

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.I</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.I 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 interfering or obstructing in peaceful possession, use and enjoyment of the plaintiff's possession over the suit property.

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 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 favour 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 defendants 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 favour 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 rights is unregistered and submitted partition has been taken place in the year 1999, on the basis of 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 Negative*

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 interfering or obstructing in peaceful possession, use and enjoyment of the plaintiff 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 existence of 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 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 mentioned below are vital to decide upon the said conditions that act as prerequisites 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 plaintiff claiming the interim relief and whether any irreparable injury or hardship is suffered by order granting or refusing to grant TI?

In this suit, there are two partition deeds based on which the plaintiff and defendant No. 1 are claiming their respective rights. In order to grant the relief of injunction at this stage, it is pertinent to consider that if the defendants are restrained from interfering with the possession of the plaintiff at this stage of the suit wherein rights pertaining to the land in respect of which the relief is claimed is not ascertained, it would cause impediment to the interest of the both the parties moreover the plaintiff claims to be in the possession of the property and suit land is said to have been cultivated by the plaintiff by growing paddy and other vegetables. On the other hand, the defendants have submitted at Para No. 8 of written statement that as the relationship between the plaintiff and defendants was cordial the defendants have permitted the plaintiff to cultivate the suit land. When the said fact is admitted in the pleadings of the defendants there is no question of interference as alleged by the plaintiff as the defendants themselves have admitted to the effect that they are permitted by the plaintiff to cultivate the land which is the subject matter of the dispute. On the basis of this observation, the court holds that balance of convenience do not lean in favor of plaintiff as he is admitted to be in the possession of the suit land at this stage and before obstructing the possession the nature of the suit property has also to be looked into and the suit land being agricultural land and on perusal of the revenue records in respect of the suit land shows that certain crops have been

cultivated in the suit land and granting of the relief claimed would cause hardship to the defendants to the greater degree in comparison with that of the plaintiff. The rival claims in question are to be adjudicated at the time of the trial and the apprehension of the plaintiffs do not entail them the equitable relief of injunction placing emphasis on pleadings of both the parties. **Hence, Point No.1 in the Negative** holding that balance of convenience do not lean in favor of the plaintiff and plaintiff will not be put to irreparable hardship by an order refusing granting of ad-interim injunction.

15. POINT No.2:- In view of the findings attributed to arrive at inference on Point No.1, this Court proceeds to pass the following;

ORDER

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

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

(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.**