

KABG310002802026



**IN THE COURT OF THE I ADDL CIVIL JUDGE AND J.M.F.C
AT: BAILHONGAL**

**Present : Shri.Basavaraja Thulasappa Nayaka,
LL.M.**

I Addl. Civil Judge and JMFC, Bailhongal

Dated this 08th day of April 2026

OS No.58/2026

1. Shri. Mehaboob S/o Babusab Shayannavar

..... Plaintiff/Applicant

(By Shri. DSD, Advocate)

V/s

1. Shri. Abdulraheem S/o Babusab Shayannavar and
others

..... Defendants/Opponents

(D: 1 to 5: By Shri.SFJ, Advocate)

(D: 6 : By Shri. AMK, Advocate)

1.	Date of filing of the IA No.I	18.02.2026
2.	Date of filing of objection	18.03.2026
3.	Date of order	08.04.2026

ORDER ON IA No.I

The plaintiff has filed the present application U/o 39 rule 1 and 2 of CPC seeking to restrain the defendant No.1 from alienating the suit schedule properties.

2. The plaintiff in the affidavit filed along with the application contended that, one Mugutsab is the original propositus. Aameena @ Modinabi is the wife of Mugutsab. Out of the marriage a son by name Babusab was born. The plaintiff, defendant No.1, 4 and 5 are the children of deceased Babusab. Defendant No.2 and 3 are the wives of defendant No.1. Except the said defendants, there are no other legal heirs to deceased Babusab. The defendant No.1 colluding together has sold the suit item No.1 property i.e. RS No.65/1 measuring 9 guntas in favour of defendant No.6 with the consent of defendant No.2 and 3 on 08.01.2026 through registered sale deed. The plaintiff have preferred appeal bearing RRT No.4/2026 before the Tahsildar. Further, contended that the plaintiff and defendants are in possession of suit properties and they are tenants in common. Further, contended that the property bearing No.687/A was sold to one Karennavar, they have no claim in respect of the said property. The suit item No.2 property in Schedule-A i.e. 64/5 measuring 30 guntas standing jointly in the name of plaintiff, defendant No.1, 4 and 5. Further, contended that plaintiff has 1/4th share in the suit properties. The defendants No.6 is trying

to mutate his name in respect of the suit item no.1 property in schedule A by virtue of the registered sale deed dated 08.01.2026. The said sale deed is not binding on them. Hence, pray to allow the application.

3. After service of summons the defendants appeared before the Court and filed written statement and memo to treat written statement as objection to IA No.I. In the written statement contended that the application is not maintainable. The plaintiff has not come to the Court with clean hands. The defendants denied that Plaintiff and defendant No.1, 4 and 5 are tenants in common of suit item No.1 in suit Schedule-A and suit item No.1 in suit Schedule – B. The defendant denied the genealogy stated by the plaintiff. The plaintiff admitted that, one Mugutsab was the original propositus. The defendant contended that the deceased Mugutsab has got two wives Ameena the first wife and Modinabi the second wife. Out of the wedlock of Mugutsab and Ameena two sons by name Babusab and Moulasab are born and out of the wedlock of Mugutsab and Modinabi 7 sons are born. After the death of Mugutsab his 9 sons succeeded to the property left by the Mugutsab. The defendant contended that the plaintiff has sought relief in respect of property No.687/A whereas in the plaint contended that he has not sought relief in respect of the said property. Further contended that there was two partition deed were executed among plaintiff and

defendant No.1 and others and also contended that the plaintiff and others have executed relinquishment deed in respect of suit item No.1 in suit Schedule – A property i.e. RS No.65/1 measuring 9 guntas.further contend that the suit item no.2 in schedule A I.e R.S.No.65/5 is standing in the name of plaintiff and defendant No.1, 4 and 5. Hence, this highly impossible that defendant alone can alienate the said property without a consent and further contended the suit item No.2 property of Schedule- B i.e. G.P. No.614 is standing in the name of deceased Mugutsab Shayannavar. Hence, the said property also the defendant No.1 alone can not alienate. The defendant contended that prior to the institution of the suit only, the defendant No.1 has sold the property bearing RS No.65/1 in favour of defendant No.6. Further, contended that, the plaintiff has not challenged the released deed and the partition deed without challenging the said released deed and impleading the others, the present suit is not maintainable. Hence, prays for dismissal of the application.

