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IN THE COURT OF PRL. CIVIL JUDGE AND J.M.F.C, TARIKERE

PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B
Prl. Civil Judge & J.M.F.C, Tarikere

DATED THIS THE 1st DAY OF AUGUST, 2026

ORIGINAL SUIT No. 193/2025

BETWEEN:

Sri. Thethrappa,
S/o. Sri. Mallappa,
Aged about 40 years,
R/o. Nandi Hosahalli village,
Lingadahalli Hobli,
Tarikere Taluk,
Chikkamagalur District.

PLAINTIFF

(By Sri. H. Parameshwarappa, Advocate)

-AND-

1. Sri. Mallappa,
S/o. Late. Sri. Nanjappa,
Aged about 79 years,
R/o. Nandi Hosahalli village,
Lingadahalli Hobli,
Tarikere Taluk,
Chikkamagalur District.

DEFENDANTS

2. Smt. Nethravathi,
D/o. Sri. Mallappa,
W/o. Sri. Krishnappa,
Aged about 51 years,
R/o. D.No.59, 1st Main,
1st Cross, Near Ganapathi Temple,
Kamala Nagara,
Bengaluru-560079.

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3. Superintendent Engineer,
Karnataka Power Transmission
Corporation Ltd.,
Chikkamagaluru.
Bruhuth Kamagari Vibhaga,
K.P.T.C.L, Shivamogga.

4. Executive Engineer,
Karnataka Power Transmission
Corporation Ltd.,
Chikkamagaluru,
Bruhuth Kamagari Vibhaga,
K.P.T.C.L. Shivamogga.

5. Assistant Executive Engineer,
Karnataka Power Transmission
Corporation Ltd.,
Chikkamagaluru,
Bruhuth Kamagari Vibhaga,
K.P.T.C.L. Shivamogga.

(D-1 by Sri. K.G. Prasanna, Advocate)
(D-2 by Sri. S.N. Mallegowda, Advocate)
(D-3 to 5 by Sri. K.L. Lingaraju, Advocate)
IN I.A.NO.I

Smt. Nethravathi

APPLICANT/ DEFENDANT
No. 2

-AND-

Sri. Teerthappa

OPPONENT/ DEFENDANT**PARTICULARS**

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 of CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Order of T.I</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>15.07.2026</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.III</i>

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v	<i>The date on which the objections are filed by Opponents/ Defendants</i>	18.07.2026
vi	<i>The date on which the orders were passed on the said application</i>	27.07.2026

ORDERS ON I.A. NO.III

1. Applicant/ Defendant No. 2 has filed the instant application under Order XXXIX Rules 1 & 2 of C.P.C seeking the relief of temporary injunction by restraining the Plaintiff and Defendant No.1, their agents, servants, representatives, legal heirs or anybody, from selling, transferring, alienating or creating any sort of encumbrance over the suit schedule property, pending disposal of the suit.
2. In the affidavit accompanying the application, it is contended that the contesting Defendants have already set up a counterclaim in the suit. It is further contended that the suit schedule property is ancestral and joint family property, in which Defendant No. 2 has a lawful right, title, and interest. Under a registered partition deed executed in the year 2025, the suit schedule property was allotted to the share of Defendant No. 2, pursuant to which the revenue authorities effected mutation of the khata in her name. Thereafter, the Plaintiff, in collusion with Defendant No. 1, instituted R.A. No.

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12/2026 before the Assistant Commissioner, Tarikere, challenging the mutation standing in the name of Defendant No. 2 and seeking restoration of the khata in favour of Defendant No. 1. According to Defendant No. 2, no notice of the said proceedings was served upon her, and without affording her a reasonable opportunity of being heard, the mutation standing in her name came to be cancelled and the khata was restored in favour of Defendant No. 1. Immediately after securing such restoration of the khata, the Plaintiff filed a memo seeking withdrawal of the present suit, which, according to Defendant No. 2, clearly discloses his mala fide intention. It is further contended that the Plaintiff and Defendant No. 1 have already executed an unregistered agreement of sale in favour of one Gangadarappa in respect of the suit schedule property and are making arrangements to execute a registered sale deed by taking undue advantage of the revenue entries standing in the name of Defendant No. 1. It is contended that, unless they are restrained by an order of temporary injunction, Defendant No. 2 would suffer serious loss, hardship, and irreparable injury. On these grounds,

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Defendant No. 2 contends that she has established a prima facie case, that the balance of convenience lies in her favour, and that she would suffer irreparable injury if an order of temporary injunction is not granted. Accordingly, she has prayed for allowing the application.

