

IN THE COURT OF THE I ADDL. CIVIL JUDGE & J.M.F.C.,
CHANNAGIRI

:- PRESENT :-

Smt.Mahalakshmi. G
M.A., LL.B.,
I Addl. Civil Judge & J.M.F.C.,
Channagiri.

Dated: This the 13th Day of November 2025

O.S.No.319/2023

PLAINTIFFS : H.S.Arun Kumar

V/s

DEFENDANTS : H.S.Shanthamma and others

I.A.NO.I

Applicants/Plaintiffs : H.S.Arun Kumar
V/s

Opponents/Defendants : H.S.Shanthamma and others

1.	Provision under which the application is filed	Under Order 39 Rule 1 and 2 R/w 151 of CPC
2.	Relief sought for	Interim Temporary Injunction
3	Date on which the application is filed	02-11-2023
4.	No.of the application	I.A.No.I
5.	Date on which the objections are filed by different opponents	09-02-2024
6.	The date on which the orders is passed	13-11-2025

ORDER ON I.A.NO.I

The present application filed by the plaintiff seeking the relief of temporary injunction against the defendant No. 6 from alienating or creating any encumbrance on application schedule property till disposal of the suit.

2. SUM AND SUBSTANCE OF THE AFFIDAVIT AS UNDER:

In support of the application the plaintiff sworn an affidavit stating that, he had filed present suit seeking the relief of partition and separate possession against the defendants and plaintiff averments may kindly read as part and parcel of this affidavit.

3. The property bearing Old site No.5, assessment No.392/14 measuring East-West 12.12 meters and North-South 18.18 meters situated at Chikkulikere village Channagiri Taluk, described as Application as well suit 'B' schedule property was purchased by his father, himself and along with the defendant No. 4 and 5, out of joint family funds through registered sale deed in the name of defendant No. 1 i.e., his mother. After the death of his father he and defendant No. 1 to 5 have inherited and succeeded the said property jointly and enjoying the same without effecting any division in it. The defendant No. 5 taking undue advantage of the old age and illiteracy of defendant No. 1

induced on her to execute nominal gift deed for pertaining to the suit 'B' schedule property in the name of defendant No. 6 i.e son of defendant No. 5 in order to obtain the educational loan for his higher studies. Accordingly the defendant No. 1 by believing those words executed registered gift deed dated 20-07-2021 in favour of the defendant No. 6 with respect to the application schedule property. When the said fact came to his knowledge he approached the defendant No. 1 and demanded to effect division in the said application schedule property. Thereafter the defendant No. 1 agreed to allot his share after Dasara festival and accordingly on 05-10-2023 the defendant No. 1 executed a document styled as 'ಒಪ್ಪಿಗೆ ಕರಾರು ಪತ್ರ' in his favour. In pursuance with the said agreement during the last week of October 2023 he has approached the defendant No. 1 and demanded his share by canceling the gift deed. But the defendant No. 1 by colluding with other defendants refused to act upon her words and refused to give his share in the application schedule property. Such being the case he will claim his legal right over the suit 'B' schedule property, but the defendant No. 6 by taking undue advantage of the entries of his name in the panchayath records with respect to the application schedule property making hectic efforts to alienate and create encumbrance over the said property to third persons.

The defendant No. 6 has no manner of right, title and interest whatsoever in the application schedule property to execute any kind of document over it. The plaintiff and defendant No. 1 to 5 are class-1 legal heirs of deceased H.N.Somanna Shetty and they are entitled to get equal 1/6th share in it. He has got prima facie case and balance of convenience lies in his favour. If the present application is not allowed it will cause heavy and irreparable loss to him and if allowed no injury or hardship would be caused to the other side. Thus, prays to allow the application.

4. The defendant No. 1 to 6 appeared through their counsel and filed written statement along with memo to treat the same as objection to IA No.1 wherein they admitted the relationship and nature of suit 'A' schedule property only. They specifically contended that during lifetime of H.N.Somanna Shetty, the plaintiff and defendant No. 1 to 6 entered into registered partition deed on 26-10-2006 through which suit 'A' schedule property allotted to the joint share of deceased H.N.Somanna Shetty and his wife/defendant No. 1. Said partition deed itself discloses that after the death their parents the said properties falls to the defendant No. 4 and 5. They specifically denied the assertions of the plaintiff with regard to the title obtained by the defendant No. 1 over the suit 'B' schedule property through the income raised out of joint family

source. They also denied the cause of action arisen to file present suit. They admitted the execution of registered partition deed dated 26-10-2006 with respect to suit 'A' schedule property. They further denied the alleged consent held between them with respect to application schedule property regarding partition is concerned. They specifically contended that application schedule property is self acquired property of defendant No. 1. Since from the date of purchase she enjoying the said property as its absolute owner in possession and khatedar. The defendants further admitted that the said H.N.Somanna Shetty died on 07-07-2014 and denied further averments and called upon the plaintiff to prove the same.

