

KABC010140982022



IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU.

DATED: THIS THE 20th DAY OF JUNE, 2025.

PRESENT : Smt. Nisharani A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru.

O.S.No.3388/2022

PLAINTIFF : Sri. Shanthamma
Aged about 90 years (Senior Citizen),
W/o Late R.Narayana Rao,
D/o Late N.R.Venkateshamappa,
R/at Kannurhalli Road,
M.V.Layout, Ward No.8,
Hosakote Town,
Bengaluru Rural District- 562 114.

(By Sri/Smt.V.B.S., Advocate)

V/S

DEFENDANTS 1. Sri.Chandrashekar M.A
Aged about 40 years.
S/o Late Ashwathamma and
Ashwathanarayana Shetty,
R/At Manjunatha Nagar, T M Colony,
Mulbhagal Town and Taluk,
Kolar – 560 131.

2. Smt.Danalakshmi
W/o Mataraka.

D/o Late Ashwathamma and
Ashwathanarayana Shetty,
R/At Annennahalli Village,
Gumalatepura Post,
Kolar Taluk And District -563 126.

3. Smt.Jayamma

Aged about 73 years,
W/o Late Srinivas Shetty,
D/o Late Late N.R.Venkatashamappa,
R/At Ramapura Village,
Gumalatepura Post,
Kolar Taluk And District- 563 128.

4. Smt.Padmavathamma

Aged about 69 years,
W/o Late Narayana Shetty,
D/o Late N.R.Venkatashamappa,
R/At. 2nd Nagarathpet,
Sidlaghatta, Chikkaballapura District.

5. Sri.Venugopal N.V

Aged about 68 years,
S/o Late N.R.Venkatashamappa,
R/At No.119/2, NRV Nilaya,
Ganesh Mandir Road,
Thyagarajanagar, 2nd Block,
Bengaluru – 560 028.

6. Smt.B.V.Venkatalakshamma

Aged about 63 years,
W/o Sri.N.V.Venugopal
R/At No.119/2, NRV Nilaya,
Ganesh Mandir Road,
Thyagarajanagar, 2nd Block,
Bengaluru – 560 028.

7. Sri.N.V.RameshBabu

S/o Sri.N.V.Venugopal,
Aged about 49 years,

R/At No.119/2, NRV Nilaya,
Ganesh Mandir Road,
Thyagarajanagar, 2nd Block,
Bengaluru – 560 028.

8. Sri.N.V.Lakshminarayana

S/o Sri.N.V.Venugopal,
Aged about 43 years,
R/At No.119/2, NRV Nilaya,
Ganesh Mandir Road,
Thyagarajanagar, 2nd Block,
Bengaluru – 560 028.

9. Sri.N.V.Venkatesh Murthy

S/o Sri.N.V.Venugopal,
Aged about 43 years,
R/At No.119/2, NRV Nilaya,
Ganesh Mandir Road,
Thyagarajanagar, 2nd Block,
Bengaluru – 560 028.

10. Sri.N.V.Raghavendra

S/o Sri.N.V.Venugopal,
Aged about 40 years,
R/At No.119/2, NRV Nilaya,
Ganesh Mandir Road,
Thyagarajanagar, 2nd Block,
Bengaluru – 560 028.

11. Sri.N.V.Manjunath

Aged about 60 years,
S/o Late N.R.Venkatashamappa,
R/At No.55, SLV Nilaya,
Hoysalanandanavana Layout,
80 Feet Road, R.K.Hegde Nagar,
Bengaluru – 560 077.

12. Smt.Manjula

W/o Sri.N.V.Manjunath,
Aged about 53 years,

R/At No.55, SLV Nilaya,
Hoysalanandanavana Layout,
80 Feet Road, R.K.Hegde Nagar,
Bengaluru – 560 077.