3. Per contra, the Plaintiff has filed objections contending that the application is not maintainable either in law or on facts and is liable to be dismissed in limine. It is contended that the suit has been instituted seeking partition and separate possession of the Plaintiff's lawful share in the suit schedule property. Being the dominus litis, the Plaintiff is entitled to withdraw the suit in accordance with law, and Defendant No. 2 has no locus standi to compel him to continue the proceedings. It is further contended that the allegations made in the application are false, imaginary, and based on suppression of material facts. According to the Plaintiff, Defendant No. 2 has no independent cause of action to seek an order of temporary injunction in the present proceedings. If Defendant No. 2 claims any independent right, title, or interest over the suit schedule property, it is always open to

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her to establish the same by instituting appropriate proceedings in accordance with law. The Plaintiff has specifically denied the allegations of collusion between himself and Defendant No. 1, as well as the allegation regarding execution of any agreement of sale in respect of the suit schedule property, contending that the same are wholly false and concocted for the purpose of the present application. It is further contended that the mere pendency of a counterclaim does not entitle Defendant No. 2 to seek the relief of temporary injunction and that she must work out her remedies independently in accordance with law. It is also contended that Defendant No. 2 has failed to establish the essential ingredients required for the grant of a temporary injunction, namely, a prima facie case, balance of convenience, and irreparable injury. According to the Plaintiff, the relief sought in the application is in the nature of a final relief and is beyond the scope of an interlocutory application. It is further contended that the present application has been filed only with an intention to protract the proceedings. On

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these grounds, the Plaintiff has prayed for dismissal of the application.

4. Heard both sides.
5. Having heard the rival contention and on perusal of the materials, the points that would now arise for my consideration are as under-

Point No.1 : Whether the Defendant No. 2 has made out a prima-facie case as against the Plaintiff and Defendant No. 1?

Point No.2 : Whether the balance of convenience lies in favour of Defendant No.2?

Point No.3 : Whether denial of temporary injunction would cause irreparable injury or hardship to the Defendant No.2?

Point No.4 : What Order?

6. Now, my finding on the above points are as follows-

Point No.1 : In the Affirmative
to 3

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

REASONS

7. **Point No.1 to 3:** The present suit has been instituted primarily seeking the relief of partition and separate possession of the plaint schedule property. The counterclaim

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filed by Defendant No. 2 is also on similar lines. While claiming a share in the plaint schedule property, Defendant No. 2 has additionally sought partition and separate possession of her share in the other two properties described in the schedule annexed to the written statement.

- 8.** The instant application is filed by Defendant No.2 seeking an order of temporary injunction by restraining the Plaintiff and Defendant No.1, their agents, servants, representatives, legal heirs or anybody, from transferring, alienating or creating any sort of encumbrance over the suit schedule properties, pending disposal of the suit.
- 9.** Before advertng to the factual matrix any further, it would be beneficial to first understand the overall concept of temporary injunction. The grant of temporary injunction is governed by Specific Relief Act of 1963 as well as the C.P.C. Section 37(1) of the Specific Relief Act of 1963 provides that the grant of temporary injunction would be regulated by C.P.C. Order XXXIX Rules 1 & 2 and Section 94 (c) of C.P.C provide circumstances under which an order of temporary injunction can be granted. That apart, it is now settled that Sections 151

