

IN THE COURT OF ADDL.SENIOR CIVIL JUDGE & JMFC,
AT CHITRADURGA.

DATED THIS THE 09th DAY OF SEPTEMBER 2025

Present: Smt.Ujwala Veeranna Siddannavar, B.Sc., LL.M.,
Addl. Senior Civil Judge & JMFC,
Chitradurga.

O.S.No.13/2023

Plaintiff/s : Hanumakka @ Hanumavva
D/o Late Bheemappa@
Bheemappa Talvar
W/o Rangappa
Aged about 74 years,
R/o Sasulu village,
Beedurga Hobli,
Holalkere Taluk.

(By Sri.B.K.R., Advocate)

V/s.,

Defendant: 1. Smt. Siddamma
W/o Late Rudrappa
Aged about 72 years.

2. Ranganatha
S/o Late Rudrappa
Aged about 59 years,

Both are D. Madakaripura village,
Bharamasagara Hobli,
Chitradurga Taluk.

3. Jalajakshi
W/o Late Gangadhara T.R
Aged about 46 years,

4. Ujwal
S/o Late Gangadhara T.R
aged about 20 years,

5. Ullas
S/o Late Gangadhara T.R
Aged about 16 years,

Defendant No.5 is minor
Represented by her natural
mother Guardian Jalajakshi
i.e., defendant No.3.

Defendant No.3 to 5 are
R/o Dhanvi Nilaya,
3rd Cross, 3rd Main, behind Mythri
Nursing College, Nanjappa Layout,
Behind Sahyadri College,
Shivamoga.

6. A.B. Veena
W/o K.A Sateesh,
Aged about 39 years
C/o Kandavadira Ajjappa
Sirigere Village,
Bharamasagar Hobli,
Chitradurga Taluk,

7. Nagaraju.A
S/o Arjunappa
Aged about 40 years
R/o D. Madakaripura village,
Bharamasagara Hobli,
Chitradurga Taluk.

(D1 & D2 - by Sri.H.B.D., Advocate)

(D3- by Sri.P.M.H., Advocate)

(D4, 5 & 7 - by .Exp.)

(D6- by Sri.A.S.N., Advocate)

(D8- by Dismissed)

PARTIES ON IA NO.XV

Applicant/defendant No.6 :Smt.A.B.Veena W/o K A Sateesh,

V/s

Opponent/plaintiff

: Hanumakka @ Hanumavva

**ORDER ON IA NO.IV FILED UNDER ORDER XXXIX RULE
1 & 2 READ WITH SECTION 151 OF CPC**

This is an application filed by defendant No.6 U/O 39, Rule 1 and 2, CPC, praying to grant the relief of temporary injunction restraining defendants from alienating Agricultural land bearing Sy.No.30/2 measuring to an extent of 01 acre 11 guntas, land bearing Sy.No.30/3 measuring to an extent of 03 acres, land bearing Sy.No.30/4 measuring to an extent of 07 acres 14 guntas and land bearing Sy.No.30/5 measuring to an extent of 03 acres 04 guntas situated at D.Madakaripura village, Chitradurga Taluk and Chitradurga District.**(herein after referred as suit schedule properties)** any way until disposal of the suit. Defendant counsel filed objection for the same denying the averments of the petition.

b) It is the case of plaintiff that she along with defendant No.1 to 5 Constitute Hindu undivided joint family and suit schedule Item No.1 to 4 properties are their joint family properties and defendants denied her share in the suit schedule properties, hence she filed suit seeking partition and separate possession with respect to Item No.1 to 4 schedule properties. Defendant No.6 appeared through

counsel and filed written statement denying the averments of plaintiff and claimed to be exclusive owner and possessor of counter claim property which is Item No.4 of suit schedule property. Defendant No.6 claimed that she purchased said property from defendant No.1 and 2 through registered sale deed. Thereby she is an absolute owner and possessor of the said suit schedule property by virtue of said sale deed.

c) Along with written statement defendant No.6 filed petition under Order XXXIX Rule 1 and 2 read with Section 151 CPC seeking relief of temporary injunction restraining plaintiff from interfering in the peaceful possession of defendant No.6 over the said counter claim property. It is submitted that the suit filed by plaintiff is not maintainable either in law or facts. The relationship of plaintiff and defendant No.1 to 5 is not known to him. Plaintiff is no way concerned to counter claim schedule property and she is having no locus standie to file this suit.

d) It is further submitted that in the year 1995 defendant No.1 and 2 have effected oral partition in the family and accordingly their name has been mutated with respect to suit schedule property and OS.No.58/2019 filed

pertaining to suit schedule properties before 2nd Additional Civil Judge and JMFC, Chitradurga, wherein the said suit has been decreed and final decree is passed and accordingly said final decree is registered on 22.04.2022 which is within the knowledge of plaintiff.

