

IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC.,

HUNAGUND

Present:

Sri. Hanamantarao R.Kulkarni.,
B.Com., LL.B.,

Senior Civil Judge & JMFC., Hunagund.

Dated this the 10th day of April, 2026.

O.S. No.71/2024

1. Veerappa S/o Basappa Kumbar.

...Plaintiff

-Versus-

1. Basappa S/o Veerappa Kumbar and others.

... Defendants

I.A. No.III

1. Basappa S/o Veerappa Kumbar.

**...Applicant/
Defendant no.1**

-Versus-

1. Veerappa S/o Basappa Kumbar

**...Opponent/
Plaintiff**

(By Sri.M.B.D., Advocate for the Plaintiff)

(By Sri.M.R.M., Advocate for the defendant no.1 to 4)

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ORDER ON I.A. NO. III

1. I.A.No.III is filed by the defendant no.1 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking to restrain the plaintiff or his men from alienating or transferring or creating any charge over the properties bearing Plot no.3 and 4 situated in S.No.322/1 and 322/2 situated at Ward no.14 of Aminagad and Plot no.14 situated in Property no.701 situated at Gaddanakeri village till the disposal of the suit.
2. The learned Counsel for the plaintiff has filed statement of objections to the said application.
3. I have heard the learned Counsel for the defendant no.1 and the plaintiff.
4. On perusal of the records of the case, the following points would emerge for my consideration:
 - 1) Whether the defendant no.1 has made out a prima-facie case?
 - 2) Whether the balance of convenience tilts in favour of the defendant no.1?
 - 3) Whether the defendant no.1 would be put to irreparable loss if the temporary injunction is not granted?
 - 4) To what order?

5. 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

6. **Point Nos.1 to 3:** I have taken these three points together for my common discussion as they are inter-linked with each other.

7. In an affidavit appended to I.A.No.III, it is stated by the defendant no.1 that the properties as mentioned in the application are necessary properties to be inserted in the suit and the suit is bad for non joinder of necessary properties and he has further stated that the plaintiff is now in hurry to alienate the said properties as mentioned in the application and if he alienates the properties he will be put to untold hardship which cannot be compensated in terms of money. Hence, the instant application.

8. The learned Counsel for the plaintiff has contended that the properties as mentioned in the application are the self acquired properties of the plaintiff and they are not the joint family properties and the defendant no.1 has not sought the counter claim and accordingly, among other grounds prays to reject the application.

9. In view of the rival contentions put forth by both the parties, now, let me see as to whether the defendant no.1 has made out a prima facie case in his favour. It is pertinent to note that the defendant no.1 has contended that the properties as mentioned in the application are the joint family properties and they are acquired out of the joint family income and on the other hand, the plaintiff has contended that they are the self acquired properties of him. Further, the learned Counsel for the plaintiff has produced documents i.e., the sale deeds and bank statement and which show that the plaintiff has purchased the properties as mentioned in the application. It is pertinent to note that prima facie it goes to show that the plaintiff is the absolute owner of the properties as mentioned in the application. Further, it is pertinent to note that the heavy burden lies upon the defendant no.1 to prove that the properties are the joint family properties and they are acquired out of the joint family income. It is pertinent to note that if the plaintiff sells the properties as mentioned in the application and if such properties are the joint family properties then the defendants will be put to untold hardship which cannot be compensated in terms of money and on the other hand, the plaintiff is the absolute owner of these properties and if the application is allowed no harm will be caused to him. Hence, it is necessary to restrain him to alienate the properties as mentioned in I.A.No.III. Further, if the

defendant no.1 has not proved that these properties are the joint family properties, then he will be out of court and he will not get anything/share out of these properties. Further, the plaintiff will not loose anything if the application is allowed at this stage as he is the absolute owner of these properties.

10. From the above discussion, it becomes clear that the defendant no.1 has established prima-facie case and the defendant no.1 is entitled to the equitable relief of temporary injunction and as such, the balance of convenience tilts in his favour in respect of the properties as mentioned in I.A.No.3. Therefore, I have arrived at the conclusion of answering points No.1 to 3 in the affirmative.
11. **Point No.4:** In view of my discussion made supra, I proceed to pass the following:

ORDER

I.A.No.III filed by the defendant no.1
under Order 39 Rules 1 and 2 of the Code of
Civil Procedure, is hereby allowed.

Consequently, issue temporary injunction
restraining the plaintiff from alienating or
transferring or creating any charge over the
properties as mentioned in Interim Application

No.III filed by the defendant no.1 till the disposal of the suit.

Under the facts and circumstances of the case, no order as to costs.

(Directly I have typed on my laptop, corrected and then pronounced by me in the open Court on this the **10th** day of **April, 2026**.)

(Hanamantarao R.Kulkarni)
Senior Civil Judge & JMFC,
Hunagund.