

KABG300000152025



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT; BAILHONGAL.**

PRESENT:

Sri. Ravi Babu Chawan,
B.A.LL.B(Spl.).
Senior Civil Judge, Bailhongal.

O.S. No. 2/2025

Dated this the 17th Day April, 2025

- 1) Smt. Basavva W/o Shivaputrappa Hiremath,
Age: 68 years, Occ: Agriculture,
R/o: Nabapur Khanagaon, Tq: Gokak,
Dist: Belagavi.
- 2) Smt. Indravva W/o Shiddalingappa Hiremath,
Age: 41 years, Occ: Agriculture,
R/o: Kumbar Oni, Nabapur Khanagaon,
Tq: Gokak, Dist: Belagavi.
- 3) Kumari. Savita D/o Shiddalingappa Hiremath,
Age: 20 years, Occ: Student,
R/o: Kumbar Oni Nabapur Khanagaon,
Tq: Gokak, Dist: Belagavi.
- 4) Kumar. Basavaraj S/o Shiddalingappa Hiremath,
Age: 18 years, Occ: Student,
R/o: Kumbar Oni Nabapur, Khanagaon,
Tq: Gokak, Dist: Belagavi.

5) Kumar. Shivanand S/o Shiddalingayya Hiremath,
Age: 17 years, Occ: Student,
R/o: Kumbar Oni Nabapur, Khanagaon,
Tq: Gokak, Dist: Belagavi.

(Plaintiff No.5 is minor represented through his
guardian natural mother plaintiff No.2)

6) Shri. Adavayya S/o Shivaputrayya Hiremath,
Age: 39 years, Occ: Student,
R/o: Kumbar Oni Nabapur Khanagaon,
Tq: Gokak, Dist: Belagavi.

7) Smt. Kashavva W/o Gurupadayya Hiremath,
Age: 61 years, Occ: Agriculture,
R/o: Hunashikatti, Tq: Bailhongal,
Dist: Belagavi.

8) Smt. Suvarna W/o Gangayya Hiremath,
Age: 66 years, Occ: Agriculture,
R/o: Islampur, Tq: Hukkeri,
Dist: Belagavi.

9) Smt. Mahadevi W/o Dundayya Hiremath,
Age: 58 years, Occ: Agriculture,
R/o: Islampur, Tq: Hukkeri,
Dist: Belagavi.

10) Smt. Shantavva W/o Jayashankrayya Hiremath,
Age: 56 years, Occ: Agriculture,
R/o: Maradigalli Bailhongal,
Tq: Bailhongal, Dist: Belagavi.

.....Plaintiffs

(By Sri. D.S.B., Advocate)

-Vs.-

- 1) Smt. Shivaleela W/o Shivalingayya Hiremath @
Salimath, Age: 52 years, Occ: Agriculture,
R/o: Kalmat Galli Bailhongal,
Tq: Bailhongal, Dist: Belagavi.
- 2) Smt. Bharati W/o Suresh Bagoji,
Age: 38 years, Occ: Household work,
R/o: Vannur, Tq: Bailhongal,
Dist: Belagavi.
- 3) Smt. Basavannevva S/o Shivalingayya Hiremath @
Salimath, Age: 36 years, Occ: Household work,
R/o: Maradigalli Bailhongal,
Tq: Bailhongal, Dist: Belagavi.
- 4) Smt. Sumangala W/o Channabasayya
Bikshavatimath, Age: 34 years,
Occ: Agriculture, R/o: near Govt Hospital Gokak Rural,
Tq: Gokak, Dist: Belagavi.
- 5) Shri. Basavaraj S/o Shivalingayya Hiremath,
Age: 32 years, Occ: Business,
R/o: Kalmatgalli Bailhongal,
Tq: Bailhongal, Dist: Belagavi.
- 6) Smt. Shoba W/o Rachayya Hiremath,
Age: 30 years, Occ: Household work,
R/o: Makkalageri, Tq: Gokak,
Dist: Belagavi.

.....Defendants

(By Sri. V.C.A. Advocate for D1 to D6)

PARTIES TO IA NO.I

Smt. Basavva W/o Shivaputrayya Hiremath,
and others,

.....Applicants/Plaintiffs

(By Sri. D.S.B., Advocate)

Vs.

Smt. Shivaleela W/o Shivalingayya Hiremath
Salimath and others,

.....Respondents/Defendants

(By Sri. V.C.A. Advocate for D1 to D6)

i	Provision under which the application is filed	U/o 39 rule-1 and 2 read with Section 151 of CPC
ii	Relief sought for	Restraining the defendants, their agents, servants or any anybody on their behalf from alienating or encumbrance the suit properties
iii	The date on which the application is filed	04-01-2025
iv	Number of the application	IA No.1
v	The date on which the objections are filed by the opponents	26-03-2025
vi	The date on which the orders were passed on the said application	17-04-2025

ORDER ON I.A.No.I

I.A. No. I is filed under Order 39 Rule 1 and 2 R/w. Section 151 of CPC filed by the Plaintiffs against the defendants restraining the defendants, their agents, servants or any anybody on their behalf from alienating or encumbrance the suit properties till the disposal of the suit.

2. In the affidavit accompanying I.A.No.I and in the plaint it is submitted by the applicants/plaintiffs the suit properties are the joint family properties of the plaintiffs and defendants. There is no partition has taken place in between the plaintiff and defendants by metes and bounds till today in respect of suit properties. It is alleged that the defendants colluding with revenue authority got created some illegal documents and got mutated their names separately in the records of rights of the suit properties and defendant Nos. 3 and 5 taking undue advantage as their names have been only mutated in the records of right of the suit properties item No. 1 and 2 highhandedly trying to alienate the suit properties. Hence, sought for interim temporary injunction.

3. On the other hand, the defendant No.1 to 6 have filed their written statement-cum-objection to IA

No.1 denying the averments of the plaint as well affidavit filed in support of IA No.1. Their specific contention is that, the suit properties are not the ancestral nor joint family properties of the plaintiffs and defendants, but these properties are the self acquired properties of defendant No.1 namely Shivalila. They further contended that, the plaintiffs have not included the family properties R.S No.247 and RS No.243 and house property standing in the names of Basayya Hiremath. Hence the suit of the plaintiffs is hit by principle of partial partition. Further the defendants have contended that, the plaintiffs and defendants are not the members of undivided family as they all are residing separately and genealogy shown in the plaint is in correct and incomplete. Hence prays to dismiss the suit as well IA No.1.

4. Heard the arguments. Perused the entire case records.

5. The following point would arise for my consideration:

Point No.1:- Whether the plaintiffs/applicants have made out a prima facie case?

Point No.2:- Whether the balance of convenience lies in favour of the applicants/ plaintiffs?

Point No.3:- Whether the applicants/plaintiffs would be put to irreparable loss or injury in the event the application is not allowed?

Point No.4:- What order?

6. My findings on the aforesaid points is as under :

Point No. 1: In the Affirmative

Point No. 2: In the Affirmative

Point No. 3: In the Affirmative

Point No. 4: As per final order for the following:

REASONS

7. **Point No. 1 to 3:-** In order to avoid repetition of facts all these points are taken up together for discussion.

8. This is a suit for partition and separate possession and the plaintiffs are seeking 5/6 share in the alleged joint family properties. The present IA-1 is as against defendants to restrain the defendants from alienating the suit properties. The defendants have contended that the suit properties are the self acquired properties of the defendant No.1. The

defendants denied nature of the suit properties and contend that the plaintiffs have no rights in the suit properties. The defendants have not denied relationship between the parties to the suit, but they contend that the genealogy shown in the plaint is incomplete.

9. The suit is for a substantive relief of partition. Plaintiffs contended that suit properties are the properties of joint family properties of plaintiffs and defendants and they were not partitioned. On the contrary the defendants denied nature of the suit properties are the joint family properties. In a partition suit where relationship is not denied there is an initial presumption that when the joint family possessed sufficient properties, the properties purchased by the family or any of its members are required out of income from joint estate. Without examining the evidence, both oral and documentary, it is difficult to come to a conclusion whether suit properties are self acquired property of defendant No.1 and they were purchased without aid of joint family income. There is always a possibility of putting the self earned income into the joint family hotch-pot. Therefore at this stage it is not proper to conduct a mini trial. The contention of the plaintiffs that suit properties are the joint family

properties cannot be considered as a false or misleading statement.

10. The question whether suit properties that were purchased by the defendant No.1 out of her own income or out of the income of the joint family is a question of fact which has to be established only after trial. The defendants could always rebut the presumption and establish that the suit properties were purchased out of her independent income. Further the defendants have contended that, the plaintiffs have not included the joint family property R.S. No.243 and R.S No. 247 standing in the name of one Basayya and hence the suit of the plaintiffs for partial partition is not maintainable. This being a question of fact, is a triable issue. Under such of circumstances this court is bound to protect the status quo of the suit properties until disposal of the suit as any disposition of the suit properties during the pendency of the suit would not only expose the plaintiffs to multifarious litigation but also would result in undermining plaintiffs' rights in the suit properties, in the event of their succeeding in the suit.

11. In view of rival contention on the both side it is must noted that the grant of an order of injunction more particularly, restraining the defendants from alienating the suit properties is very onerous and is granted only to maintain status-quo of the properties until the disposal of the suit. This is subject to the plaintiffs making out a prima-facie triable case and also establishing the fact that refusal to grant injunction would result in incalculable hardship and that defendants would not suffer any inconvenience.

12. On the basis of written statement filed by the defendants their intention to enjoy the properties exclusively could be gathered. Thus the apprehensions raised by the plaintiffs that the defendants are planning to alienate or encumbrance the suit properties cannot be lightly brushed away. The order restraining alienation would ensure that the suit property is preserved until the disposal of the suit. Therefore the plaintiff has made out a *prima facie* case. If IA No.1 is allowed no harm will be caused to the defendants. On the other hand if the IA No.1 is not allowed the plaintiffs will suffer irreparable loss, and as such the balance of convenience is in favour plaintiffs. Accordingly I answer Point No.1 to 3 in Affirmative.

13. **Point No.4:-** For the reasons assigned to Point no.1 to 3, to meet the ends of justice I proceed to pass the following:

ORDER

I.A.No. I filed under Order 39 Rule 1 and 2 R/w. Section 151 of C.P.C by the plaintiffs is hereby allowed.

The defendants, their agents, servants or any person claiming through or under the defendants are hereby restrained from alienating or encumbering the suit properties, in any manner whatsoever until the disposal of the suit.

Cost follow the main suit.

(Dictated to the stenographer directly on computer system, typed by him, corrected and pronounced by me in the open Court on 17th day of April, 2025)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

