

KABK700003862023



O.S./129/2023

IN THE COURT OF PRL. SENIOR CIVIL JUDGE & JMFC, JAMKHANDI.

Present:

**Shri. Rajashekhar.S. Harsoor
B.A. LL.B.,**

Prl. Senior Civil Judge & JMFC, Jamkhandi.

O.S.No.129/2023

Dated the 25th day of July 2025.

Between:

1. Smt. Annawwa W/o Shekhar Parit Urf Madiwalar,
Before Marriage Annawwa D/o Nagappa Parit,
Age: 52 years, Occ: Household work,
R/o Kadapatti, Tq: Jamkhandi,
Dist: Bagalkot.
Now at: Chilamur-591114, Tq: Ramadurg,
Dist: Belagavi.

....Plaintiff.

(Represented by Shri. K.S.N., Advocate)

And:

1. Smt. Shakuntala W/o late Fakirappa Parit
Urf Madiwalar, Age: 65 years, Occ: Household work,
R/o: Kadapatti-587301, Tq: Jamkhandi,
Dist: Bagalkot.
2. Shri. Basawaraj S/o late Fakirappa Parit
Urf Madiwalar, Age: 30 years, Occ: Household work,

R/o: Kadapatti-587301, Tq: Jamkhandi
Dist: Bagalkot.

3. Smt. Yamanawwa W/o Late Dyamanna Parit,
Age: 40 years, Occ: Agriculture,
R/o Kadapatti-587301, Tq: Jamkhandi,
Dist: Bagalkot.
4. Smt. Lalita W/o Late Madiwalappa Parit
Urf Madiwalar, Age: 60 years, Occ: Agriculture,
R/o: Kadapatti-587301, Tq: Jamkhandi
Dist: Bagalkot.
5. Shri. Nagaraj S/o Late Madiwalappa Parit
Urf Madiwalar, Age: 35 years, Occ: Private Service,
R/o Kadapatti-587301, Tq: Jamkhandi
Dist: Bagalkot.
6. Smt. Manjula D/o Late Madiwalappa Parit
Urf Madiwalar, Age: 40 years, Occ: Agriculture,
R/o: Kadapatti-587301, Tq: Jamkhandi,
Dist: Bagalkot.
7. Shri. Basayya S/o Late Gurumurtayya Mathapati,
Age: 48 years, Occ: Business,
R/o: Kadapatti-587301, Tq: Jamkhandi
Dist: Bagalkot.
8. Shri. Balachandra S/o Late Parasappa Madiwalar
Urf Parit, Age: 50 years, Occ: Agriculture,
R/o: Kadapatti-587301, Tq: Jamkhandi
Dist: Bagalkot.

....Defendants

(Defendants No.1 & 2 by Shri. R.M.J., Advocate)

(Defendants No.3 to 8 are placed as ex-parte)

: RANK OF PARTIES IN I.A No.I:

- 1. Smt. Annawwa W/o Shekhar Parit Urf Madiwalar
Before Marriage Annawwa D/o Nagappa Parit.**

Applicant/Plaintiff.

- Vs -

- 1. Smt. Shakuntala W/o late Fakirappa Parit
& others.**

...Opponents/Ori. Defendants.

i.	Provision under which the application is filed	:	IA.No.I filed U/o. XXXIX Rule 1 & 2 R/w Sec151 of CPC.
ii.	Relief sought for	:	IA.No.I – To restrain the defendants from alienating, transferring or creating charge over the suit schedule properties till the disposal of this suit.
iii.	The date on which the application is filed	:	IA.No.I is filed by plaintiff along with the plaint on 12-09-2023
iv.	Number of the application	:	I.A.No.I
v.	The date on which the objection is filed by opponent	:	15-04-2024.
vi.	The date on which the order was passed on the said application	:	Counsel for the defendants No.1 & 2 filed written arguments on I.A.No.I on 23-06-2025. Arguments of plaintiff side is taken as nil on 25.07.2025. Order passed on 25-07-2025.

