

KABG510007722016



IN THE COURT OF THE II ADDL.CIVIL JUDGE & J.M.F.C.,

AT: Gokak

PRESENT: Shri. Abhinay

B.C.A.,L.L.B LL.M.

***C/c. II Addl. Civil Judge & JMFC,
Gokak***

O.S.No.114 of 2016

Dated this the 17th day of September 2025

PLAINTIFF:	Smt. Gangawwa W/o. Ramasiddappa Ningannavar
<i>[R/by Sri. V.B.H, Adv.]</i>	
DEFENDANTS	Smt. Ningawwa W/o. Basappa Sulannavar and others
<i>D-1 to 3 [R/By Sri.S.T.Y .Adv.] D-4(a), 4(b) [R/By Sri. S.S.M. Adv.] D-5 & 6 [R/By Sri.R.N.R. Adv.] D-7 & 8[R/By Sri. S.G.T.Adv.]</i>	
<u>PARTIES To I.A.NO.5</u>	
Applicant/ Original Plaintiff:	Smt. Gangawwa W/o. Ramasiddappa Ningannavar
<i>//Vs//</i>	
Opponents/ Original Defendants:	Smt. Ningawwa W/o. Basappa Sulannavar and others

I	Provision under which the application is filed	U/o 39 Rule 1 & 2 R/w 151 of CPC
II	Relief sought for	Ad-interim Ex-parte temporary injunction
III	The date on which the application is filed	03.09.2025
IV	Number of application	I.A.No.5
V	The date on which the objections are filed by different opponents	04.09.2025
VI	The date on which the orders were passed on the said application	17.09.2025

ORDER ON I.A. NO.5 FILED BY PLAINTIFF

U/O: XXXIX R-1 & 2 OF CPC

The plaintiff's counsel has filed IA No. 5 with a prayer to restrain defendant no.8 from alienating the suit property in favour of others till disposal of the suit. Counsel for defendant no. 8 has filed objections to IA No. 5, contending that the petition is not maintainable, which is liable for dismissal, and has admitted that the contents of written statement shall be read as objections to IA No. 5.

2. The averments made in the affidavit annexed to I.A. No.5 in brief are as under:

It is the case of plaintiff that she is the daughter of first wife namely Yallawwa and defendant no. 1 to 6 are also the children of first wife. The counsel has contended that the suit property is the joint and ancestral property of plaintiff and defendants. The plaintiff has come up with this application to restrain defendant no. 8 from alienating the suit property. Thus, prayed to allow the application.

3. Defendant no. 8 has filed a written statement and has denied the plaint averments. Defendant no. 8 submits that the relationship has been wrongly shown by the plaintiff along with the genealogy. Defendant no. 8 submits that Bhimawwa is the first wife of Sabanna and not the Yallawwa. In paragraph number 4 of the written statement, it is pleaded that suit properties are the joint and ancestral properties of the Sabanna. After the death of Sabanna on 13.05.1995, Bhimawwa obtained survivor certificate and got entered her name in respect of

concerned revenue records along with defendant no.4 and his brother Basappa.

4. Defendants contend that a partition took place between defendant no.7 to 9, Plaintiff and other defendants, accordingly the names of defendant no. 7, 8 and defendant no. 4 came to be entered to the half share in the year 6.01.2000.

5. The defendant contend that there was a partition between defendant no. 7 and the daughters of second wife. Accordingly, half portion of the suit property was fallen to the share of defendant no. 7 and another half portion was fallen to the share of brothers of plaintiff. The plaintiff has no right to claim partition in respect to the suit property which is allotted to the share of Bhimawwa, the first wife of Sabanna. Accordingly, prays to dismiss the petition.

6. On the basis of pleadings of the parties and documents produced, following points arise for my consideration.

POINTS

- 1. Whether the plaintiff has made out a prima facie case for grant of temporary injunction?**
- 2. Whether balance of convenience lies in favor of plaintiff?**
- 3. Whether plaintiff will be put to irreparable injury, if an order of Temporary Injunction is not granted?**
- 4. What order?**

7. Heard, the learned Counsels for the plaintiff. Perused material placed on record and my answer to above 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

8. POINT 1 TO 3:- These points are taken up together for common discussion.

9. It is the case of plaintiff that the suit property is the joint and ancestral property of plaintiff and defendants. Plaintiff contends that Yallawwa is the first wife of Sabanna. Counsel for defendant no. 8 has argued that Bhimawwa is the first wife of Sabanna. Counsel for defendant no. 8 has argued that a partition has already taken place. In the said partition, half portion of the suit property is fallen to the share of defendant No.7 and another half portion of the property is fallen to the share plaintiff's brothers.

10. In paragraph number 4 of the written statement, it has been pleaded that the suit properties are the joint and family properties of Sabanna. Defendant number 8 has taken a view that there was a partition and the suit property has fallen to the share of defendant No.7. It is not mentioned that when partition between the parties has taken place. Further, counsel for Defendant No.8 has submitted that after the death of Sabanna, Bhimawwa and children of Yallawwa, namely Hanumant and Basappa, their names came to be entered as

per Varsa vardi in respect of the suit property in concerned revenue records.

11. It is to be noted that as the defendant no.8 has pleaded that the suit property is the joint and ancestral property of Sabanna and the relationship between the parties is not denied. It is stated in the written statement in paragraph number 2 that plaintiff and defendants are the legal representatives of Sabanna. But only name of defendant no. 7, 8, defendant no. 4 and the deceased Basappa came to be entered. Therefore this fact require trial. Documents at Ex.P1 to Ex.P6 have got marked by the plaintiff, from the documents available on record, the name of defendant no.8 is appearing in respect of suit property. In Ex.P3, name of defendant no. 7, name of deceased Basappa and defendant No.4 is appearing. Therefore, the suit property till appears to be joint property. With these observation point No.1 to 3 are answered in the 'Affirmative'.

12. **Point No.4:-** In view of discussion on point No.1 to 3 the following order:-

ORDER

IA No.5 filed by the plaintiff is allowed as prayed for.

The defendant no. 8, her agents, servants or anybody acting on her behalf are restrained from alienating suit property bearing Survey No.303/5 P1 (303/5) and 303/10P1 (303/11) situated in Gosbal village, Tq: Gokak in favour of anybody till disposal of the suit.

(Abhinay)

**C/c. II Addl.Civil Judge & JMFC.,
Gokak.**