



IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE,
GOKAK

Present: Sri. Mahadev Kanatti, B.Com LL.B.
I Addl. Senior Civil Judge, Gokak

Dated, this the 08th day of July, 2026

O.S.No.530/2025

Plaintiffs : 1. Smt. Balawwa W/o Balappa Dalwai and others.

V/s

Defendant : 1. Kenchappa S/o Bhujappa Kudari.

PARTIES TO I.A. No.I AND II

Applicants/

Ori.Plaintiffs : 1. Smt. Balawwa W/o Balappa Dalwai,
Age: 72 years, Occ: Agriculture,
R/o: Sajjihal, Tal: Gokak and others.

(By Shri. R.M.B., Advocate)

V/s

Opponent/Org.

Defendant : 1. Kenchappa S/o Bhujappa Kudari,
Age: 29 years, Occ: Agriculture,
R/o: Sajjihal, Tal: Gokak.

(R/by Sri.S.B.H., Advocate.,)

COMMON ORDERS ON IA NO.I AND II

i.	Provision under which the application is filed	U/Order XXXIX Rule 1 and 2 of CPC and
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		U/Order XXXIX Rule 4 of CPC.
ii.	Relief sought for	Grant of Temporary Injunction and modification of exparte temporary injunction
iii.	The date on which the applications are filed	24.07.2025 and 04.03.2026
iv.	Number of the applications	I.A.No.I and II
v.	The date on which the objections are filed by different opponents	Opponents filed objection on 05.01.2026 and 07.03.2026
vi	The date on which the orders were passed on the said application	08.07.2026

The IA.No.I filed by the plaintiffs U/O.XXXIX Rule 1 and 2 of CPC for granting temporary injunction against the defendant restraining him from alienating, mortgaging or creating charge over the suit properties till disposal of the suit, on the count that, the plaintiffs have filed the present suit for the relief of partition and separate possession claiming their legitimate share in the suit properties alleging that, the suit properties are the ancestral and joint family properties of themselves and the defendant. Accordingly, they are in joint possession, use and enjoyment of the suit properties. It is the defendant illegally and high handedly without partition trying to alienate the suit properties by taking

undue advantage of his name appearing in the R/R of the suit properties without having exclusive rights over the same. It is further stated that, they have got prima-facie case and balance of convenience in their favour. On these grounds prays to allow the application.

2. On the other hand, the defendant has filed memo adopting the contents of the written statement as objections to the IA.No.1. The defendant contended in his written statement that, the suit property Sl.No.1 is purchased by one Mutteppa Bhujappa Kudari in the year 1967. Since then the said Mutteppa and his son i.e., father of defendant are in possession of the suit property. After the death of the Mutteppa and the father of the defendant, the defendant and his family members are in possession of the said property. He has taken further contention that, out of the Sl.No.1 property bearing Sy.No.106/1, the father of the defendant and propositus Mutteppa have jointly sold to the extent of 02Acres out of 07Acres 09Guntas to the family of one Kallolli, but they are not impleaded as parties to the suit. It is further contended that, the defendant availed bank loan for development of the suit properties at SBI Bank, Gokak branch and the loan amount is due for

Rs.33,28,782/- with interest. Hence, to pay said loan amount the defendant has entered into an agreement of sale with one Adivappa Sidramappa Kamati for valuable consideration of Rs.10,50,000/- to the extent of 02Acres. It is further taken contention that, the propositus of the family by name Mutteppa died on 22.08.1996. The plaintiffs have kept mum more than 29 years even though the succession is opened in the year 1996 and they are not at all in possession of the suit property and the suit is barred by law of limitation. The plaintiffs have not challenged the mutation entries in respect of the suit properties. Hence, the suit is not maintainable. On these grounds prays to dismiss the suit.

3. The IA.No.II is filed by the defendant U/O.XXXIX Rule 4 of CPC., to vacate or modify the ex parte order granted by the Court dated: 28.07.2025 in respect of the suit property Sl.No.4 to the extent of 02Acres of land out of 10Acres 14Guntas in R.S.No.328/1 of Hadaginal Village, on the count that, he has already executed the agreement of sale in favour of one Adivappa Siddappa Kamati for repaying the loan amount. It is further submitted that, he has raised loan in SBI Bank, Gokak branch for development of suit properties and the said loan amount is due. Accordingly, he is intending to repay the loan by alienating the said property. The

agreement holder insisting for execution of the regular sale deed. On these grounds prays to allow the application.

