

KADG210002612025



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C
AT: CHANNAGIRI**

Present:
Soubhagya.B.Bhushar,
B.A.,LL.M

Senior Civil Judge & J.M.F.C,
Channagiri

DATED; THIS THE 07th DAY OF AUGUST-2026

ORIGINAL SUIT NO. 49/2025

PLAINTIFFS:

1. Smt.Puttamma W/o Late Basappa,
Age: 72 years, Occ: Agriculturist
& Housewife,
2. B.Ramesh S/o Late Basappa,
Age: 47 years, Occ: Agriculturist.
3. Smt. Nethravathi D/o Late Basappa,
W/o Somashekharappa, Age: 46 years,
R/o: Javur, Shivani Hobli, Tq:Ajjampur,
Dist: Chikkamagalur.
4. B.Mariyappa S/o Late Basappa,
Age: 43 years, Occ: Employee in Judicial
Department.

The plaintiff No.1, 2 & 4 are R/o: Malahalu,
Tq: Channagiri, Dist: Davanagere.
C/o: Talikatte, Ramagiri Hobli,
Tq: Holalkere, Dist: Chitradurga

(By Sri.Shekharappa.D.G.,Adv.,)

V/s

DEFENDANTS:

1. Revappa S/o Late Siddappa, Age: 68 years, Occ: Agriculturist, R/o: Malahalu, Ubrani Hobli, Tq: Channagiri, Dist: Davanagere.

2. Marisiddappa @ Marulasiddappa S/o Late Siddappa, Age: 66 years, Occ: Agriculturist, R/o: Malahalu, Ubrani Hobli, Tq: Channagiri, Dist: Davanagere.

3. Smt. Geethamma D/o Late Siddappa, W/o Eshwarappa, Age: 64 years, R/o: Talikatte, Ramagiri Hobli, Tq: Holalkere, Dist: Chitradurga.

4. Thimmaiah @ Thimmappa, S/o Late Siddappa, Age: 62 years, Occ: Agriculturist, R/o: Malahalu, Ubrani Hobli, Tq: Channagiri, Dist: Davanagere.

5. Smt. Renukamma D/o Late Siddappa, W/o Chandrappa, Age: 60 years, R/o: Gadihalli, Tq & Hobli: Ajjampura, Dist: Chikkamagalur.

6. Sri. Govindappa S/o Late Siddappa, Age: 58 years, Occ: Agriculturist, R/o: Malahalu, Ubrani Hobli, Tq: Channagiri, Dist: Davanagere.

(D.1 to 4 & 6 By Sri.Y.M.Ramachandrarao.,Adv.,)
(D.5 Ex-parte)

**ORDER ON IA.I FILED UNDER ORDER 39 RULE 1 AND 2
R/W SECTION 151 OF C.P.C**

The learned counsel for the plaintiffs has filed this I.A No.1 under order 39 rule 1 and 2 R/w section 151 of C.P.C., seeking grant an ex-parte ad-interim order of temporary injunction

restraining the defendants, their agents, servants etc., from interfering with the plaintiffs peaceful possession and enjoyment of suit "B" schedule property till disposal of the suit.

2. This application annexed with the sworn affidavit of the plaintiff No.2, wherein he has stated that they have filed this suit against the defendants for partition and separate possession of their legitimate share in "A" schedule properties and declaration of their exclusive ownership and possession of suit "B" schedule property and consequential relief of permanent injunction. The contents of the plaint may be read as part and parcel of this affidavit to avoid the repetition of the facts. Further his father i.e., Late Basappa and the defendant No.1 to 6 are the sons and daughters of the Late Siddappa. They were all the constituted Hindu Undivided joint family and all are co-parceners. The Siddappa was the manager and kartha of their joint family during his lifetime. After his death, the defendant No.1 is the Manager and kartha of the joint family of the plaintiffs and the defendants. The said Siddappa died during the year 1996-1997. The suit "A" schedule properties are the ancestral joint family properties and khata of the all the "A" schedule properties are jointly standing in the name of the defendant No.1, 2, 4 and 6 and his father Basappa. Themselves and the defendants are joint owners and joint constructive possession and enjoyment of the "A" schedule properties and they are the co-sharer.

