

KABG400003132025



IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
CHIKODI

: PRESENT :

SHRI. PATIL HARISH RANGANAGOWDA
BA. LL.B.(Hon's)
Prl. Senior Civil Judge, Chikodi.

10th DAY OF APRIL - 2026

OS NO.116/2025

BETWEEN :

Smt. Shobha W/o. Sadashiv Kotagi

... Plaintiff

(Sri. S. B. Mukare, Adv.,)

AND :

**Sri. Mallappa Annasab Nirvani
and others**

... Defendants

(D1, 3, 4 by Sri. M. R. Sagare, Adv.,)

(D2 & 9 by Sri. R. D. Kamate, Adv.,)

(D5 to 8 by Sri. K. D. Madiwal., Adv.,)

(D10 to 12 by Sri. A. G. Pawar, Adv.,)

:: ORDERS ON IA NO.II ::

The defendant No.3 has filed IA No.II u/O.39 Rule 4 of CPC seeking to modify the interim order passed on IA No.I which was filed u/O.39 Rule 1 and 2 of CPC restraining the defendants from alienating the suit properties. He seeks to modify the said interim order enabling him to alienate the suit property bearing RS No.218/4 measuring 1 acre 20 gunta in favour of the agreement holder dated:17.03.2025.

2. He has pleaded that he has entered into an agreement of sale with one Mutturaj Basappa Madar and Ajay Basappa Madar under agreement of sale dated:17.03.2025 agreeing to convey the property bearing RS No.218/4 measuring 1 acre 20 gunta to meet his necessities such as payment of college and boarding fees of his son and daughter who are pursuing their graduation in Bachelor of Engineering and Bachelor of Science. Therefore he is in need of money to meet the education expenses of his children and to clear the other dues. Therefore he has entered into an agreement of sale prior to the filing of present suit by the plaintiff. The prospective purchasers who have paid advance sale consideration are insisting for execution of sale deed. He has good case on merit and could succeed in defending the suit of plaintiff. Therefore he seeks to modify the interim order enabling him to complete the sale transaction in terms of the agreement of sale.

3. The plaintiff has objected the said application by contending that the defendant No.3 is not entitled to seek permission to alienate the undivided interest over suit property. There is no truth

in the case of necessity pleaded by the defendant No.3. Further the agreement of sale does not stipulate the recital of necessity pleaded by the defendant No.3. The law does not permit him to seek modification of interim order to alienate the property. Therefore she seeks to reject the application. Heard both sides. The counsel for defendant No.3 has produced the copies of challen of payment of college fees and copies of education records of his daughter.

4. Having heard both sides and having perused the material on record, the following points arise for consideration;

1. Whether the defendant No.3 makes out ground to modify the interim order passed on IA No.I in respect of suit property bearing RS No.218/4 measuring 1 acre 20 gunta as sought in IA ?

2. What order ?

5. Having heard and having perused the material on record, my findings to above points is as under:

Point No.1 : In the Affirmative

Point No.2 : As per the final order,

for the following:

:: REASONS ::

6. **Point No.1:-** The plaintiff has filed this suit seeking for the relief of partition and separate possession of her share over suit properties in all measuring more than 31 acres. According to her, one Ishwar Mallappa Nirvani is the propositus who died leaving behind widow Akkatai (defendant No.4) and seven children namely Shashikala (mother of defendant Nos.5 to 7), Mangal (defendant No.8), Shobha (plaintiff), Lalitha (defendant No.9), Sanjay Kumar (defendant No.3), Mallappa (defendant No.1) and Vishwanath (defendant No.2). Thus, she claimed that she herself and

defendants constitute Hindu undivided joint family and suit properties are joint family properties. The request made by her to effect partition was turn down. Hence, she approached this court.

7. The defendant Nos.1, 3 and 4 have opposed the suit claim on the ground of prior partition effected by the propositus among his sons. Therefore they claimed that the partition has already taken place in respect of suit properties. They also claimed that an area measuring 2 gunta of land was given to the plaintiff by executing gift deed. The said plaintiff has appropriated the property and alienated the same to the third parties. Therefore there is no truth in the case of plaintiff. Hence, they seek to dismiss the suit. The issue before court is regarding the interest of plaintiff to seek division and the factum of earlier partition set up by the defendant Nos.1 to 4.