4. On the other hand, the application is opposed by the learned counsel for the plaintiffs by filing objections to the IA.No.II contending that, the defendant has not produced any material document to show that, he has borrowed loan from the bank and by suppressing the same has filed the present application and he has got document illegally in order to deprive the share of the plaintiffs in the suit properties and prays to reject the application.

5. Heard both sides.

6. Points that arise for consideration of the court are:

1. Whether plaintiffs have made out a prima-facie case in their favour?
2. Whether balance of convenience lies in favour of plaintiffs ?
3. Whether irreparable loss, which cannot be compensated by any means would be caused to plaintiffs if the present application is dismissed?
4. Whether the defendant has made out grounds to vacate or modify the temporary injunction in respect of the Sl.No.4 property as sought in the IA.No.2 ?
5. What order?

7. Findings of this court on the above points are:

Point No.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Affirmative.

Point No.4: In the Affirmative.

Point No.5: As per final order for the following:

REASONS

8. Point No.1:- In order to get the order of temporary injunction parties have to show that, prima-facie case and balance of convenience lies in their favour. Further they have to show that in case of temporary injunction order as sought by is not granted, they will be put to heavy and irreparable loss, which cannot be compensated in terms of money. Before going to merits of the case, I would like to discuss what is the prima-facie case, balance of convenience and irreparable injury.

9. The prima-facie case: means the Court must be satisfied with that the applicants have raised a bonafide disputes which needs investigation and the decision on merits and fact there is a probability of the applicants being entitle to the relief claimed by them. The burden is on the plaintiffs to prove that, there is a prima-facie case in their favour. While determining whether the a prima-facie case has been made out the relevant consideration is

whether on evidence lead, it is possible to arrive at the conclusion in question and not whether what is the only conclusion which could be arrived on that evidence.

10. Balance of convenience: Before granting the injunction the Court must be satisfied that, the hardship likely to be caused to the applicants, by refusing the injunction is greater than that likely to affect the opponent. If on weighing conflicting probabilities the Court is of the opinion that, the balance of convenience is in favour of applicants it must grant the injunction.

11. Irreparable Injury: The applicants must satisfy the Court that, they will suffer irreparable loss, injury if the injunction is refused as there is no other remedy by which they can be protected from consequences apprehending injury. The grant of injunction is an equitable relief and it can be exercised when judicial intervention is necessary to protect the applicants. And injunction can be regarded as irreparable where there is no pecuniary standard for measuring damages.

12. By keeping all these cardinal principles in mind, I have gone through the pleadings and documents produced by the both the parties. The plaintiffs have filed the present suit against the

defendant for the relief of partition and separate possession claiming their legitimate share in the suit properties on the count that, the plaintiffs and the defendant constitute joint Hindu undivided family. The suit properties are their ancestral and joint family properties. Accordingly, they are in joint possession, use and enjoyment of the suit properties. There is no partition taken place between them by metes and bounds. The defendant alone got mutated his name in the suit properties and trying to alienate the suit properties by depriving the legitimate share of the plaintiffs. Hence, the plaintiffs constrained to file the present suit for the relief of partition and separate possession and also filed the IA.No.I restraining the defendant from alienating or creating charge over the suit properties.

13. On the other hand the defendant though in his written statement has denied the averments of the plaint and genealogy submitted by the plaintiffs. However, he has indirectly admitted the relationship of the plaintiffs with him by taking contention that, the propositus of the family of the plaintiffs and the defendant by name Mutteppa who died in the year 1996 through whom the plaintiffs and the defendant claiming rights over the suit properties. Further the defendant has taken specific contention that, about 29 years

the plaintiffs have kept mum and filed the present suit which is beyond limitation and also not challenged the mutation entries in respect of the suit properties.