5. The specific defense of the defendant can be gathered at para No. 9 to 12 wherein they specifically contended that one H.N.Somanna Shetty and his wife defendant No. 1 had two daughters and 3 sons i.e the plaintiff and the defendant No. 2 and 5. The joint family of the H.N.Somanna Shetty is managed by his father during his lifetime and effected registered partition deed dated 26-10-2006 with respect to the entire ancestor and joint family properties among the joint family members and allotted their respective shares and having their peaceful possession. The suit 'B' schedule property purchased by the defendant No. 1 through registered sale deed from Bulli Kariyappa S/o Ningappa.

Subsequently the Khata and mutation also effected in the name of defendant No. 1. Hence the said property is the absolute property of defendant No. 1. Neither the plaintiff nor other defendants have any right over it. After the effect of registered partition deed there is no existence of joint family status among the plaintiff and defendants and they are living separately and there is no any dispute among the plaintiff and defendant No. 2 to 5 till death of their father. The plaintiff being elder son of deceased Somanna Shetty and defendant No. 1 has not performed any responsibility towards his parents. The present defendants looking after their father and defendant No. 1. Such being the case the suit schedule property gifted by the defendant No. 1 in favour of the defendant No. 6 through registered Gift deed dated 20-07-2021. Said fact is also well within the knowledge of the plaintiff and the defendant No. 2 to 5. The donee also accepted the said gift deed and enjoying its peaceful possession. Such being the case the plaintiff all of a sudden on 06-10-2023 rushed into house of defendant No. 4 in which the defendant No. 1 living, made galata which disturbed peaceful environment of the family and demanded his share. The defendant No. 1 also abused them with filthy language, caused life threats and made assaults upon them repeatedly. Hence the defendants also approached the Channagiri

police station on 14-11-2023 wherein the plaintiff executed bond, which resulted in compromise. Hence the plaintiff had filed present suit with an intention to cause harassment to the defendants though he had knowledge about the existence of registered partition deed dated 26-10-2006 with respect to the ancestral and joint family property of their family. Hence seeking partition and separate possession again in the application schedule property does not arise at all. Thus prays to dismiss the suit with cost.

6. Based on the rival contentions raised by the respective parties, the following points would emerge for consideration;

POINTS

1. Whether the plaintiffs have made out prima facie case?
2. Whether the balance of convenience lies in favour of plaintiffs?
3. Whether the plaintiffs will be put to irreparable loss, if the order as prayed for is not granted?
4. What order?

7. Heard the learned counsel appearing for the plaintiffs and defendant. Perused the records and on perusal of the same, my findings to above said points are as under :

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

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

REASONS

8. **Point No.1:-** Admittedly, present suit filed by the plaintiff seeking the relief of partition and separate possession of his share in suit 'A' and 'B' schedule properties from the defendant No. 1 to 6. In the meanwhile the plaintiff also preferred present application along with plaint seeking interim temporary injunction order by the court against the defendant No. 6 from restraining him from alienating application schedule property. According to the plaintiff the said application schedule property is not self acquired property, it is also ancestor and joint family property purchased in the name of defendant No. 1 during the lifetime of his father from the income of joint family nucleus. Hence the said application schedule property is also their joint family property in which the plaintiff also had share along with other defendants.

Thus the registered gift deed executed in favour of the defendant No. 6 by the defendant No. 1 is not tenable under law which alleged to be executed behind the back of the defendant No. 1 by inducing on her.

9. The defendants admitted the relationship and execution of registered partition deed among them and plaintiff during the lifetime of H.N.Somanna Shetty. They specifically denied the nature of suit 'B' schedule property as alleged by the plaintiff and contended that said property is self acquired property of defendant No. 1 who disposed off the same through registered gift deed in favour of the defendant No. 6 who is son of defendant No. 5. pursuant the revenue records also effected in the name of defendant No. 6 and the said suit 'B' schedule property is absolute property of defendant No. 1. Hence prays to dismiss the application.

