

**IN THE COURT OF THE II ADDL CIVIL JUDGE &  
JMFC, CHANNAGIRI.**

Dated: 18<sup>th</sup> Day of March 2025

PRESENT: **SMT. MAHALAKSHMI G M.A., L.L.B.,  
II Addl Civil Judge & JMFC, Channagiri.  
OS No.272-2024**

**BETWEEN :**

Savitha and others

...Plaintiffs

**AND**

N. Shivalingappa and others

...Defendants

**I.A. No. I**

**BETWEEN :**

Savitha and others

...Applicants/Original plaintiffs

**AND**

N. Shivalingappa and others

...Opponent/Original defendants

|    |                                                 |   |                                          |
|----|-------------------------------------------------|---|------------------------------------------|
| 1. | Provision under which the application is filed: | : | U/o 39 rule 1 and 2 R/w Sec.151 of CPC., |
| 2. | Relief sought for                               | : | Interim Temporary injunction             |
| 3. | Date on which the application is filed          | : | 19.09.2024                               |

|    |                                                                |   |            |
|----|----------------------------------------------------------------|---|------------|
| 4. | Number of the application                                      | : | IA.No.I    |
| 5. | Date on which the objections are filed by different opponents: | : | 28.11.2024 |
| 6. | The date on which the orders is passed:                        |   | 18-03-2025 |

**Date:18-03-2025**  
**Place: Channagiri.**

**(Smt.Mahalakshmi. G)**  
**II Addl Civil Judge And Jmfc.,**  
**Channagiri.**

**ORDER ON IA No.I**

It is an application filed by the plaintiffs U/o 39 rule 1 and 2 of CPC., seeking add interim temporary injunction against the defendants with respect to suit schedule property.

**2. Sum and Substance of the affidavit as under:**

The plaintiffs have given the application schedule properties at beneath as well plaint schedule. According to it the properties bearing Sy.No.4/2 measuring 0.20.08 guntas, situated at Chikka Kogaluru village, Sy.No.162/7 measuring 0.33.00 guntas , Sy.No.38/32 measuring 0.26 guntas situated at kogaluru Village Sy.No. 41/1 measuring 1 acre 31 guntas, Sy.No.37/4 measuring 0.16 + 1.09 guntas are situated at Kogaluru Village are the landed properties and the house property bearing katha No.1096/2 measuring East-West:15 mts, North-South 9015 mts situated at Santebennuru Village. The property bearing No.183 consisting red titled house measuring East-West: 35 mts, North-South:42 mts and property bearing No.56 measuring East-West: 42 Feet, North-South:40 mts are

situated at Kogaluru Village, with in the jurisdiction of Kogaluru Village Panchayath. The property bearing Sy.No.38/31 measuring 0.19.08 guntas and property bearing Sy.No.38/31 measuring new Sy.,no.38/35 measuring 0-05.08 guntas are described as application item No.1 to 11 schedule properties. The present suit filed by them against the defendant seeking the relief of partition and separate possession with respect to suit schedule item No.1 to 11 properties. The alleged properties are the ancestral and joint family properties of plaintiff and defendants. The defendants by taking undue advantage of revenue records stands in their names with out bringing to their knowledge have trying to sell the application schedule item No.1 to 11 properties to the 3<sup>rd</sup> parties. When the said fact came to their knowledge they have filed the present suit along with this present application. The defendants are intended to defraud the birth right of the plaintiffs by way of sale. The defendants repeatedly making efforts to create charge, gift, alienate and mortgage the application schedule properties with an intention to cheat the legitimate share of the plaintiffs. Thus, prays to restrain the defendants from alienating the application schedule properties to any body till disposal of the suit. If this application is not allowed they will be put to irreparable loss and injury which cannot be compensated by means of money. On the other hand if this application is allowed no hardship would be caused to the other side. Thus, prays to allow the application.

3. The defendant No.1 and 6 filed written statement and other defendant No.2 to 4 filed memo to adopt the said written statement on their behalf. They also filed memo to treat the same as objection to IA No.1.

