

KABG700001932024



**IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
KHANAPUR**

AT : KHANAPUR.

PRESENT

**Shri.Chandrashekhar Yallappa Talawar,
B.A.,LL.B.(Spl),
Senior Civil Judge and JMFC,
Khanapur.**

Regular Appeal No.8/2024

Dated this the 29th day of August, 2025

Appellants:-

1. Shri.Ishwar s/o Balappa Mutagi
[Since deceased by his legal heirs]
- 1.1) Shri.Mahantesh s/o Ishwar Mutagi
and others.

//V/s//

Respondents:-

1. Smt.Leelavati w/o Shivanand Mutagi
and others.

I.A.No.I**Applicants/Appellants:-**

1. Shri.Ishwar s/o Balappa Mutagi
[Since deceased by his legal heirs]

1.1) Shri.Mahantesh s/o Ishwar Mutagi,
Age: 48 years, Occ: Agriculture,
R/o: Nandgad village, Tal: Khanapur,
Dist: Belagavi
And others.

(By Shri.S.G.G. Advocate)

//V/s//

Opponents/Respondents:-

1. Smt.Leelavati w/o Shivanand Mutagi
Age: 58 years, Occ: Agriculture & Household work,
R/o: C/o.M.S.Shiroor,
R/o: Merawada, Dharwad, Tal:Dist: Dharwad
and others.

(R.2, 4 by Shri.I.B.L. Advocate
R.3 by Shri.M.S.B. Advocate
R.1 Eparte)

ORDER ON I.A.No.I

The applicants/appellants have filed this I.A. U/O 39 Rules 1
and 2 R/w Section 151 of CPC praying to restrain the

respondents/defendants, their agents, servants or anybody acting on their behalf from alienating the suit lands viz., agricultural lands bearing R.Sy.No.51/3B measuring 2 acres 37 guntas, R.Sy.No.151/3A+4A+4B+5B+1B measuring 3 acres 37 guntas and R.Sy.No.162 measuring 5 acres 6 guntas situated at Kasaba Nandgad village, Tal: Khanapur, Dist: Belagavi by way of sale, mortgage, lease, or otherwise in any manner creating charge there upon, pending disposal of the suit.

2) In the annexed affidavit, the appellant No.3 stated that the appellants have filed the present case being aggrieved by the judgment and decree dated 27.1.2024 passed by Addl.Civil Judge Court, Khanapur in suit O.S.No.66/2017 filed by their deceased father. The Trial Court by impugned judgment and decree dismissed the said suit.

3) It is further stated that, now the respondents/defendants taking undue advantage of the impugned judgment and decree are trying to dispose of the suit property to the third person in order to defeat their claim over the suit lands. The said

respondents/defendants have started showing the suit land to prospective customers and are negotiating with prospective customers. They have learnt the said facts through reliable sources. If the respondents/defendants are permitted to deal with the suit lands and complete the sale transaction the very purpose of filing the present appeal would get frustrated and there will also be multiplicity of litigation. They have fair chances of success, if the present appeal filed by them is heard on merits.

4) It is further stated that, appellant had made out a prima facie case for grant of relief of temporary injunction made in the accompanying application. The balance of convenience also leans in their favour and appellants will be put to great hardship and irreparable loss which cannot be compensated in terms of money if the I.A. is rejected. On the contrary the respondents/defendants will not be put to any loss or prejudice if the accompanying application is allowed. Hence prayed to allow the I.A.No.1.

5) The respondent No.3 has filed her objections to the I.A.No.1 contending that, the I.A. filed by the appellants is frivolous and vexatious and deserves to be dismissed in limine. The appellants are not having right to file the present I.A. and as such same be dismissed as not maintainable. It is further contended that the respondent No.3 is the owner of the suit property Sy.No.151/3A+4A+4B+5B+1B. The respondent No.3 is the absolute owner of the suit property and he has acquired the property as per family arrangement between the family members of the respondent No.3 in the year 1967 and the injunction can't be granted against true owner. The appellants who is the plaintiffs before the Trial Court has no right or title in the suit properties and Trial Court has not granted any relief to appellants and dismissed the suit filed by the appellants.

