

KABG510040482026



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.

***II Addl. Civil Judge & JMFC,
Gokak***

O.S.No.332 of 2026

DATED THIS THE 27th DAY OF JULY 2026

PLAINTIFFS: Shri. Raju S/o. Shivanand Vagganavar
and another

[R/by Sri. S.L.T., Adv.]

DEFENDANTS Shri. Yallappa S/o. Mallappa Vagganavar
and others

***D-1 to 6[R/By Sri. M.A.P.Adv.]
D-7, 9, 10[R/By Sri. S.S.S.Adv.]
D-8 & 11[Exparte]***

PARTIES To I.A.NO.I

**Applicant/
Original
Plaintiff:** Shri. Raju S/o. Shivanand Vagganavar
and another

//Vs//

**Opponents/
Original
Defendants:** Shri. Yallappa S/o. Mallappa Vagganavar
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 against Defendant No.7, 9 and 10
III	The date on which the application is filed	01.06.2026
IV	Number of application	I.A.No.I
V	The date on which the objections are filed by different opponents	Objection filed to IA No.1 on dated 21.07.2026
VI	The date on which the orders were passed on the said application	27-07-2026

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

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

The learned counsel for the plaintiffs has filed I.A. No. 1 under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, seeking an order of temporary injunction restraining Defendant Nos. 7, 9 and 10 from alienating the suit schedule properties by way of sale, agreement of sale, gift deed, Will, relinquishment deed, mortgage or by creating any third-party interest in favour of any person, pending disposal of the suit.

2. The averments made in the affidavit annexed to

I.A. No. I in brief are as under:

In the affidavit filed in support of the application, Plaintiff No. 2 has stated that the suit schedule properties are the joint family and ancestral properties of the plaintiffs and the

defendants and that no partition has taken place in respect of the said properties. It is further stated that the suit schedule properties presently stand in the names of the plaintiffs and Defendant Nos. 7, 9 and 10. According to the plaintiffs, they requested Defendant Nos. 7, 9 and 10 to effect partition of the suit schedule properties, but the defendants failed to do so. Apprehending that the defendants may alienate the suit properties in favour of third parties, the present application has been filed. In support of the application, the plaintiffs have produced several documents.

3. Defendant Nos. 7, 9 and 10 have filed their objections to I.A. No. 1. It is contended that Suit Schedule 'A' property at sl Nos. 2 and 4 originally belonged to the father of Defendant No. 7, namely Mallappa. After his death, a compromise was entered into between the parties in O.S. No. 629/2023. Under the said compromise, Suit Schedule 'A' property at sl No. 2 and 4 were allotted to the share of Defendant No. 7. It is further contended that the plaintiffs and the other defendants relinquished their rights over the said properties under the compromise. Consequently, Defendant No. 7 became the absolute owner of those properties. In support of the said contention, certified copies of the compromise petition, decree and other relevant documents have been produced. Hence, they have prayed for dismissal of the application.

4. Heard the learned counsel for both sides. Perused the application, objections and the documents placed on record.

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

POINTS

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

6. Heard, the learned Counsel for the plaintiff. Perused material placed on record and my answer to above points is as under

Point No. 1:	In the Negative
Point No. 2:	In the Negative
Point No. 3:	In the Negative
Point No.4:	As per final order for the following:

REASONS

7. **Point No. 1 to 3:-** These points are taken together for common discussion.

8. It is the case of the plaintiffs that the suit schedule properties are the joint family and ancestral properties of the plaintiffs and the defendants. It is stated that the

propositus, Mallappa, and his wife, Lakshmibai, are no more. They had three children, namely Yallappa, Shivanand and Hanumanth. Yallappa is Defendant No. 1, Shivanand is deceased and Hanumanth is Defendant No. 7.

9. It is further stated that Plaintiff No. 1 is the son of late Shivanand through his first wife, Parvathi, and Plaintiff No. 2 is the son of late Shivanand through his second wife, Uddavva. According to the plaintiffs, the suit schedule properties are ancestral properties and they are in joint possession and cultivation of the same.

10. This Court has carefully perused the documents produced by the plaintiffs, namely the RTC extracts and mutation extracts relating to Survey Nos. 181/23, 181/29, 181/31 and 181/32. A perusal of the RTCs discloses that the names of Defendant No. 7, Defendant No. 1 and Plaintiff Nos. 1 and 2 are entered therein. Corresponding mutation entries have also been effected.

11. On the other hand, it is the contention of Defendant Nos. 7, 9 and 10 that the present suit schedule properties were the subject matter of O.S. No. 629/2023 pending before the Hon'ble Senior Civil Judge, Gokak. It is submitted that the present Plaintiff Nos. 1 and 2 were arrayed as Defendant Nos. 3 and 4 in the said suit and that the properties were partitioned by way of a compromise decree. According to the defendants, Suit Schedule 'A' property at sl

Nos. 2 and 4 of the present suit were allotted to the share of Defendant No. 7.

12. This Court has perused the certified copy of the compromise petition filed in O.S. No. 629/2023. On such perusal, it is found that the properties allotted to Defendant No. 7 in the said compromise are different from the suit schedule properties involved in the present suit. Under the compromise, Defendant No. 7 (who was Defendant No. 2 in O.S. No. 629/2023) was allotted land in Survey No. 181/2 measuring 1 acre 38 guntas. Similarly, the present Plaintiff Nos. 1 and 2 (who were Defendant Nos. 3 and 4 in the earlier suit) were allotted 20 guntas in Survey No. 181/14.

13. Admittedly, the present plaintiffs were parties to O.S. No. 629/2023. If there were other ancestral properties available for partition, nothing prevented the parties from including the present suit schedule properties in the said suit and seeking partition thereof under the compromise. The omission to include the present properties in the earlier proceedings raises a serious doubt regarding the maintainability of the present suit and the claim put forth by the plaintiffs.

14. In view of the above circumstances, this Court is of the opinion that the plaintiffs have failed to establish a prima facie case for grant of temporary injunction. Once the plaintiffs fail to establish a prima facie case, the questions of

balance of convenience and irreparable loss do not survive for consideration and cannot be held in their favour. Accordingly, Point Nos. 1 to 3 are answered in the **Negative**.

15. **Point No.4:** In view of the findings recorded on the above points, I proceed to pass the following:

ORDER

**The I.A. No. I filed by plaintiffs
U/Order XXXIX Rule 1 and 2 R/w
Section 151 of CPC is hereby
dismissed.**

(Dictated to the stenographer typed by him corrected by me and then pronounced in the open court on this the 27th day of July 2026.)

(Abhinay)
II Addl. C.J.& JMFC,
Gokak