

IN THE COURT OF THE CIVIL JUDGE & JMFC, SANDUR

:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B.(Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 06th day of February 2026

O.S. No.77/2025

Plaintiff/s : H. Thippeswamy S/o H. Thippeswamy,
Aged about 29 years,
Agriculturist,
R/o Chikkanthapura village,
Sandur Taluk, Ballari District.

(By Sri. U.T.P., Advocate)

V/S

Defendant/s : H. Thippeswamy S/o Late Kalappa,
and Others.

(D-1 to 4 placed Exparte)
(D-5 By Sri. G.M. Advocate)

I.A.No.I

Applicant : H. Thippeswamy S/o H. Thippeswamy
(Plaintiff)

V/S

Opponent : H. Thippeswamy S/o Late Kalappa,
and Others.
(Defendants)

ORDER ON I.A.No.I FILED UNDER ORDER 39
RULE 1 AND 2 R/w SECTION 94 AND 151 OF C.P.C.

This is an application filed by the plaintiff against the defendant No.1 and 5 with a prayer to restrain them from alienating or transferring the suit properties in favour of third person, till the disposal of the suit.

2. The plaintiff and defendant No.2 to 4 are the children of defendant No.1 and Smt. H. Narayanamma. The defendant No.5 is said to be purchaser of the plaint schedule item No.2 property.

3. According to applicant, the defendant No.1 has acquired the land bearing Sy. No. 280, measuring 6.00 acres, situated at Chikkanthapura village, Sandur taluk in a family partition between himself, his father and brothers. In the said partition, the above land was allotted to the share of defendant

No.1. On the basis of the said partition, the defendant No.1 got his name mutated in the revenue records vide MR No.6/1994-95. Since then the defendant No.1 along with his wife and children are in joint possession and enjoyment of the said property as absolute owner. Thereafter, the property fell to the share of defendant No.1 was renumbered as Sy. No.280/2 vide MR No.T-1/2017-18 Dt. 18.07.2017. The plaintiff claim that he and the defendant No.1 to 4 are the members of Hindu undivided joint family, and no partition has taken place between them in respect of the above land.

4. According to plaintiff, he learnt that defendant No.1 without effecting partition and without his consent or knowledge has sold the property bearing land Sy. No.280/2 to the extent of 2.00 acres in favour of defendant No.5 vide Registered Sale Deed No.1040/2019-20 Dt. 17.08.2019. On the basis of the Registered Sale Deed, the name of defendant No.5 got mutated in the revenue records vide MR No.H-6/2019-20 Dt. 01.10.2019. The plaintiff claim that the sale deed executed by defendant No.1 in

favour of defendant No.5 in respect of plaint schedule item No.2 property is null and void and not binding on the share of the plaintiff. The property sold to defendant No.5 is described as plaint schedule item No.2 property.

5. According to plaintiff, he requested defendant No.1 to 4 to effect partition and allot his share in the suit property. They postponed to effect partition on one or the other reason. Thereafter in the first week of April 2025, the panchayath was convened in which the defendant No.1 refused to allot share to plaintiff. It is specific contention of the plaintiff that the suit properties are ancestral and joint family properties. It is alleged that defendant No.1 and 5 by taking advantage of their names appearing in the revenue records are making efforts to alienate the suit properties to third person to defeat his right. As such, the plaintiff is seeking the order of restrain defendant No.1 and 5 from alienating the suit properties. According to plaintiff, he has *prima-facie* and balance of convenience in his favour. If the

injunction is not granted irreparable loss will be caused to him. On these grounds, he prays to allow the application.

6. After service of summons in the case, the defendant No.1 to 4 failed to respond to the summons, and they are placed *exparte*. Similarly, defendant No.5 appeared through his learned counsel and filed written statement and adopted the same as objections to the application by filing memo.

7. The defendant No.5 admitted that the defendant No.1 has acquired the land bearing Sy. No. 280, measuring 6.00 acres, situated at Chikkanthapura village, Sandur taluk in a family partition between him, his brothers and father. He also admit the execution of Registered Sale Deed in his favour by defendant No.1.

