

KABG040047192024



Presented on : 19-12-2024

Registered on : 20-12-2024

**IN THE COURT OF IV ADDL. CIVIL JUDGE AND JMFC
BELAGAVI.**

**PRESENT: Bhuvaneshwari D. BA, LLB (Hon's), LLM.
IV Addl. Civil Judge & JMFC.,
Belagavi.**

Dated, on this 10th day of October, 2025

ORIGINAL SUIT No.1737/2024

PLAINTIFF:	1. Shri. Mallappa S/o Yallappa Tahasildar, Age : 75 years, Occ : Agriculture, R/o: H. No. 19, Shivaji Galli, Muchandi, Tal & Dist: Belagavi.
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V/s.

DEFENDANTS:	1. Shri. Kedari S/o Yallappa Tahasildar, Age: 80 years, Occ: Retired Teacher R/o: H. No. 714/1, Chavadi Galli, Swami Vivekanand Marg, Balekundri BK Tal:Dist: Belagavi. 2. Shri. Marutirao S/o Kedari Tahasildar, Age: 45 years, Occ: Service at Air force R/o: H. No. 714/1, Chavadi Galli, Swami Vivekanand Marg, Balekundri BK Tal:Dist: Belagavi. 3. Shri. Vijaykumar S/o Kedari Tahasildar Age: 43 years, Occ: Teacher, R/o: H. No. 714/1, Chavadi Galli, Swami Vivekanand Marg, Balekundri BK Tal:Dist: Belagavi.
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<u>ORDERS ON I.A.No.II</u>	
APPLICANTS/ PLAINTIFFS:	Shri. Mallappa S/o Yallappa Tahasildar
(By Shri. A. I. Jotawar, Advocate)	
-AND-	
DEFENDANTS /OPPONENTS:	Shri. Kedari S/o Yallappa Tahasildar and others
(Rep. By Sri. U. H. Rajput, Advocate)	

**ORDERS ON I.A.No. II UNDER ORDER XXXIX RULE 1
AND 2 R/W SECTION 151 OF CPC**

This I.A. is filed under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC seeking relief of Ad-interim injunction against the defendants restraining them from alienating or creating any encumbrance over the suit property till disposal of the suit.

2. In the affidavit annexed to the I.A, the facts sworn in are elucidated as under;

It is the case of plaintiff that suit is instituted for the relief of declaration and perpetual injunction and plaintiff further submits that by virtue of family partition the property has fallen to his share, due to which he is in the possession of the said property and he has been cultivating vegetables like cauliflower, kadapals in the said property. The plaintiff further submits that defendant No.1 is trying to encroach upon the suit property by getting his name entered illegally as defendant No.1, has executed a Gift

Deed in favor of defendant No. 2 and 3 in order to deprive the legitimate rights of the plaintiff's over the suit property.

3. The counsel for defendants No.1 to 3 has filed memo submitting that written statement may be treated as objections to I.A. No.I. The contentions taken by the plaintiff in the plaint averments are denied by the defendants and they have submitted that partition was affected but as the document is false and fabricated and it was not acted upon and names were not mutated accordingly in the revenue records. It is further contention of the defendant that there was partition in respect of the suit property along with properties which are ancestral in nature in the year 1999 and as per the said partition it is contended that suit property was fallen to the share of the defendant No.1 and property bearing R.S. No.42 and 44 measuring 10 guntas and 12 guntas respectively has fallen to the share of plaintiff. It is further contended by the defendant No.1 that he had permitted the plaintiff to cultivate the suit property as defendant No. 1 was working as teacher at Pant- Balekundri, Belagavi. Further it is the case of the defendant No. 1 that he has exclusive ownership right over the suit property and he has executed Gift Deed dated 07.02.2024 in favor of defendant No. 2 and 3 and he further contended that on the basis of said instrument the names were mutated accordingly in the revenue records and he contended that the said I.A. may be dismissed as the partition deed on the basis of which the plaintiff is

claiming right is not registered as per the law and no rights can be conferred on the basis of unregistered document.

4. Heard the counsel for plaintiff Shri. AJJ who submitted that the partition was affected, but was not implemented in the revenue records and reiterated the plaintiff averments and he specifically contended that as defendant No.1 himself has no absolute right to execute the Gift Deed. The defendant No. 2 and 3 cannot acquire rights based on the said instruments and he laid emphasis on Para No. 5 of the written statement wherein defendant No.1 has admitted as to granting permission to plaintiff to cultivate the suit land and he further drew the attention of the court to copy of the partition deed laying emphasis on the recitals mentioned at Page No.5 and 6 and receipt showing electricity connection and Gift Deed, mutation register, record of rights and affidavit sworn in by adjacent owners.

5. Heard counsel for defendants no.1 to 3 Sri. UHR who submitted that Partition Deed on the basis of which plaintiff is claiming his rights is unregistered and submitted partition has been taken place in the year 1999, on the basis of that he contends that revenue records were mutated and also laid emphasis on the proceeding in O.S. No.190/2003 and relied on document pertaining to R.S. No. 74/2013 to show that suit property is self acquired property and claimed that 1/6th share has been allotted

accordingly. It is further contended that mutual partition was affected between the plaintiff and defendant No.1 who are siblings and specifically stated that the electricity connection do not confirm the rights of ownership and also drew the attention of the court to Para No.2 of the affidavit sworn in by Sambhaji S/o Yallappa Tahasildar and stated that he had filed suit for partition in O.S. No.190/2003 and laid emphasis on Issue No. 3 wherein suit property was held to be the self acquired property.