ORDER ON IA No.I

1. The plaintiff has filed I.A.No.I U/o.XXXIX Rule 1 & 2 R/w Sec.151 of CPC, with a prayer to restrain the defendants from alienating, transferring the suit schedule properties or creating any charge thereon until disposal of the suit.

2. In support above application, the plaintiff has sworn to an affidavit, wherein she stated that, the plaint averments be read as part & parcel of her affidavit. She further stated that, the suit schedule properties are ancestral properties of herself and defendants No.1 to 6. They are in joint possession & enjoyment of the suit schedule properties. Such being the state of affairs, her brothers & the present defendants had clandestinely got created alleged sale deed in favour of defendant No.8 and one Gurmurtayya Mathapati and also got mutated the suit schedule properties in their names. Now all the defendants are trying to transfer the suit schedule properties to the strangers and create charge thereon on the strength of illegal mutation entries, only with an intent to deprive her rights over the suit schedule properties. She further stated that, she has made out prima facie case & balance of convenience lies in her favour.

Therefore it is just & necessary to restrain the defendants from alienating, transferring or creating any charge on the suit schedule properties till the disposal of the suit. If the defendants are not temporarily restrained from aforesaid acts, she will be put to loss & hardship. With this the plaintiff has prayed to allow above application.

3. In response to suit summons & notices, the defendants No.1 & 2 have appeared through their counsel and filed their written statement along with a memo stating that, the contents of their written statement may be treated as objection to IA.No.I. Rest of the defendants remained absent, despite service of summons. Hence they are placed as ex-parte.

4. Heard counsel for the plaintiff. Perused written arguments filed by counsel for the defendants. Perused application, memo, pleadings, documents and all other materials available on record. Upon going through the same, the following points arise for consideration:

POINTS

- 1. Whether the plaintiff has made out prima facie case?**
- 2. Whether the balance of convenience tilts in fevour of plaintiff ?**

