

KABG300008822024



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL**

PRESENT:

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

O.S. No. 189/2024

Dated this the 3rd Day of May, 2025

1) Smt. Nagavva W/o Rudrappa Hakari,
Age: 50 years, Occ: Household work,
R/o: Budrakatti, Now at: Sangolli,
Tq: Bailhongal, Dist: Belagavi.

2) Manjunath S/o Rudrappa Hakari,
Age: 25 years, Occ: Agriculture,
R/o: Budrakatti, Now at: Sangolli,
Tq: Bailhongal, Dist: Belagavi.

3) Smt. Laxmi Rudrappa Hakari,
Age: 23 years, Occ: Household work,
R/o: Budrakatti, Now at: Sangolli,
Tq: Bailhongal, Dist: Belagavi.

.....Plaintiffs

(By Sri. S.S.A., Advocate)

- Vs.-

- 1) Shri. Parappa Maddeppa Hakari,
Age: 70 years, Occ: Agriculture,
R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.
- 2) Smt. Shantavva Basappa Hakari,
Age: 65 years, Occ: Household work,
R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.
- 3) Smt. Neelavva Shankreppa Gaddigal,
Age: 45 years, Occ: Household work,
R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.
- 4) Smt. Mahadevi Mallappa Tegur,
Age: 42 years, Occ: Household work,
R/o: Turakarashigihalli, Tq: Bailhongal,
Dist: Belagavi.
- 5) Shri. Maddeppa Basappa Hakari,
Age: 40 years, Occ: Agriculture,
R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.
- 6) Smt. Manjula Chandrashekar Murgod,
Age: 38 years, Occ: Household work,
R/o: Markumbi, Tq: Bailhongal,
Dist: Belagavi.
- 7) Shri. Virupaxappa Maddeppa Hakari,
Age: 64 years, Occ: Agriculture,
R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.
- 8) Shri. Ishwar Maddeppa Hakari,
Age: 62 years, Occ: Agriculture,

R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.

9) Shri. Shankar Maddeppa Hakari,
Age: 60 years, Occ: Agriculture,
R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.

10) Smt. Channavva Irasangappa Hakari,
Age: 48 years, Occ: Household work,
R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.

11) Smt. Nirmala Irappa Budrakatti,
Age: 35 years, Occ: Household work,
R/o: Hosur, Tq: Soundatti,
Dist: Belagavi.

12) Smt. Iravva Raju Dodwad,
Age: 33 years, Occ: Household work,
R/o: Kulavalli, Tq: Kittur,
Dist: Belagavi.

13) Smt. Mahadevi D/o
Irabasappa @ Irasangappa Hakari,
Age: 35 years, Occ: Agriculture,
R/o: Budrakatti, Tq: Bailhongal,
Dist: Belagavi.

.....Defendants

(By Sri. J.G.B. Adv. D1 to D6)
(By Sri. D.S.B., Adv. D7 to D10)
(D1, D11, D12 & D14: Exparte)
(D13-Absent)

PARTIES ON I.A. NO.I

Smt. Nagavva W/o Rudrappa Hakari
and others.

.....Applicants/Plaintiffs

(By Sri. S.S.A., Advocate)

Vs.

Shri. Parappa Maddeppa Hakari
and others**.....Respondents/Defendants**(By Sri. J.G.B. Adv. D1 to D6)
(By Sri. D.S.B., Adv. D7 to D10)
(D1, D11, D12 & D14: Exparte)
(D13-Absent)

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, or any person claiming on their behalf from alienating or encumbrance the suit properties
iii	The date on which the application is filed	29-07-2024
iv	Number of the application	IA No.1
v	The date on which the objections are filed by the opponents	02-05-2025
vi	The date on which the orders were passed on the said application	03-05-2025