13. Sri.M.Madhusudhan

Aged about 35 years,
S/o Sri.N.V.Manjunath,
R/At No.55, SLV Nilaya,
Hoysalanandanavana Layout,
80 Feet Road, R.K.Hegde Nagar,
Bengaluru – 560 077.

14. Smt.Surekha V.S

W/o Sri.M.Madhusudhan,
Aged about 30 years,
R/At No.55, SLV Nilaya,
Hoysalanandanavana Layout,
80 Feet Road, R.K.Hegde Nagar,
Bengaluru – 560 077.

15. Kumari Baby Namratha

D/o Sri.M.Madhusudhan,
Aged about 6 years,
Since Minor represented by
Natural Guardian and her
Mother Smt.Surekha,
W/o Sri.M.Madhusudhan,
R/At No.55, SLV Nilaya,
Hoysalanandanavana Layout,
80 Feet Road, R.K.Hegde Nagar,
Bengaluru – 560 077.

16. Sri.N.Lalith Kumar

Aged about 31 years,
S/o N Late K.Narayanramji,
R/at. No.84, Narayanan Krupa,
2nd Cross, Near New Age Public School,
Marathahalli Colony,
Bengaluru – 560 037.

17. Sri.Jithendar Kumar

Aged about 37 years,
S/o Late K.Narayanramji,
R/at. No.84, Narayanan Krupa,
2nd Cross, Near New Age Public School,
Marathahalli Colony,
Bengaluru – 560 037.

18. Sri.Arshan Saheed A.A

Aged about 45 years,
S/o Late K.Allabakash,
R/At No.616, BHBCS Layout,
Veerannapalya, Nagawara,
Arabic College Post,
Bengaluru – 560 045.

(D.1 to 3, 5 to 10 and 11 to 15 – Exparte
D.16 & 17 by Sri.A.K., advocate,
D.18 by Sri.R.V., advocate)

Provision under which the application is filed	I.A.No.I filed under Order 39 Rule 1 & 2 of CPC
Relief sought for	Ad-interim order of temporary Injunction
The date on which the objection filed by opponent	28-02-2025
The date on which the order passed on the said application.	20-06-2025

**ORDERS ON INTERLOCUTORY APPLICATION No.I FILED
BY THE PLAINTIFF UNDER ORDER XXXIX, RULES 1 AND 2
OF CODE OF CIVIL PROCEDURE.**

The plaintiff has filed IA.No.I under Order XXXIX Rule 1 and 2 restraining the defendants from alienating or encumbering suit schedule properties.

2. This is a suit filed by the plaintiff for partition and separate possession and other consequential reliefs. It is contended that originally suit schedule properties belongs to one Sri.N.R.Venkatashamappa S/o Late Ramanna, who had two children namely Smt.Puttamma and Smt.Lakshamma. The said Sri.N.R.Venkatashamappa out of his wed lock of 1st wife begot only one daughter by name Smt.Shanthamma, who is arrayed as plaintiff herein. With his 2nd wife begotten totally five children who are arrayed as defendant defendant No.1, since dead by his LRs defendant Nos.1 and 2 and Smt.Jayamma arrayed as defendant No.3, Smt.Padmavathamma arrayed as defendant No.4, Sri.Venugopal, dead and represented by his wife defendant No.6 and four children defendant Nos.7 to 10, Sri.Manjunath defendant No.11 dead and represented by his wife defendant No.12, his son defendant No.13 and his children defendant Nos.14 and 15. Late Sri.N.R.Venkatashamappa got agricultural land carving income yielding wealth. Thus, purchased