e) Defendant No.3 to 5 for their legal family necessities have sold counter claim properties in favor of defendant No.6 through a registered sale deed dated 17.11.2022. On the same day they have delivered possession of the said properties to defendant No.6 and accordingly he is in peaceful possession and enjoyment over the suit schedule properties from the said date of sale. It is alleged that plaintiff making hectic efforts to interfere in the peaceful possession and enjoyment over defendant No.6 property hence he approached jurisdictional police but as a matter is civil in nature no action taken against plaintiff. It is further submitted that he is bonafide purchaser of suit schedule properties and invested huge amount and improved the said properties. Therefore if plaintiff is not restrained he will be put to irreparable loss and injury which cannot be compensated. Hence sought for temporary injunction with

respect to counter claim property.

f) On the said application plaintiff filed objection denying the averments of petition and submitted that said schedule property is ancestral joint family property and summons duly served upon defendant No.6 on 05.01.2023. Even then he has not choose to contest the matter and after lapse of two years he appeared and filed written statement along with this application restraining plaintiff by making untenable allegations. The said property is ancestral joint family properties of plaintiff and defendant No.5 and it is alleged that defendants colluding with each other to harass and cause inconvenience to plaintiff they have filed this petition. If the petition is allowed she will suffer heavy irreparable loss. Therefore defendant No.6 is having no prima facie case and balance of convenience lies in favor of plaintiff and irreparable loss would be caused to her rather than defendant No.6. Hence for all the said reasons pray for dismissal of the petition.

3. Heard learned counsel appearing for plaintiff and defendant No.6. Perused application, affidavit, pleadings and documents produced from the both side.

4. Upon hearing arguments and on perusal of materials placed on record the following points would arise for my consideration;

- 1. Whether defendant No.6 has established prima facie case?**
- 2. Whether the balance of convenience lies in favour of defendant No.6?**
- 3. Whether irreparable loss or hardship will be caused to defendant No.6 if injunction as prayed in IA No.XV is not granted?**
- 4. What order?**

5. My findings to the above points are as under;

Point No.1 to 3:- In the Affirmative
Point No.4 :- As per order for the following;

REASONS

6. **POINT NO.1:-** This application U/o 39 rule 1 and 2 filed by defendant No.6 seeking temporary injunction restraining plaintiff from interfering in counter claim schedule property. Plaintiff filed this suit for the relief of partition and separate possession against defendants. It is further submitted that she along with defendant No.1 to 5 constitute Hindu Undivided Joint Family and suit schedule properties are their ancestral joint family properties which have not been partitioned and she is having legal share in

the said properties. As her share denied by defendant No.1 to 5 she filed this suit for seeking her legitimate share in the suit schedule properties.

7. During pendency of the suit after two years defendant No.6 filed this application along with his written statement denying the right of plaintiff in the suit schedule properties. He also filed counter claim seeking for equitable partition and allotment of item No.4 property in his favor which is counter claim property. He further submitted that he is a bonafide purchaser under registered sale deed executed prior to institution of this suit by virtue of sale deed dated 17.11.2022 as final decree proceedings was held between defendants before 2nd Additional Civil Judge and JMFC, Chitradurga, which is in the knowledge of plaintiff.

8. Defendant No.3 to 5 said to have executed said sale deed dated 17.11.2022 in favor of defendant No.6. Thereby from the date of the said sale possession he is handed over to defendant No.6 and he is cultivating suit schedule properties and invested huge amount for development of the same. It is further submitted that the registered sale deed executed in his favor prior to the institution present suit and

he is in settled possession of the said property.

9. Plaintiff in her pleadings not referred the said sale transaction and only upon filing this petition by defendant No.6 in her objection denied the said sale transaction. Plaintiff disputed oral partition and contend that counter claim property and joint family properties are same and not specifically challenged the alienation of the said properties in the plaint.

10. It is pertinent to note that defendant No.1 to 5 though appeared through counsel but not choose to file their written statement and not denied said sale transaction. Defendant No.4 and 5 remained absent from the proceedings while defendant No.1 to 3 counsel appeared but not filed objection. Defendant No.6 and 7 are said to be the purchaser of the suit schedule properties.

11. Defendant No.6 is claiming her right over the property by virtue of the registered sale deed dated 17.11.2022 executed in her favor. The said sale deed has not been referred by plaintiff in the pleadings. She alleged that defendants harassed to cause loss to plaintiff and knock of share in the suit schedule properties and in collusion with

each other making hectic efforts to alienate, mortgage and create encumbrance certificate of suit schedule properties standing in their name without her knowledge.

12. She has stated regarding sale of said item No.4 property in favor of defendant No.6. Only after defendant No.6 appeared before the Court and submitted his written statement plaintiff filed rejoinder to the counter claim submitted by defendant No.6 and denied oral partition as stated between defendant No.1 to 5 and allotment of share. Further she denied execution of the sale deed in favor of defendant No.6 and other defendants.

