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

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

**DATED THIS THE 2<sup>nd</sup> DAY OF JUNE, 2025**

**ORIGINAL SUIT No. 511/2022**

**BETWEEN:**

Kum. Kushi,  
D/o Sri. Bharath,  
Age 4 years,  
Since minor represented by  
natural guardian mother  
namely Smt. Geetha.G,  
W/o. Sri. Bharath,  
Aged about 33 years,  
Housewife,  
Guddadahatti village,  
Mathighatta post,  
Kadur Taluk,  
Chikkamagalur District

**PLAINTIFF**

**(By Smt. B.R. Reshma., Advocate)**

**-AND-**

1. Sri. Bharath,  
S/o. Late. Sri. Srinivas,  
Age 37 years,  
Business and Finance,

**DEFENDANTS**

2. Sri. Ravikanth,  
S/o. Late. Sri. Srinivasa,  
Age 48 years,  
Agriculturist,

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3. Sri. Dushyath,  
S/o. Late. Sri. Srinivas,  
Age 36 years,  
Agriculturist,

4. Smt. Poornima,  
W/o. Late. Sri. Mohan,  
Age 32 years,  
Housewife.

Defendant No.1 to 4 are  
resident of Thimmaboovi Colony,  
Lakkavalli village and Hobli,  
Tarikere Taluk,  
Chikkamagalur District.

**(D-1 & 2 By Sri. Aseem Ahmed., Advocate)**

**(D-3 and 4 Exparte)**

**IN I.A.NO.I**

Kum. Kushi

**APPLICANT/ PLAINTIFF**

**-AND-**

Sri. Bharath and others

**OPPONENTS/  
DEFENDANTS**

**PARTICULARS**

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 r/w. Section 151 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>05.12.2022</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.I</i>
<i>v</i>	<i>The date on which the objections are filed by opponent/ Defendant No.1</i>	<i>05.10.2023</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>02.06.2025</i>

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

1. Applicant/ Plaintiff has filed the instant application under Order XXXIX Rules 1 & 2 r/w. Section 151 of C.P.C seeking the relief of temporary injunction by restraining the Opponent/ Defendant No.1 from alienating the suit schedule property in favour of anybody, in any manner, pending disposal of the suit.
2. In the affidavit appended to the application, it is contended that the suit is filed seeking the relief of partition and separate possession of the suit schedule property. The *khata* of the suit schedule properties stands in the name of Defendant No.1, who purchased the same through a registered sale deed executed in the year 2005. It is therefore contended that the properties are joint family properties of the Plaintiff and Defendant No.1, each having a 1/2 share therein. Among the suit schedule properties, taking advantage of the *khata* standing in the name of Defendant No.1 in respect of Item No.2, the *khata* has been unlawfully changed to the name of Defendant No.2 without any supporting document. This act is alleged to have been done with the

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intention to deprive the Plaintiff of her legitimate share. It is further alleged that there are ongoing and hectic attempts to alienate Items No.1 and No.3 of the suit schedule properties as well. If such actions are carried out by the Defendants, the very purpose of the suit would be rendered infructuous. Hence, contending that she has a prima facie case, that the balance of convenience lies in her favour, and that she would suffer irreparable injury if a temporary injunction is not granted, the Plaintiff prays that the application be allowed.

- 3.** *Per contra*, the Opponent/ Defendant No.1 has filed objections to the instant application, stating that the application lacks essential facts. There is also a prayer to treat the averments in the written statement of Defendant No.1 as objections to the application. In the written statement, apart from denying the allegations in the plaint, it is contended that Defendant No.1 has sufficient income from his business and had purchased the suit schedule properties under a registered sale deed executed in 2005. Since then, he alone has been in possession and enjoyment of the suit schedule properties as their absolute owner, with the revenue records duly mutated

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in his name. It is contended that the suit schedule properties are the self-acquired properties of Defendant No.1, and the Plaintiff cannot claim any right over them. It is further stated that there is a clear admission in the pleadings themselves that the suit schedule properties are neither ancestral nor joint family properties of the parties to the suit. The Plaintiff is alleged to have approached the Court without clean hands by suppressing material facts. It is further contended that the suit itself is not maintainable. Hence, a prayer is made to dismiss the application with heavy costs.

