



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, GOKAK.**

BEFORE: Sri.Umesh S. Atnure,

B.Com.LL.B.(Spl)

O.S. No.142/2022

DATED THIS 01st DAY OF APRIL-2025

Plaintiffs:

1. Jagadeesh S/o Yamanappa Hatti,
Age: 48 years, Occ: Agriculture,
R/o: Laxmipur Arshikar, Tq: Arashikari,
Dist: Hassan-573103.
2. Smt: Kaveri W/o Mallappa Somappanavar,
Age: 46 Years, Occ: Household,
R/o: Bailhongal, Tq: Bailhongal,
Dist: Belagavi.
3. Ambarish S/o Yamanappa Hatti,
Age: 45 years, Occ: Agriculture,
R/o: Shiltibhavi, Tq: Gokak, Dist: Belagavi.

V/s

Defendants:

1. Yamanappa S/o Hanamant Hatti,
Age: 82 years, Occ: Agriculture,
R/o: R.T. Nagar, Bangalore.
2. Smt: Gangavva W/o Yamanappa Hatti,
Age: 70 years, Occ: Household,
R/o: Shiltibhavi, Tq: Gokak.
3. Smt: Chandravva W/o Uddappa Hatti,
Age: 70 years, Occu: Household,
R/o: Mamadapur, Tq: Gokak.

4. Smt: Laxnavva W/o Dyamanna Ligaraddi,
Age: 38 years, Occu: Agriculture,
R/o: Yarajaravi, Tq: Savadatti.
5. Vasu S/o Uddappa Hatti,
Age: 35 years, Occu: Household,
R/o: Mamadapur, Tq: Gokak.
6. Chandrappa S/o Hanamant Hatti,
Age: 71 years, Occ: Agriculture,
R/o: Munnolli, Tq: Savadatti.
7. Prashant S/o Chandrappa Hatti,
Age: 36 years, Occ: Agriculture,
R/o: Munnolli, Tq: Savadattil
8. Shridhar S/o Chandrappa Hatti,
Age: 32 years, Occ: Agriculture,
R/o: Munnoli, Tq: Savadatti.
9. Smt: Basavva W/o Basappa Hatti,
Age: 65 years, Occ: Household,
R/o: Yarajaravi, Tq: Savadatti.
10. Smt: Renuka W/o Shrikant Hanji,
Age: 36 years, Occ: Agriculture,
R/o: Janata Plot, Gokak, Tq: Gokak.
11. Hanamant @ Hanamantappa S/o Basappa
Hatti, Age: 38 years, Occ: Agriculture,
R/o: Yarajaravi, Tq: Savadatti.
12. Smt: Rekha W/o Fakirappa Patil,
Age: 30 years, Occ: Agriculture,
R/o: Gudamakeri, Tq: Gokak.
13. Siddappa S/o Mudakappa Shingadi,
Age: Major, Occ: Agriculture,
R/o: Mamadapur, Tq: Gokak.

14. Nagappa S/o Mudakappa Shingadi,
Age: Major, Occ: Agriculture,
R/o: Mamadapur, Tq: Gokak.
15. Bhimappa S/o Mudakappa Shingadi,
Age: Major, Occ: Agriculture,
R/o: Mamadapur, Tq: Gokak.
16. Smt: Lakkavva W/o Chandappa Onti,
Age: 35 years, Occ: Agriculture &
Household,
R/o: Maradi Shivapur, Tq: Gokak.
17. Smt: Suvarna W/o Gurunath Sayannavar,
Age: 33 years, Occ: Agriculture &
Household,
R/o: Kemmanakol, Tq: Gokak.
18. Smt: Laxmavva @ Laxmi W/o Mallappa
Basarimarad,
Age: 30 years, Occ: Agriculture &
Household,
R/o: Maradi Shivapur, Tq: Gokak.

**PARTIES TO I.A.No.IV U/o XXXIX RULE 1 AND 2 OF
CPC**

Applicant: 1. Ambrish S/o. Yamanappa Hatti
.....Plaintiff No.3/ applicant
Vs.
Opponents: 1. Yamanappa S/o. Hanamant Hatti
and others
.....Defendants/ Opponents

ORDERS ON I.A.No.I FILED U/o XXXIX RULE 1 & 2 R/W
SEC 151 OF CPC.

