

KABR310003382019



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE & J.M.F.C.,
AT DEVANAHALLI.**

PRESENT

SRI. PRAVEEN NAYAK, LL.M.,

Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

Dated this day of 3rd September, 2025.

O.S.No.254/2019

BETWEEN:

Sri. A. Muniraju : **Plaintiffs**
since dead by his Lrs and others

(Plts. - By Sri.A.R.S.R.,Advocate)

AND:

Smt. Muniyamma W/o Late Lakshmaiah : **Defendants**
and others

(Defts.1 ,4 – By Sri. D.S.V.R., Advocate)

(Defts.3, 6 – Exparte)

(Deft.5 – By Sri. M.N., Advocate)

(Deft.2 (a) – Absent)

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i	Provision under which the application is filed	U/o. XXXIX Rule 1 and 2 R/w.Sec.151 of C.P.C. and U/o. XXXIX Rule 4
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		R/w.Sec.151 of C.P.C
ii	Relief sought for	Temporary Injunction
iii	The date on which the application is filed	03-04-2019 & 27-06-2025
iv	Number of the application	I.A.No.I,II and IX
v	Date of filing objection	12-10-2020 & 11-07-2025
vi	Date of Pronouncement of Order	03-09-2025

Sd/-
(PRAVEEN NAYAK)
Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.

COMMON ORDER ON I.A. No.I, II and IX

I.A.No.1 has been filed by the counsel for plaintiff under Order XXXIX Rule 1 and 2 R/w.Sec.151 of C.P.C, seeking grant of ad-interim order of Temporary Injunction to restrain the defendants, their agents or anybody claiming through them from creating 3rd party charge over suit item No.1 to 5 and 7 properties till disposal of the suit.

2. I.A.No.2 has been filed by the counsel for plaintiff under Order XXXIX Rule 1 and 2 R/w.Sec.151 of C.P.C, seeking grant of ad-interim order of Temporary Injunction to restrain the defendants, their agents or anybody claiming through them from putting up any construction over the suit item No.1 property till disposal of the suit.



3. I.A.No.9 has been filed by the counsel for defendants No.1,4 and 5 under Order XXXIX Rule 4 R/w.Sec.151 of C.P.C, seeking to vacate the interim order on I.A.No.1 and 2.

4. In the affidavit accompanying, I.A.No. 1 and 2, the plaintiff has stated that the suit schedule properties are the joint family properties of plaintiff and the defendants and the same are inherited through their ancestors. There is no partition between the plaintiff and the defendants. The defendants are trying to create charge over the suit properties and also trying put up structure over the suit item No.1 property. If the defendants create 3rd party right, the plaintiff will suffer irreparable harm and injury. Hence, prayed to allow the application.

5. In response suit summons, the defendant No.1 appeared through his counsel and filed common objection to I.A.No.1 and 2. The defendants No.1, 4 and 5 also filed I.A.No.9 under Order 39 Rule 4 of C.P.C seeking to vacate the exparte Temporary Injunction passed in favour of the plaintiff. In the objection statement to I.A.No.1 and 2 and in the affidavit accompanying I.A.No. 9 the defendants No.1,4 and 5 have stated that the application filed by the plaintiff is not maintainable under law. The plaintiff has not established his right over