13. It is settled that purchaser of the coparcener acquires only undivided share of his vendor and cannot claim exclusive ownership of specific property until partition by meets and bounds. The contention of defendant No.6 is that he purchased counter claim property under a registered sale deed dated 17.11.2022, much prior to the institution of the present suit. He submits that he is in lawful possession and enjoyment over the said property from the date of the sale and plaintiff has not challenged the said alienation of the property in her favor and now interfering in the peaceful

possession of defendant No.6.

14. Whereas plaintiff contended that said property is joint family property and the said sale is not binding on her and she denied the said sale transaction and oral partition. Plaintiff has not specifically pleaded about the sale transaction or sought to set aside alienation. Defendant No.6 is impleaded subsequently filing the suit. It is settled principle that purchaser from coparcener acquires only undivided share of his vendor and cannot claim exclusive ownership over specific joint family property until partition. Co-sharer or his purchaser cannot another coparcener entitled possession over the possession and enjoyment joint family properties. However where purchaser has being in possession through a registered sale deed executed prior to the suit and his possession not disputed by vendors the Court may protect such possession till his rights are adjudicated.

15. In the present case in hand defendant No.1 to 5 who are vendors of defendant No.6 not filed objection nor denied said sale transaction. Plaintiff claim the suit schedule property as joint family properties whereas defendant No.6

claim that he purchased said property through his vendor who have received said property in oral partition. The said fact has to be decided before the Court on merits by considering evidence placed on record. At this initial stage it cannot be decided and the rights of parties cannot be adjudicated. As defendant No.6 claiming his exclusive right over said property by virtue of the sale deed executed by other defendants and he purchased the said property prior filing of the suit his possession is supported by registered document and the vendors have not disputed the said sale. Plaintiff does not specific assail the transaction. In such circumstances equity require that his possession to be protected until partition is finally worked out without affecting plaintiff lawful share. Therefore defendant No.6 made out sufficient grounds and prima facie case in his favor. **Accordingly, I answer point No.1 in affirmative.**

16. Point No.2 and 3: Defendant No.6 claim to be bonafide purchaser of the counter claim property by virtue of the registered sale deed executed in his favor by his vendors who are none other than other defendants in this case. Plaintiff has not narrated anything regarding the said sale

transaction in her plaint, whereas defendant claim to be in exclusive possession over the said property by virtue of the said sale deed from the date of sale. Plaintiff alleged that defendants colluding with each other trying to alienate the suit schedule property but she has not stated regarding the previous suit and final decree proceedings and this sale transaction on which defendant No.6 is claiming his possession over counter claim property.

17. He has furnished documents pertaining to the said properties FDP passed in OS.No.58/2019. This goes to show that balance of convenience lies in his favor. If plaintiff is not restrained then definitely defendant No.6 would suffer irreparable loss and injury which cannot be compensated in terms of money as defendant No.6 has invested money and said to have developed counter claim property. If at all plaintiff is having share in the suit schedule properties and established that there was no oral partition or any other kind of partition in the joint family, then definitely she would be entitled for her share.

18. The said sale transaction took place prior to filing of the suit and the possession was handed over to defendant

No.6 pursuant to the said registered sale deed stands by prima-facie established. No objection is raised by vendors/defendant No.1 to 5 who said to have executed a sale deed in favour of defendant No.6. Thereby he has made out a case for grant of temporary injunction restraining plaintiff for interfering in his possession over the counter claim property. Though the co-sharer or his purchaser cannot get injunction against another co-sharer but when possession of the purchaser is not denied by the vendors court can protect possession of such purchaser subject to plaintiff share being worked out in the final decree.

19. It is further made clear that defendant No.6 cannot claim absolute temporary injunction against plaintiff on the ground that he is exclusive owner of counter claim property because plaintiff asserts it still joint family property. Since defendant No.6 purchased counter claim property prior to the suit and he is in possession. The court may protect his possession to an extent of his right subject to final result of the suit. If the injunction as claimed by defendant No.6 is granted plaintiff will not suffer irreparable loss and injury.

Accordingly, I answer point No.2 and 3 in affirmative.

20. POINT NO.4: The observations made above will not come in any way for the final disposal of the suit on merits and for the reasons stated above I proceed to pass the following:-

ORDER

IA No.XV filed by defendant No.6 under order XXXIX Rule 1 and 2 read with Section 151 of Civil Procedure Code is hereby partly allowed.

No order as to costs.

(Dictated to the Stenographer, transcription generated through the computer by her with my verification and then signed and pronounced by me in the Open Court dated this the 09th day of September 2025)

(Ujwala Veeranna Siddannavar),
II Addl. Sr.Civil Judge and JMFC
Chitradurga.