The plaintiffs have filed this present application U/o XXXIX Rule 1 and 2 R/W.Sec.151 of CPC at I.A.No.I praying to restrained defendants from alienating, transferring or mortgaging the suit properties bearing R.S.No.293/4B and R.S.No.329/4B of Mamadapur village till disposal of this suit.

2. In the accompanying affidavit, the plaintiff No.3 contended that they have filed this suit seeking the relief of partition and separate possession of their legitimate share in the suit schedule properties. They are in joint possession and enjoyment of the suit properties, they have got every right, title and interest over the suit schedule properties. The defendants taking undue advantage of their names appearing the record of rights of the suit schedule properties without their knowledge and consent alienated the suit properties infavour of strangers in order to cause loss to them. The suit properties are their ancestral and joint family properties, they have got share in the suit schedule properties, there is no partition took place in between

themselves and defendants in respect of the suit properties hence, they have filed this application praying to restrained defendants from alienating, transferring or mortgaging the suit schedule properties against the defendants. They have got prima facie case, balance of convenience lies in their favour. If the temporary injunction as prayed by them is not granted they will be put to irreparable loss and injury. Hence, they prayed to allow the application.

3. When the suit is filed at that time the defendants No.1 to 12 are only the parties and during pendency of this suit the defendants No.13 to 18 were got impleaded by the plaintiffs.
4. The defendants No.1 to 5 filed their written statement by admitting the contentions of the plaintiff and they also prayed to allot their share in the suit properties but they have not filed any objections to this application. The defendants No.6 to 8 filed the written statement and memo adapting the written statement objections to IA.No.1.
5. The defendants No.6 to 8 denied the entire contentions of the plaintiffs. They further contended that the defendant No.6 is the father of the defendants No.7 and 8, the defendant No.6 was government servant, he retired recently, he was having

independent source of income. His wife is also having landed properties from her parental house. The wife of the defendant No.6 and mother defendants No.7 and 8 by name Shantavva Chandrashekhar Hatti purchased land bearing R.S.No.53 measuring 04 acres of 10 acres 04 guntas of Munavalli village from Hanamant Bhimappa Talawar @ Dodamani, Vittal Bhimappa Talawar @ Dodamani, Arjun Hanamant Talawar @ Dodamani, Bhimappa Yallappa Talawar @ Dodamani under registered sale deed dated 27.10.1993 for sale consideration amount of Rs.96,000/- since then she was in possession and enjoyment of the said property. Thereafter she sold 01 acre 20 guntas out of 04 acres infavour of Hanamant Bhimappa Dodamani @ Talawar on 01.01.1999, 01 acre infavour of Ningappa Mudakappa Gudluru on 01.01.1999 and 01 acre 20 guntas infavour of Yamanappa Bhimappa Kambi on 01.01.1990. The said alienations were made by her for her family and legal necessity, the sale consideration amount was utilized for purchasing the suit properties item No.2 and 3 i.e., R.S.No.329/4B measuring 04 acres 2 guntas and R.S.No.293/4B measuring 02 acres 36 guntas of Mamadapur

village. She purchased the said properties in the name of defendants No.7 and 8 for Rs.8,07,000/- on 11.03.2014. Based on the said sale deed they were put in possession of the said properties and they are growing commercial crops and paying land revenue to the government. The plaintiffs are no way related to the said properties the said properties are the self acquired properties of the defendants No.7 and 8. The plaintiffs knowing very well about the said facts, they have intentionally included those properties in the suit only to grab the valuable properties of the defendants No.7 and 8. The said properties are not the ancestral and joint family properties to the plaintiffs and defendants. Further they contended that the defendants No.7 and 8 are in need of money for their family and legal necessity as such, they have sold the land bearing R.S.No.329/4B measuring 04 acres 12 guntas i.e., item No.3 of the suit schedule property under registered sale deed dated 17.02.2022 infavour of the defendant No.15 and they have also sold the land bearing R.S.No.293/4B measuring 02 acres 36 guntas under registered sale deed dated 02.02.2022 infavour of the Siddappa and Nagappa sons of Mudakappa Shingadi i.e.,

defendants No.13 and 14. Since then the defendant No. 13 to 15 become absolute owners of the said properties, they were put in possession of the said properties. Except item No.2 and 3 of the suit schedule properties, the remaining properties are the ancestral properties. Further they contended that the wife of defendant No.6 having property bearing R.S.No.399 measuring 04 acres 07 guntas of Soppdala village Savadatti taluk and she got the said property from her parental house and 03.10.2006 she sold the said property infavour of Mahabaleshwar Nagappa Kurabagatti to an extent of 02 acres 03 guntas and out of the said sale consideration amount, she has purchased the item No.2 and 3 of the suit properties in the names of herself and later on for the family and legal necessity they have sold the said properties infavour of the defendants No.13 to 15. As the plaintiffs and other defendants are not having any sort of right, title and interest over the said properties, they falsely included those properties in this suit just to grab their properties. As such, they prayed to reject this application.

