

KABC010236982022



IN THE COURT OF THE I 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 1st day of July 2026

O.S. 5679 / 2022

PLAINTIFFS : 1. Smt. Anandamma,
D/o late Muniyappa,
W/o Narasimhaiah,
Aged about 72 years,
R/o No.67, 3rd Stage,
3rd Block, Saneguruvanahalli,
Basaveshwara Nagara,
BENGALURU – 560 079.

2. Smt. Puttalakshmamma,
D/o late Muniyappa,
W/o K.V. Kondandaramu,
Aged about 70 years,
R/o 1st Main Road,
Vivekananda Nagara,
KANAKAPURA – 562 117,
Ramanagara District.

(By Sri. P. Mahesha, Adv.)

V/s.

- DEFENDANTS :**
1. **M. Lokesh Kumar,**
DEAD, by L.Rs.
 2. Smt. Anasuyamma,
D/o late Muniyappa,
W/o Munivenkatappa,
R/o No.3/2, 11th Cross,
1st Main, Jai Maruthi Nagara,
Nandini layout, BENGALURU – 560 096.
 3. R. Mahendra,
S/o R. Range Gowda,
Aged about 32 years,
R/o # 1810, 23rd Cross,
5th Main, C Block,
Shakara Nagara, BENGALURU – 560 092.
 4. Smt. Kumuda,
W/o late M. Lokesh Kumar,
Aged about 44 years,
 5. Kum. Nandini M.L.,
D/o late M. Lokesh Kumar,
Aged about 25 years,
 6. Pavan Kumar,
S/o late M. Lokesh Kumar,
Aged about 23 years,
D4 to D6 are r/o # 159, 3rd Main Road,
3rd Cross, Jai Maruthi Nagara,
BENGALURU – 560 096.
 7. B.N. Srinivas,
S/o late B.A. Narayanaswamy,
Aged about 48 years,
R/o # 09, Anirikshitha Nilaya,
Bettahalasuru Village, Jala Hobli,
Yalahanka, BENGALURU – 562 157.
 8. Smt. Balanagamma,
D/o late Muniyappa,
W/o late Munivenkatappa,
Aged about 68 years,
R/o # 26, 5th Cross, Balaji Nagara,
BENGALURU – 560 029.
 9. Smt. Anjamma,
D/o late Muniyappa,
W/o late Murthy,
Aged about 65 years,

R/o # 19, 1st Main Road, 1st Cross,
Mahalakshmi layout,
BENGALURU – 560 096.

(D2 by Sri. V.R.;
D4 to D6 by Sri. B.N.N.;
D7 by Sri. V.C., Advocates,
D3 *Ex parte*.)

* * * * *

COMMON ORDER ON I.A. Nos.1, 4 & 5

Advocate for plaintiffs filed IA No.1 under Order 39 Rules 1 & 2 r/w Section 151 CPC with prayer to grant temporary injunction restraining defendant Nos.1, 2 & 4 to 6 from alienating or creating any third party rights over the suit schedule properties, pending disposal of the suit.

2. Advocate for plaintiff Nos.1 & 2 filed IA No.4 under Order 39 Rules 1 & 2 r/w Section 151 CPC with prayer to restrain defendants from changing nature of the suit schedule properties.

3. Advocate for plaintiff Nos.1 & 2 filed IA No.5 under Order 39 Rules 1 & 2 r/w Section 151 CPC seeking order of temporary injunction restraining defendants from alienating or creating third party rights over the suit schedule properties.

4. When I.A. No.1 was filed at the time of filing the suit, there were 4 plaintiffs and 6 defendants. On 03.09.2022, the Court passed *ex parte* interim order restraining defendants Nos.1 to 6 from alienating suit schedule properties. Said *ex parte* temporary injunction order was extended from time to time but on 20.01.2023, it was not extended for further period. Thereafter, on 04.09.2024 defendant Nos.4 to 6 have sold suit schedule item No.2 in favour of

defendant No.7. After purchase of suit schedule item No.2 property, defendant No.7 is subsequently impleaded. Plaintiff Nos.3 & 4 become the confirming parties to said sale deed. Hence, they have been transposed as defendant Nos.8 & 9.

5. As per the case of plaintiffs, plaintiff Nos.1 to 4 and defendant No.2 are the sisters of defendant No.1. Father Muniyappa and mother Thimmakka died intestate leaving behind suit schedule properties and plaintiff Nos. 1 to 4 and defendant No.2 as their legal heirs. Defendant No.3 is the agreement holder of suit schedule item No.2 property. Defendant Nos.4 to 6 are the wife and children of defendant No.1. Earlier, there was an agreement of sale with Srinivas. On 17.03.2021 fresh agreement of sale in favour of defendant No.3 came to be executed. At the time of signing said agreement, defendant No.1 gave Rs.3.00 lakh each to plaintiffs by way of cheque. By suspecting the act of defendant No.1, plaintiffs obtained encumbrance certificate and came to know that instead of agreement of sale, signatures of plaintiffs are obtained on release deed dated 17.03.2021 in respect of suit schedule item No.2 property. Plaintiffs were not willing to execute release deed in favour of defendant No.1. Taking undue advantage of illiteracy of plaintiffs, defendant No.1 obtained their signatures on release deed which is not binding on them. Hence, plaintiffs have filed this suit for partition claiming their $1/6^{\text{th}}$ share each and for declaration that the release deed dated 17.03.2021 is not binding on the shares of plaintiffs.