10. To establish the prima facie case of the plaintiff he is placed the digital copy of E-swattu Form No. 9 and 11(A) dated 28-06-2022 discloses the name of defendant No. 6 and the nature of acquisition is mentioned as gift deed.

11. The original registered partition deed dated 26-10-2006 effected between the deceased H.N.Somanna Shetty S/o late H. T. Narayana Shetty and his wife H.S Shanthamma i.e

defendant No. 1 and their children defendant No.2 to 5 and partitioned their ancestral and joint family properties among them. The very partition deed also discloses at page No. 3 which styled as 'Will' executed by deceased H.N.Somanna Shetty and Defendant No.1 in favour of defendant No. 3 and 4 is concerned. The plaintiff and defendant No. 1 to 6 are the signatories of the said registered partition deed .

12. The certified copy of registered sale deed dated 29-06-2000 with respect to Application schedule property purchased by the defendant No. 1.

13. The digital copy of registered gift deed dated 20-07-2021 executed by defendant No. 1 in favour of defendant No. 6 with respect to Application schedule property. The digital copy of E-swattu form No.9 and 11A dated 17-11-2014 , the death certificate dated 16-07-2014 of H.N.Somanna Shetty , the copy of unregistered and insufficiently stamped 'Oppige Kararu patra'.

14. The defendants to establish their contention has placed certified copy of registered gift deed dated 20-07-2021 , original sale deed dated 29-06-2000 and the original partition deed dated 26-10-2000 .

15. Having taken note of the prima facie pleadings and materials placed on record by both parties, it is clear that both the

plaintiff and defendant no. 1 to 6 and deceased H.N.Somanna Shetty entered into registered partition deed with respect to ancestral and joint family properties is concerned during 26-10-2006 through which suit 'A' schedule property fallen to the joint share of deceased H.N.Somanna Shetty and defendant No. 1 is not in dispute. The plaintiff in the instant application, seeking the relief with respect to suit 'B' schedule property which is purchased through registered sale deed by the defendant No.1 from one Ningappa on 29-06-2000. It is specific assertion of the plaintiff that the said property is purchased from the income generated from the joint family nucleus. But the very registered sale deed dated 29-06-2000 is not discloses the said contents which is registered one. As per **Section 14 of Hindu Succession Act** any property owned by Hindu female is becomes her absolute property. To consider the said assertion of the plaintiff whether the application schedule property is self acquired or purchased from joint family income, requires full fledged trial .

16. The very document relied by the plaintiff seeking his hissa share i.e unregistered and insufficient stamped 'Oppige Kararu pathra' dated 05-10-2023 cannot be looked into at this stage where there is specific bar on court as per **Sec. 49 of Indian Registration Act 1908-** the court cannot go through the

contents of unregistered and insufficiently stamped document with respect to immovable properties is concerned. Hence the plaintiff has made out triable case. At this initial stage this court cannot conduct mini trial to ascertain the genuineness of the said Oppige Kararu pathra. Hence the plaintiff failed to establish prima facie case to get the relief of Temporary injunction as sought in the application. Hence this court answered point No. 1 in the **Negative**.

17. Point No.2 and 3:- These two points are interconnected as such are taken at once for discussion.

18. The existence of prima-facie case is fundamental to grant of interim temporary injunction. The plaintiff has to establish the said aspect at first by placing prima-facie materials too. The balance of convenience and irreparable injuries are always fall in line with prima-facie case. In the case on hand, the plaintiff has failed to prove the very existence of prima-facie case and therefore, balance of convenience, irreparable injury would also not in favour of plaintiff. Thus, the **point No.2 and 3 are held in the Negative**.

19. **Point No.4:-** As a result, this court proceeds to pass the following:

ORDER

**The I.A.No.I filed by the plaintiff U/O.39
Rule 1 and 2 R/w Sec.151 of CPC is hereby
rejected.**

No order as to cost.

Issues framed.

**For list of documents and list of
witnesses if any.**

(Dictated to the stenographer typed by her, corrected by me and then pronounced in the open court on this the 13th Day of November, 2025.)

**(Smt. Mahalakshmi. G)
I Addl. Civil Judge & J.M.F.C.,
Channagiri.**