The defendant No.7 filed separate written statement as well memo to treat the same as objection to IA No.1.

4. The defendant No.1 and 6 admitted the relationship pleaded by the plaintiff and there specific contention with respect to plaintiff assertion can be gathered after para No.7 of the written statement. Wherein they asserted that, one Shivamurthappa S/ o Veerappa N. is their father the application schedule No.4 property purchased by the defendant No.1 to 6 after the death of their father out of the their self acquired income. Hence, the application schedule item No.4 property is their self acquired property.

5. The defendant No.1 Working as a Government teacher since 1985 had purchased the application schedule item No.7 property from Choudakki Hallappa S/o Durgappa of Geddalhatti Village, during the year 1995 out of his own personal income. Thus, the alleged application schedule item No.7 property is the self acquired property of defendant No.1. The defendant No.6 look after their mother namely Jayamma N. by incurring her medical expenses at her old age and also performed her pre and post funeral rituals by obtaining hand loans except application schedule item No.7 property. The 5<sup>th</sup> defendant cultivating the remaining properties. Thus, he also had equal hissa right in the application schedule properties along with the plaintiff and defendants.

6. On the other hand, the defendant No.7 filed his separate written statement by denying the assertion of the plaintiffs and specifically contended that, with respect to application item no. 11 property the defendant No.6 and his wife namely Gangamma and

son Kiran K have executed registered sale deed in his favour on 11.03.2024. Thus, the plaintiffs and the defendants have no any hissa rights over the application schedule item No.11 property and has no any cause of action arise to file the present suit against him. Thus, prays to dismiss the suit with cost.

7. On the basis of rival contention this court formulated the following points for determination.

### **POINTS**

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

8. Heard the learned counsels appearing for the plaintiff and defendants. Perused the records and on perusal of the same, my findings to said points are as under;

### **POINTS**

Point No.1 to 3 : In the Affirmative

Point No.4 : As per the final order

for the following.,

### **REASONS**

**9. Point No. 1:** Admittedly the plaintiffs have filed the present suit seeking the relief of partition and separate

possession in the suit schedule item No.1 to 11 properties against the defendants. In order to establish the prima facie case, the plaintiff produced C/c of G-tree dated 24.01.2024 issued by Deputy Tahasildar, Santebenuru 1<sup>st</sup> Hobli, Channagiri Taluk. the copy of RTC for the year 2022-23, 2023-24 of Kogaluru Village, bearing Sy.No.41/1 stands in the name of Shivalingappa S/o Veerappa, the RTC for the year 2023-24 of Kogaluru Village bearing Sy.No.38/32 stands in the name of defendant No.6 , the RTC for the year 2023-24 bearing Sy.No.4/2 of Chikkakogaluru Village stands in the name of Shivalingappa, the RTC for the year 2024-25 bearing Sy.No.37/4 of Kogaluru Village, stands in the name of defendant No.2,4 and 5, the RTC bearing Sy.No.38 for the year 2024-25 of Kogaluru village, stands in the name of defendant No.6, the property Sy.No.38/35 of Kogaluru Village, for the year 2204-25 stands in the name of defendant No.7, RTC for the year 2023-24 of Kogaluru Village, bearing Sy.No.167/1 stands in the name of N. Shvalingappa S/o N. Veerappa along with defendant No.5, the hand written RTC entries pertaining to katha No.137/18, 268 pertaining to the year 1994-95 depicts the name of N. Shivalingappa S/o N. Veerappa and N. Eashwarappa S/o Shivalingappa and N. Rudrappa S/o Shivalingappa, the hand written RTC for the year 1990-91 to 1994-95 bearing Sy.No.167/1 of Kogaluru Village stands in the name of N. Shivalingappa S/o N. Veerappa and mutation register extracts bearing MR No.T5/2017-18 dated 17.10.2017, MR No.H73/2023-24 dated 30.05.2023