6. Defendant Nos.2, 4 & 7 have filed the Written Statement, which is adopted as objections to these IAs. Relationship among plaintiffs and defendant Nos.1 & 2 is not in dispute. It is also not in dispute that suit schedule properties are inherited by the parties from

their father Muniyappa, who died intestate. Further averments of plaint are denied. It is contended that Muniyappa & Thimmakka died leaving behind 10 children. Plaintiff Nos.1, 2, 4 and defendant No.2 who are the sisters of defendant No.1, have executed registered release deed in respect of suit schedule item No.2 property in favor of defendant No.1 M. Lokesh Kumar, who is the husband of defendant No.4 and father of defendant Nos.5 & 6. They have received consideration of Rs.3.00 lakh each by way of cheque in lieu of their shares in the suit schedule properties. Thereafter, name of defendant No.1 was mutated to the suit schedule item No.2 property based on the release deed.

6(a). Initially, suit schedule item No.2 property was agreed to be sold in favor of T. Srinivasa Murthy as per the unregistered sale agreement dated 26.06.2020. Thereafter, said Srinivasa Murthy was not in position to purchase said property. As such, defendant No.1 and Srinivasa Murthy approached defendant No.3, who agreed to purchase suit schedule item No.2 property for consideration of Rs.2.4 crore and accordingly registered agreement of sale dated 17.03.2021 came to be executed in his favor. Defendant No.1 and defendant Nos.4 to 6 have affixed their signatures on the registered agreement of sale dated 17.03.2021 executed in favor of defendant No.3. Defendant No.1 died on 30.06.2023 leaving behind defendant Nos.4 to 6 as his legal heirs.

6(b). Thereafter, defendant No.3 filed suit for specific performance in O.S.326/2024 against defendant Nos.4 to 6 in the Court of III Additional Senior Civil Judge and JMFC, Devanahalli. Defendant Nos. 4 to 6 approached defendant No.3 and informed him that sisters of defendant No.1 have filed suit for partition in

O.S.248/2021 and requested defendant No.3 that they will settle the dispute among the family members and execute the sale deed. Accordingly, supplementary agreement dated 03.07.2024 came to be executed. On 13.07.2024 compromise came to be entered in O.S.248/2021. In the said compromise, sisters of defendant No.1 have relinquished their rights in respect of item No.2 of the scheduled property in favor of defendant Nos.4 to 6.

6(c). Thereafter, due to financial constraints and contingencies, defendant Nos.3 & 4 to 6 approached defendant No.7 to purchase the suit schedule item No.2 property. Accordingly, on 04.09.2024 defendant Nos.4 to 6 have sold suit schedule item No.2 property in favor of defendant No.7 for consideration of Rs.3,15,00,000/-. Plaintiff Nos.3 & 4 and defendant No.2 are confirming parties to said sale deed. Already plaintiffs have executed release deed dated 17.03.2021 relinquishing their rights in said property. As such, the suit is not maintainable and they have no any right, title & interest. Hence, present IAs are not maintainable.

7. Heard arguments. Perused the material on record.
8. Now the points that arise for my consideration are : -
 1. Whether plaintiffs have made out *prima facie* case for grant of temporary injunction as prayed in I.A. Nos.1, 4 & 5 ?
 2. Whether plaintiffs will be put to great hardship in the event of temporary injunction as prayed in I.A. Nos.1, 4 & 5 are not granted and the balance of convenience lies in their favour ?
 3. What Order ?

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

Point Nos.1 & 2 : In the Affirmative

**Point No.3 : As per final order,
for the following :-**

REASONS

10. **POINT Nos.1 & 2** : Since both these points are inter-connected with each other, they are taken up together for discussion in order to avoid repetition of facts.

It is not in dispute that plaintiff Nos.1 to 4 and defendant No.2 are the sisters of defendant No.1. Defendant Nos.4 to 6 are the wife and children of defendant No.1. It is also not in dispute that suit schedule properties are inherited by the parties from their ancestors.

11. It is the specific case of plaintiffs that on 17.03.2021 defendant No.1 asked plaintiffs to affix their signatures on the registered agreement of sale executed in favor of defendant No.3, but on the same date they have obtained the signatures of plaintiffs on release deed. Plaintiffs averred that defendant No.1 paid Rs.3.00 lakh each to plaintiffs stating that they are signing registered agreement of sale in favor of defendant No.3 by canceling the previous agreement. As such, believing defendant No.1, they have affixed their signatures on the document believing that it is registered agreement of sale executed in favor of defendant No.3 and they have not affixed their signatures on the alleged release deed of the same date i.e., 17.03.2021.