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of C.P.C also can be invoked sparingly to grant an order of temporary injunction to meet the ends of justice if the circumstances are not covered either under Order XXXIX Rules 1 & 2 or Section 94 (c) of C.P.C (See **MANOHAR LAL CHOPRA VS RAI BAHADUR RAO RAJA SETH HIRALAL** reported in **AIR 1962 SC 527**). Though the above provisions provide the circumstances under which an order of temporary injunction could be granted, the principles governing grant of an order of temporary injunction is evolved by judicial pronouncements. The Hon'ble Supreme of Court of India in **GUJARAT BOTTLING CO. LTD. V. COCA COLA CO.** reported in **(1995) 5 SCC 545** has held at Para No.43 as under –

"The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests – (i) whether the Plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the Plaintiff; and (iii) whether the Plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the Plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the Plaintiff during the period before that uncertainty

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could be resolved. The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the "balance of convenience" lies. [See:Wander Ltd.v.Antox India (P) Ltd.[1990 Supp SCC 727] , (SCC at pp. 731-32.) In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the Plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial"

10. In GOWRISHANKARA SWAMIGALU V. SRI

SIDDHAGANGA MUTT reported in **1989 SCC ONLINE KAR**

116, the Hon'ble High Court of Karnataka has held at Para

No.18, 25 & 26 as under –

(i) Grant of ad-interim injunction has to course through the following slots : (i) prima facie case; (ii) balance of convenience; (iii) irreparable injury to the Plaintiff, and (iv) lastly, all injunctions being absolutely discretionary in nature whether there was any overriding consideration that supported the refusal of the injunction by the Court-below.

(ii) The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put

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forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the Plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima facie case or even a very strong prima facie case does not permit, leap-frogging by the Plaintiff directly to an injunction without crossing the other hurdles in between....Even granting that the Plaintiff has an invincible prima facie case, he will not be entitled ex debitaie justitiae, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the Plaintiff might have an unbeatable prima facie case.

- 11.** These two celebrated judgement one of the Hon'ble Supreme Court of India and the other of the Hon'ble High Court of Karnataka beautifully encapsulate the principles underlying the grant of temporary injunction and there arises no necessity to look any further.
- 12.** In order to be entitled for an order of temporary injunction, the Applicant has to first satisfy the court that he has a prima-facie case in his favour. Prima-facie case is the harbinger or the all clear sign to go ahead in investigating other aspects and on failure to establish it, further questions of balance of

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convenience and irreparable loss would fade into insignificance. Prima facie case, however, should not be confused with a case that is required to be proved to the hilt. The Court while examining if the Applicant has a prima facie case or not while deciding question of his entitlement for an order of temporary injunction, should not examine the merits of the case closely because at that stage, it is not expected to decide the suit finally. Once prima-facie case is established, the other aspects would have to be examined first being balance of convenience which in other words mean that the Court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the Applicant by refusing the injunction will be greater than that which is likely to be caused to the Opposite Party by granting it. Next, the applicant must further satisfy the Court by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. The expression irreparable injury however does not mean that there should

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be no possibility of repairing the injury. It only means that the injury must be a material one, i.e., which cannot be adequately compensated by damages. Apart from these principles, the grant of temporary injunction being purely discretionary, other aspects would also factor in while considering entitlement for temporary injunction. The relief of temporary injunction may be refused on the ground of delay, laches or acquiescence or where the Applicant has not come with the clean hands or has suppressed material facts, or where monetary compensation can be an adequate relief. Establishing prima-facie case though is harbinger in examining other aspects, even where prima-facie case is established, it would not automatically entitle the Applicant to an order of temporary injunction unless he establishes the other aspects aforesaid. With these principles in mind, it would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.

- 13.** The present suit has been instituted by the Plaintiff seeking the relief of partition and separate possession of the plaint

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schedule property. Defendant No. 2, who has entered appearance and contested the suit, has also set up a counterclaim. While claiming a share in the plaint schedule property, she has additionally sought partition and separate possession of her share in the other two properties described in the schedule annexed to the written statement.

