

KABG600002482021



IN THE COURT OF THE SENIOR CIVIL JUDGE, HUKKERI.

PRESENT: **Sri, K.S.Rotter**, B.Com., LL.B(Spl)
Senior Civil Judge, Hukkeri.

DATED: This 11th Day of February 2025

R.A. No.28/2021

APPELLANT: Shri Shahejan Maniksab Ammanagi

-VERSUS-

RESPONDENTS: Smt. Ramatabi Vajirsab Ammanagi and others

PARTIES TO IA NO.V

Applicant/Appellant:

1. **Shri Shahejan Maniksab Ammanagi**,
Age: 60 years, Occ: Agriculture,
R/o: Shirahatti K.D., Taluk: Hukkeri,
District: Belagavi.

(By Shri B.M. Jinarali, Advocate)

-VERSUS-

Opponent/Respondents :

1. **Smt. Ramatabi Vajirsab Ammanagi**,
Age: 45 years, Occ: Agriculture,
R/o: Shirahatti K.D., Taluk: Hukkeri,
District: Belagavi and others

(By Shri D.K. Awargol, Advocate)

- i). Provisioned under which the application is filed : U/o.39 Rules-1 and 2 of C.P.C
- ii). *Relief sought for* : Grant of Temporary Injunction.
- iii). *The date on which the Application is filed* : 04.12.2024
- iv). *Number of the application* : IA No.V
- v). *The date on which the objections are filed by the different opponent* : 16.12.2024
- vi). *The date on which orders were Passed on the said application* : 11.02.2025

Stage of the Appeal: For Arguments.

-Sd/-
(K.S.Rotter)
Senior Civil Judge, Hukkeri.

ORDERS ON IA NO.V

The appellant has filed I.A. No.V under Order XXXIX Rule 1 & 2 R/w Sec.151 of the Civil Procedure Code, for the relief of granting temporary injunction against the respondents No.1 to 3 restraining them from alienating the suit properties bearing R.S. No.30/3, 30/5, 30/8, 30/10 and 30/12 situated at Shirahatti B.K. village in Hukkeri taluk in any manner pending disposal of appeal

2. In support of the above said application, the appellant – Shri Shahejan Maniksab Ammanagi has filed his sworn affidavit stating that, he has filed the present appeal against the respondents by challenging the judgment and decree passed in O.S. No.234/2015. It is stated that now the respondents No.1 to 3 are trying to alienate the above said suit lands bearing R.S. No.30/3, 30/5, 30/8, 30/10 and 30/12. It is stated that, now the present appeal is fixed for arguments and he has requested the respondents not to sell the suit properties and do not make any encumbrances on the said properties but the respondents without heeding his request trying to alienate the suit properties. Therefore, without any alternative, the appellant has filed present application. Further appellant stated that, the respondents with an intention to dupe the suit properties

trying to alienate the same and if during pendency of the present appeal, the suit properties are alienated, he will be put to irreparable loss and hardship. Therefore, appellant stated that he has got prima-facie case, balance of convenience lies in his favour, if temporary injunction is not granted against the respondents No.1 to 3, he will be put to irreparable loss and injury. Hence, the appellant prayed for allowing IA No.V.

3. On the other hand, the respondents have filed objections to the above said application and contended that, the I.A.No.V filed by the appellant is false, frivolous and not maintainable under law. The respondents denied the averments of the affidavit filed in support of the I.A.No.V. The respondents denied that they are trying to alienate the suit properties bearing R.S. No.30/3, 30/5, 30/8, 30/10 and 30/12 without heeding the request of the appellant as stated in the affidavit. Further respondents denied the averments of the para No.4 and 5 of the affidavit filed by the appellant in support of the I.A.No.V as false and frivolous. Further respondents specifically contended that they are the absolute owners in possession and enjoyment of the suit lands bearing R.S. No.30/3, 30/5, 30/8, 30/10 and 30/12. The respondents have

acquired the suit properties in the partition between themselves and appellant and appellant has not having any share in the suit properties. The appellant has received money towards his share and he has relinquished his entire right in favour of the respondents. Accordingly, respondents have got divided the suit properties and also made phodi to their share of properties and changed their names to the revenue records of the suit properties and the present appellant has admitted the said partition before the Trial Court. As per the said partition, the revenue documents also changed and the plaintiff has no right or share in the suit properties. Further respondents stated that, they are not alienating the suit properties but appellant, with an intention to give harassment to them, has filed this false and frivolous application. Hence, respondents prayed for dismissing the I.A.No.V.

