

KABK710026842022



O.S./253/2022

{CASE\_CAUSE\_TITLE}

**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,**  
**JAMKHANDI, AT: JAMKHANDI**

**PRESENT :**

**SRI ABDUL RAHIMAN. A. MULLA**

*B.A.L, L.L.B. (Hons.)*

**Prl. Civil Judge & JMFC,**  
**Jamkhandi.**

**Dated this the 11<sup>th</sup> day of March-2024**

**O.S. No.253/2022**

1. Sri. Shankar S/o Jatteppa Bhajantri,  
Age: 44 years, Occ: Coolie,  
R/o Janata Plot, Mudhol,  
Tq: Mudhol, Dist: Bagalkot.

**..... Plaintiff.**

**(By Sri.MMT/MBP., Advocates)**

**Vs.**

1. Smt. Suvarna W/o Shrikant Bhajantri  
Age: 50 years, Occ: Coolie,  
R/o Billur village, Tq: Jatt,  
Dist: Sangli, State: Maharashtra.
2. Smt. Savitri W/o Raju Kaikali @ Bhajantri  
Age: 47 years, Occ: Household work,  
R/o Sheganv village, Tq: Jatt,  
Dist: Sangli, State: Maharashtra.

3. Sri. Muttappa S/o Jatteppa Mane @,  
Bhajantri, Age: 46 years, Occ: Service,  
R/o Laxmi Nagar, behind Treasury  
Office, Banahatti, Tq: Rabakavi-  
Banahatti.
4. Sri. Chandrashekar S/o Jatteppa  
Bhajantri, Age: 42 years,  
Occ: Business, R/o Ward No.22, Near  
Mann Kadir Darga, Keerti Nagar,  
Vijayapur.
5. Smt. Kavita W/o Mahadev Bhajantri  
Age: 31 years, Occ: Household work,  
R/o Near Venkataraman Temple,  
Bhajantri Oni Mudhol, Tq: Mudhol,  
Dist: Bagalkot.
6. Sri. Abhishek S/o Mahadev  
Bhajantri, Age: 11 years.
7. Sanjana D/o Mahadev  
Bhajantri, Age: 12 years, Minor,  
both defendant No.6 and 7 are minors,  
represented by their mother and natural guardian  
defendant No.5, Smt. Kavita W/o Mahadev  
Bhajantri,  
R/o Near Venkataraman Temple, Bhajantri Oni,  
Mudhol, Tq: Mudhol, Dist: Bagalkot.
8. Smt. Arati W/o Mahadev Bhajantri  
Age: 42 years, Occ: Household work,  
R/o Near Kunchanur Circle, Bhajantri,  
Oni, Jamkhandi, Tq: Jamkhandi,  
Dist: Bagalkot.

9. Sri. Sudeep S/o Mahadev Bhajantri  
Age: 23 years, Occ: Student,  
R/o Near Kunchanur Circle, Bhajantri,  
Oni, Jamkhandi, Tq: Jamkhandi,  
Dist: Bagalkot.
10. Shobha W/o Parashu Bhajantri,  
Age: 22 years, Occ: Household work,  
R/o Near Kunchanur Circle, Bhajantri,  
Oni, Jamkhandi, Tq: Jamkhandi,  
Dist: Bagalkot.
11. Sri. Sachin S/o Mahadev Bhajantri  
Age: 21 years, Occ: Agriculture,  
R/o Near Kunchanur Circle, Bhajantri,  
Oni, Jamkhandi, Tq: Jamkhandi,  
Dist: Bagalkot.
12. Sri. Shivappa S/o Maruti Bhajantri  
@ Koravi, Age: 50 years, Occ: Business,  
R/o Adihudi, Tq: Jamkhandi,  
Dist: Bagalkot.
13. Sri. Shrikant S/o Bhimappa Araker  
Age: 44 years, Occ: Private Service,  
R/o Hirepadasalagi, Tq: Jamkhandi,  
Dist: Bagalkot.
14. Smt. Kalavati W/o Hanamant Kori,  
Age: 28 years, Occ: Household work,  
R/o Hirepadasalagi, Tq: Jamkhandi,  
Dist: Bagalkot.
15. Sri. Gurappa S/o Ramappa Kori,  
Age: 42 years, Occ: Agriculture,  
R/o Hirepadasalagi, Tq: Jamkhandi,  
Dist: Bagalkot.

16. Special Land Acquisition Officer,  
UKP Jamkhandi.

..... **Defendants.**

**(D- 1 and 2 By Shri. P.G.P., Advocate)**  
**(D- 12 to 15 By Shri. A.P.K., Advocate)**  
**(D-3 to 7, 10 &16 are exparte)**  
**(D-8 and 9 steps not taken)**

**I. A. No.I**

1. Sri. Shankar S/o Jatteppa Bhajantri.

..... **Applicant/Plaintiff.**

**Vs.**

1. Sri. Shivappa S/o Maruti Bhajantri  
@ Koravi and 3 others.

.....**Opponents/Defendant No.12 to 15..**

\* \* \*

i	Provision under which the application is filed	Under Order 39 Rule 1 and 2 R/w Section 151 of CPC.
ii	Relief sought for	To restrain defendant No.12 to 15 from alienating suit schedule property.
iii	The date on which the application is filed	09-12-2022
iv	Number of the application.	IA No.1

v	The date on which the objections are filed by different opponents	19-08-2023
vi	The date on which the orders were passed on the said application	11-03-2024

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

The present suit is filed by plaintiff against defendants for the relief of partition and separate possession and along with the suit, this application is filed by plaintiff seeking order of temporary injunction restraining defendant No.12 to 15 from alienating, transferring, mortgaging etc suit schedule property i.e., VPC No.370 of Hirepadasalagi till disposal of the suit.