12. In paragraph No.20 of Written Statement of defendant No.4 it is stated that defendant No.3 filed suit for specific performance in O.S.326/2024. At that time, defendant Nos.4 to 6 told him that partition suit in O.S.248/2021 is pending and after settlement in the said suit they will execute the sale deed. In paragraph No.21 of the Written Statement it is stated that O.S.248/2021 ended in compromise on 13.07.2024.

13. Advocate for defendant No.7 produced certified copy of the order sheet and plaint in O.S.248/2021 which shows that present plaintiff Nos.1 & 2 are defendants Nos.5 & 6, but plaintiffs got these defendant Nos.5 & 6 deleted and in their absence compromise was entered. Hence, if really there was proper compromise or settlement between the parties, it was not necessary to delete defendant Nos.5 & 6 who are present plaintiff Nos.1 & 2. Said settlement is during the pendency of present suit in the absence of these plaintiffs Nos.1 & 2 and as such it cannot be termed as proper settlement or compromise between the parties. When plaintiffs Nos.1 & 2 who are defendant Nos.5 & 6 in O.S.248/2021, claiming their share in the suit schedule property by deleting them, there cannot be proper compromise. Hence, it cannot be termed as O.S.248/2021 is ended in compromise.

14. Respective counsels filed their written arguments. Advocate for defendant No.7 relied upon following decisions :

- i. ILR 1992 KAR 3772 (*M/s. Patel Enterprises v. M.P. Ahuja*);
- ii. ILR 2007 KAR 339 (*Sri. Aralappa v. Sri. Jagannath & Ors.*);
- iii. AIR 1972 SC 2685 (*Ram Saran & Anr., v. Smt. Ganga Devi*);
- iv. ILR 1980 KAR 103 (*Poojari Puttaiah & Ors., v. Kempaiah*);
- v. Regular Second Appeal No.23/2021 before The Hon'ble High Court of Karnataka (*Somayya Belchada v. Santhosh & Ors.*);

- vi. (2012) 6 SCC 430 (*A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, Represented by its President & Ors.*); and,
- vii. ILR 1997 KAR 206 (*A.D. Narayanappa & Anr., v. Muniyappa & Ors.*)

I have gone through the said rulings.

15. It is the basic requirement in civil suit that the suit schedule property is to be preserved till the disposal of the suit. In this case, plaintiffs have specifically averred that alleged relinquishment deed is not executed by them, but it is created by defendant No.1 by obtaining their signatures stating that they are signing the registered agreement of sale in favor of defendant No.3. As such, plaintiffs have challenged said release deed dated 17.03.2021 and seeking their 1/6th share in the suit schedule properties.

16. Plaintiff Nos.3 & 4 become confirming parties to sale deed executed in favor of defendant No.7. Merely because plaintiff Nos.3 & 4 have signed sale deed executed in favor of defendant No.7, it cannot be termed as plaintiffs Nos.1 & 2 have relinquished their rights in the suit schedule properties. On going through the compromise in O.S.248/2021, during the pendency of this suit, by deleting the names of these plaintiffs who are defendant Nos.5 & 6 in the said suit, itself shows that these defendants are trying to make wrongful gain in the absence of plaintiff Nos.1 & 2.

17. As discussed above, in this suit there was an *ex parte* interim order restraining defendant Nos.4 to 6 from alienating the suit properties. But, due to non-filing of application for extension of said order, the stay order was not continued. By taking advantage of the same, and as discussed above, by deleting the names of these

plaintiffs Nos.1 and 2 in O.S.248/2021 got the suit disposed and executed the sale deed behind the back of these plaintiff Nos.1 & 2. Thus, plaintiffs have made out *prima facie* case and balance of convenience lies in favor of plaintiffs. If the suit schedule properties are not preserved and defendants are not restrained from further alienation or changing nature of the suit, it will create further complications which would lead to multiplicity of proceedings. Accordingly, I answer **Point Nos.1 & 2** in the **Affirmative**.

18. POINT No.3 : In view of the above, I proceed to pass the following : -

ORDER

IA No.1 filed by plaintiffs under Order 39 Rules 1 & 2 r/w Section 151 CPC is allowed, thereby defendant Nos.1, 2 & 4 to 6 or anybody acting on their behalf are restrained from alienating or creating charge over the suit schedule properties, pending disposal of suit.

IA No.4 filed by plaintiff Nos.1 & 2 under Order 39 Rules 1 & 2 r/w Section 151 CPC is allowed, thereby defendants or anybody acting on their behalf are restrained from changing nature of the suit schedule properties.

IA No.5 filed by plaintiff Nos.1 & 2 under Order 39 Rules 1 & 2 r/w Section 151 CPC is allowed, thereby defendants or anybody acting on their behalf are restrained from alienating or creating third party rights over the suit

schedule properties.

*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 **1st day of July 2026.***

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