4. Heard arguments.

5. The following points are arises for my consideration:

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience lies in his favor?

3. Whether the plaintiff would be put to irreparable hardship and injury?
4. What order ?
6. My answer to the above points are as follows”-
Point No.1 to 3 : Partly in the Affirmative.
Point No.4 : As per order for the following:

REASONS

7. Point No.1 to 3 :- As these points are inter related they are taken together for discussion. The plaintiff contended that one Mugutsab is the original propositus. Ameena is the wife of Mugutsab. Out of the wedlock Babusab was born. The plaintiff, defendant No.1 4 and 5 are the children of Mugutsab and Ameena. The plaintiff and defendant No.1, 4 and 5 are the tenants in common of suit schedule property. They have 1/4th share in the suit properties. Further contended that property bearing RS No.687/A was sold to Karennavar, they have no claim in respect of the said property. The defendant No.1 has illegally sold the suit item No.1 in the Schedule-A i.e. RS No.65/1 measuring 9 guntas in favour of defendant No.6. Now the defendant No.6 is trying to mutate his name. On the other hand the defendant denied the genealogy. The defendant admits that, the Mugutsab is the original propositus. The defendant contended that Mugutsab had

two wives by name Ameena and Modinabi. Out of the wedlock with Ameena by Mugutsab, Babusab and Moulasab were born. Out of the wedlock of Mugutsab and Modinabi 7 sons are born, they all succeeded the properties, the properties left by Mugutsab. The defendant contended that, the plaintiff and defendant No.1, 4 and 5 and others have executed partition deed and further contended that, the plaintiff and defendant executed released deed suit item No.1 property i.e. 65/1 measuring 9 guntas, without challenging said released deed and impleading all the successors, the suit is not maintainable.

8. The plaintiff counsel argued that, the plaintiff and defendant No.1,4 and 5 are the tenants in common of schedule properties. The plaintiff in this regard relied on RTCs and also relied on RRT appeal preferred before the Tahsildar.

9. The defendant counsel argued that, the present suit is not maintainable. The plaintiff claim that the present suit is filed for the relief of declaration, whereas in the plaint, the plaintiff has not sought relief of declaration with respect to his right over the suit properties. Further, argued that the plaintiff has not challenged the partition deed dated 09.02.2025. Hence, the present suit is not maintainable. Further, argued, the plaintiff has not filed

suit with clean hands, he has not challenge the partition deed and released deed. In the plaint states he has not claim any relief in respect of GP No.687/A, whereas in the plaint prayer he has relief in respect of the suit property. The suit property is standing in the name of Karennavar. Further, argued that all the legal heirs of deceased Mugutsab are not impleaded in the present suit. Hence, the present suit is not maintainable. Further argued that the defendant No.1 has executed sale deed in respect of the suit item No.1 property i.e. RS No.65/1 in favour of defendant No.6, prior to the institution of the suit. The plaintiff in order to harass the defendant No.6 has filed the present suit. Further relied on the released deed and argued that, the plaintiff is signatory to the said released deed, wherein the plaintiff has relinquished her share in respect of suit item No.1 in schedule A in favour of defendant No.1. Hence, the plaintiff has no right whatsoever over the suit item No.1 property. In the plaint there is no whisper regarding the execution of the release deed. This clearly shows that, the plaintiff has not come to the court with clean hands. The plaintiff counsel relied on following decisions:-

***1) In the Court of Hon'ble Supreme Court of India
– case between A Venkatasubbia Naidu Vs. S
Chellappan and others – dated 19.09.2000.***

2) In the Court of Hon'ble Supreme Court of India – CIVIL APPEAL No.4900 of 2010 - case between Mumbai International Airport Pvt. Ltd Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors – 06.07.2010.

3) In the Court of Hon'ble Jammu & Kashmir High Court – case between Tariq Umar Sheikh Vs. Zubair Khan and Ors – 29.06.2020.

4) In the Court of Hon'ble High Court of Karnataka – 2011(4)KAR L.J 657 – case between G Channarayappa and Ors Vs. Lakshmi Malleables Pvt. Ltd – 07.06.2011.

5) In the Court of Hon'ble Supreme Court of India - case between S P Chengalvaraya Naidu Vs. Jagannath – 27.10.1993.