6. Perused the pleadings of both the parties and upon placing emphasis on rival contentions canvassed by both the parties the following points arise for the determination of this Court;

POINTS

1. *Whether the plaintiff has made out sufficient grounds to obtain the relief as sought for in the I.A?*
2. *What order?*

7. After hearing the counsel of both the parties and placing emphasis on the submissions of the counsels, pleadings of the parties and the documents produced before the court. This court answers the aforementioned points as under;

Point No.1 : *In the Affirmative*

Point No.2 : *As per the final order for the following;*

REASONS

8. POINT No.1:- In this suit the relief sought is declaration and consequential relief of perpetual injunction. This I.A. pertains to restraining the defendants from alienating or creating any encumbrance over the suit property.

9. In order to obtain the relief of temporary injunction it is settled proposition of law that these conditions has to be fulfilled;

- Whether the plaintiff has made out existence of prima-facie case?
- Whether balance of convenience liens in favor of party claiming relief of temporary injunction?
- Whether any irreparable injury of hardship is caused by granting or refusing to grant TI?

10. Whether the plaintiff has made out prima-facie case?

As it is well settled proposition of law that prima facie case has to be looked into while granting the relief of this nature as it is held in catena of decisions. As held in the Judgment of ***Dalpat Kumar And Another vs Prahlad Singh And Others, (1992 1SCC 719)*** “Prima facie case means that the court must satisfy as to there is a serious disputed question to be tried in the suit.”

11. Before dwelling upon the discussion on the aspects of prima-facie case, Balance of Convenience and irreparable hardship or injury the factual aspects of the said lis that are mentioned below are significant to determine the factors that are essential for grant of temporary injunction. it is incumbent at this stage to discuss the facts in nutshell which led to the institution of the suit.

12. It is the case of the plaintiff that he and defendant No.1 are brothers. Defendant No.1 is elder brother and plaintiff claimed that partition was affected amongst his 5 brothers on 03.05.2017 in the presence of elders. He further contended that the partition "Tippan" was signed on 12.05.2017. The plaintiff on this pretext claims to be the exclusive owner of the suit property and he claims to have dug the borewell and submits to have procured the basic amenities like electricity connection which are essential to carryout agricultural activities in the said properties.

13. The documents that are produced by the plaintiff which are the MR Extract of R.S. No. 74/13, record of rights in respect of R.S. No. 74/13, R.S. No. 74/20, R.S. No. 74/21 and electricity bill and the bill which stands as proof of sale of vegetable produce obtained from the suit property and affidavits by Sambaji Tahashildar and Shakuntala Tahashildar and copy of partition deed dated

03.05.2017 considered along with the contentions taken by the plaintiff in the plaint averments goes to show that there is a dispute which requires fully fledged trial. Hence, this court considered that the plaintiff has made out prima facie case as held in the decision in the case of **Kashinath Sansthan v. Srimad Sudhindra Thirtha Swamy, MANU/SC/1852/2009 : AIR 2010 SC 296** the court prescribed the criteria for temporary injunction as follows:

"In order to grant an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well-settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience".

Relying on the proposition of law laid down in the said decision it can be noted that the plaintiff has made out prima facie case to go for trial.

14. Whether balance of convenience lies in favor of party claiming relief of temporary injunction and Whether any irreparable injury of hardship is caused by granting or refusing to grant TI?

In this I.A, the relief sought is pertaining to non-alienation of the suit property pending the disposal of the suit and for restraining the defendants from creating any charge or encumbrance over the suit property. It is the apprehension of the plaintiff that defendants No. 2 and 3 have entered their names in the record of rights on the bases of Gift Deed executed by defendant No. 1 without having any manner of rights, title or interest over the suit property. The defendant No.1 on the other hand submits that he is having exclusive rights over the property hence, he had the authority to execute the Gift Deed on 07.02.2024. The very purpose of filing the suit is to get the relief of declaration declaring the Gift Deed executed by defendant No. 2 and 3 is not binding upon the plaintiff. This being the state of affairs, if defendants are permitted to carry out further transactions it would create third party interest and pave the way for multiplicity of proceedings and any transaction that take place during the pendency of the proceeding will be hit by the doctrine of lis pendens. In order to avoid the rights of the parties to the lis being curtailed by any further transactions in any of the modes prescribed for conveyance of properties in respect of the suit land until the rights of the parties with regard to factum of possession and ownership are conclusively determined by holding a fair trial, this court holds that balance of convenience lies in favour of plaintiff as the very purpose of the filing suit will be defeated and the comparative hardship that is likely to be sustained by the

plaintiff is greater when compared to that of the defendants. **Hence, Point No.1 in the Affirmative** holding that balance of convenience lie in favour of the plaintiff and plaintiff will be put to irreparable hardship by an order refusing grant of ad-interim injunction.

15. POINT No.2:- In view of the affirmative findings arrived at Point No.1, this Court proceeds to pass the following;

ORDER

I.A.No.II filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC is hereby allowed.

The defendant No. 2 and 3, their agents, servants, henchmen or any other persons acting on their behalf are be restrained from alienating or creating any encumbrance over the suit property until further orders.

No order as to costs, keeping in view of the nature of suit.

For framing of issues by
15.10.2025

(Dictated to the Stenographer Grade-III, transcribed and typed by her, the transcript revised and corrected by me and pronounced in the open Court, on this the 10th day of October, 2025).

Sd/-

(Bhuvaneshwari D.)
IV Addl. Civil Judge & JMFC,
Belagavi.