14. The documents produced by the plaintiffs reveals that, the suit properties are originally appearing in the name of the propositus of the family i.e., Mutteppa Kudari. The Sl.No.1 property is purchased by him in the year 1967 and remaining properties are granted by the Land Tribunal. After his death the name of the father of the defendant i.e., Bhujappa Mutteppa Kudari got mutated and thereafter the name of the defendant alone entered in the R/R of the suit properties. Though the defendant contended that, the plaintiffs have kept mum for 29 years and now they are claiming to the suit properties, but one thing is clear from the documents produced by the plaintiffs that, there is no partition taken place between the plaintiffs and the defendant either during lifetime of the propositus Mutteppa or after his death. Further it is not the defence of the defendant that, there was already partition between the plaintiffs and the defendant in respect of the suit properties. Hence, the pleadings and documents produced by the plaintiffs at this stage the prima-facie reveals that, the plaintiffs have got legitimate share in the suit properties. Whether the plaintiff have

given up their share or their claim is barred by the law of limitation it requires full fledged trial. Hence, the plaintiff have made out prima-facie case to grant temporary injunction. Accordingly, point under consideration is answered in the Affirmative.

15. Point No.2 and 3 :- Mere establishing prima-facie case is not sufficient to grant temporary injunction. The plaintiffs have to establish balance of convenience lies in their favour and if the temporary injunction is not granted they will be put to irreparable loss rather than the defendant. As discussed above, pleadings and documents reveal that, the plaintiffs have got legitimate share in the suit properties and there is no partition taken place between them by metes and bounds. The materials on record further reveal that, the defendant and the plaintiffs are the co-sharers or co-owners of the suit properties and having their legitimate share in the suit properties, if the defendant succeeds in alienating the suit properties it is the plaintiffs who will be put to irreparable loss and balance of convenience also lies in their favour. Further, the defendant succeeds in his alleged act it leads to multiplicity of proceedings. Accordingly, Point Nos.2 and 3 are answered in the Affirmative.

16. Point No.4:- As stated supra the plaintiffs and the defendant being the co-owners or co-shares of the suit properties having legitimate share in the suit properties, and they are totally measuring 18Acres and more, if the suit is decreed each will get 03Acres and more landed properties. The defendant has already raised bank loan for development of suit properties and the said amount is due and he is seeking modification of the ex parte temporary injunction in respect of the suit property Sl.No.4 to the extent of 02Acres as he has already entered into an agreement of sale with one Adivappa Sidramappa Kamati for alienating the said property. As stated supra, the plaintiffs and the defendant are the co-owners of the suit properties approximately they get $1/5^{\text{th}}$ share in the suit properties if the suit is decreed in their favour. It suggests that, the plaintiffs and the defendant each will be entitled 03Acres and more land in suit properties. Now as stated supra, the defendant seeking modification of the ex parte injunction to the extent of 02Acres, as he has already entered in the agreement to repay of the loan amount raised in the bank. If the defendant is not permitted to alienate the said property obviously the amount is already due and interest will be increased day by day and it is very difficult for the defendant to pay the said amount and he has no

other means to repay the loan amount. Even the plaintiffs succeeded in the suit, in the final decree proceedings the said property has to be allotted to the share of the defendant. Considering the necessities and requirement of the defendant, under the facts and circumstances of the case it is just and necessary to vacate or modify the exparte temporary injunction to the extent of 02Acres in respect of the Sl.No.4 suit property as sought by the defendant. Hence, the defendant has made grounds to allow the application. Accordingly, Point No.4 is answered in the Affirmative.

17. Point No.5:- In view of the findings arrived on the point No.1 to 4, this Court proceed to pass the following:

ORDER

The IA No.I filed by the plaintiffs U/O
XXXIX Rule 1 and 2 CPC is hereby allowed in
part.

The defendant is hereby restrained
from alienating the suit properties Sl.No.1 to
4 excluding to the extent of 02Acres in
Sl.No.4 property in respect of which he has
already entered into an agreement of sale by

way of temporary injunction till disposal of the suit.

IA.No.2 filed by the defendant U/O

XXXIX Rule 4 of CPC., is hereby allowed.

No order as to costs.

(Dictated to the stenographer typed by the steno, corrected and then pronounced by me in the open Court on this the 08th day of July, 2026)

Sd/-

(Mahadev Kanatti)

**I Addl. Senior Civil Judge,
Gokak.**