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IN THE COURT OF THE | ADDITIONAL CITY CIVIL &
SESSIONS JUDGE (CCH – 02) AT BENGALURU

PRESENT : Sri. B.P. DEVAMANE, LL.M.,
I Addl. City Civil & Sessions Judge,
Bengaluru City.

Dated this the 5th day of June 2026

O.S. 3066 / 2025

PLAINTIFF : Smt. Priya Bhaskar,
W/o Murali Bhaskar,
D/o late D. Gopinath,
Aged about 57 years,
R/o # 21, Kellys Road,
Kilpauk, CHENNAI – 600 010.

(By Smt. Sunita Srinivas, Adv.)

V/s.

DEFENDANT : Prithviraj Gopinath,
S/o late D. Gopinath,
Aged about 54 years,
R/o # 20, 35th Main, Dollar Colony,
BTM layout 1st Stage,
Opp. Mira School,
BENGALURU – 560 068.

(By Smt. V.J. Prathima, Adv.)

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COMMON ORDER ON I.A. Nos.1 TO 3 & 5

Advocate for plaintiff filed IA No.1 under Order 39 Rules 1 & 2 r/w Section 151 of CPC with prayer to issue temporary injunction restraining defendant or anybody acting on his behalf from alienating or creating charge over the suit schedule 'A' to 'H' properties, pending disposal of the suit.

Advocate for plaintiff filed IA No.2 under Order 39 Rules 1 & 2 r/w Section 151 of CPC with prayer to issue temporary injunction restraining defendant or anybody acting on his behalf from altering or changing nature & character of suit schedule 'F' property, pending disposal of the suit.

Advocate for plaintiff filed IA No.3 under Order 6 Rule 17 r/w Section 151 CPC seeking permission to amend the plaint by inserting paragraph Nos.38A & 38B.

Advocate for defendant filed IA No.5 under Order 7 Rule 11(d) r/w Section 151 CPC with prayer to reject the plaint for payment of insufficient Court-fee.

2. In the affidavits supporting IA Nos.1 & 2, it is stated by plaintiff that she is the sister of defendant. They are the children of late Gopinath and late Smt. Ananthalakshmi Gopinath, who died on 30.07.2016 & 08.01.2022 respectively. Plaintiff & defendant constitute Hindu undivided family with their parents. Father of plaintiff & defendant viz., late D. Gopinath acquired suit schedule properties under registered partition dated 29.09.1962. Thereafter, allotment of share was confirmed in the decree dated 18.02.1981. Father of plaintiff & defendant Gopinath died intestate. Smt. Ananthalakshmi

Gopinath is purported to have executed Will dated 15.11.2021. During her lifetime plaintiff, defendant and their mother Smt. Ananthalakshmi Gopinath mutually discussed and agreed upon the manner in which all the properties owned & possessed by their mother would be divided after her passing. It is alleged that Smt. Ananthalakshmi Gopinath executed her last Will and testament on 15.11.2021 i.e., about two months prior to her death. It was apparent that Smt. Ananthalakshmi Gopinath had executed the Will only under coercion, duress and undue influence of defendant. On plain reading of the Will, it reveals wholly contrary to what three of these plaintiff, defendant and Smt. Ananthalakshmi Gopinath had earlier discussed and agreed upon regarding the properties of Smt. Ananthalakshmi Gopinath.

2(a). On 21.04.2022 plaintiff & defendant entered into memorandum of understanding with mutual intention of maintaining positive family relationship, preventing fragmentation of the properties and maintained peace & harmony with the family after division of immovable properties of their mother Smt. Ananthalakshmi Gopinath. The MOU overrides the terms contained in the Will dated 15.11.2021 executed by Smt. Ananthalakshmi Gopinath. Defendant has willfully & continuously breached the terms of MOU despite lapse of 90 days from the date of execution of said MOU. Defendant has failed and neglected to execute necessary documents to transfer & release the properties in favor of plaintiff as described in the memorandum of understanding. The memorandum of understanding is valid agreement, which is legally binding and enforceable. As such, plaintiff issued notice dated 26.07.2024 calling upon defendant to enforce the terms of memorandum of

understanding, within 15 days of receipt of said notice. Said notice was replied by defendant on 12.08.2024 refusing to implement / enforce the memorandum of understanding. Left with no other option, plaintiff issued legal notice dated 19.02.2025 for partition, which is replied by defendant on 03.03.2025. Thus, plaintiff has filed this suit. Plaintiff has made out *prima facie* case and balance of convenience lies in favor of plaintiff. If defendant alienates or changes nature of suit schedule 'F' property, plaintiff will be put to hardship. Hence, prayed to allow IA Nos.1 & 2.