8. During pendency of suit the defendant No.3 moves an application u/O.39 Rule 4 of CPC at IA No.II seeking to modify the interim order passed on IA No.I removing the interim injunction

in respect of land bearing RS No.218/4 measuring 1 acre 20 gunta enabling him to alienate the same to the agreement holders. He has contended that he has entered into an agreement of sale with defendant Nos.10 and 11 to alienate the suit property bearing RS No.218/4 measuring 1 acre 20 gunta to meet his necessities. He has contended that he has to pay college and boarding fees of his children who are pursuing their studies. Therefore he is in need of money to meet the necessities. He has produced college record of son and daughter. He has also produced the payment challen of college fees. The said records indicate that the children of defendant No.3 are pursuing their studies in the technical course. Therefore there is prima-facie material indicating the necessity of the defendant No.3. The plaintiff claimed 1/8th share in the suit properties. The suit properties are in all measuring more than 31 acres. Even if the suit get decreed, each sharer would get more than 3 acre of land. The defendant No.3 will also receive same share. The records indicate that the suit properties are independently standing in

the name of defendant Nos.1 to 3 to the independent extent. Therefore it prima-facie show the independent possession of said brothers over the said property. The property intend to be disposed off by the defendant No.3 is well within his quantum of share. Even if the suit get decreed the share of plaintiff can very well be accommodated. Therefore if the interim order is modified vacating it on land RS No.218/4 measuring 1 acre 20 gunta it will not have adverse impact on the share of plaintiff. The learned counsel for plaintiff submits that if the defendant No.3 alienated the said property and purchaser comes in the joint possession over said property it will create hostile atmosphere among the parties. The records prima-facie indicate the exclusive possession of defendant No.3 over the said property and proposed alienation undertaken by defendant No.3 is well within his 1/8th share over suit property. Therefore the request for modification of interim order could be considered on the humanitarian ground as the defendant No.3 shows that he has to meet the educational expenses of his children. The interest of plaintiff is well secured

as there are other large extent of land available for division. However no blanket removal of injunction could be passed. The defendant No.3 and prospective purchaser who are defendant Nos.10 to 12 should be put on terms. They should execute indemnity bond before this court that they will not change the use of said land from agricultural use to non-agricultural use and develop the property for further alienation. Further they will abide by the decision of court on the final outcome of suit subject to the law of equity. Therefore on these two condition the interim order could be modified. This court has taken aid from the law laid down by Hon'ble High Court of Karnataka in MFA No.7416/2025 to modify the interim order. The Hon'ble High Court of Karnataka has modified the interim order in the said case protecting the interest of plaintiff curtailing the alienation to the extent of share of plaintiff. Therefore taking aid from the said decision I found suitable to apply the law and pass order modifying the interim injunction. **Hence, I hold above point No.1 in the Affirmative.**

9. **Point No.2:-** In the light of aforesaid findings on the above said points, I proceed to pass following:

ORDER

The IA No.II filed by defendant No.3 u/O.39 Rule 4 of CPC is hereby allowed on condition.

The interim order dated:16.04.2025 passed on IA No.I is modified by vacating the interim order in respect of suit property bearing RS No.218/4 measuring 1 acre 20 gunta which is proposed to be alienated in favour of defendant Nos.10 to 12 on following condition.

a. **The defendant No.3 and defendant Nos.10 to 12 shall execute indemnity bond before this court that they will not convert the suit property from agricultural to non-agricultural use and develop the**

property and make further alienation till disposal of suit.

b. They will abide by the decision of court in regard to the said property subject to the law of equity.

(Dictated to the stenographer directly over the computer, typed by her, corrected, signed and then pronounced by me in the open court on this the 10th day of April, 2026).

**(Patil Harish Ranganagowda)
Prl. Senior Civil Judge,
Chikodi.**

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