2. In the affidavit annexed to the application, plaintiff averred that suit schedule property belongs to his mother Sonnavva @ Sonubai, who purchased the same under registered sale deed dated 21-03-1983. During her life time, his mother has never executed any document in favour of anybody. The alleged released

deed said to have been executed by Sonnavva in favour of defendant No.12 does not convey any title or interest as the document is unregistered. Defendant No.13 who is purchaser also does not get any right, title over suit schedule property. Now defendant No.14 and 15 by taking disadvantage of their names appearing in the VPC extract are attempting to alienate suit schedule property, by which they will loose their right in suit schedule property and amongst other grounds, prayed to allow the application.

3. After issuance of suit summons, defendant No.3 to 7, 10 and 16 are placed exparte, whereas defendant No.1 and 2 appeared through his counsel, but they have chosen not to file any written statement and objections, whereas defendant No.12 to 15 appeared through their counsel, filed their written statement and memo adopting written statement as objections to this application and contended that Sonnavva and her legal heirs have not challenged the resolution passed by Gram

Panchayat and release deed till today. The suit of plaintiff is barred by limitation and also hit by doctrine of estoppel. Defendant No.12 alienated extent of 35X15 ft to defendant No.13 on 07-08-2006 under registered sale deed and defendant No.12 has sold extent of 12X15 ft to defendant No.15 under registered sale deed dated 05-10-2012 and defendant No.12 has also sold extent of 13X15 ft to defendant No.14 under registered sale deed dated 05-10-2012. Since then, defendant No.13 to 15 are owners in actual possession of suit schedule property and amongst these grounds, prayed to dismiss the application.

4. Heard, perused the records placed before the court. Plaintiff has filed written arguments.

5. The points that arise for my consideration is as under :

- 1) Whether prima-facie case and balance of convenience lies in favour of plaintiff ?

- 2) To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same ?
- 3) What Order ?
6. My findings to the above points is as under :
- Point No.1** .... In the Affirmative,
- Point No.2**.... To plaintiff in case of refusing to grant temporary injunction,
- Point No.3** .... As per final order for the following :

### **REASONS**

7. **POINT No.1 AND 2**: For the sake of convenience and to avoid repetition of facts, these points are taken together for common discussion.

8. It is the specific case of plaintiff that suit schedule property was purchased by his mother Sonavva under registered sale deed dated 21-03-1983 and her mother has never executed any release deed in favour of defendant No.12. Now defendant No.14 and 15 by taking

disadvantage of their names appearing in the VPC extracts are attempting to alienate the same.

9. In support of his contention, plaintiff produced in all 5 documents i.e., property assessment form of suit schedule property, original registered sale deed dated 21-03-1983, application given by plaintiff to Zilla Panchyath, Bagalkot, endorsement issued by EO, Bagalkot and endorsement issued by Hirepadasalagi Gram Panchayat.

10. On the contrary, defendant No.12 to 15 contended that defendant No.12 has alienated suit schedule property in favour of defendant No.13 to 15 in parts. The legal heirs of Sonavva have not challenged the resolution and release deed till today. No documents are produced by defendant No.12 to 15 in support of their contention.

11. On perusal of pleadings and documents produced by plaintiff, prima-facie it appears that suit schedule property was purchased by Sonavva under registered sale deed dated 21-03-1983. It is contention of

defendant No.12 to 15 that defendant No.12 has sold suit schedule property to defendant No.13 to 15 in parts. Whether so called release deed is registered or not is a matter of trial and whether the transfer of suit schedule property in favour of defendant No.12 to 15 is legal or not cannot be decided at this stage of the case, as it requires full fledged evidence and trial.

12. If at all suit schedule property is alienated during the pendency of this suit, the very purpose of the suit will be defeated and suit schedule property may not be available for partition to enjoy the fruits of the decree at the time of final disposal of the suit.

13. In order to grant an order of temporary injunction, 3 essential ingredients have to be fulfilled. The documents produced by plaintiff prima facie goes to show that suit schedule property is standing in name of defendant No.12 to 15. If the suit schedule property is alienated during the pendency of the suit, it would lead to multiplicity of proceedings and purpose of the suit will

be defeated. There appears prima facie case and balance of convenience in favour of plaintiff. If temporary injunction as prayed by plaintiff is not granted, it would cause irreparable loss and injury to plaintiff, rather than defendants. Hence for the above said reasons, I answer point No.1 in the 'affirmative' and point No.2 as 'irreparable loss and injury would be caused to plaintiff in case of refusing to grant temporary injunction'.

14. **POINT No.3:** For the reasonings and findings given to point No.1 and 2, I proceed to pass the following :

### **ORDER**

I. A. No.I filed by plaintiff under Order 39 Rule 1 and 2 R/w Section under Section 151 of C.P.C is hereby allowed.

Defendant No.12 to 15 are hereby restrained by an order of temporary injunction from alienating, transferring, mortgaging etc the suit

schedule property i.e., VPC No.370 of Hirepadasalagi till disposal of the suit.

The interim exparte temporary injunction order dated 17-12-2022 is hereby confirmed.

(Typed to my dictation by the Stenographer directly on computer, then corrected, printout taken, signed by me and then pronounced in the open court on this **11<sup>th</sup> day of March-2024**)

**(Abdul Rahiman A. Mulla)**  
Prl. Civil Judge & JMFC,  
Jamkhandi.