HC-KAR

NC: 2025:KHC:52003
MFA No. 3715 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

MISCELLANEOUS FIRST APPEAL NO.3715 OF 2025 (CPC)

BETWEEN:

1. SMT. YASHODA SANIL VISHWANATH,
   W/O LATE VISHWANATH A. SANIL
   AGED ABOUT 76 YEARS,

2. SMT.K.PRAMILA SANIL
   W/O SRI BHARATH M.KOTIAN
   AGED ABOUT 50 YEARS,
   APPELLANTS 1 AND 2 ARE BOTH
   R/AT H.NO.8-253, DODDAMANE,
   SRI VISWHA GAJANANA THONSE WEST,
   PO KEMMANNU UDUPI TALUK

...APPELLANTS

(BY SRI. A MADHUSUDHANA RAO, ADVOCATE)

AND:

Digitally signed by RAMYA .D
Location: HIGH COURT OF KARNATAKA

1. SRI. PRASHANTH KUMAR A V
   S/O LATE A.VISHWANATH SANIL
   AGED ABOUT 52 YEARS,

2. SRI. PRATHAP V. SANIL
   S/O LATE A. VISHWANATH SANIL
   AGED ABOUT 48 YEARS,

   RESPONDENTS 1 AND 2 ARE BOTH
   R/AT NO.6(NEW NO.76),
   1ST MAIN ROAD, NEAR LALBHAG ROAD,
   SUDHAMANAGAR, BANGALORE SOUTH,
   WILSON GARDEN, BANGALORE 560 027

3. SMT. PRATHIMA.R
W/O RAMESH BABU.G
D/O LATE A.VISHWANATH SANIL
AGED ABOUT 45 YEARS,
R/AT FLAT NO.321,
APOORVA MEADOWS,
AGRAHARA BADAVANE,
KOGILU, YELAHANKA
BENGALURU – 560 0064

…RESPONDENTS

(BY SRI. PRAVEEN G, ADVOCATE FOR R1 TO R3)

THIS MFA FILED U/O.43 RULE 1(r) OF THE CPC, AGAINST THE ORDER DT.18.02.2025 PASSED ON IA NO. 2 IN O.S.NO.13/2024 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND CJM, UDUPI, ALLOW ING THE IA NO.2 FILED U/O.39 RULE 1 AND 2 R/W SEC.94(c) AND 151 OF CPC, 1908.

THIS APPEAL, COMING ON FOR FURTHER ARGUMENTS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

ORAL JUDGMENT

The appeal is filed by the appellants/defendant Nos.1 and 2 questioning the order dated 18.02.2025 passed on I.A.No.II in O.S.No.13/2024 by the Prl. Senior Civil Judge & CJM, Udupi, D.K., thereby, the application filed by the plaintiffs for temporary injunction is allowed.

2. The plaintiffs have filed the suit for declaration and partition for claiming 3/5th share in all the suit

schedule properties by claiming that the schedule properties are ancestral and joint family properties.

3. Upon the application filed by the plaintiffs, the trial Court has passed the following order:

> "***ORDER***
>
> *The I.A No. II filed by the plaintiffs U/o 39 Rules 1 and 2 r/w Sections 94(c) and 151 of CPC is hereby allowed.*
>
> *In the result, the defendants No.1 and 2 or their men or anybody on their behalf are hereby restrained from creating charge/alienating the suit schedule 'A' and B' properties in any manner till disposal of the suit.*
>
> *It is made clear that the temporary injunction order passed by this court today will not come in the way, if any loan obtained by the defendant Nos.1 and 2 either to improve or to invest the money before passing of this order.*
>
> *It is also made clear that this order will not come in the way to run the business by the 2nd defendant without creating charge or alienating the suit schedule properties.*
>
> *Parties to bear their own cost of this application."*

4. Learned counsel for the appellants/defendant Nos.1 and 2 submitted that defendant Nos.1 and 2 are running a factory and there are about 55 employees are

employed and for further expansion of business and its business activities, a loan will be needed by mortgaging Item No.21 of Schedule 'A' in the plaint property. Therefore, prays for modification of the impugned order insofar as allowing the defendants to raise loan by making utilization of the property at Item No.21 in schedule 'A' in the plaint property and let the order of temporary injunction be continued insofar as other properties are concerned. Hence, prays to allow/modify the impugned order.