3. Whether the plaintiff will be put to loss & hardship if temporary injunction is not granted ?

4. What order?

5. This court answers to above points as under:

Point No.1: In the affirmative,

Point No.2: In the affirmative,

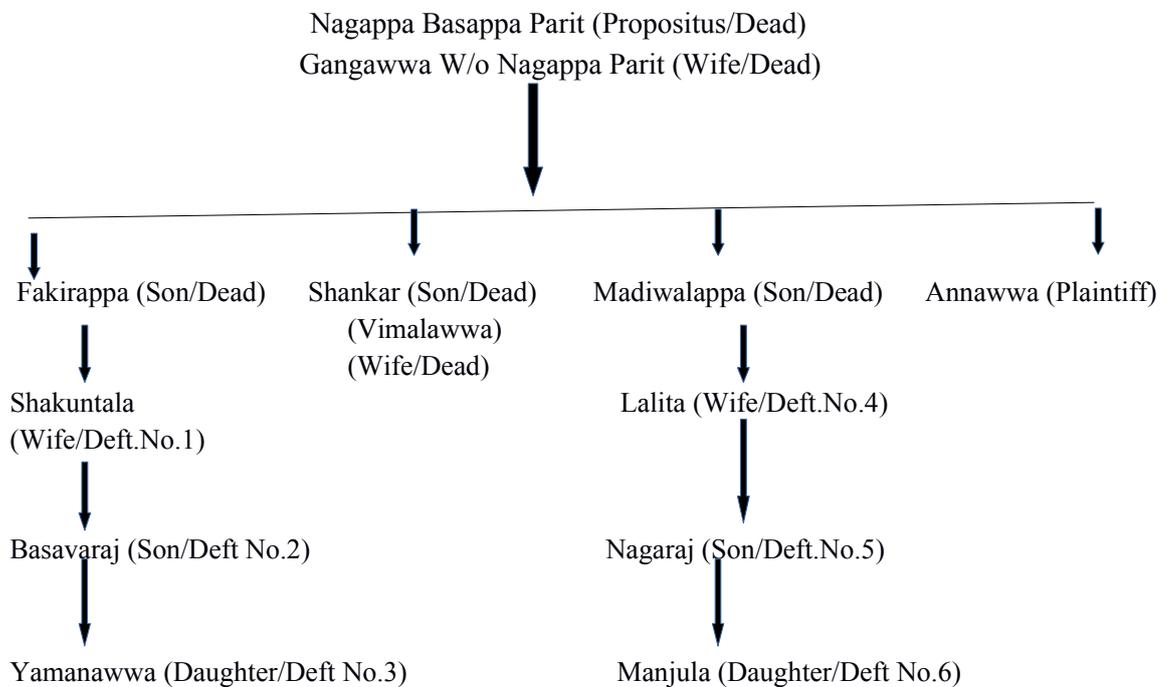
Point No.3: In the affirmative,

Point No.4: As per final order for the following:

REASONS

6. Points No.1 to 3: These points are taken up together for common discussions to avoid repetition of facts. The plaintiff has filed IA.No.I U/o.XXXIX Rule 1 & 2 R/w Sec.151 of CPC seeking to restrain the defendants from alienating, transferring and creating charge over the suit schedule properties until the disposal of the suit. In the affidavit annexed to I.A.No.I, the plaintiff has specifically stated that, the plaint averments be read as part & parcel of her affidavit. The plaint reveals that, the plaintiff has filed this suit for the relief of partition & separate possession claiming her 1/3rd share in the suit schedule properties. It is specifically averred in the plaint that, the propositus deceased Nagappa S/o Basappa

Parit and his spouse Smt. Gangawwa W/o Nagappa Parit died leaving behind their four children viz., Fakirappa, Shankar, Madivalappa & the plaintiff as their legal heirs. Aforesaid Fakirappa died leaving behind his spouse i.e., defendant No.1 and children defendants No.2 & 3 as his legal heirs. Aforesaid Shankar & his spouse Smt.Vimalawwa both of them died issueless as per the family genealogy. Aforesaid Madivalappa died leaving behind his wife i.e., defendant No.4 and two children defendants No.5 & 6 as his legal heirs. For better understanding of the relationship amongst the plaintiff & defendants, the family genealogy shown in the B- schedule of the plaint is reproduced as under;



7. It is mainly averred in the plaint that, the suit schedule properties are ancestral & joint family properties of the plaintiff & defendants No.1 to 6.

6. The father of plaintiff namely Nagappa had inherited the suit schedule properties from his ancestors. He had got the same in family properties partition. After his demise, his legal heirs inherited the suit schedule properties vide ME.No.1807 dated 04-02-1989. Therefore the plaintiff is entitled for 1/3rd share in the suit schedule properties. Such being the state of affairs the deceased Fakirappa sold the suit schedule property bearing R.S No.28/1 measuring 28 guntas out of 1 acre 22 guntas in favour of the defendant No.8. Further aforesaid deceased Madivalappa had sold the suit schedule property bearing R.S No.153/4A/1 measuring 3 acres 26 guntas in favour of one Gurumurtayya S/o Veerbhadrayya Mathapati behind the back of plaintiff. It is further averred in the plaint that, the defendant No.7 has got the suit schedule property bearing R.S No.153/4A/1 in a partition with his family members. Therefore aforesaid sale deeds are not binding upon the plaintiff's share. It is further averred in the plaint that, the brothers of plaintiff have illegally & clandestinely alienated aforesaid suit schedule properties. The deceased Fakirappa had given an assurance to the plaintiff to allot share to her in the suit schedule properties. But he has failed to do so. However the plaintiff demanded

the defendants No.1 to 6 to allot her share in the suit schedule properties, but they declined her demand. Hence she is constrained to file this suit along with I.A.No.I.

8. On the contrary, the defendants No.1 & 2 have specifically contended in their written statement that, the plaintiff & her siblings had got divided the suit schedule properties during the life time of the propositus. The plaintiff has filed this suit only with intent to cause hardship to the defendants. Hence the application as well as suit are not maintainable. With this said defendants have prayed for rejection of above application.

