

**THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
HOSAKOTE.**

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 30th day of April - 2026

O.S.No.401/2024

Plaintiff/s : Sri.Subramanya

- V/s -

Defendant/s : Sri.Ramegowda & Ors.

i. Provision under which the application is filed.	U/o 39 Rule 1 and 2 of CPC. U/o 39 Rule 4 of CPC
ii. Relief sought for	Temporary injunction.
iii. The date in which the application is filed	1) 03-06-2024 2) 28-3-2026
iv. Number of the application	IA No.1 and 7
v. The date on which the objections are filed by different opponents	19-11-2025 09-04-2026
vi. The date on which the orders were passed on the said application.	30-04-2026

Orders on I.A.No.1 and 7

The plaintiffs have filed I.A.No.1 under Order 39 Rule 1 and 2 R/w Section 151 of CPC seeking an order of temporary injunction restraining the defendant No.4 from alienating or

encumbering the suit schedule property to any third parties till disposal of the suit.

2. The defendant No.4 has filed I.A.No.7 U/o 39 Rule 4 R/w Section 151 of CPC to vacate an ad interim order of ex parte temporary injunction granted on 05-06-2024.

3. In the annexed affidavits it is stated that the suit schedule properties are the ancestral and joint family properties of the plaintiff and defendants No.1 to 3 and they are in joint possession and enjoyment over the said properties having acquired the same by their grand father by name Munichikkappa and till today there was no partition among themselves. When such being the case, the defendants No.1 to 3 by colluding with each other have created the gift deed dated 24-2-2014 in favour of defendant No.2. Based on the said gift deed the defendant No.2 has sold the suit property in favour of defendant No.4 through registered sale deed dated 5-10-2015. The defendant No.1 and 3 without having any individual right have created the gift deed to deprive the right of the plaintiff over the suit property. When the plaintiff demanded for partition, they refused to do so. Hence, prays to allow I.A.No.1 and prays to reject the I.A.No.7.

4. On service of suit summons, the defendants appeared and filed written statement and also defendant No.4 filed I.A.No.7 under Order 39 Rule 4 R/w Section 151 of CPC and further taken a contention that he had purchased the suit schedule property from defendant No.2 through a registered sale deed dated 5-10-2015 and he is possession of the suit property. The revenue records were mutated in his name and he is in possession and enjoyment of the said property. After lapse of 10 years the plaintiff has filed the above suit on the instigation of the other defendants in order to grab the money. Further, the plaintiff himself had executed the registered consent deed dated 27-11-2015 in favour of this defendant by giving consent to the registered sale deed dated 5-10-2015 and had received the amount of Rs.2,00,000/- through cheque. The plaintiff by suppressing the above said fact has filed the above suit and obtained an exparte order of injunction against this defendant. Hence, on other ground prays to vacate the interim order.

5. Both the parties in their favour have relied upon the copies of documents.

6. Based upon the above contentions of the plaintiff and defendants, following points arise for consideration of this court:

1. Whether the plaintiff has made out prima facie case in his favour?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. If temporary injunction is not granted who will suffer great hardship and injustice?
4. Whether the defendant No.4 has made out sufficient grounds to allow the I.A.No.7 ?
5. What order?

7. On due perusal of the records, the court findings on the above points are as under:

Point No.1 to 3 : In the Negative,

Point No.4 : In the Affirmative,

Point No.5 : As per the final order
for the following;

REASONS

8. **Point No. 1 to 4:-** These points are inter-linked with each other. Therefore, in order to avoid the repetition of facts and

circumstances, they are taken together at one stretch for common discussion.

The plaintiff have filed the above suit against the defendants for the relief of partition and separate possession in respect of suit schedule property and also declaration that the gift deed dated 24-2-2014 and sale deed dated 5-10-2015 are not binding on his share.

9. In support of his case, he has produced the genealogical tree which is not disputed by the parties and the RTC and mutation extracts along with copy of gift deed dated 24-2-2014, sale deed dated 5-10-2015.

10. The defendant No.4 through his application prays to vacate the interim order passed in this case and further taken a contention that the plaintiff and defendant No.1 to 3 by colluding themselves have filed the above suit though they are having knowledge about the execution of sale deed and also contended that the plaintiff himself has executed the consent deed in his favour on 27-11-2015 by receiving consideration and by admitting the sale deed dated 5-10-2015.

11. On perusal of available records and the arguments canvassed by both the parties it is the specific case of the plaintiff that the suit schedule property is the ancestral and joint family property having acquired the same by their grand father by name Munichikkappa. After his death, the plaintiff and defendant No.1 to 3 continued in joint possession of the said property. The defendant No.1 taking advantage of the katha standing in his name fraudulently executed the gift deed dated 24-2-2014 in favour of defendant No.2 who in turn sold the same in favour of defendant No.4 on 5-10-2015.

12. Here in this case the defendant No.1 to 3 through their written statement have admitted the claim of the plaintiff and also prays to decree the suit.

13. As per statement made by the plaintiff and the defendant No.4, the defendant No.1 has executed the gift deed in favour of defendant No.2 who sold the same in favour of defendant No.4 on 5-10-2015. But, here in this case the defendant No.2 has not challenged the said sale deed executed by him in favour of defendant No.4 till this date.

14. Furthermore, though the defendant No.1 gifted the suit property has taken a contention that he is also having equal share in the suit property. Further, the defendant No. 2 who himself has sold the suit property is also claiming equal share over the same. Furthermore, the plaintiff has not produced any material documents to show that the suit property is their ancestral and joint family property.

15. As per documents produced by the plaintiff the M.R.No.6/1990-91 is pertains to the Sy.No.7/2 which was transferred in the name of Muninagappa and his brothers. The RTC produced by the plaintiff shows that the suit property bearing Sy.No.7/2 is standing in the name of one Munichikkappa and later the same was changed in the name of Muninagappa and others.

16. Further, as per recitals made in consent deed dated 27-11-2015 the plaintiff voluntarily executed the consent deed by admitting the sale made by the defendant No.2 on 6-10-2015 in favour of defendant No.4 by receiving consideration of Rs.2,00,000/-.

17. Here in this case, as per statement made by the defendant No.1 to 3 clearly discloses that though they have executed the gift deed and the sale deed have claimed the relief of partition it clearly goes to show that they themselves have colluded with each other.

18. Furthermore, the gift deed was executed on 24-2-2014 and the sale deed was executed in favour of defendant No.4 on 5-10-2015 but, this suit was filed in the year 2024 after lapse of 10 years. Therefore, at this stage the plaintiff has not made out any prima facie case and the balance of convenience is also not lies on his favour. If an order of temporary injunction is granted, the defendant No.4 will be put to great loss and injustice. Hence, on the above reasons, I answered point No.1 to 3 in the “**Negative**” and Point No.4 in “**Affirmative**”.

19. **Point No.5:-** In view of the aforesaid findings on point No.1 to 4, I proceed to pass the following:

ORDER

The I.A.No.1 filed by the plaintiff under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby rejected.

The I.A.No.7 filed by the Defendant No.4 under Order 39 Rule 4 R/w Section 151 of CPC is hereby allowed.

Consequently the Interim order granted on 05-06-2024 stands vacated.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 30th day of April 2026.)

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