6) It is further contended that the contention of the appellants that the Trial Court has dismissed the suit without proper appreciation of oral and documentary evidence is totally incorrect. The oral evidence of PW.1 and documents at Ex.P.3

and Ex.P.4 marked in the evidence before the Trial Court clearly show that and PW.1 have admit the earlier partition between ancestor of family Shivappa and his sons. Accordingly partition was effected in the year 1955 and mutation entry No.768 was certified, after that suit property is fallen to the share of the respondent No.3 by virtue of family arrangement between defendant No.3 and his brothers and his father. From the admission given by the appellants are clearly shows that respondent No.3 is the absolute owner of the properties. Thus the Trial Court has rightly held that plaintiffs are not entitled for partition in the suit property and accordingly dismissed the suit.

7) It is further contended that the appellants have not at all made out a prima facie case and balance of convenience is not in their favour. The sole intention of the appellants is to harass the respondent No.3. The appellants have filed the I.A. just to prolong the matter. It is further contended that, appellants and other respondents already sold the suit property to the third party and their names are entered in the RTC of suit properties.

Therefore I.A. filed by the appellants only against the respondents is not maintainable without made as party in the application. Further Court cannot grant injunction against 3rd party. Hence respondent No.3 prayed to dismiss the I.A.No.1 with costs.

8) On the basis of the said rival contentions, the following points arise for consideration:-

- 1. Whether the appellants have made out a prima facie case ?**
- 2. Whether the balance of convenience lies in favour of the appellants ?**
- 3. Whether the appellants will be put to irreparable loss, if an order of temporary injunction is not granted in their favour ?**
- 4. What order ?**

9) Heard the arguments. Perused the entire materials placed on record.

10) The findings on the above points are 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

11) **Points No.1 to 3:-** All these points are interconnected with each other. So they are taken up together for common discussion to avoid repetition of facts.

12) The appellants/plaintiffs have filed this appeal questioning the legality of the judgment and decree passed by the Trial Court in O.S.No.66/2017 dated 27.1.2024 which came to be dismissed. Being aggrieved by the said judgment and decree, they have preferred this appeal with a prayer to set aside the judgment and decree passed by the Trial Court in O.S.No.66/2017 dated 17.1.2024.

13) Further, the appellants contended that, now the respondents/defendants taking undue advantage of the impugned judgment and decree, they are trying to dispose of the suit property to the third persons in order to defeat their

claim over the suit lands. The respondents have started showing the suit land to prospective customers and are negotiating with prospective customers. If the respondents are permitted to deal with the suit lands and complete the sale transaction the very purpose of filing the appeal would get frustrated and there will also be the multiplicity of litigation.

14) On the other hand the respondent No.3 contended that the appellants have not at all made out a prima facie case and the balance of convenience is not in their favour. The appellants and other respondents are already sold the suit property to the third party and their names are entered in the RTC of the suit property.

15) I have gone through the entire material carefully. The plaintiffs have filed the suit before the Trial Court claiming the decree for partition. The learned Trial Court, by considering the materials produced before it and hearing the arguments of both the parties, dismissed the suit. Being aggrieved by the said judgment and decree they have preferred this appeal. The main

grievance of the appellants is that the respondents are trying to alienate the suit property to third persons. If the respondents are succeed their activities, the plaintiffs will be put to great loss which cannot be compensated in terms of money and also it will cause multiplicity of proceedings. But, the respondent No.3 has denied the contention of the appellants and contended that the appellants and other respondents are already sold the suit property to the third party. But the respondent No.3 has not produced any document to show that the appellants and other respondents have already sold the suit property to the third persons. More over, the respondents have not under taken that they will not transfer the suit property till disposal of the appeal. If respondents allowed to alienate the suit property, more hardship and injustice would be caused to the appellants than respondents. If respondents are allowed to alienate schedule property then, it will lead to multiplicity of proceedings, if the appellants are succeed in the appeal. Hence this Court is opinion that the appellants have made out a prima facie case and the

balance of convenience and irreparable loss lies in favour of appellants, if temporary injunction is not granted. Hence, I answer the **Points No.1 to 3 in the affirmative.**

16) **Point No.4:-** In view of my findings on points No.1 to 3, I proceed to pass the following...

ORDER

The I.A.No.1 filed by the appellants/applicants U/O 39 Rules 1 and 2 R/w Section 151 of CPC is hereby allowed.

The respondents are hereby restrained temporarily from alienating the suit property to any other persons till disposal of the appeal.

Parties to bear their own costs.

[Dictated to the Stenographer directly on Computer, the same is revised and corrected by me and then pronounced in the Open Court on this the 29th day of August, 2025].

sd/-

**(Chandrashekhar Yallappa Talawar)
Senior Civil Judge & JMFC,
Khanapur.**