9. Perused the documents placed on record in the light of pleadings. The RTCs of the suit schedule properties disclose that, the suit schedule property bearing R.S No.34/3 measuring 2 acres 39 guntas situated at Hanchinal, Tq: Jamkhandi is jointly standing in the name of defendants No.1 to 3 & deceased Madivalappa. The suit schedule property bearing R.S No.17/4 measuring 1 acre 10 guntas situated at Hunnur village, Tq: Jamkhandi is jointly standing in the name of defendants No.1 to 3. The suit schedule property bearing R.S No.28/1A measuring 29 guntas situated at Hunnur village, Tq: Jamkhandi is jointly standing in the name of defendants No.1 to 3. The suit schedule properties bearing R.S

No.17/3 measuring 26 guntas & R.S No.153/4/A/2 measuring 3 acres 25 guntas, both situated at Hunnur village, Tq: Jamkhandi & Jamkhandi respectively are standing in the name of deceased Shankar S/o Nagappa Parit. The suit schedule property bearing R.S No.153/4/A measuring 3 acres 26 guntas situated at Jamkhandi is standing in the name of defendant No.7. The suit schedule property bearing R.S No.28/1B measuring 20 guntas situated at Hunnur village, Tq: Jamkhandi standing in the name of defendant No.8. The certified copies of RTCs, sale deed and mutation extracts produced by the plaintiff & defendants No.1 & 2 prima facie disclose that, the propositus has inherited the suit schedule properties from his ancestors.

10. It is to note here that, the defendants No.3 to 8 have remained absent, hence they were placed as Ex-parte. Therefore there is no any resistance to the I.A.No.I by said defendants.

11. The defendants No.1 & 2 have specifically contended in their written statement that, their family members had got divided the suit schedule properties during the life time of deceased propositus vide memorandum of partition dated 29-05-1985. Therefore the suit of the plaintiff is not maintainable. In support of their contention they have

produced an unregistered memorandum of partition dated 29-05-1985. On careful perusal of said document, it appears that the deceased Nagappa & his sons namely Fakirappa, Shankar & Madivalappa had got divided the lands bearing R.S No.17/3, 28/1, 34/2/1 & 153/4A. It is significant to note here that, the plaintiff is not party to said alleged memorandum of partition. No any explanation is given by the defendants No.1 & 2 as to absence of the plaintiff's name in the alleged memorandum of partition.

12. Upon going through the rival pleadings of the parties and the documents placed on record, this court is of opinion that, the plaintiff has made out a prima facie case for trial. On conjoint reading of the contents of pleadings and documents placed on record, it appears that, the balance of convenience lies in favour of the plaintiff rather than the defendants. As discussed above the plaintiff has alleged that, the defendants are trying to alienate the suit schedule properties and create charge thereon in order to deprive her right over the suit schedule properties. Having regard to the apprehension of the plaintiff, pleadings and the contents of documents placed on record, this court is of opinion that, it is just & necessary to restrain the defendants from alienating, transferring or creating any charge over the suit schedule properties until disposal of the

suit. If the temporary injunction is not granted, the plaintiff would be put to hardship rather than the defendants. Accordingly points No.1 to 3 are answered in the affirmative.

13. Point No.4: In view of findings, the following order is passed:

ORDER

IA.No.I filed U/o.XXXIX Rule 1 & 2
R/w Sec.151 of CPC by plaintiff is hereby
allowed.

Consequently the defendants or
anybody claiming through them are hereby
temporarily restrained from alienating or
transferring the suit schedule properties
and creating any charge thereon till the
disposal of suit.

No order as to costs.

(Dictated to the stenographer directly on computer, typed by her, corrected then pronounced by
me in the open Court on this the 25th day of July 2025)

Sd/-
(Shri. Rajashekhar S. Harsoor)
Prl. Senior Civil Judge & JMFC,
Jamkhandi.