3. Defendant filed Written Statement and adopted the same as objection to IA Nos.1 & 2. Defendant has admitted that plaintiff is his sister and they are the children of late Gopinath and Smt. Ananthalakshmi Gopinath. It is contended that Gopinath carried out partition in the said properties at his discretion, distributing the properties among the parties herein and their mother. This partition was formally recorded through memorandum of partition dated 02.01.1984. In view of said partition, suit schedule 'G' property is exclusive property of defendant, khatha of which is standing in his name. Smt. Ananthalakshmi Gopinath i.e., mother of the parties, formally expressed her final wishes through duly registered Will dated 15.11.2021. The Will must be given full effect and legal sanctity. As per the Will, suit schedule C, D & E properties are exclusive properties of Smt. Ananthalakshmi Gopinath and she has bequeathed suit schedule 'C' property in favor of plaintiff and suit schedule 'D' & 'E' properties in favor of defendant.

3(a). On 21.04.2022 there was memorandum of understanding between plaintiff & defendant only with intention of preserving the family harmony & goodwill, considering the relationship between

parties. Upon initiation of discussions between the parties concerning the possible renegotiation of distribution of their late mother's properties, it was mutually understood that the original memorandum of understanding dated 21.04.2022 had ceased to be binding or operative. Plaintiff expressed her intention to modify terms of the original memorandum of understanding reflects that said MOU was effectively abandoned by mutual implication. Subsequently, plaintiff proposed draft addendum to the MOU which sought to introduce new terms & conditions. Proposed addendum was never finalized or signed. Father of the parties Gopinath had already partitioned the family properties in accordance with his wishes, which was subsequently recorded in memorandum of partition. Thereafter, mother of the parties Smt. Ananthalakshmi Gopinath executed her last Will dated 15.11.2021 distributing her estate between the parties. Therefore, there remains no joint or undivided properties to claim partition. Thus, the suit is not maintainable. Hence, prayed to reject IA Nos.1 & 2.

4. In the affidavit supporting IA No.3 for amendment of plaint, it is stated by plaintiff that in view of the memorandum of understanding dated 21.04.2022, the properties has to be equally divided between plaintiff & defendant within a period of 90 days from said MOU. Due to oversight & inadvertence, plaintiff not included the word "as per the MOU dated 21.04.2022 as the schedule properties has to be divided by metes & bounds." Trial of the suit is not yet commenced. Hence, the proposed amendment i.e., paragraph Nos.38A & 38B are necessary for proper adjudication of the matter. These paragraphs are regarding narration about the memorandum of understanding. Hence, prayed to allow IA No.3.

5. Advocate for defendant filed objections to IA No.3 contending that plaintiff has already made averments regarding MOU dated 21.04.2022 in plaint paragraph Nos.10 to 19. Therefore, insertion of proposed paragraph Nos.38A & 38B does not arise. The proposed paragraph Nos.38A & 38B repeating and elaborating the matters already pleaded. Hence, prayed to reject IA No.3.

6. In the affidavit supporting IA No.5, defendant stated that plaintiff has valued the suit on Rs.3.00 crore. Plaintiff has sought for possession of suit schedule properties, which shows that she is not in possession of the properties. As such, plaintiff is required to pay court-fee under Section 35(1) of Karnataka Court-fee & Suit Valuation Act. Plaintiff has paid only court-fee of Rs.200/-, which is contrary to Section 35(1) of Karnataka Court-Fee & Suit Valuation Act. Hence, prayed to allow IA No.5.

7. Advocate for plaintiff filed objections to IA No.5 and contended that plaintiff has paid the fixed court-fee of Rs.200/-. Plaintiff has filed this suit for partition of joint family properties and for declaration that the Will dated 15.11.2021 is created document and it is not binding on her. Defendant has admitted in paragraph Nos.30, 36 & 44 of his Written Statement regarding memorandum of understanding dated 21.04.2022 between plaintiff & defendant. It is not correct that plaintiff is required to pay court-fee under Section 35(1) of Karnataka Court-Fee & Suit Valuation Act. Hence, prayed to reject IA No.5.

8. Heard arguments. Perused the material on record.

9. Now the points that arise for my consideration are : -

1. Whether plaintiff has made out *prima facie* case for grant of temporary injunction as prayed in IA Nos.1 & 2 ?
2. Whether plaintiff will be put to great hardship in the event of temporary injunction is not granted as prayed in IA Nos.1 & 2 and balance of convenience lies in his favour ?
3. Whether IA No.3 filed by plaintiff under Order 6 Rule 17 r/w Section 151 of CPC deserves to be allowed ?
4. Whether IA No.5 filed by defendant under Order 7 Rule 11(d) r/w Section 151 of CPC deserves to be allowed ?
5. What order ?

10. My answer to the above points are as under:

Point Nos.1 TO 3 : In the **Affirmative**

Point No.4 : In the **Negative**

Point No.5 : As per the final order,
for the following: -

REASONS

11. **POINT Nos.1, 2 & 4** : These points are interconnected with each other. Hence, they are taken up together for discussion in order to avoid repetition of facts.