immovable properties including the properties in the name of his sons Sri.N.V.Venugopal and Sri.N.V.Manjunath together with their sons. The family had sufficient nucleus to purchase the properties. On 11.05.2006, Sri.Nagaraj S/o Sri.Thippanna sold land in favour of defendant No.5, which is item No.21 of the suit schedule property. The total sale consideration amount to the property paid out of the source of joint family. Then 5th defendant purchased property to an extent of 19 guntas situated at Thanisandra Village, K.R. Puram, Hobli under a sale deed on 28.12.1995 which is also purchased out of the source of joint family income, the said Sri.N.V.Venugopal executed Gift Deed of item No.22A to his wife and his son 10th defendant on 16.05.2014. Item No.22B in favour of 8th defendant, item No.22C in favour of 6th defendant, item No.22D in favour of 9th defendant, item No.22E in favour of 7th defendant. The 6th defendant sold property item No.22C in favour of 18th defendant, further properties came to be partitioned in Bangalore and item No.22 and 22C are

alienated and sold. Therefore, as item No.22 and 22C are also joint family properties, the plaintiff has her rights over two properties. In further plaintiff submits that defendants have no source of income to purchase the properties, therefore, constructions and buildings in item No.23 is also obtained from the income out of joint family. The plaintiff and defendants are in joint possession of the properties and Sri.N.R.Venkatashamappa also purchased other properties. Then as Sri.N.R.Venkatashamappa died intestate succession opened for the children of both the wives of Sri.N.R.Venkatashamappa and the plaintiff also got her 1/6th share as she being the daughter of Sri.N.R.Venkatashamappa. Defendant Nos.5, 7 and 10 with the knowledge of plaintiff entered into Vibhaga Patra among themselves on 17.09.2021 for no reasons they executed plaintiff, the said Vibhagapatra was also got registered on 24.09.2021, the defendants cannot exclude the plaintiff in their partition deed they played fraud and infringed the right of plaintiff 1/6th share over the suit

schedule property. Defendant No.11 Sri.N.V.Manjunath by saying that he will give the amount to her 1/6th share made her to sign in the sale proceedings with defendant Nos.11 and 15. The same was agreed by the plaintiff and she being the elder daughter agreed and signed to the document, but she has not received any amount from defendant No.11. Therefore, the sale deed executed on 22.06.2017 in favour of defendant Nos.16 and 17 is not binding on the share of the plaintiff. Therefore, that sale proceedings deprive the 1/6th share of the plaintiff right over the suit schedule property, therefore, this suit. Case of action arose when the defendant No.11 with defendant Nos.3 and 12 to 15 promised to give amount in Rs.2,35,00,000/- pertaining to 2 items of suit schedule properties and refused to pay the amount and also refused to effect partition including plaintiff. Therefore, prayed to allow application.

3. Defendant Nos.16 and 17, who are the purchasers and seriously contested the matter filed their

written statement with documents and adopted the same as objections to IA.No.I submits that the suit itself is not maintainable as defendant Nos.16 and 17 are the bonafide purchasers and are in peaceful possession and enjoyment over the suit schedule property by virtue of a registered sale deed. Therefore, the suit is not maintainable, defendant Nos.16 and 17 purchased the item No.18 and 20 suit schedule properties by paying total sale consideration amount of Rs.2,35,00,000/-, therefore, they are the bonafide purchasers and are in actual physical possession of the suit schedule property by virtue of registered sale deed dated 22.06.2017. Defendants invested huge amount on conversation of land and formed the residential layout in the said land. This suit is filed in order to grab money from the defendants. She has not challenged partition deed dated 18.08.1984 entered into between defendant Nos.5 and 11 and also not challenged MR 2000-01, she herself a party to the sale deed executed in favour of defendants including item Nos.18 and 20 in

suit schedule property. She is questioning the sale deeds after lapse of 5 years which is not maintainable and it has to be dismissed with exemplary costs. Plaintiff being of executant to the sale deed dated 22.06.2017 has been named as vendor No.6 in the said transaction. The plaintiff is not in the physical possession of the property. The plaintiff in collusion with the other defendants filed this suit in order to harass defendant Nos.16 and 17. Therefore, the same is not maintainable and to dismiss the suit.