4. The rest of the Defendants have not filed any objections to the instant application.
5. Heard both sides.
6. 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 Plaintiff has made out a prima-facie case as against the Defendants?

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

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

**Point No.4** : What Order?

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

**Point No.1** : In the Negative  
**to 3**

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

### **REASONS**

8. **Point No.1 to 3:** The instant suit is filed seeking mainly the relief of partition and such ancillary relief that would flow from the main relief. The application at hand seeking the relief of temporary injunction restraining the Defendant No.1 from alienating the suit schedule property 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

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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 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*

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*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 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*

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*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 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-

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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 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

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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 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

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the case only to the extent necessary for disposal of this application.

- 13.** The case of the Plaintiff is that she is the daughter of Defendant No.1. She contends that, although Defendant No.1 purchased the suit schedule properties under a registered sale deed, the said properties are joint family properties, thereby entitling her to a share along with the other parties to the suit. In this context, it is alleged that Defendant No.1 has unlawfully caused the *khata* of Item No.2 in the suit schedule to be changed in favour of Defendant No.2, who is his brother. It is further alleged that Defendant No.1 is making concerted and hasty efforts to alienate the suit schedule properties in an attempt to defeat the Plaintiff's legitimate share, thereby necessitating the filing of the instant suit.
- 14.** On the other hand, Defendant No.1 contends that the suit schedule properties are his self-acquired properties, purchased under a registered sale deed in the year 2005. Therefore, he asserts that the said properties cannot be classified as either joint family or ancestral properties of the parties to the suit. Consequently, the Plaintiff cannot question

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the actions of Defendant No.1 with respect to the suit schedule properties, as they are exclusively his self-acquired assets.

- 15.** In light of the rival contentions, it becomes necessary to examine the documents produced by both parties. The Plaintiff has produced her birth certificate, genealogical tree (*G-tree*), RTCs, and M.R. extract. However, the Defendants have not produced any documents at this stage.
- 16.** A perusal of the pleadings on both sides clearly reveals that there is no dispute regarding the relationship between the parties. It is an admitted fact that the Plaintiff is the daughter of Defendant No.1. Notably, the Plaintiff herself has admitted in the plaint that the suit schedule properties are the self-acquired properties of Defendant No.1. In this backdrop, Defendant No.1 is legally entitled to deal with the suit schedule properties as he deems fit. There is nothing on record to suggest that the suit schedule properties are either joint family or ancestral properties of the parties to the suit. Hence, although the Plaintiff is the daughter of Defendant No.1, this fact alone does not confer upon her any right to

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challenge the actions of Defendant No.1 in relation to the suit schedule properties. The averments in the plaint appear fundamentally flawed and reflect an ulterior motive behind the institution of the suit, which cannot be entertained. Given these circumstances, it cannot be said that the Plaintiff has established a *prima facie* case warranting the grant of a temporary injunction.

- 17.** The Applicant/ Plaintiff having failed to prove prima-facie case which is the harbinger in examining other aspects, there is no necessity to examine the questions of balance of convenience or irreparable injury in view of dictum laid down in **GOWRISHANKARA SWAMIGALU V. SRI SIDDHAGANGA MUTT (supra)**. With these observations, the **Point No.1 to 3** which have arisen for my consideration are also answered in the **Negative**.
- 18. Point No.4:**For the foregoing reasons, I proceed to pass the following -

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**ORDER**

*I.A No.I filed by the Applicant/ Plaintiff  
under Order XXXIX Rules 1 & 2 r/w Section  
151 of the C.P.C is hereby dismissed.*

*Costs made easy.*

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 2<sup>nd</sup> of JUNE, 2025)

sd/-

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