

KADG210005992025



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

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

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

DATED; THIS THE 07th DAY OF AUGUST-2026

ORIGINAL SUIT NO.148/2025

PLAINTIFFS:

1. M.Jayadevakumar S/o M. Murugendraiah,
Age: 55 years,
2. Smt. Rekha M.J W/o Sri. M.
Jayadevakumar, Age: 48 years, Both are R/
o: behind old Rotary Convent, Channagiri
Road, Santhebennuru Village- 577552, Tq:
Channagiri, Dist: Davanagere.

(By Sri.M.SiddalingaSwamy.,Adv.,)

V/s

DEFENDANTS:

1. M. Murugendraiah S/o Late Jayadevaiah
Matada, Age:78 years, R/o: Siddanamatada
Chandrashekharappa Master, Opp: KEB,
Santhebennuru-577552, Tq: Channagiri,
Dist: Davanagere.
2. Smt. Mamatha.M D/o M. Murugendraiah, W/
o M.N Veeraiah, Age: 51 years, R/o:

#1306/75, 8th Extended cross,
Shivakumaraswamy Extention, I stage, 2nd
main, Davanagere -577005.

3. M.Vagish S/o M.Murugendraiah, Age: 46 years, R/o: Siddanamatada Chandrashekharrappa master, Opp: KEB, Santhebennuru-577552, Tq: Channagiri, Dist: Davanagere.
4. B.Summa W/o M.Vagish, Age: 38 years, R/o: Siddanamatada Chandrashekharrappa master, Opp: KEB, Santhebennuru-577552, Tq: Channagiri, Dist: Davanagere.

(D.1 By Sri.Srinivasa.M.K.,Adv.,)
(D.2 exparte)
(D.3 & 4 By Sri.Vijaya.T.,Adv.,)

**ORDER ON IA.I FILED UNDER ORDER XXXIX RULE 1 AND
2 OF C.P.C**

The learned counsel for the plaintiffs has filed this I.A No.1 under order XXXIX rule 1 and 2 of C.P.C., granting an ex-parte ad-interim order of temporary injunction restraining the defendants or any body under his from alienating, encumbering the application schedule property in any manner before any Sub-Registrar till disposal of the suit.

2. This application annexed with the sworn affidavit of the plaintiff No.1, wherein he has stated that they have filed the suit as against the defendants seeking relief of partition and separate possession in respect of suit schedule property. The averments made in the plaint para may be read part and partial of this affidavit. It is further stated that the suit schedule properties are

the Hindu joint family properties. Hence, he is also having equal share in the said suit schedule properties. Further he stated that the suit schedule property Item No. B to D are the agriculture property. The Suit schedule property Item No.B was ancestral property and joint family property, which is allotted to the defendant No. 1 i.e., on 02.01.2005 through the registered partition among the members of Joint family. When the suit schedule item No. B was allotted to the defendant No.1 it was very delicate manners and it was very poor for income source and the coconut garden was also not in proper growth due to non-maintenance and moreover there was a drought while allotting the share and at that time there was no other family income. Hence, he started improving the coconut garden and also started cattle farming, distribution of paper, running small petty shop, gradually he started electrical work in the meanwhile the defendant No.3 left the house due to poverty without giving any support to the family improvements. Thereafter his electric work income gradually improved and started electric contract and in the meanwhile his mother has suffered through cancer in respect he used to look after his mother's medical expenses also and moreover his wife also has started dosa idly grinding machine work. In the meanwhile his income derived from the electric work improvement and as per wish of the defendant No.1, he purchased the suit schedule item No.C in the name of the defendant No.3 by paying the consideration amount through registered sale deed in name of the defendant No.3 and moreover his son died during the year 2000 and he got only one daughter. Hence, he decided the defendant No.3 as if his son.

3. Further stated that after purchase of the suit schedule Item No."C" he started farming arecanut garden & coconut plants also started plantation improvement of arecanut garden. In respect there was 24 borewell drilled out of which two bore has successes for getting water & took electricity connection which wasn't available at the time of purchase. The electricity connection was obtained by spending huge money and transformer in respect he worked day and night for a period of 5 years for improving arecanut garden & at that juncture the defendant No.3 or any other person did not supported for improving the arecanut garden and moreover he has spent several lakhs for period of 5 years by dedicating day and nights work. While improving the suit schedule item No.C he also improved suit schedule item No. B by getting water connections more than one k.m., from suit schedule item No.C to B by spending huge money therein also i.e., suit schedule item No.B he spent several lakhs in improving coconut garden & also planted teak wood plantation in suit schedule item No.B & C. That teak wood plantation has planted more than 20 years back. After the improvement & good growth in the electric contract, he purchased suit schedule item No.D in the name of wife of the defendant No.3 & his wife name jointly. Subsequently he planted coconut saplings by spending huge money and also putting more than 15 bore well out of which one bore water is running and also inserted CCTV and fencing in coconut garden.