consist the properties bearing Sy.No.167/1, 38/3, 162/7, 37/4 mutated from the name of N. Shivalingappa S/o N. Veerappa to the names of N. Shivalingappa S/o N. Veerappa and defendant No.3 and 5. The computerized copy of MR No.H18/2023-24 dated 2023-24 with respect to application schedule item No.11 property mutated from the name of defendant No.6 to defendant No.7 on the basis of sale deed, computerized copy of MR No.T75/2021-22 dated 08.06.2022, property survey extract pertaining to property No.183 and 56 for the year 2002-23 depicts the name of Veerappa S/o Shivalingappa, the copy of registered partition deed dated 25.06.2002 vide SRO No.1195/2002 affected amongst the joint family members with respect to there joint family and ancestral properties. the C/c of registered registered partition deed bearing SRO No.409/1993-94 dated 22.05.1993, the copy of certificate issued by Secretary, Santebennuru Village, Panchayath dated 25.02.2022 with respect to property bearing Katha No.1096/2, the digital copy of sale deed dated 06.03.2024 with respect to application item No.11 is concerned.

10. Though the defendant 1 and 2 have taken a contention in their written statement that the application schedule item No.1 to 4 property is there self acquired property and item No.7 property is the self acquired property of defendant. The defendant No.5 is cultivating the application schedule properties except application schedule No. 7 property but have not placed any

documents to establish the said contention, the defendant No.7 though filed the written statement stating that, the defendant No.6 had executed registered sale deed in his favour dated 11.03.2024 along with his family members with respect to application schedule item No.11 property is concerned. but he also not placed any document to that effect but the plaintiff herself placed the alleged documents on record as stated above.

11. Having taken note of the pleadings and the documents available on record, it is the specific assertion of the plaintiffs that the application schedule item No.1 to 11 properties are the ancestral and joint family properties of plaintiffs and defendants. Hence, the plaintiffs also have their hissa rights in the alleged properties. Having perusal of revenue records placed by the plaintiffs with respect to application schedule properties which are stood in the name of Shivalingappa who is ancestor of plaintiffs and defendants. The defendant No.1 to 6 have not disputed the genealogical tree placed by the plaintiff.

12. Having perusal of the plaint averments and its enclosed documents, at this stage the plaintiffs have made out prima-facie case to grant temporary injunction against the defendants if this exparte TI is not granted the very purpose of the suit as well as application would be defeated by way of delay. There might be chances of alienating the application schedule properties to the third persons which will leads to multiplicity of proceedings. Under such circumstances to protract the nature of



properties as it is, I feel it is necessary to grant temporary injunction till disposal of the suit with respect to application schedule item No.1 to 11 property. The contention raised by the defendant that application schedule item No.4 is the self acquired property of defendant No.1 to 6 and item No.7 is the self acquired property of defendant No.1 to consider the said contention it requires full pledged trial. At this initial stage this court cannot conduct mini trial. Being that opinion this court answered the point **No.1 in the Affirmative.**

**13. Point No.2 and 3:** These two points are interconnected. As such are taken at once for discussion.

The existence of prima-facie case is fundamental for the grant of interim temporary injunction. The plaintiff has to established 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 sucessful to prove the very existence of prima-facie case and therefore, balance of convenience, irreparable injury would also in favour of plaintiff. Thus, the **point no. 2 and 3 are held in the Affirmative.**

14. **Point No.4 :** As a result, this court proceed to pass the following:

**Order**

**The IA No.I filed by the  
plaintiffs U/o 39 Rule 1 and 2 CPC**

is hereby allowed.

Consequently, the defendants No.1 to 7 are hereby restrained from alienating, mortgaging or any type of transferring with respect to suit schedule item No.1 to 11 properties till disposal of the suit in the interest of justice and equity.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 18<sup>th</sup> day of March 2025)

Date: 18-03-2025  
Place: Channagiri.

Sd/-  
(Smt.Mahalakshmi .G)  
II Addl Civil Judge And Jmfc.  
Channagiri.