8. According to him, in the month of May 2019, the defendant No.1 and his wife by name H. Narayanamma had approached him and expressed their willingness to sell plaint schedule item No.2 property for their household expenses and to

clear family debt. The proposal was accepted which led to execution of the sale deed in respect of plaint schedule item No.2 property for consideration amount of Rs.5,00,000/-. The wife of defendant No.1 has signed the sale deed as attesting witness. According to defendant No.5, the possession of the property is also handed over to him under the sale deed. He is in possession and enjoyment of the plaint schedule item No.2 property without anybody's interference.

9. It is specifically contended that defendant No.5 purchased plaint schedule item No.2 property after verifying all the documents and after satisfying no irregularities and liabilities on the said land. Further, the defendant No.1 said to have asserted that he is selling the suit property to the extent of his share and the plaint schedule item No.1 property has been allotted to defendant No.1 to 4 in a family settlement. Defendant No.5 claim to be a bonafide purchaser of plaint schedule item No.2 property for consideration.

10. According to defendant No.5, he got a summons from the court of Hon'ble Senior Civil Judge, Kudligi sitting at Sandur in O.S. No.93/2014, which is filed by one Honnuramma and her daughter Lakshmi in respect of land bearing Sy. No. 280 and other properties. The suit has been renumbered as O.S. No.677/2025 after the transfer of court to Hon'ble II Addl. Senior Civil Judge, Ballari. It is submitted that the suit in O.S. No.677/2025 is pending for consideration. The property covered by the present suit is also the subject matter in O.S. No. 677/2025. The conduct and attitude of the plaintiff in filing the suit against defendant No.5 shows the intention to harass the defendant No.5. Further, the plaintiff has executed Unregistered Consent Deed on 08.09.2023 in respect of the sale of plaintiff schedule item No.2 property in favour of defendant No.5. It is submitted that the plaintiff has filed this suit only to harass the defendant No.5 and for wrongful gain. Amongst other grounds, he prays to dismiss the application.

11. I have heard the learned counsel for the plaintiff.

Defendant no.5 did not argue on the application. Perused the records.

12. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour?
2. Whether the applicant proves balance of convenience in his favour?
3. Whether the applicant proves that irreparable loss would be caused to him if injunction is not granted?
4. What order?

13. My answer on the above points are as follows:-

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

14. **POINT NO.1 TO 3:-** This is a suit for the relief of partition and separate possession in respect of the suit property bearing land Sy.No.280/2 measuring 04.00 acres and another

piece of land in the same Sy.No.280/2 measuring 02.00 acres out of total extent of 06.00 acres situated at Chikkanthapura village Tq: Sandur.

15. The relationship of plaintiff and defendant no.2 to 4 with defendant no.1 is undisputed. According to plaintiff, the land bearing Sy.No.280 measuring 06.00 acres is acquired by the defendant no.1 in a family partition with his brothers and father. The entries in the ROR of the said land for the year 1997-98 *prima facie* establish this fact. So, what is forthcoming from the records placed before the court is that the land Sy.No. 280 has devolved on defendant no.1 from his father. Further, the contents of Registered Sale Deed No. 1040/2019-2020 Dt: 17.08.2019 executed by defendant no.1 in favour of defendant no.5, reveal the nature of property. The defendant no.1 has stated in the sale deed that the property being sold is his ancestral property. Thereby, the plaintiff and defendant no.2 to 4 have also got share in the ancestral property of defendant no.1.

16. However, it cannot be declined that the defendant no.1 is the karta of the family. It is trite that the Karta's power to alienate joint or ancestral family property is well-established, and his decision is binding on all undivided family members, including minors and widows, if the alienation is for valuable consideration and legal necessity or for the benefit of the estate. In the very sale deed the defendant no.1 has stated that he is selling the land Sy.No.280 to the extent of 02.00 acres for family necessity. The wife of defendant no.1 and mother of plaintiff, defendant no.2 to 4 has also signed the deed as attesting witness. Thus, the purpose and intention of selling the part of land is very much forthcoming from the covenants of the sale deed. Even after selling 02.00 acres of land there is surplus land left to the extent of 04.00 acres, which is described as plaint schedule item no.1 property.