4. He further stated that the defendant No.3 started quarreling with him since 2 years about allotment of joint family property with the support of the defendant No.1 resulting which

there is a continued quarrel among the members of the family and he also lodged complaint against the defendant No.3 and moreover the defendant No.3 used to take advantage of his body weakness of blood cancer and due to Covid, he was unable to work in proper manner taking undue advantage of his inability the defendant No.3 trying to take independent possession in especially suit schedule item No.B to D, and also trying to alienate other suit schedule properties in the name of the defendant No.3. Further the defendant No.1 is elderly member who is his father, and he used to support the defendant No.3 for getting exclusive possession for suit schedule item No. B to D. He has not received any equal right in suit schedule property even though the suit schedule property are consisting of joint family property. He further stated that the defendants are locally well influenced having political background and based on the political power the defendant has started blackmailing him not to file any suit. If the defendants sells the property then the plaintiff will have to face multiplicity of proceedings. Hence, he has got prima facia case as against the defendant and he has got balance of inconvenience and if the temporary injunction is not granted then he will be put to hardship and injury and consequently if the temporary injunction is granted then there is no hardship and injury will be caused to the other side. Hence, he prays to allow the application.

5. The defendant No.1, 3 and 4 have appeared before this court through their respective counsels. The defendant No.3 and 4 have filed written statement and also filed a memo for the written statement may be treated as objection to I.A No.1. In the

written statement they have denied the entire allegations averments pleaded in the plaint. It is contended that there is no cause of action for this suit and the alleged cause of action arisen at Santhebennur since July 2023 and subsequently when the defendant No.1 & 3 continued to trouble the plaintiffs in order to get exclusive possession in respect of suit schedule property of Item No. "B" to "D" and one or the other reasons are all denied as false and concocted story for the purpose of this suit. Further stated that the loan stated in the plaint 'N' schedule and dues stated are all the plaintiffs individual transaction and no way connected to the joint family and he took loans for his business that too by mortgaging the joint family properties and the 'P' schedule properties are not fully correct and C.C.TV camera are not functioning and other articles are not fully correct and the plaintiff is liable to strict proof of the same. Further stated that the plaintiff No.1 have deliberately suppressed the most material facts that all the suit schedule properties including item No.'B', C and 'D' were jointly pledged to the Bank for the purpose of plaintiff electrical contract business investment and the plaintiff taken loan by mortgaging the suit schedule properties, for which this defendant and the defendant No.1 also executed the documents and also stood as guarantor and the plaintiff alone responsible to clear the loans taken for the business purpose and now the plaintiff filed the suit to avoid his legal responsibility to clear those loans.

6. Further stated that the plaintiff No.1 do not have independent source of income or financial capacity to run

electrical contract business or agricultural improvement as alleged in the plaint and on the other hand the defendant No.1 and 3 have actively supported the family business by providing fund from agricultural income and assisted for loan repayment and always worked in the agricultural developments. Further the plaintiff No.1 borrowed loan by mortgaging the joint family properties and due to nonpayment of the loan by the plaintiff No.1 the Bank authorities have issued legal notice and demand notice by stating they were taken coercive action against the mortgage properties, which clearly discloses that the properties are being jointly enjoyed by the all family members and liabilities are required to be cleared by the plaintiff No.1 since the said loan amount taken for the plaintiff business purpose without any contribution to the joint family. Further the act of the plaintiff that suppressing the Bank mortgage documents, loan account statements, demand notice issued to the defendants is a deliberate act of fraud and suppression, hence the plaintiff is not entitled to seek equitable relief of partition unless furnished the electric contract work transaction statement and cancel the sale deed executed by the plaintiffs prior to file this suit. Further except ancestral properties, the other properties which are purchased in the name of plaintiffs and the defendant No.3 and 4 are all joint family properties out of joint family and ancestral properties income and now the plaintiffs sold two properties which are purchased in their name out of joint family source of income, hence the plaintiffs not entitled to claim any share from the suit schedule properties which are stands in the name of the defendant No.3 and 4 and the plaintiffs are liable to clear the loan secured by mortgaging the properties stands in

the name of the defendant No.3 and 4 which were taken for his business purpose.

