec.94 of the Civil Procedure Code it is amply clear that such powers are given to prevent the ends of justice from being defeated. Hence, if there is any apprehension that the defendant may by his action change a state of things in respect of the subject matter of dispute in such a way that decree eventually passed would become meaningless or ineffective or difficult to execute the court can exercise the power of granting an injunction to prevent such an intended or apprehended action.

8. The detailed instructions regarding temporary injunction are available in order 39 of the C.P.C A temporary injunction is of two types. The one which is granted even when an application for temporary injunction has not been decided and it operates till the disposal of such operation is called ad interim injunction. It may be

confirmed or vacated or modified when the application for temporary injunction is decided.

There are three well known basic principles for seeking/granting an order U/O 39 rules 1 C.P.C. They are:

1. Prima-Facie case”
2. Balance of Convenience:
3. Irreparable damage:

9. The foremost of these principles is prima-facie case.

The concept of a prima-facie case needs to be clearly understood. Generally speaking prima-facie case means a good case. That is to say that the case on first sight appears good on merit and a good case to go in for trial. A prima-facie case implies the probability of the plaintiff obtaining relief on the material placed before the court. As explained by various Hon'ble High Courts in examining the prima facie case the court is called upon to see whether the party who has approached to court has a plausible case and whether there is a possibility of such a case succeeding at a trial.

10. On perusal of the pleadings of both the parties they have admitted the relationship between the parties that plaintiff and defendant No.2 are the daughters of the defendant No.1. The father of the plaintiff Hanamanta @ Sannahanamappa Muchalagudda died leaving behind the plaintiff and defendant No.1 and 2 as his legal heirs. The plaintiff has contended that the defendant No.1 and 2 are attempting to alienate or creating charge on the suit properties. On the other hand, the defendant No.1 and 2 have contended that during the life time of

Hanamanta @ Sannahanamappa Muchalagudda he has borrowed loan of Rs.6,00,000/- to meet marriages expenses of the plaintiff and defendant No.2 and also for his medical expenses. In order to discharge the said loan, the plaintiff is also liable to pay her share amount of debt. It is also contended that the defendant No.3 is having his $\frac{1}{2}$ share in the suit properties.

11. The plaintiff has produced the documents RTC extract of RS No.105/1 measuring 03A-30Gts jointly entered in the names of the defendant No.1 and 3 similarly RS No.105/2A measuring 01 acre is also jointly entered in the names of defendant No.1 and 3. MR No.T-283/2021-22 discloses Rs.2,60,000/- loan obtained from various banks. Similarly MR No.H-40/2019-20 in respect of RS No.105/1 also discloses Rs.2,60,000/- availed from various banks. Even on RS No.105/2A also discloses the name of defendant No.1 and 3 jointly entered. ME No.2821 dated:03.12.1996 the mutation register extract discloses there was partition of the properties of RS No.105/1, 105/A, 218/6A and 264/1A in between Hanamappa Doddarangappa Muchchalagudda, Bhimappa Doddarangappa Muchchalagudda, Mallappa, Shankrappa sons of Doddarangappa Muchchalagudda, Hanamavva W/o Sannahanamappa Muchchalagudda, Yallappa Doddarangappa Muchchalagudda, Yamanappa Doddarangappa Muchchalagudda. Accordingly, Rangavva W/o Sannahanamappa Muchchalagudda acquired the property of RS No.105/1 measuring 04A-30Gts, RS No.105/2A measuring 01A-10Gts acquired by Yamanappa W/o Doddarangappa. The death certificate of Sannahanamappa is produced to show that he died on 22.03.1996.

12. The defendants have not produced any documents in support of their contention. Admittedly the defendants have not disputed the relationship of the plaintiff and defendant No.1 and 2. The nature of the suit properties also not disputed. After death of Sannahanamappa the plaintiff being the daughter of Co-persener is having her legitimate share in the suit properties. The defendant No.1 and 2 have not denied the right of share of the plaintiff in the suit properties but they have contended that during the life time of Sannahanamappa he has borrowed loan of Rs.6,00,000/- towards performance of the marriages of the plaintiff and defendant No.2 and meet to his medical expenses. The documents produced by the plaintiff made out prima facie case balance of convenience is lies in favour of the plaintiff. If the defendant No.1 and 2 have alienated the suit properties the plaintiff will be put to hardship. Therefore, I am of the view that it is necessary to restrain the defendant No.1 from alienating the suit properties. Hence, I answer to Point No.1 to 3 is in the **Affirmative**.

13. **Point No.4:-** For the reasons stated above, I proceed to pass the following.....

:ORDER:

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

Consequently, the defendant No.1 is hereby restrained from alienating the suit schedule properties in any manner till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer, transcribed and typed by her, script corrected and signed by me, then pronounced in the open Court on the 26th day of October - 2023)

(V.Hanumanthappa)
Senior Civil Judge and J.M.F.C., Badami.