



**IN THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC.,  
MUDIGERE.**

**DATED: THIS THE 30<sup>th</sup> DAY OF JUNE 2023**

**Present: Sri. Vishwanath A.,** B.B.A., L.L.B.  
Addl. Civil Judge & JMFC.,  
Mudigere.

**ORIGINAL SUIT No: 32/2022**

**BETWEEN :**

1. Suresh H.S.  
S/o Subbegowda  
Aged about 51 years,  
Agriculturist,  
R/o Halekote Village,  
Bidarahalli Post,  
Mudigere Taluk.
  2. Smt. Jalajakshi H.S.  
W/o Late Poornesh,  
Aged about 48 years,  
Tailoring Work,  
R/o Havalli Village,  
Aldur Post, Chikkamagaluru Taluk.
  3. Sri. Nagesh  
S/o Subbegowda,  
Aged about 56 years,  
Agriculturist,  
R/o Sirigola, Sangameshwarapet  
Post, Chikkamagaluru Taluk.
- ... Plaintiffs*

**(By Sri. B.M.Laxmana Gowda, Adv.)**



**AND :**

1. Sri. Laxmana Gowda,  
S/o Late Sri. Menasegowda,  
Aged about 64 years.
2. Sri. Upendra  
S/o Late Sri. Menasegowda,  
Aged about 59 years.
3. Sri. Gajendra  
S/o Late Sri. Menasegowda,  
Aged about 57 years.
4. Sri. Narendra  
S/o Late Menasegowda,  
Aged about 54 years.
5. Surendra  
S/o Late Sri. Menasegowda,  
Aged about 51 years.
6. Sri. Ravindra  
S/o Late Sri. Menasegowda,  
Aged about 49 years.

Dfs.No.1 to 6 are Agriculturists,  
R/o Taruve Village, Kottigehara  
Post, Mudigere Taluk.

*...Defendants*

***(By Sri.M.V.Jayaraj Adv.,)***

**PARTIES ON I.A.NO.I**

**BETWEEN :**

Suresh H.S. & Ors.

*... Applicants*



**AND :**

Sri. Laxmana Gowda & Ors.

*...Opponents*

**ORDERS ON I.A.NO.I**

The Plaintiffs have filed the present application under Order XXXIX rule 1 & 2 of Code of Civil Procedure, seeking an interim order of temporary injunction restraining the defendants, their men, agents, servants or anybody claiming through them not to sell the suit schedule property till disposal of the present suit.

**2.** The Plaintiffs have contended that, suit schedule properties are the joint family properties of plaintiffs and defendants. The plaintiff No.1 and 2 had filed suit in O.S.No.21/2013 on the file of Hon'ble Sr. Civil Judge, Mudigere seeking partition of suit schedule properties. The said suit came to be decreed and now F.D.P No.3/2017 is pending for disposal. This being the case the defendants are trying to sell the suit schedule properties and even though on 25.03.2023 the plaintiffs have requested the defendants not to sell the suit schedule properties, they have refused the request of plaintiffs and trying to sell the suit properties.



On these averments the plaintiffs have sought for allowing the present application.

**3.** The defendants have filed memo submitting that the written statement may be treated as objections to present application it is the defendant No.3 who has filed his written statement and the same is adopted by the other defendants. In the written statement the defendants have admitted the fact of decree passed in O.S.No.21/2013 and also regarding pendency of F.D.P.No.3/2017. Apart from these other averments of plaint is denied by the defendants. The defendants have contended that they have preferred an appeal before Hon'ble High Court of Karnataka and the same is pending thus, the defendants are not making any attempts to sell the suit property but the plaintiffs have filed the present suit only to harass the defendants. On these averments, the defendants have sought for rejection of the application.

**4.** In view of the above contentions, the following points arise for consideration.

***1. Whether the plaintiffs have made out prima-facie case in their favour to grant temporary injunction as prayed for?***



**2. Whether the balance of convenience lies in favour of plaintiffs?**

**3. Whether the Plaintiffs will be put to irreparable injury if the injunction is not granted in their favour?**

**4. What order?**

5. Heard both side and perused the entire materials available on record. Now, the findings of this Court to the above points are as follows:

Point No.1 : ***In the Affirmative***

Point No.2 : ***In the Affirmative***

Point No.3 : ***In the Affirmative***

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

### **REASONS**

**6. POINT No.1 TO 3:** Since these points require common consideration, they are taken for discussion together as to avoid repetition of facts.

The Plaintiffs have filed the above suit for the decree of bare permanent injunction against the defendants restraining them from alienating the suit schedule properties until disposal of F.D.P.No.3/2017 pending on the



file Hon'ble Sr. Civil Judge and JMFC, Mudigere. It is the only contentions of the plaintiffs that the suit for partition filed by them in O.S.No.21/2013 is decreed and when the FDP is pending the defendants are trying to sell the suit property.

7. On the other hand, the defendants have denied the plaint averments submitting that they have preferred an appeal before the Hon'ble High Court of Karnataka against the decree passed in O.S.No.21/2013 and they have not attempted to sell the suit property. In support the plaintiffs case they have produced RTC's and M.R. pertaining to suit properties. The plaintiffs have also produced the copy of judgment in O.S.No.21/2013 and copy of the Commissioner Report in FDP No.3/2017. On perusal of the judgment passed in O.S.No.21/2013, it is seen that the said suit is decreed and the plaintiff No.1 and 2, the defendant No.10 therein and Smt.Subbamma are allotted with half share in the suit schedule property. The said properties are also measured by the Court Commissioner as per the order passed in FDP No.2/2017 and he has proposed the scheme of division with respect to the suit properties.



**8.** It is the specific plea of the plaintiffs that in spite of the decree and pendency of FDP, the defendants are trying to sell the suit schedule properties. Though the defendants have submitted that they are not making attempt to sell the suit schedule property, but it is also their case that they have preferred an appeal against the preliminary decree. When this being the contentions of both parties, then the apprehension of plaintiffs which they have placed on record through an affidavit cannot be effaced for the only reason that the defendants have submitted that they are not trying to sell the properties.

**9.** The facts being that the FDP is pending with respect to division of suit schedule properties as per the preliminary decree passed in O.S.No.21/2013, if the temporary injunction is not granted restraining the defendants from alienating the suit schedule properties then definitely the plaintiffs will be put to irreparable injury and there would be multiplicity of proceedings. This suit is dependent on the out come of FDP and also the appeal before the Hon'ble High Court of Karnataka. Therefore, being satisfied with the prima-facie case put forth by the plaintiffs, this Court considers that the balance of convenience lies in favour of



plaintiff. Hence, point No.1 to 3 are answered in **Affirmative.**

**10. POINT No.4:** In view of the above findings on point No.1 to 3, this Court proceed to pass the following.

**ORDER**

***I.A. No.I filed by the Plaintiff under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, is allowed.***

***The defendants, their men, agents, servants or anybody claiming through them are temporarily restrained from alienating or creating encumbrance on the suit schedule properties, until disposal of this suit.***

***For Issues by: 06.07.2023.***

*(Dictated to the stenographer, typed by her on computer, corrected and then pronounced by me in the open court on this the 30<sup>th</sup> day of June, 2023).*

**(Vishwanath.A)**  
Addl. Civil Judge & JMFC,  
Mudigere.