6) In the Court of Hon'ble Senior Civil Judge Bailhongal on IA No.I in OS No.246/2023.

10. The Defendant counsel relied on legal heirs certificate, GP extract, partition deed dated 17.02.2025 and 18.02.2025 and the released deed dated 19.02.2025 and also relied on RTC, mutation . It is pertinent to note that the relation ship between plaintiff and defendant No.1, 4 and 5 is not disputed. Further, it is not in dispute that, the original propositus is one Mugutsab. On perusal of the RTC, it appears that the RS No.65/1 stands in the name of defendant No.1. RS No.64/5 stands in the name of

plaintiff, defendant No.1, 4 and 5 and the property No.624 stands in the name of Mugutsab. The GP No.687/A stands in the name of Karennavar. According to the plaintiff, the defendant No.1 illegally sold the suit item No.1 property in favor of defendant No.6 and sought to restrain the defendant No.1 from alienating suit property. It is pertinent to note that on perusal of sale deed, it appears that the sale deed was executed on 08.01.2026, it appears that in respect of the said property, sale deed has been executed prior to the institution of the suit. Further, on perusal of released deed dated 15.02.2025, it appears that the plaintiff has relinquished her right in respect of the property bearing RS No.65/1 measuring 9 gunta in favour of defendant No.1. The plaintiff has not pleaded in the plaint regarding the execution of the released deed in respect of RS No.65/1 in favour of defendant No.1. As rightly contended by the defendants, the plaintiff has not come to this Court with clean hands. So far as property No.687/A, the plaintiff himself in the plaint stated that he has not sought relief in respect of said property and the said property is standing in the name of Karennavar. Hence, the question of grant of relief of temporary injunction in respect of the said property also does not arise. As stated supra, the plaintiff has released his share in respect of suit item No.1 property in Schedule-A i.e. RS No.65/1, measuring 9 guntas, the plaintiff is not entitled for the relief of temporary injunction in respect of said

property. Moreover, the plaintiff has not challenge the released deed. Further, on perusal of the partition deed, it appears that, there was a partition effected between plaintiff and defendant No.1,4 and 5 in respect of other properties. The plaintiff contended that without the relief declaration as to the partition deed, the present suit is not maintainable. It is pertinent to note that on perusal of the partition deed, in the said deed, the suit item No.2 property i.e. RS No.64/5 and GP No.614 is not included. Hence, the question of challenging partition deed does not arise. So far as not impleading of the necessary parties, it is matter of trial. So far as the suit item No.2 of Schedule -A i.e. RS No.64/5 measuring 30 gunta and GP No.614 is concerned, defendant No.1 to 5 themselves admits that the RS No.64/5 stands jointly in the name of plaintiff and defendant No.1, 4 and 5 and GP No.614 stands in the name of original propositus. It is highly impossible to alienate the suit property. This clearly shows that, the plaintiff and defendant No.1, 4 and 5 are tenants in common of the said properties. The plaintiff claim that, the defendant No.1 may alienate the said properties. Hence, to the extent of said properties i.e. GP No.614 and RS No.64/5, the plaintiff is entitle for relief of temporary injunction, not to alienate the said properties. So far as suit itme no.1 property I.e R.S.No.65/1 measuring 9 guntas, the plaintiff has not made out prima facie case, balance of convenience and irreparable hardship in his

favor. Hence, I answer the point No. 1 to 3 partly in the Affirmative.

11. Point No.4: In view of the above discussions, I proceed to pass the following order portion:

ORDER

I.A.No.I filed by the plaintiff U/o 39 rule 1 and 2 of CPC is hereby partly allowed.

The defendant No.1 is hereby restrained from alienating the suit item No.2 in Schedule-A i.e. RS No.64/5 measuring 30 guntas and GP No.614 i.e. suit item No.1 of Schedule – B property, till the disposal of the suit.

The relief of temporary injunction sought by the plaintiff in respect of suit item No.1 in Schedule-A property i.e. RS No.65/1 measuring 9 guntas is hereby rejected.

No order as to cost.

(Dictated to stenographer typed by him, corrected by me, then pronounced in the open court on this the 08th day of April 2026)

Sd/-
**I Addl. Civil Judge and JMFC
Bailahongal.**