ORDER ON I.A.NO.I

I.A. No. I is an application under Order 39 Rule 1 and 2 R/w. Section 151 of CPC filed by the Plaintiffs to restrain defendants or any person claiming 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 that the suit properties are the joint family properties of the plaintiffs and defendants. There is no partition has taken place in between the plaintiffs and defendants by metes and bounds till today in respect of suit properties. It is alleged that the defendants got created some illegal documents and they taking undue advantage as their names have been mutated in the records of right of the suit properties illegally, high handedly, behind back of the plaintiffs and without his knowledge trying to alienate, transfer, creating lien, mortgage, loan lease over the properties with a mala-fide intention to dupe shares of the plaintiffs in the suit properties. Hence, sought for interim temporary injunction.

3. On the other hand, the defendant No.5 has filed his written statement dated 2-5-2025 and the

same is adopt the defendant No.2 to 4 as their written statement also. Further learned counsel for these defendants has submitted a memo stating the contentions of written statement be treated as objections to IA No.1. The defendant No.5 has filed his written statement denying the averments of the plaint. However he has not denied relationship between the parties. He specifically contended that the item No.2, 3 and 6 are the self acquired properties of grandfather and father of defendant No. 2 to 6 and as such the plaintiffs have no rights and interest in the item No.2, 3 and 6 of schedule-A properties. According to these defendants the item no.1, 4 and 5 only are ancestral properties of the plaintiffs and defendants. It further case of these defendants that there was amicable partition between the plaintiffs and defendants many years ago, and according to which everyone has been cultivating the properties that came to their respective share. But since no one has paid the expenses for phodi in the lands and no one has come forward and tried to get the land in their separate name, the names of plaintiffs and the defendants have continued in the extracts of the suit properties. Hence the cause is that the land title is pending between the plaintiffs and defendants only in

the documents. Hence prayed to dismiss the suit as well as IA No.1.

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

5. The following points 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 plaintiff is seeking $\frac{1}{2}$ 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 defendant No. 2 to 6 have contended that the amongst the suit agricultural properties lands at serial No.2, 3 and 6 are the self acquired properties of the their father and grandfather. These defendant have admitted that remaining properties are ancestral properties, but they contend that, there was amicable partition between the plaintiffs and defendants many years ago, and according to which everyone has been cultivating the properties that came to their respective share.

9. The suit is for a substantive relief of partition. The relationship between the parties to the suit is not denied. Plaintiffs have pleaded that all the suit properties are the properties of joint family property of plaintiff and defendants and they were not

partitioned. The defendant No. 2 to 6 admitted that except suit properties at Sl. No. 2, 3 and 6 properties, remaining suit properties are the ancestral properties of plaintiffs and defendants. Thus 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 item No.2, 3 and 6 properties are self acquired property of defendant No.2 to 6's father and grandfather or it's were purchased out of joint family income. Further 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 joint family cannot be considered as a false or misleading statement.

10. The question whether item No. 2, 3 and 6 of suit schedule properties that were purchased by the defendant No.2 to 6's father or grandfather out of their own income or out of the income of the joint family is a question of fact which has to be established only after trail, 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 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. In the case hand as admitted by the defendant No. 2 to 6 the family possessed some of suit properties mentioned at SI No.1, 4 and 5. If that be so, then a presumption could be drawn that the funds of the family and its members were utilized to purchase the other properties. The defendant No.2 to 6 could always rebut the presumption and establish that the

properties at Sl. No.2, 3 and 6 were purchased out of independent income of their father and grandfather namely Madeppa.

12. On the basis of written statement filed by the contesting defendants their intention to enjoy the property 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 properties are preserved until the disposal of the suit. Therefore the plaintiffs have 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 the 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 henchmen or any person claiming through them are hereby restrained from alienating or encumbering the suit properties, in any manner whatsoever until the disposal of the suit.

No order as to Cost.

(Dictated to the stenographer directly on computer system, typed by him, corrected, signed and pronounced by me in the open Court on 3rd day of May, 2025)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal