

KATK710004352025



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

Present:- Smt.B. Priyanka, B.A.L, L.L.B.,
Addl. Civil Judge and JMFC,
Pavagada.

Dated this the 3rd day of May, 2025

O.S.No.110/2025

Plaintiff :

D.Shivanna
S/o Late Lingappa,
Aged about 84 years,
R/at Dommathamari Village,
Kasaba Hobli, Pavagada Taluk,
Tumakuru District.

(By Sri.Ramesh, Advocate)

V/S

Defendant :

1. Gowramma
D/o Late D.Krishnaiah and
W/o Gopalappa,
Aged about 60 years,
2. Sujatha
D/o Late D.Krishnaiah and
W/o Late Hanumanthappa,
Aged about 58 years,
3. Roopa
W/o Late Srinivasa,
Aged about 48 years,

All are R/at Dommathamari
Village, Kasaba Hobli, Pavagada
Taluk, Tumakuru District.

(By Sri.M.B, Advocate)

I.A.No.I

Applicant/Plaintiff : D.Shivanna

V/s

Opponents/Defendants : Gowramma and others

Provision Under which the application is filed :	Under Order 39 Rule 1 and 2 of CPC
Relief sought for :	Temporary Injunction restraining the defendants, their men, agents, servants or any other persons on behalf of them from alienating the suit schedule property.
The date on which the application is filed :	25.02.2025
Number of the application :	IA No.1
The date on which the objections are filed by different Opponents :	24.03.2025
The date on which the orders were passed on the said application :	03.05.2025

**ORDERS ON I.A.NO.I FILED BY THE PLAINTIFF UNDER
ORDER 39 RULE 1 & 2 of C.P.C.**

The counsel for the plaintiff has filed IA No.1 **Under Order XXXIX Rule 1 and 2 of CPC** with a prayer to restrain the

defendants, their men, agents, servants or any person on their behalf from alienating the suit schedule property until the disposal of the suit in the interest of justice and equity

2. The suit schedule property is described as follows:

The Vacant Site property bearing Katha No.714, measuring East – West : 26 feet and North – South : 33 feet, situated at Dommathamari Village, Kasaba Hobli, Pavagada Taluk, which is bounded by:-

East	:	House of Kurubara Nanjappa,
West	:	Hissa Property of plaintiff,
North	:	Penukonda Road,
South	:	Galli.

3. In the affidavit annexed to the IA, the plaintiff has submitted that he has filed the present suit for the relief of partition and separate possession and he along with defendants are the members of Undivided Hindu Joint Family and the suit schedule property is their joint family property standing in the name of their mother late Venkamma and there has been no partition, but however, from the past one month, the defendant No.3 by colluding with the other defendants is making hectic efforts to alienate the suit schedule property including share of the plaintiff from third parties without the consent of the

plaintiff to defeat his right and if the present application is not allowed the plaintiff would be put to much hardship and loss and among these grounds prays for the IA to be allowed.

4. The defendants have filed their objections to the said application contending that the plaintiff has sworn to a false affidavit. But however, the defendants are the lawful owners of the suit schedule property which fell to their share under Partition Deed dated 22.04.1981 and the Katha of the suit schedule property is standing in the name of the defendant No.3.

5. The plaintiff in fact had sold the property bearing Assessment No.714 which fell to his share under Partition Deed dated 22.04.1981 in favour of one Smt.M.Vasanthakumari who is in possession and enjoyment of the same. In order to make illegal gain he has filed the present suit only to harass the defendants and among these grounds prays for the IA to be dismissed.

6. Heard the arguments of learned advocate Sri.Ramesh appearing on behalf of the applicant (plaintiff) and the learned advocate Sri.M.B, appearing on behalf of the opponents (defendants) and perused the records carefully and meticulously.

7. The following points arise for my consideration:

1. Whether the plaintiff has made out a prima facie case for the grant of temporary injunction?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to irreparable loss and hardship in case of refusal of temporary injunction?
4. What order?

8. My answer to the aforesaid points are as follows:

- Point No.1 : In the Negative
- Point No.2 : In the Negative
- Point No.3 : In the Negative
- Point No.4 : As per the final order for the following:

REASONS

9. **Point No.1:-** The plaintiff has filed the present suit for the relief of partition and separate possession with respect to the suit schedule property and for costs.

10. It is the contention of the plaintiff that the suit schedule property is joint family property and the defendant

No.3 by colluding with the other defendants is attempting to sell the same in favour of some other person.

11. Per-contra, the defendants contend that there is already a partition under Partition Deed dated 22.04.1981 and the suit schedule property has fallen to the share of the defendants and in fact the plaintiff has sold his share in Katha No.714 to one M.Vasanthakumari, but the correct Assessment Number is Katha No.6 which belongs to the defendants.

12. The plaintiff in support of his claim has produced the Endorsement, Copy of Genealogical Tree and the C/c of Demand Register Extract.

13. The defendants on the other hand have produced Unregistered Partition Deed dated 22.04.1981, Demand Register Extract with respect to Katha No.6 and the General Power of Attorney executed in faovur of M.Vasanthakumari by the plaintiff for sale and the other acts with respect to Katha No.714 measuring 9 X 33 feet bounded on East by : Property of Roopa, West by : Road leading to the Village from Penukond, North by : Penukonda – Madakasira P.W.D Road, South by : Property of Buddaiah.

14. On careful perusal of these documents, it is clear that, the Demand Register Extract produced by the plaintiff does not show the boundaries or extent of the same and the certified

copy of Registered GPA allegedly executed by the plaintiff and his children shows that M.Vasanthakumari has been given right to sell the property in Katha No.714 measuring 9 X 33 feet situated at Dommathamari. The suit schedule property is described to be Katha No.714 measuring 26 X 33 feet and the defendants claim that the plaintiff has given false boundaries and the katha number has been falsely mentioned as 714 instead of 6.

15. On careful perusal of all these documents it appears that the plaintiff has not come before the Court with clean hands. He has not at all mentioned the execution of the Registered GPA for sale of Katha No.714. Moreover, none of the documents produced by the plaintiff shows the extent or the boundaries of the property bearing Katha No.714. Therefore, the plaintiff has failed to make out a prima facie case and hence I answer point No.1 in the **Negative**.

16. **Point No.2 and 3:-** Since the plaintiff has failed to make out prima facie case, the question of considering the balance of convenience, irreparable loss or hardship does not arise. Hence, point No.2 and 3 are also answer in the **Negative**.

17. **Point No.4:** In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiff under order
39 Rule 1 and 2 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, corrected and then
pronounced by me in the open court on this the 3rd day of May,
2025)

(Smt.B. Priyanka)
Addl. Civil Judge & J.M.F.C.,
Pavagada.