

KABG040012922022



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 the 08th day of July, 2026

ORIGINAL SUIT No. 749/2022

PLAINTIFF:	1. Balawwa D/o. Maruti Gudagenahatti, After marriage, Smt. Balawwa, W/o Mallappa Kempannavar, Age : 36 years, Occ: Household work, R/o: Bagaranal, Tal: Hukkeri, Dist: Belagavi.
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V/s.

DEFENDANT:	1. Shri. Kempanna S/o. Balu Gudagenahatti, Age : 44 years, Occ : Agriculture, R/o: Kedanur Village, Belagavi.
<u>ORDER ON I.A.No.II</u>	
APPLICANTS/ DEFENDANT	Shri. Kempanna S/o. Balu Gudagenahatti, (By Shri V. M. Patil, Advocate)
-AND-	
OPPONENTS/ PLAINTIFF:	Balawwa D/o. Maruti Gudagenahatti, (By Shri A. B. Koni, Advocate)

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

This I.A is filed by defendant under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC seeking to obtain an order of status quo to maintain the suit properties in the same conditions.

2. In the accompanying affidavit it is submitted that in the month December-2022 the plaintiff had come with proposal to sell her share in the landed properties bearing R.S. No. 46/40 and R.S. No. 46/25. It is further submitted that in the presence of panchas of Kednur village, the proposal was accepted by the defendant. In the month of January-2023 it is contended by the defendant that Rs.2,00,000/- was paid by the plaintiff in the presence of panchas. It is further contended that plaintiff has agreed to sell her share in property bearing R.S. No. 46/40 and R.S. No. 46/25 situated at Kadoli Village, after defendant alleged receiving Rs.2,00,000/- from defendant. The defendant has alleged that plaintiff is not executing Sale Deed before the office of Sub-Registrar. On these contentions, the defendant contending that plaintiff is the making an attempt to dupe the advance amount of Rs.2,00,000/- has filed this I.A. seeking order of status-quo to maintain the suit properties in their intact condition.

3. The counsel for plaintiff has failed to file objection to I.A. No. II hence, objections to I.A. No. II is taken as not filed on 10.01.2024.

4. The counsel for plaintiff and defendant failed to putforth arguments on I.A.No.II despite providing ample opportunity hence, hearing on I.A. No. II is taken as nil.

5. 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 defendant has made out sufficient grounds to obtain the relief as sought for in the I.A?

2. What order?

6. 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;

<i>Point No.1:</i>	<i>In the Negative</i>
<i>Point No.2:</i>	<i>As per the final Order, for the following;</i>

REASONS

7. **POINT No.1:-** The present suit is instituted by the plaintiff seeking the relief of partition and separate possession in respect of the suit properties. It is the case of the plaintiff that defendant and she are related to the original propositus Kallappa who died leaving behind his elder son Balu and younger son Maruti. It is further contended that the plaintiff had approached the defendant in the month of May-2022 to effect partition in respect of the suit properties. The relief is seeking order of status-quo under Order XXXIX Rule 1 and 2 of CPC, if the accompanying affidavit is perused no reasons are made out so as to pass status-quo order. It is settled proposition of law that court can grant order of status-quo only in exceptional circumstances. In this specific suit the defendant has sought an order of status-quo without mentioning as to what is his apprehension in seeking for the said relief and moreover it is admitted fact that plaintiff and defendant are the members of joint sights family and they have equal rights and legitimate interest in the suit properties. It is also well postulated that injunction cannot be granted against the co-owners of the properties. Considering the said proposition of law, this court is view that defendant has not established existence of prima facie case to obtain an order of court in his favour and he himself has admitted ownership of the plaintiff over the suit properties.

8. The relevant provision applicable is Order XXXIX Rule 1(a) of CPC. As there is proposition of law stating citing of wrong provision is not fatal. The present application is considered under Order XXXIX Rule 1(a) of CPC.

9. At this stage the court deems it appropriate to hold that the aspect of balance of convenience and irreparable injury cannot be looked into when the plaintiff has failed to demonstrate prima facie case which is supported by below mentioned authority:

The Hon'ble High Court of Karnataka in Gowrishankar Swamigalu V/s Siddaganga Mutt & others, reported in ILR 1989 KAR 1701, wherein it has been held:

"The existence of a prima facie case in the matter of granting injunction is really the harbinger or all the clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put for-ward was so weak and tainted having very little prospect of being accepted by the Court, further questions of bal-ance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself..."

10. Placing reliance on the aforementioned decision when the prima-facie case is not made out the question of considering balance of convenience and irreparable injury do not survive for consideration. **Hence Point No.1 is answered in the Negative holding that defendant has not made out grounds to obtain status-quo Order.**

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

ORDER

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

***No order as to costs keeping in view
the nature of the application.***

(Dictated to the Stenographer Grade-III, transcribed and typed by her and corrected by me and then pronounced in the Open Court, on this the 08th day of July, 2026).

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