the suit schedule properties. In order to seek an injunction, the plaintiff has to prove his right over the suit properties. The father of the plaintiff executed registered sale deed in favour of H.Kempaiah by alienating his share in lands bearing Sy.No.359/2 measuring 08 guntas, Sy.No. 360/2 measuring 12 guntas, Sy.No.365/2 measuring 25 guntas situated at Bagaluru Village. The sale deed came to be registered in the year 1953-54. The said H.Kempaiah executed sale deed in favour of B.M Venkatarayappa on 19.11.1964 in respect of those properties. The father of the plaintiff also executed Release Deed dated 13.04.1961 in favour of one Sattar Barni Sahib in respect of land bearing Sy.No.10/4 measuring 03 guntas. The said Sattar Barni Sahib executed registered Sale Deed in respect of the said property in favour of one Gangappa. On careful reading of those sale deeds and Release Deeds it is crystal clear that sons of Sunnakallu Nanjappa by name Lakshmaiah and Anthrappa have partitioned the joint family properties under Jubane Parikath. Thereafter, the father of plaintiff by name Anthrappa alienated his shares under registered sale deeds as well as Release Deeds to repay the loan and also for family necessity. Under the partition, portion of item No.1 measuring 03 guntas and item Nos. 3,5,6 and 7 have been allotted to the share of Lakshmaiah i.e, the husband of the defendant No.1 and father of defendants No.2 to 6. The defendant No.1 and her family members



have purchased a portion of "A" schedule property measuring 06 guntas and also "B" schedule property under registered Sale Deed dated 04.01.1990. Similarly, the defendants No.5 and 6 have purchased item No.4 of schedule properties under registered sale deed out of their own earnings. The suit item No.1, 2 and 4 are the self acquired properties of defendant No.1 and defendants No.5 and 6. The plaintiff has no right to seek partition of suit item No.1 to 7 properties. The defendant No.1 constructed residential house in item No.1 of suit properties. The plaintiff has suppressed the above materials facts and filed the present suit, which is not maintainable under law. Hence, prayed to reject I.A.No.1 and 2, by allowing I.A.No.9.

6. The Lrs of plaintiff filed objection statement to I.A.No. 9 by stating that no reasons are made out to vacate the Temporary Injunction. It is stated that there is no suppression of material facts by the plaintiff. Hence, prayed to reject I.A.No. 9.

7. Heard both sides.

8. The following points would arise for my consideration:



1. Whether the plaintiff proves that he has got prima-facie case and the balance of convenience tilts in his favour to pass an order of ad-interim injunction on I.A. No.I,II and IX?
2. Whether the plaintiff proves that he will suffer irreparable loss and hardship if temporary injunction order has not been passed on I.A. No.I,II and IX?
3. Whether the defendants No.1,4 and 5 prove that there is suppression of material facts by plaintiff while obtaining *ex parte* Temporary Injunction by the hands of this court?
4. What order ?

9. My answer to the above points are as follows:

Points Nos.1 & 2 : **In the Negative**

Point:3 :**In the Affirmative**

Point No.4 : **As per final Order
for the following**



REASONS

10. Point No.1: In order to establish his prima facie case, the plaintiff has to establish his prima-facie right over the suit schedule properties. It is the specific case of the plaintiff that the suit item No.1 to 7 properties are the ancestral and joint family properties of him and the defendants and the same are available for partition. The defendants are trying to alienate the same and also putting up construction over suit item No.1 property. On the other hand, the defendants No.1,4 and 5 have contended that there is no prima facie in favour of plaintiff as the plaintiff has suppressed material facts. There was a Jubane Parikath between the father of the plaintiff and the husband of defendant No.1. The father of the plaintiff has sold the properties allotted to his share in favour of various persons as per the sale deed of the year 1953-54, Sale Deed dated 19.11.1964 and Release Deed dated 13.04.1961. The suit item No.1,2 and 4 properties are the self acquired properties of defendant No.1 and defendants No.5 and 6, having purchased the same out of their own income.

11. In view of rival contentions, on going through the materials placed on record it appears that the plaintiff has mainly relied upon the revenue documents to claim that suit properties are joint family



