

Order below Exh.5 in RCS 94/2024
Nirmala Sushant Aratal Vs Anusaya Pujari and Ors
CNR-MHSN08-000934-2024

The interim injunction application is under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (the C.P.C).

2 Perused the application, and the record.

3 Heard.

4 Brief facts of the plaintiff's case:- The plaintiff is the daughter of defendant 1. Defendant 3 is the sister of the plaintiff. Defendant 2 is the husband of the defendant 3. The nature of the suit property is ancestral/HUF, which is more particularly mentioned in para 1 of the plaint. It is averred that the deceased father Sidhappa, purchased the suit property, on the name of defendant 1 out of the income of HUF therefore, the nature of the suit property, is ancestral. Defendant 1 has executed, a registered sale deed bearing No.1464/2022 Dt.22/04/2022 in favor of defendant 2. Hence, the present application.

5 Brief contentions of the defendants:- Their ws cum say is below Exh.____. The suit has been combated on various counts, inter alia misdescription of the suit property, and partial partition. It has been contended that the suit property, is the self acquired one of defendant 1 and therefore, cannot be a subject matter of the instant suit for partition. The suit is misconceived. Defendant 1 was looked after by defendants 2 and 3. The sale deed has been executed for the medical expenditure, and livelihood by defendant 1. Since, the sale deed is for consideration and is in respect of the self acquired property of defendant 1, the application is opposed.

6 The plaintiff has filed the following documents viz.,

Sr.No	Particulars of the documents
1	Death certificate of Sidhappa
2	VF No.16
3	ME 388

4	ME form No.12
5	Sale deed
6	ME 904
7	VF No.7 and 12
8	Extracts 9 (3) 9 (4)
9	VF No.7 and 12 (total 2)
10	Sale deed
11	ME 1151
12	VF No.8
13	VF No.7 and 12 (total 3)
14	VF No.8
15	Sale deed
16	ME 2028
17	VF No.7 and 12
18	ME 2665
19	VF No.7 and 12
20	Adhar card of plaintiff

7 The defendants have not relied upon any documents.

8 The following points arose for my determination, to which I record my findings together with the reasons thereof:-

Sr.No	Points for determination	Findings
1	Does the plaintiff proves prima-facie case in her favor?	No
2	Does the plaintiff proves balance of convenience tilts in her favor?	No
3	Does the plaintiff proves she would suffer irreparable loss, if interim injunction is refused?	No

4	What order?	As per the final order.
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Reasons

Points 1 to 3

9 It is sine qua non for the grant of an interim relief, which is an equitable relief that the plaintiff, should prima-facie, prove the above points for determination.

10 It is trite law that prima-facie, does not mean prima-facie, title or the case proved to the hilt.

11 It is settled law that grant of equitable relief is a matter of judicial discretion, and the plaintiff, should approach the Court with clean hands.

12 The pleadings and the material on the record have to be judicially scanned.

13 It is settled law, that in a partition suit, for claiming interim relief, it is sine qua non, that the plaintiff to prima-facie, prove that the nature of the suit property is ancestral/HUF.

14 On prima-facie, perusal of the pleadings, it appears that it is bone contention of the plaintiff, that the suit property has been purchased out of the income of HUF. A translated copy of the record of rights of form No.2 of village Tadlavga, has been produced to prima-facie, suggest that the same was a property of HUF/ancestral, after the death of the deceased Sidhappa. The relation inter-se, the party, is an admitted fact. The defendants came with a theory of the suit property, being self acquired one.

15 On perusal of the sale deed, in favor of defendant 2, it is clear that the occupation of the defendant 1 is mentioned therein an agriculturist. This when prima-facie, considered with the earlier sale deed, in favor of Shivniga Chaougule, from whom defendant 1 re-purchased, the property prima-facie, suggest that the transaction was for some necessity. Prima-facie, from the record, the facts may be said to be

covered by Section 14 (1) of the HS Act. Prima-facie, there is nothing to suggest that the suit property, has been purchased out of the income of HUF or otherwise. There is a mention of occupation of defendant 1 as an agriculturist, the same cannot be lightly brushed aside.

16 For the above reasons, the plaintiff fails to prove prima-facie case in her favor. Therefore, the balance of convenience does not tilt in her favor. Therefore, no irreparable loss/harm/prejudice would ensue to the plaintiff, if interim injunction is refused. The comparative mischief that would be caused to the defendant would be more, if interim injunction is allowed. The contention may be considered on merits. Accordingly, the points for determination are answered. Costs follows the event. Hence, the following **Order**

The application stands rejected.

2 Costs in the cause.

Jath
Date:- 11/02/2025

(Sanjay P.Bunde)
Jt.C.J.J.D, Jath