

KABR210007472008



**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE
AND JMFC, AT ANEKAL**

Dated this 16th day of December, 2025

PRESENT : SRI. MANJUNATHA M. B.A.(L), LL.B.
II Addl. Senior Civil Judge & JMFC,
Anekal.

O.S.No.807/2009

PLAINTIFF/S:

1. Sri. Marappa
S/o late Muniyappa,
aged about 65 years,
2. Sri. Ramaiah
S/o late Muniyappa,
aged about 55 years,

Both are R/at Menasiganahalli village,
Kasaba Hobli, Anekal Taluk,
Bengaluru District.

(Rep. By Sri. S.L.S., Advocate)

V/s

DEFENDANT/S:

1. Smt. Lagumakka
W/o late Muniyappa,
aged about 80 years,
2. Sri. Marappa
S/o late Chikkappaiah,
aged about 85 years,
3. Sri. Subbanna
S/o late Munishamaiah,
aged about 45 years,
4. Sri. Ramaiah
S/o late Munishamaiah,
aged about 38 years,
5. Sri. Raghunatha
S/o late Munishamaiah,
aged about 36 years,
6. Sri. Nagaraju
S/o late Munishamaiah,
aged about 30 years,
7. Sri. Manohar
S/o late Thammanna,
aged about 28 years,
8. Sri. Srikanth
S/o late Thammanna,
aged about 27 years,

9. Sri. Munshamaiah @ Sonnappa
S/o late Muniyappa,
aged about 75 years,

10. Sri. Abbanna
S/o late Doddaiiah,
aged about 50 years,

Defendants No.1 to 10 are
R/at Menasiganahalli village,
Kasaba Hobli, Anekal Taluk,
Bengaluru District.

11. Sri. Ramanna
S/o late Doddaiiah,
aged about 68 years,
R/at Kalkandahalli village,
Thali Tharfu, Denkanikotta Taluk,
Krishnagiri District, Tamilnadu.

12. Smt. Gowramma
W/o Thimmarayappa,
aged about 60 years,

13. Sri. Narayanappa
S/o late Nanjundappa,
aged about 68 years,

14. Smt. Pillamma
W/o Narayanappa,
aged about 55 years,

15. Sri. P.Chikkappaiah
S/o late Pillanna,
aged about 52 years,

16. Sri. T.Muniyappa
S/o Thayappa,
aged about 60 years,

Defendants No.12 to 16 are
R/at Menasiganahalli village,
Kasaba Hobli, Anekal Taluk,
Bengaluru District.

17. Sri. Muniyappa
S/o late Kempaiah,
aged about 56 years,
R/at Kemmannu Dommasandra
Village, Menasiganahalli Dakale,
Kasaba Hobli, Anekal Taluk,
Bengaluru District.

PARTIES ON IA.NO.X

**Applicants /
Plaintiffs**

Sri. Marappa & Another

V/s

**Opponent /
Defendant No.5**

Sri. Raghunatha

PARTIES ON IA.NO.XVII

**Applicant /
Defendant No.5**

Sri. Raghunatha

V/s

**Opponents /
Plaintiffs**

Sri. Marappa & Another

COMMON ORDERS ON I.A.NO.X & XVII

I.A.No.X filed by the plaintiffs under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC, praying for Temporary Injunction restraining defendant No.5 from changing the nature of Item No.1 of plaint schedule property.

2. In support of application, plaintiff No.1(d) sworn to an affidavit and pleaded that they filed suit for the relief of partition and separate possession. Themselves and defendants are joint family members and they are in joint possession of suit schedule property. Suit Item No.1 is their ancestral property. There is no division in Item No.1 of the plaint schedule. Themselves and defendants are in joint possession. Defendants now trying to digging trenches in Item No.1 of plaint schedule and trying to put up construction. Defendants are trying to digging trenches, when illegal acts were questioned, defendants threatened them with dare consequences. If application is allowed, no hardship or prejudice will be caused to the defendant No.5, hence application. On the other hand, if application is dismissed, they will put to great hardship and injustice.