7. Further stated that the plaintiff started electrical contract work out of joint family source of income and secured loan by mortgaging the properties of the defendant No.1, 3 and 4, hence the plaintiffs No.1 is liable to furnish the account details of his business transactions and also to share the income among all the joint family members and unless bring back of collusive sold properties standing in the name of plaintiffs, they not entitled to claim any share from the properties in the name of the defendant No.3 and 4. Further the defendant No.1 from the beginning itself, running petty shop and working as chit fund and LIC agent and also always engaged in the agricultural development activities and also running grinder out of those source of income the other properties purchased for the joint family income in the name of the plaintiffs and the defendant No.3 and 4 and also the defendant No.1 and this defendant provide financial assistance for the electric contract business and the plaintiff No.1 though he is doing contract work in his name under Marulusiddeshwara Electrical contract, the entire investment are from the joint family source of income and the defendant No.1 individual earnings along-with ancestral properties source of income, hence the plaintiff No.1 business including the sold properties are all joint family properties and this defendant has every right to claim. Further the plaintiff No.1 start electric contract business with the financial assistance of the defendant No.1 and in the year 2010-11 the plaintiffs taken loan for electric business by pledging the

defendant No.1 ancestral property and later secured loan by mortgaging all the joint family properties for business purpose, hence question of individual property or self acquired property does not arise and whatever the developments and existence of joint family properties purchased on various occasions are all joint family properties including the plaintiff sold properties, which are required to be considered for allocation of share. Further the plaintiffs not entitled to claim any share from the joint family properties unless clear the mortgaged loan secured for the plaintiff No.1 business purpose. The plaintiffs have conveniently suppressed the fact that the entire suit schedule properties are under mortgage and Banks are now issued demand notice and also notice under SARFAESI Act, which are required to be answered and clear by the plaintiff No.1 before making false allegations against this defendants. The plaintiffs not approached this court with clean hands and not disclosed the two sold properties to defeat the joint rights and interest over the said properties. Hence, prayed to dismiss the suit and I.A No.1 with costs.

8. 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?

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

Point No.1: In the Affirmative.

Point No.2: In favour of the plaintiffs.

Point No.3: In the Affirmative.

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

REASONS

10.POINT NO.1 TO 3: These points are interrelated to each other and involve common appreciation of facts. Finding on point No.1 will have bearing on other. Hence, to avoid repetition of facts, these points are taken together for common consideration. The plaintiffs have filed the suit for the relief of partition, separate possession and such other reliefs against the defendants. It is definite case of the plaintiffs that they are also having $\frac{1}{4}^{\text{th}}$ share in the suit schedule properties. It is their contention that the defendants refused to allot the legitimate equal share of the plaintiffs in the suit schedule properties. Further the plaintiffs are claiming that the suit schedule properties are their joint family properties and as such they are also having $\frac{1}{4}^{\text{th}}$ share in the same. Now they reliably learnt that the defendants taking undue advantage of the weakness of the plaintiffs and documents standing in their names are making hectic efforts to alienate or encumber the suit schedule properties behind their back which is absolutely prejudicial to their right and interest over the suit schedule properties. Hence, they have filed this suit and I.A No.1.

11. Admittedly the defendants have appeared and filed their written statement and memo for adopting the written statement as objection to I.A No.1. In the written statement they have denied the entire allegation plaintiff paras. Further contended that the present suit of the plaintiffs is not maintainable in law as relief of partition unless clear the mortgaged loan secured for the plaintiff No.1 business purpose. The plaintiffs to cause harassment to the defendants, the present suit is filed. Hence, in these properties the plaintiffs have no right to claim any share. On the other hand, the plaintiffs is pleaded that it is their joint family properties and they are having $\frac{1}{4}^{\text{th}}$ share. The present I.A No.1 is filed seeking relief of temporary injunction to restrain the defendants from alienating the suit schedule properties to any third parties till disposal of the suit. Now the plaintiffs are apprehended that the defendants are trying to alienate the suit schedule properties.

12. Admittedly the suit was filed against the defendants for the relief of partition, separate possession and also filed I.A No.1 restraining the defendants from selling the suit schedule properties. Admittedly this may cannot decide the nature of the acquisition of the suit schedule properties of the defendants or in other words to decide the present IA this court cannot harp upon trace of title of the parties to the suit. Admittedly the plaintiffs are claiming that they are having $\frac{1}{4}^{\text{th}}$ share in the suit schedule properties, whether the plaintiffs are right to claim any share in the suit properties or not is to be decide only after full pledged trial. At this stage if the defendants are allow to sell the suit schedule properties it is the plaintiffs who will be put to loss and hardship.

Hence, the plaintiffs have got a prima facie case and balance of convenience also lies in their favour. With these reasons, I answered the point No.1 and 3 in the Affirmative and point No.2 is in favour of the plaintiffs.

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 on behalf of the plaintiffs under order XXXIX rule 1 and 2 of C.P.C., is hereby allowed.

The defendants are temporarily restrained from alienating the suit schedule properties till disposal of the suit.

Parties shall 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.