properties. The plaintiff has also produced the Sale Deed dated 04.01.1990 which shows that one of the suit properties has been purchased in the name of the defendant No.1. On the other hand, the defendants have produced several documents to show that the father of the plaintiff by name Anthrappa has executed a registered sale deed dated 16.07.1953 and also other few sale deeds in respect of portions_ of suit properties. They have also produced the copy of the sale deed dated 04.01.1990 to claim that one of the suit property is self acquired property of defendant No.1. They have produced sufficient documents to prima facie establish that the suit item No.1 ,2 and 4 properties are self acquired properties of defendant No.1 and defendants No.5 and 6. They have produced the copies of Sale Deed dated 08.12.1973 and 17.06.1993 in support of their contention. On careful perusal of the plaint and the affidavits accompanying I.A.No.1 and 2 it appears that the plaintiff and subsequently his Lrs have not disclosed the material facts regarding alienation of several properties by the father of the plaintiff by name Anthrappa. On careful perusal of the documents it appears that there was some kind of division of family properties between Lakshmaiah and Anthrappa and thereafter revenue entries have been effected in the name of Lakshmaiah in respect of the properties allotted to his share. It also appears prima facie that Anthrappa has sold several properties allotted to his share



in favour of different persons. Under such circumstances, as there is suppression of material facts and the plaintiff/ his Lrs have no prima facie case and the balance of convenience does not tilt in their favour.

Hence, I answer Point No.1 in the Negative.

12. Point No.2: While answering the point No.1 it is held there is no prima facie case in favour of plaintiff. It is settled law that once it is held that there is no prima facie case, the question of considering irreparable harm and injury to be caused to the parties does not arise.

13. The learned counsel for the Lrs of plaintiff has relied upon the following decisions:-

- 1) AIR 2005 SC 104
- 2) Judgment in Civil Appeal No.32601/2018
- 3) 2007 53 AIC 256
- 4) 2018 (2) KCCR 1423
- 5) (2007) 5 AirKarR 366

I have gone through the above decisions. The decisions speak about position of law under Hindu Law as to ancestral and joint family properties. The decisions also speak that under Section 91 of Indian Evidence Act, the defendants are estopped from denying the



statement made in the documents. It also speaks that under joint Hindu family there is a presumption in law regarding continuance of joint family. The decisions are not applicable to the present set of facts.

14. The learned counsel for the defendant No.1 has relied upon the following decisions:-

- 1) 2017(4) AKR 129
- 2) 2014(1) AKR 194
- 3) AIR 2008 SC 2291
- 4) AIR 1994 SC 853
- 5) AIR 2013 SC 523

I have gone through the above decisions. It is clearly stated in the decisions that conduct of the parties shall be considered while deciding an application under Order 39 Rule 1 and 2 of C.P.C. In this case there is clear suppression of material facts by the plaintiff and the decisions relied upon by the counsel for defendant No.1 are applicable to the present set of facts. Therefore, the plaintiff has not made out grounds to grant Temporary Injunction as sought in I.A.No.1 and 2.

Hence, I answer point No.2 in the Negative.



15. Point No.3: The defendants No.1,4 and 5 have contended that there is suppression of material facts by the plaintiff while obtaining exparte Temporary Injunction by the hands of this court. While answering point No.1 it is held that the plaintiff has suppressed several material facts such as alienation of portions of suit properties by his father in the year 1953 and 1961 and also about execution of registered Release Deed. Therefore, the defendants No.1,4 and 5 have established that the plaintiff has obtained exparte Temporary Injunction by suppressing material facts in the plaint and also in the affidavits accompanying in I.A.No.1 and 2. It is to be noted here that the said sale deeds are registered instruments and under Section 3 of Transfer or property Act, it shall be deemed as notice to the public in general. **Hence, I answer point No.3 in the Affirmative.**

16. Point No.4 : In view of the above findings, this court proceed to pass the following:

ORDER

I.A. No.I and II filed by the
plaintiff under Order XXXIX Rule 1 and
2 R/w.Sec.151 of C.P.C are rejected.

I.A.No.IX filed by the
defendants No.1,4 and 5 under Order



XXXIX Rule 4 R/w.Sec.151 of C.P.C is allowed.

Consequently, the exparte Temporary Injunction granted in favour of plaintiff stands vacated.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 03rd Day of September, 2025).

Sd/-

(PRAVEEN NAYAK)

Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.