6. The defendants No.13 to 15 have filed their written statement and memo adapting the written statement as

objection to this application. These defendants contended that the defendant No.15 is the purchaser of the R.S.No.329/4B which is item No.3 of the suit properties and defendants No.13 and 14 are purchasers of R.S.No.293/4B from the defendants No.7 and 8. They also contended that the defendant No.6 was having properties and she sold those properties and out of the sale consideration amount she purchase the item No.2 and 3 of the suit properties in the name of the defendants No.7 and 8 and those properties are not the ancestral nor joint family properties of the plaintiffs and defendants No.1 to 5 and they are the self acquired properties of the defendant No.6 as such, the plaintiffs are not having any right, title and interest over the said properties and they are the bonafide purchasers of the item No.2 and 3 of the suit properties from defendants No.7 and 8 as such, the plaintiffs and other defendants are not having any right, title and interest over the said properties. Hence, the plaintiffs are not made out any prima facie case and balance of convenience does not lie in favour of the plaintiffs. Hence, prayed to dismiss the application.

7. The learned counsel for the plaintiffs filed the written arguments I have perused the same and heard the arguments of learned counsel for the defendants No.6 to 8 and 13 to 15. Perused the application and records.

8. The points that arise for my consideration are as follows:

1. Whether the plaintiffs have made out prima-facie case?

2. Whether the balance of convenience lies in favour of the plaintiffs?

3. Whether the plaintiffs will be put to irreparable loss and injury if the temporary injunction as sought by the plaintiffs are not granted?

4. What order?

9. My findings on the above Points are:

Point No.1:- In the Negative

Point No.2:- In favour of defendants No.6 to 8 and 13 to 15.

Point No.3:- Infavour of defendants No.6 to 8
and 13 to 15.

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

REASONS

10. **Point No.1:-** The plaintiffs contended that themselves and defendants No.1 to 12 are constituted joint family and suit schedule properties are their joint family properties and they have filed this suit seeking the relief of partition and separate possession of their legitimate shares in the suit schedule properties. Now the defendants taking undue advantage of their names appearing in the record of rights of R.S.No.293/4B i.e., item No.2 and R.S.No.329/4B i.e., item No.3 are intending to alienate the said properties only with an intention to gulp their shares as such, they sought for an order of temporary injunction against the defendants restraining them from alienating the suit schedule properties.
11. This present suit is filed by the plaintiffs on 21.02.2022 along with this suit, the plaintiffs have filed this present application wherein this court was granted exparte

temporary injunction restraining the defendants from alienating item No.2 and 3 of the suit properties. The said order was passed on 25.02.2022. By perusing the contention of the plaintiffs that they contended that the item No.2 and 3 of the suit properties are their ancestral properties. In support of this contention the plaintiffs have produced the RTC extract of R.S.No.293/4B and R.S.No.329/4B for the year 2020-21 wherein the said properties is jointly standing in the names of defendants no.7 and 8 jointly during the year 2020-21. Apart from these two RTC extracts the plaintiffs have produced the RTC extracts of R.S.No.329/4B for the year 969-70 to 1975-76 wherein by perusing the same it goes to shows that the said property was standing in the name of Vijayavarma S/o. Ravivarma Desai. By perusing the RTC extract of R.S.No.329/4B it clearly goes to shows that the said property is not the ancestral property of the family of the plaintiffs and defendants No.1 to 5 but the said property belongs to one Vijayavarma S/o. Ravivarma Desai. Hence, it is clear that the land bearing R.S.No.329/4B is not the ancestral property. Further by perusing the RTC extract of the item No.2 and 3 of the suit properties for the year 2020-