3. Further his father Basappa was married the plaintiff No.1 who is his mother at Talikatte village, Ramagiri Hobli, Tq:

Holalkere. After the marriage his father started to live at Talikatte in the house of his mother/plaintiff No.1 and often came over to Malahal village and enjoying the joint family properties along with the defendants. During the lifetime of his father with the financial assistance of his mother's parents purchased the land in Sy.No.112 measuring 01 acre 10 guntas of Malahal village through Registered Sale Deed dated: 05.08.1974 and the land in Sy.No.112 measuring 01 acre 14 guntas of Malahal village through Registered Sale Deed dated: 18.10.1978 for valuable considerations. Thereby his father was exclusively become the owner of land to an extent of 2 acres 24 guntas in Sy.No.112. The said properties are the self acquired properties of his father. His father and they are the absolute owners in lawful possession and enjoyment of the said Sy.No.112. Out of the said measuring 02 acres 24 guntas purchased by his father he had sold an extent of 01 acre in favour of the defendant No.5, who is none other than the sister of his father through Registered Sale Deed dated: 18.08.1999. At the time of execution of sale deed the defendant No.5 requested to his father to execute the sale deed along-with his brothers due to there was no division in the joint family and to avoid future complications. Hence, as per the request of the defendant No.5 his father had executed a sale deed in favour of the defendant No.5 along-with his brothers i.e., the defendant No.1, 2, 4 and 6. Thereafter remaining land of 01 acre 24 guntas had been in possession and enjoyment of his father which is described as suit "B" schedule property. His father had grown up arecanut garden in the suit schedule property, digging borewell and had been in his exclusive possession and enjoyment of the

suit "B" schedule property till his death on 07.01.2021 and after his death they are succeeded the suit "B" schedule property by inheritance and becomes absolute joint owners in possession of the same. The khata of the "B" schedule property transferred in their names on the basis of inheritance and RTC stands in their joint names.

4. Further stated that after death of his father there arose differences between themselves and the defendant No.1, 2, 4 and 5 and they started to disturb the exclusive possession and enjoyment of their suit "B" schedule property. Therefore, they have filed the suit against the defendant No.1, 2, 4 and 5 for permanent injunction restraining them from interfering with their peaceful possession and enjoyment of suit "B" schedule property in O.S No.189/2022 before the Prl. Civil Judge & J.M.F.C, Channagiri. In the said suit the said defendants filed the written statement claiming the suit "B" schedule property as a joint family property and they denied the exclusive ownership of them of the suit "B" schedule property. Hence, they have withdrawn the said suit for filing proper suit. Thereafter they demanded on 05.01.2025 to allot their share in the "A" schedule properties. But the defendants did not came forward to give their legitimate share in the suit "A" schedule properties and continued the interference of their exclusive peaceful possession and enjoyment of suit "B" schedule property. That they are the absolute owners in possession and enjoyment of the suit "B" schedule property. The defendants have no right, title, interest or possession over the suit "B" schedule property. The document produced in the suit goes to

show that they are the exclusive owners in possession of the suit "B" schedule property. They have got prima facie case and balance of conveniences are lies in their favour. The defendants are powerful persons and their illegal interference in their suit "B" schedule property cannot be resisted without the aid of this Court and they cannot remove the arecanut crop from the suit "B" schedule property. Hence it is just necessary to restrain the defendants, their men etc., from interfering with their peaceful possession and enjoyment of the suit "B" schedule property during pendency of this suit. Otherwise they will suffer injustice, hardship and irreparable loss which cannot be compensated in any manner. Hence, he prayed to allow the application.

5. The defendant No.1 has filed objection. In the objection it is contended that application filed by the plaintiff is not tenable under law as well as on facts. Hence, the same is liable to be dismissed. The plaintiff has filed an application along-with affidavit and grounds made out in the said affidavit are all created and concocted, false and baseless grounds. Further the present application is absolutely not maintainable in a suit for partition and it is against the co-owners and co-shares and the plaintiff is and was never in possession of the "B" schedule property and without possession over the said 'B' schedule property as on the date of filing of the suit or earlier to it and thereby the present application is not tenable and same is liable to be dismissed. Further stated that the plaintiff was filed the suit before the Civil Judge, (Jr.Dvn), Channagiri in O.S.No.189/2022 for the relief of permanent injunction in respect of 'B' schedule property and in the said suit

this defendant was filed his written statement and also objection to I.A No.1 on 11.10.2022 and after filing the said statement the plaintiff in the said suit was not argued the matter of on I.A No.1, later the plaintiff got dismissed the said suit and the written statement and objection to I.A in O.S No.189/2022 may be read as part and parcel of this objection statement. Hence, he prays to dismiss the application with heavy costs.

6. Heard the arguments and perused the material placed on record. The following points arisen for my consideration:

1. Whether the plaintiffs have made a prima facie case?
2. Whether the balance of convenience lies infavour of the plaintiffs?
3. Whether irreparable loss will be caused to the plaintiffs, if the injunction is not granted?
4. What order?

7. My answer to the above points are as under:

Point No.1: In the Negative.