- 14.** The Plaintiff has now filed a memo seeking dismissal of the suit as not pressed. The said memo was seriously opposed by Defendant No. 2. By a separate order passed today, this Court has rejected the said memo for the reasons recorded therein.
- 15.** In the meanwhile, Defendant No. 2 has filed the present application seeking an order of temporary injunction restraining the Plaintiff and Defendant No. 1 from alienating or otherwise creating any third-party interest in the plaint schedule property pending disposal of the suit. According to Defendant No. 2, there exists an imminent threat that the Plaintiff, in collusion with Defendant No. 1, having succeeded in securing mutation of the plaint schedule property in the name of Defendant No. 1 through proceedings before the Assistant Commissioner behind her back despite the existence

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of a registered partition deed in her favour, is now attempting to alienate the property.

- 16.** The order passed by the Assistant Commissioner has been placed on record by both sides. A prima facie perusal of the said order lends some support to the contention of Defendant No. 2 that the mutation standing in her name pursuant to a registered partition deed could not ordinarily have been cancelled in the absence of any Court order setting aside or nullifying the said partition deed. The Assistant Commissioner appears to have directed restoration of the khata notwithstanding the existence of the registered partition deed. Prima facie, such an exercise appears to be beyond the scope of the jurisdiction vested in the revenue authorities. Needless to observe, the legality and effect of the said proceedings are matters that shall ultimately be decided on the merits and at this stage, this Court refrains from expressing any final opinion on the same.
- 17.** Another circumstance that assumes significance is that the Assistant Commissioner has recorded in the very same order that notice issued to Respondent No. 1 therein, namely

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Defendant No. 2 herein, remained unserved. Despite such a finding, the proceedings were concluded by passing an order adverse to her interest. This circumstance gives rise to a serious prima facie doubt on the sanctity of such proceedings.

18. The conduct of the Plaintiff also assumes significance. The Plaintiff himself instituted the present suit unequivocally asserting that he is entitled only to a one-third share in the plaint schedule property, the remaining two-thirds share being claimed by Defendant Nos. 1 and 2. Immediately after the mutation was restored in favour of Defendant No. 1 by the Assistant Commissioner, the Plaintiff sought to have the present suit dismissed as not pressed. Such conduct, viewed in the backdrop of the attendant circumstances, prima facie indicates a lack of bona fides.

19. The Plaintiff himself has acknowledged that Defendant No. 2 has a subsisting claim over the plaint schedule property. Defendant No. 2 has also asserted such right by filing a counterclaim seeking partition and separate possession of her share. In these circumstances, this Court is satisfied that Defendant No. 2 has made out a strong prima facie case for

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protection of the suit property pending adjudication of the rival claims.

- 20.** The balance of convenience also lies in favour of preserving the property in its existing condition. If during the pendency of the proceedings, the Plaintiff and Defendant No. 1 are permitted to create third-party rights in the property, the adjudication of the counterclaim may be rendered ineffective and Defendant No. 2 would be exposed to unnecessary multiplicity of proceedings. On the other hand, if they are restrained from dealing with the extent of the share claimed by Defendant No. 2, no irreparable prejudice would be caused to them. Defendant No. 2 has asserted only a one-third share in the plaint schedule property, and protecting that extent during the pendency of the suit would sufficiently safeguard the interests of all parties. The principle governing grant of such relief also finds support in the judgment of the Hon'ble High Court of Karnataka in MFA No. 7416 of 2025 dated 05.11.2025.
- 21.** It also needs to be clarified that once a Defendant sets up a counterclaim, such Defendant assumes the character of a

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Plaintiff in respect of the counterclaim and is entitled to maintain an application of the like kind. Therefore, the present application for temporary injunction at the instance of Defendant No. 2 is clearly maintainable. Accordingly, **Point No.1 to 3** which have arisen for my consideration are also answered in the **Affirmative**.

22. Point No.4: For the foregoing reasons, I proceed to pass the following -

ORDER

I.A No.III filed by the Applicant/ Defendant No.2 under Order XXXIX Rules 1 & 2 of C.P.C is hereby allowed.

Plaintiff and Defendant No.1 are hereby restrained from alienating or creating any sort of encumbrance over the claimed one-third share of the Defendant No.2, in the Application/ Plaint schedule property, pending disposal of the suit.

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 1st of AUGUST, 2026)

sd/-

(Rahul Shettigar)
Prl. Civil Judge & J.M.F.C,
Tarikere.

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