21 they goes to shows that the said properties are jointly standing in the name of the defendants No.7 and 8. If at all these properties are ancestral properties, the plaintiffs would have pleaded anything how their family was acquired these properties from Vijayavarma S/o. Ravivarma Desai but these is no pleading to that effect. On the other hand, the defendants No.6 to 8 contended that the wife of defendant No.6 got properties from her parental house and she has alienated those properties and thereafter she purchased the item No.2 and 3 of the suit properties in the name of her sons i.e., defendants No.7 and 8 and after purchase of the said properties, the names of the defendants No.7 and 8 were mutated to the item No.2 and 3 of the suit properties. By perusing the RTC extracts which are produced by the plaintiffs, they prima facie goes to shows that the item No.2 and 3 of the suit properties are standing in the names of defendants No.7 and 8, which shows that the said properties are not the ancestral nor joint family properties.

12. Further the defendants No.6 to 8 contended that for their family and legal necessity, the defendants No.7 and 8 alienated R.S.No.329/4B infavour of defendant No.15 on

06.02.2022 and they have also alienated R.S.No.293/4B infavour of defendants No.13 and 14 on 20.01.2022. The defendants No.13 to 15 produced ME.No.8280 dated 22.03.1977 wherein it goes to shows that the land bearing R.S.No.329/4B and 293/4B are granted to one Mallappa Basappa Benni. Hence, it is clear that the said properties are not the ancestral nor joint family properties of the family of the plaintiffs and defendants No.1 to 5. Further they have produced the copies of the sale deeds in respect of item No.2 and 3 of the suit properties, by perusing the said documents, they clearly goes to shows that, the defendants No.7 and 8 were alienate R.S.No.329/4B i.e., item No.2 of the suit properties infavour of the defendants No.13 and 14 on 20.01.2022. Further they produced the another sale deed in respect of R.S.No.293/4B i.e., item No.3 of the suit properties wherein the defendants No.7 and 8 alienate the said property infavour of defendant No.15 on 16.02.2022. Hence, by perusing these two sale deeds, they clearly goes to shows that prior to filing of this suit, the defendants No.7 and 8 alienated the item No.2 and 3 of the suit properties infavour of the defendants No.13 to 15. Hence, by perusing the

material available on record, at this stage the prima facie goes to show that the item No.2 and 3 properties are not the ancestral nor joint family properties of the plaintiffs and defendants No.1 to 5 and the defendants No.6 to 8 and 13 to 15 put forth prima facie material before this court to show that the item No.2 and 3 properties are not the ancestral nor joint family properties. Hence, by considering the contentions of both the parties and documents produced by both the parties, I am of the considered view that the plaintiffs are failed to make out a prima facie case. Hence, **I answered the point No.1 in the Negative.**

13. **Point No.2 and 3:-** The plaintiffs are failed to make out a prima facie case to show that the suit schedule properties are their ancestral and joint family properties. The defendants No.6 to 8 and 13 to 15 put forth prima facie material before this court to show that the item No.2 and 3 are not the ancestral nor joint family properties of the plaintiffs and defendants No.1 to 5 and they further put forth prima facie material before this court to show that the defendants no.7 and 8 were alienated the item No.2 and 3 of the suit properties in favour of the defendants No.13 to 15. It

prima facie goes to show that prior to filing of this suit already alienation was taken place in respect of item No.2 and 3 of the suit properties and there is no prima facie material put forth by the plaintiffs to show that item No.2 and 3 properties are also ancestral nor joint family properties. Hence, the balance of convenience does not lie in favour of the plaintiffs as compared to the defendants No.6 to 8 and 13 to 15. When the plaintiffs are failed to make out a prima facie case and balance of convenience does not lie in favour of the plaintiffs, then plaintiffs will not be put to any irreparable loss or injury if temporary injunction as prayed by the plaintiffs is not granted. Hence, **Hence, I answered the point No.2 and 3 in favour of the defendants No.6 to 8 and 13 to 15.**

14. **Point No.4 :** For the aforesaid findings, I proceed to pass the following;

ORDER

The application filed by the plaintiffs
U/o XXXIX Rule 1 and 2 R/W/ Section 151
of CPC at I.A.No.I is hereby rejected.

Call on for cross-examination of PW1 by

10.06.2025.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 01st day of April, 2025.)

(Umesh S. Atnure)
Prl. Senior Civil Judge Gokak.