Point No.2: Lies infavour of both parties.

Point No.3: Lies infavour of both parties.

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

REASONS

8. **POINT NO.1 TO 3:** These points are inter-linked to each other and finding on point No.1 will bearing on others. In order to avoid repetition of the facts, these points are taken together for common discussion.

9. Suit of the plaintiffs is for the relief of partition, separate possession, declaration and permanent injunction. The plaintiffs have pleaded in their plaint and I.A.No.1 that the suit schedule 'A' properties are their ancestral joint family properties and 'B' schedule property is their absolute ownership property. Further stated that the plaintiffs and the defendants are the undivided joint Hindu family members and they are joint possession over the 'A' schedule properties. But the "B" schedule property is not their joint family property and the defendants are not in joint possession of the same. Further as per the registered sale deed their father purchased the 'B' schedule property. Since, then he was became the absolute owner, in possession, enjoyment and personal cultivation of the said land. After the death of their father the plaintiffs are the absolute owners, possessors and enjoyment of the same. But the defendants without any right, title, interest or possession over the suit 'B' schedule property. Further the defendants are disturbing in peaceful possession and enjoyment of the plaintiffs over the suit schedule 'B' property. In this regard the plaintiffs have requested the defendants not to do such illegal act, but dared the defendants not heeded their request. Hence, they have filed this I.A.No.1.

10. On perusal of the pleadings, it is necessary to ascertain all the documents placed on record by the plaintiffs and the defendants in order to prove the prima facie case. The plaintiffs in order to substantiate their claim have produced the documents, which are original sale deeds, rectification deed, certified copy of sale deed, RTC, partition deed, gift deed, mutation extracts, order

sheet in O.S No.189/2022 and copies of amended plaint, written statement, memo and additional written statement in O.S No.189/2022. The defendants have also produced documents, which are bore-well expenditure payment receipt, purchase of motor and its accessories, getting electricity supply from electricity Company Ltd., Bengaluru.

11. In the present suit the defendants disputes the title over the suit schedule 'B' property itself. The court must note that merely because a family is joint, there is no legal presumption that a specific property is joint family property. Since the "B" schedule property stands exclusively in the father's name via a registered sale deed, the initial burden is on the defendants to prove that joint family funds were used to buy it. The court will explicitly state that it is not conducting a full trial, but rather examining the documents to see who holds immediate possession. The plaintiffs claim exclusive possession via the father's deed, but the defendants claim joint physical possession. Without a full trial, the court cannot safely determine who is telling truth. The present suit filed by the plaintiffs for partition, separate possession, declaration and permanent injunction. The final relief for restraining the defendants from interference of the possession of the suit schedule 'B' property by the plaintiffs and the interim relief are one and the same. If the interim application is allowed it is nothing but passing of final judgment in that regard. Further the plaintiffs claim the present relief is against their co-owners and co-sharers. It is well settled principle of law that the court cannot grant injunction against the co-owners and co-sharers. Further in the present suit

mixed question of possession and ownership are involved. This court cannot hold a mini trial with regard to the interlocutory application. The documents produced by the parties consider at the time of trial. Hence, as discussed in the foregoing paras, this court cannot held a mini trial only with regard to interlocutory application and full-pledged trial is required to decide the suit.

12. In the present suit the defendants stated that they are in possession over the suit schedule "B" property. The plaintiffs never in possession over the said property. Further contended that the said property is also joint family property. Further the relief sought by the plaintiffs IA is similar relief sought in the suit prayer. Hence, there is no absolute necessity to dispose the I.A at this stage. Clamming presently who are possession of the suit schedule "B" property and who are attempt to interference as on the suit is doubtful. Therefore, under these circumstances this court is of the consider opinion that there was no prima facie case in favour of the plaintiffs, but balance of convenience and irreparable loss will caused to both the parties, if T.I is granted. Therefore, it is good enough to pass an order of status-quo to prevent both the parties. Hence, I answered the point No.1 in the Negative and the point No.2 and 3 are lies in favour of both the parties.

13. POINT NO.4: In view of above discussion made in detail, while answering point No.1 to 3, I proceed to pass following:

ORDER

I.A.No.1 filed by the plaintiffs under order 39 Rule 1 and 2 R/w section of Code of Civil Procedure is hereby partly allowed in following terms;

Both parties are hereby directed to maintain status-quo till disposal of suit.

Looking to the facts and circumstances of the case the parties are directed bear their own cost.

(Directly dictated to the stenographer, typed by her, corrected by me, signed and then order pronounced by me in the open court this 07th day of August 2026)

**(Soubhagya.B.Bhusher)
Senior Civil Judge & J.M.F.C,
Channagiri**