4. Heard the arguments on both the sides.
5. The points which arise for my consideration are as below:-
 1. *Whether the Appellant has made out prima-facie case?*
 2. *Whether balance of convenience leans in favour of the Appellant?*

3. *Whether the Appellant will be put to irreparable loss and injury if TI order is not granted?*

4. *What order?*

6. My findings on the above points are as under:-

1. In the affirmative
2. In the affirmative
3. In the affirmative
4. As per final order for the following:-

REASONS

7. **Points No.1 to 3:** I take all these points for common considerations, because they are inter-linked each other.

8. Admittedly, the appellant/plaintiff has filed this regular appeal under Order XLI Rule 1 R/w Section 96 of Civil Procedure Code, being aggrieved by the judgment and decree dated 09.06.2021 passed in O.S.No.234/2015 on the file of the Civil Judge & JMFC, Hukkeri dismissing the suit of the plaintiff filed for partition and separate possession in the suit properties. It is seen from the records that, after service of notices respondents have appeared through their advocate and contested the appeal.

Thereafter the Trial Court records are received and now the case is fixed for agreements. At this stage, appellant has filed IA No.V for granting temporary injunction restraining the respondents from alienating the suit properties pending disposal of the appeal. Admittedly, plaintiff has filed suit against the defendants seeking the relief of partition separate possession of his 1/5th share in the suit properties on the ground that, originally suit properties belonging to his father Manikasab and after his death, they have inherited the suit properties but the said suit is dismissed by the trial court. Now the advocate for appellant contended that, in this appeal plaintiff has every chance of success and prayed for granting temporary injunction against the respondents.

9. On perusal of the case papers on hand, at this stage, the appellant apprehends that, the respondents are illegally trying to alienate the suit properties in order to defeat his right and if they alienated the suit properties during the pendency of this appeal, it will lead to multiplicity of proceedings and it will defeat the valuable right of the appellant in the suit properties and he will be put to irreparable loss and injury. On the other hand, if the respondents are restrained from alienating the suit lands, their right to use and

enjoyment of the suit properties will not be curtailed. The only right to be curtailed is that of alienation. However, in order to protect the right of the appellant, this right of the respondents has to be curtailed. The inconvenience and hardship which will be caused to the appellant are greater. Apart from that, before the trial court, the present appellant has taken the order of temporary injunction against the respondents restraining them from alienating the suit properties in any manner during the pendency of the said suit. Further in their objections also the respondents stated that they are not trying to sell the suit properties. Therefore, at this stage from perusal of the apprehension of the appellant I am of the opinion that, the appellant has made out sufficient and reasonable grounds to grant TI. Hence, for all these reasons, I am of the opinion that the appellant has made out prima-facie case, balance of convenience leans in his favour and he will be put to irreparable loss and injury if temporary injunction is not granted. Therefore, I answer points No.1 to 3 in affirmative.

10. **Point No.4:** For the foregoing reasons I proceed to pass the following :-

ORDER

The IA No.V filed by the appellant under Order XXXIX Rule 1 and 2 R/w Sec.151 of the Civil Procedure Code is hereby allowed.

The respondents No.1 to 3 are hereby restrained by way of temporary injunction from alienating the suit properties bearing R.S. No.30/3, 30/5, 30/8, 30/10 and 30/12 situated at Shirahatti K.D. Village in Hukkeri taluk as described in I.A. No.V in any manner pending disposal of the appeal.

No order as to costs.

(Dictated to Stenographer, transcribed and typed by her, corrected by me and then pronounced in open court on this 11th day of February 2025).

-Sd/-

(K.S.Rotter)

Senior Civil Judge, Hukkeri,
Itinerary Court at Sankeshwar.