12. Plaintiff filed this suit for partition claiming her half share in the suit schedule properties and also for declaration to declare that Will dated 15.11.2021 is null & void and not binding on plaintiff and for *mesne* profits. Defendant filed his Written Statement and admitted that plaintiff is his sister. It is the contention of defendant

that on 02.01.1984 his father at his discretion distributed the properties among the parties and as per said partition suit schedule 'G' property is his absolute property standing in his name. Defendant further contended that his mother i.e., mother of plaintiff & defendant Smt. Ananthalakshmi Gopinath executed Will dated 15.11.2021 in respect of her self-acquired properties and as per said Will, suit schedule 'C' property is bequeathed in favor of plaintiff and suit schedule 'D' & 'E' properties are bequeathed in favour of defendant. Further, defendant has admitted that on 21.04.2022 there was memorandum of understanding between plaintiff & defendant in order to maintain family harmony, goodwill and considering the close relationship between plaintiff & defendant. Defendant has further contended that while negotiating regarding the memorandum of understanding, plaintiff expressed her intention to modify terms of the memorandum of understanding which reflects that parties have abandoned the memorandum of understanding by mutual implication. Thus, defendant has admitted that after the death of their parents and after the alleged Will, on 21.04.2022 there was memorandum of understanding between plaintiff & defendant in respect of the joint family properties.

13. Thus, looking to the facts & circumstances of the case and pleadings of the parties, plaintiff has made out a triable case. Full-fledged trial is necessary to decide whether the Will dated 15.11.2021 is genuine or it is created as pleaded by plaintiff. It is also to be decided whether the memorandum of understanding which is admitted by defendant, is binding on the parties or not. It is the basic requirement that suit schedule properties are to be preserved till disposal of the suit. IA No.1 is regarding restraining

defendant from alienating or creating charge over the suit schedule properties. IA No.2 is regarding restraining defendant from changing or altering nature of suit schedule 'F' property. Plaintiff in her affidavit stated that defendant is trying to demolish the structure existing on suit schedule 'F' property and trying to put up new construction. Since the suit for partition is pending and if defendant is not restrained from demolishing and putting up new construction and if defendant succeeded in putting up new construction on suit schedule 'F' property, it will create further complications while allotting said property to the parties, after preliminary decree.

14. Looking to the facts & circumstances of the case, the Court is of the considered opinion that IA Nos.1 & 2 deserve to be allowed. As discussed above, plaintiff has made out a triable case. This is a suit for partition regarding joint family properties and plaintiff has paid Court-fee under Section 35(2) of Karnataka Court-Fees & Suit Valuation Act. There is specific averment that plaintiff & defendant are in joint possession of the properties. Thus, plaintiff has properly paid the Court-fee of Rs.200/-, which is correct under Section 35(2) of The Karnataka Court Fees and Suit Valuation Act, i.e., maximum Court-fee of Rs.200/- as required under The Karnataka Court Fees and Suit Valuation Act. There are no any good grounds made out by defendant to reject the plaint as prayed in IA No.5. Accordingly, I answer **Point Nos.1 & 2** in the **Affirmative** and **Point No.4** in the **Negative**.

15. POINT No.3 : Plaintiff seeking amendment to the plaint by incorporating proposed paragraph Nos.38A & 38B regarding MOU dated 21.04.2022. Though plaintiff has pleaded in her plaint regarding the memorandum of agreement dated 21.04.2022, but in

the original plaint it is not stated that plaintiff has failed to effect partition in view of the memorandum of understanding. In the proposed amendment, plaintiff has narrated elaborately regarding the memorandum of understanding dated 21.04.2022. Defendant in his objection stated that there is already pleading regarding the memorandum of understanding and the pleadings of proposed paragraph Nos.38A & 38B are repetitive one. As such, the proposed amendment is not necessary. Trial of the suit is not yet commenced. As per Order 6 Rule 17 CPC, party can amend the pleadings before commencement of trial which is necessary for proper adjudication of the matter. In this case, trial of the suit is not yet commenced. Looking to the facts & circumstances of the case, the Court is of the considered opinion that the proposed amendment is necessary for proper adjudication of the matter. Accordingly, I answer **Point No.3** in the **Affirmative**.

16. **POINT No.5** : In view of the above, I proceed to pass the following : -

ORDER

I.A. No.1 filed by plaintiff under Order 39 Rules 1 & 2 r/w Section 151 of CPC is allowed, thereby defendant or anybody acting on his behalf are restrained from alienating or creating charge over the suit schedule 'A' to 'H' properties, pending disposal of suit.

I.A. No.2 filed by plaintiff under Order 39 Rules 1 & 2 r/w Section 151 of CPC is allowed, thereby defendant or anybody acting on his

behalf are restrained from altering or changing nature & character of suit schedule 'F' property, pending disposal of suit.

I.A. No.3 filed by plaintiff under Order 6 Rule 17 r/w Section 151 of CPC is allowed.

I.A. No.5 filed by defendant under Order 7 Rule 11(d) r/w Section 151 of CPC is rejected.

*Dictated to Senior Sheristedar (now under instructions to continue the work as Stenographer Grade I) directly on computer, computerized by him, revised, corrected by me and then pronounced in the open Court on this the **5th day of June 2026**.*

(B.P. DEVAMANE)
I Addl. City Civil And
Sessions Judge (CCH-02),
Bengaluru City.