4. The defendant No.18 filed his written statement stating that the suit of the plaintiff is not maintainable. Sri.N.V.Venugopal acquired the suit schedule property of item No.22 which was his self acquired property by virtue of registered sale deed dated 29.12.1995 and he with love and affection executed gift deed in favour of his wife 5th defendant in item No.22 measuring $(41 \frac{1}{2} + 40 \frac{1}{2})$ feet totally 1230 sq. feet which is arrayed as item No.22C herein, he executed registered gift deed in favour of 6th

defendant and 6th defendant for family necessities executed site No.2 (item No.22C of suit schedule property) for valuable consideration in favour of 18th defendant and put him in the possession of the property since from the date of the purchase of the property. Therefore, the plaintiff has no right over the suit schedule property item No.22C. The plaintiff has not challenged the sale deed of 18/01/2018 suit schedule property after the lapse of 8 years and 4 years respectively. Which is barred by limitation, therefore on that ground only the suit has to be dismissed. The plaintiff paid insufficient court fee, therefore, the suit has to be dismissed. Defendant No.18 paid revenue taxes regularly and exercising absolute rights, ownership over the suit schedule property. Therefore, the suit has to be dismissed with exemplary costs.

5. From the contents of the I.A. and contention taken by parties the points that arise for my consideration are,-

POINTS

1. Whether the plaintiff has made out prima facie case for granting T.I. as sought in I.A.No.1 ?
2. Whether balance of convenience lies in favour of plaintiff ?
3. Whether the irreparable loss would be caused to the plaintiff, if the order of temporary injunction is not granted ?
4. What order ?

6. Heard arguments. After hearing the arguments and considering the available material on record my answer to the above points are:-

POINT NO.1 : In the Negative,

POINT NO.2 : In the Negative,

POINT NO.3 : In the Negative,

POINT.NO.4 : As per final order,
for the following:-

REASONS

7. POINT No.1 PRIMA-FACIE CASE:- The plaintiff filed this suit for partition and separate possession over the suit schedule property. Plaintiff admits that the suit

schedule property items including item Nos.18, 20, 22 and 22C are purchased out of the source of income of the joint family property. She has got right over the suit schedule property. She has also filed documents stating that she is the elder sister of the defendants and the documents of partition deed and sale deeds. Therefore, as she is not party to the partition deed, therefore she is entitled for the property. The documents filed by the defendant that the sale deed 2017 in which the plaintiff is also signatory to the document and the recitals of the sale deed shows that the possession is handed over to the defendant Nos.16, 17 and the sale deed of the defendant No.18 shows that the possession handed over to the defendant No.18. Therefore, it shows that plaintiff is not in possession of the suit schedule property. Therefore, prima facie case is not made out by the plaintiff, therefore, I hold this point No.1 in the **Negative**.

8. POINT Nos.2 & 3 – BALANCE OF CONVENIENCE & IRREPARABLE LOSS :- When the

plaintiff is not in the possession of the suit schedule properties, balance of convenience and irreparable loss will not lie in favour of plaintiff. Therefore, I answer **point Nos.2 and 3** in the **Negative**.

9. **POINT No.4:-** For the foregoing reasons, I proceed to pass the following,-

ORDER

I.A.No.1 filed by the plaintiff under
Order XXXIX Rule 1 & 2 C.P.C. is
hereby dismissed.

(Dictated to the Stenographer on computer, typed by her, corrected and pronounced by me in open Court on this 20th day of June, 2025).

**(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.**

ORDERS ON I.A.NO.2

I.A.No.2 filed by the plaintiff under Order 32 Rule 3 of CPC for appointment of defendant No.14 natural guardian/ mother of defendant No.15/ Baby Namratha as her natural guardian to prosecute the case.

The defendant No.15/ Baby Namratha is the daughter of defendant No.14 who is none other than the natural guardian of the defendant No.15. Therefore, the application is hereby allowed and the natural guardian defendant No.14 is permitted to sue by representing Baby Namratha/ defendant No.15.

(Nisharani A.C)
III A.C.C & S.J. Bengaluru.