5. Learned counsel for the respondents/plaintiffs submitted that defendant Nos.1 and 2 who are intending to raise loan by making utilization of the property at Item No.21 is not for business or industrial expansion activities and if defendant Nos.1 and 2 are allowed to raise loan by making use of Item No.21 property and in future, if defendant Nos.1 and 2 have not repaid the loan, then it would lead to auction and in such an event, the plaintiffs would suffer injury and loss insofar as item No.21 property

is concerned. Therefore, justified the impugned order and prays not to modify the impugned order as requested by the appellants/defendants.

6. Upon considering the rival submissions and perusing the materials produced at this stage, the points that arise for consideration are as under:

(i) *Whether, under the facts and circumstances involved in the case, the appellants/defendants demonstrate that the plaintiffs have not made out prima facie case so as to grant an order of temporary injunction?*

(ii) *Whether, under the facts and circumstances involved in the case, the appellants/defendants demonstrate that the plaintiffs have not made out balance of convenience so as to grant an order of temporary injunction?*

(iii) *Whether, under the facts and circumstances involved in the case, the defendants demonstrate that if an order of temporary*

injunction is not granted, then the plaintiffs will not suffer any loss or injury?

(iv) Whether the order passed by the trial Court granting an order of temporary injunction requires interference from this Court?

7. The suit is filed for partition and declaration to declare that the settlement deed is null and void and not binding on the plaintiffs and also for partition by claiming 3/5th share in all the suit schedule properties. The relationship between the parties and nature of property involved in the suit are not in dispute.

8. The trial Court after considering the case held that if the defendants raise further loan amount and if they do not reimburse the amount, then that would be subject to risk of auctioning of property and in such an event, the plaintiffs will not be able to get their share insofar as item No.21 property is concerned.

9. For this, learned counsel for the appellants/defendants submitted that the defendants have

mortgaged other properties for raising loan and the defendants are repaying the loan amount promptly, which shows that the defendants are in need of raising future loan for genuine purpose for expansion of business and industrial activities as more than 55 employees are employed.

10. This Court on 24.07.2025 has stayed the impugned order and at the same time permitted the defendants to raise loan on Item No.21 and other properties of the plaint schedule property, subject to the outcome of the suit. Upon considering the impugned order passed by the trial Court, this Court does not find any perversity or illegality. The only reason given by the defendants to raise loan in future by making utilization of Item No.21 property is that, this property is situated where the factory being run by the defendants is situated. But there is no reason assigned by the defendants as to why the defendants are interested to raise loan only by

making utilization of Item No.21 of plaint schedule property.

11. Therefore, upon considering the impugned order and the plaintiffs also having share in the plaint schedule 'A' and 'B' properties, therefore, restraining the defendants from alienating the suit schedule 'A' and 'B' properties is found to be correct. Further the trial Court by safeguarding the interest of the defendants has observed that the order of temporary injunction will not come in the way, if any loan was obtained by the defendants either to improve or to invest in factory before passing the order.

12. It is also made clear that this will not come in the way to run the business by the defendants without creating charge or alienating the suit properties. Therefore, on all these aspects, the impugned order passed by the trial Court is found to be legal and it is not perverse in nature. The impugned order is only for restraining the defendants from alienating without

disturbing to carry out business and also the order of temporary injunction will not come in the way of the loan already raised by the defendants for running activities of business industry. Therefore, I do not find any perversity or illegality in the order passed by the trial Court.

13. Therefore, the trial Court is correct in observing that the plaintiffs have made out a prima facie case and balance of convenience. If an order of temporary injunction is not granted, then the plaintiffs would suffer loss and injury. Therefore, the order passed by the trial Court is justified. Hence, there is no need to make any interference or modification in the order passed by the trial Court. Hence, the appeal is liable to be dismissed.

14. By virtue of the impugned order dated 24.07.2025 by this Court permitting the defendants to raise loan by using Item No.21 property, the defendants have mortgaged Item No.21 of plaint schedule 'A' property and loan is sanctioned. If that be so, loan raised is subjudice of the suit proceedings and this loan will not

affect the rights of the plaintiffs. The trial Court shall expedite the trial as expeditiously as possible and for this, both the parties shall co-operate with the trial Court for early disposal.

15. Accordingly, I proceed to pass the following

ORDER

(i) The appeal is ***dismissed***.

(ii) The impugned order dated 18.02.2025 passed on I.A.No.II in O.S.No.13/2024 by the Prl. Senior Civil Judge & CJM, Udupi, D.K., is hereby confirmed.

(iii) No order as to costs.

SD/-
(HANCHATE SANJEEVKUMAR)
JUDGE

PB
List No.: 1 Sl No.: 48