3. Defendant No.5 was placed exparte, hence, on the basis of IA.No.X, exparte order was passed, restraining

defendant No.5 from changing the nature of suit Item No.1 of the plaint schedule.

4. Defendant No.5 appeared and filed IA.No.XVII under Order XXXIX Rule 4 r/w Sec.151 of CPC praying to vacate exparte order passed on IA.No.X.

5. In support of application, defendant No.5 sworn to an affidavit and pleaded that father of plaintiffs i.e., Muniyappa S/o Thammanna and his brothers entered into partition through partition deed dated 04.08.1958. In the partition schedule Item No.3 was allotted to Muniyappa, said Muniyappa was in possession. Schedule Item No.1 was allotted to him and revenue records were also mutated in the name of Muniyappa. From the date of partition, there is no joint family as pleaded by the plaintiffs. Shareholders in the partition were enjoying their shares and they constructed house in the properties allotted to them. His house is under dilapidated condition. By demolishing house, now trying to construct new house in the property allotted to him. Even though there is no joint family, legal heirs of plaintiff No.1 filed false application and there is no joint family as pleaded by the plaintiffs. If exparte order is not vacated, he will be put to great hardship and injustice. On the other hand, no prejudice will be caused to the plaintiffs.

6. Heard both side and perused materials placed before the court.
7. Now the points that would arises for consideration are ;

POINTS

1. Does plaintiffs made out prima facia case ?
 2. Does balance of convenience lies in favour of plaintiffs ?
 3. Does plaintiffs will suffer injury, if injunction is refused as prayed in IA.No.X ?
 4. Does defendant No.5 made out grounds to vacate exparte Order passed on IA.No.X ?
 5. What order ?
8. By considering the arguments of learned counsels and materials placed before the court, above points are answered as below ;

- | | |
|--------------|--|
| Point No.1 : | In the Negative |
| Point No.2 : | Does not survive for consideration |
| Point No.3 : | Does not survive for consideration |
| Point No.4 : | In the Affirmative |
| Point No.5 : | As per the final order for the following ; |

:- R E A S O N S :-

9. **Point No.1:-** Case of plaintiffs is, there is no partition between children of Thammanna. Admittedly, plaintiffs and defendants are legal heirs of Thammanna and suit schedule properties were belonged to Thammanna. The contention of defendant No.5 is that there was partition between children of Thammanna and properties were divided between children of Thammanna. To challenge it, defendant No.5 produced mutation register extract, it discloses that there was partition between children of Menasiganahalli Thammanna on 04.08.1958 and properties divided among children of Thammanna. Mutation Register Extracts prima facia shows that there is no joint family between children of Thammanna, at this stage, materials placed before the court, shows that there is no joint family as pleaded by the plaintiffs, at this stage, case of plaintiffs that there is no partition between children of Thammanna is doubtful, hence, this Point answered *in the Negative*.

10. **Point No.2 & 3:-** These points involves common question of facts, hence, taken together for discussion to avoid repetition of facts and for convenience.

When plaintiffs failed to establish prima facia case, question of balance of convenience and injury does not arise, accordingly, these points does not survive for consideration.

11. **Point No.4:-** For the reasons assigned to Point No1, defendant No.5 made out grounds to vacate exparte order granted on 27.11.2024, accordingly this point answered in the ***Affirmative.***

12. **Point No.5:-** For the reasons assigned to Point No.1 to 3, resulted in following :-

ORDER

IA.No.X filed by the plaintiffs under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC is dismissed.

IA.No.XVII filed by the defendant No.5 under Order XXXIX Rule 4 r/w Sec.151 of CPC is allowed.

Exparte order dated 27.11.2024 is stands vacated.

No order as to the cost.

In case plaintiffs able to establish case, then defendant No.5 shall handover the possession without claiming equity.

(Dictated to the Stenographer, transcribed by her, corrected and then pronounced by me in the open court, on this, **the 16th day of December, 2025**)

(MANJUNATHA M.)

II Addl. Senior Civil Judge & JMFC.,
Anekal.