17. Likewise, the sale deed in favour of defendant no.5 is executed in the year 2019 itself. The alienation is questioned after 6 years of execution of sale deed. Even the mutation in the name of defendant no.5 has taken place. Further, the plaintiff has

suppressed the pending suit in O.S.No.677/2025 (previously O.S.No.93/2014) before the court of Hon'ble II Addl. Senior Civil Judge, Ballari sitting at Sandur, with regard to suit land in which the defendant no.5 *herein* is also arrayed as one of the defendant. The property described in plaint schedule item no.2 is also said to be part of the suit in O.S.No.677/2025. The suppression of this material fact disentitle the plaintiff from claiming discretionary relief of temporary injunction.

18. Further, the Hon'ble High Court of Karnataka in ***Smt. Akhila Begum and Others Vs. Nadimulla Khan and Others [MFA No.6218/2025 (CPC)]*** has observed that in a partition suit, an absolute injunction restraining alienation over the entire property is incorrect when the plaintiffs only claim a fractional share. In the instant case, the plaintiff is claiming 1/5th share in the suit properties. Therefore, an injunction restraining alienation over the entire property cannot be granted. The plaintiff has not shown *prima-facie* case in his favour.

19. The applicant has averred that, the defendant No.1 is trying to sell the plaint schedule item no.1 property to third party. The source of information is not revealed by the plaintiff. Moreover, in the event of alienation pending *lis*, such transfer is always hit by the doctrine of *lis pendens* under section 52 of T.P.Act. Therefore, it is not apt to grant interim injunction to plaintiff. In the case of ***Shri Prakash Gobindram Ahuja vs Shri Ganesh Pandharinath Dhonde and others*** reported in **2016 SCC OnLine Bom 8884**, wherein the Division Bench of Hon'ble High Court of Bombay, was to decide the question of law, which essentially pertain to the protection given under Section 52 of T.P. Act against transfer *pendente lite* vis-a-vis protection granted by order of temporary injunction and whether in view of such protection, the party can be entitled to get the relief of interim injunction against such transfer *pendente lite*. The Hon'ble High court after referring to various decisions including that of the Hon'ble Apex Court and while answering to the question posed to itself has ultimately held as under:

“Question No.(III) : Since a plaintiff seeking a temporary injunction is required to show that he would suffer irreparably if temporary injunction is not issued, would it be inappropriate to expect such plaintiff to show that the provisions of Section 52 of the Transfer of Property Act do not afford adequate protection before an injunction to restrain transfer pendente lite is issued ?

Answer : Though it may not be inappropriate for the Court to expect the plaintiff to show that the provisions of Section 52 of TP Act do not afford adequate protection, it cannot laid down as a blanket proposition of law that in each and every case, plaintiff is expected to show it as a condition precedent for grant of injunction order.”

20. Therefore, there is no absolute or blanker bar in granting injunction even when there is protection under Section 54 of T.P.Act. It must be noted that, Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of *lis pendens* as enacted in Section 52 of T.P.Act was regarded to have provided all the panacea against *pendente lite* transfers, the

legislature would not have provided in Rule 1 of Order 39 for interim injunction restraining the transfer of the suit property. Rule 1 of Order 39 clearly demonstrates that *notwithstanding* the rule of *lis pendens* in Section 52 of T.P.Act, there can be occasion for the grant of injunction restraining *pendente lite* transfers under the circumstances of each case. In the instant case, the plaintiff apprehends that, the defendant No.1 is making all out efforts to sell the suit property. However, the plaintiff has not shown that the provisions of Section 52 of T.P. Act do not afford adequate protection, as observed in ***Shri Prakash Gobindram Ahuja's case*** (*supra*). As observed above, the plaintiff has suppressed the fact of pending suit involving defendant no.5 and plaint schedule item no.2 property. Further, the plaintiff has not disclosed whether he has obtained any injunction against the defendant no.1 in O.S.No.677/2025 (old O.S.No.93/2014). The plaintiff failed to substantiate *prima-facie* case in his favour. Therefore, the other two ingredients for grant of injunction need not be gone into. Hence, this Court answers Point No.1 to 3 in the **Negative**.

21. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A. No.I filed by the plaintiff U/O.39 Rule 1 and 2 R/w Sec. 94 and 151 of C.P.C., is hereby dismissed.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 6th day of February 2026)

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.