

KADG320069012025



**IN THE COURT OF
II ADDL. CIVIL JUDGE AND JMFC HARIHAR,
AT HARIHAR**

Presided Over by SMT. JYOTI ASHOK PATTAR
(B.E., LL.B.)

O.S. No.228/2025

Dated this the 28th day of January, 2026

Darshan .M.H. and others.

....PLAINTIFFS

Vs.

Jyothi and others.

....DEFENDANTS

PARTIES TO I.A. NO.I

Darshan .M.H.

**....APPLICANT/
PLAINTIFF NO.1**

Vs.

Jyothi and others.

**....OPPONENTS/
DEFENDANTS**

i	Provision under which the application is filed	U/O. XXXIX Rule 1 and 2 R/w Sec.151 of CPC
ii	Relief sought for	Temporary Injunction
iii	The date on which the application is filed	12.09.2025
iv	Number of the application	01
v	The date on which the objection is filed by the defendant/opponent	30.10.2025
vi	The date on which the orders passed on the said application.	28.01.2026

ORDER ON I.A.No.I

The present application is filed by the plaintiffs U/O. XXXIX Rule 1 and 2 R/w Sec.151 of CPC along with plaint, seeking an order of temporary injunction restraining defendants from alienating or otherwise encumbering of the suit schedule property.

2. It is stated in the accompanying affidavit that the suit schedule property is allotted to propositus of the plaintiffs and defendants by name M. Mailappa during his life time. After his death the suit schedule property mutated in the name of his wife by name Hovakka i.e., defendant No.6. It is specifically contended that the propositus four children by name Harish, Kenchamma, Halesh and Sakamma. The Harish died leaving behind his

wife and children i.e., defendant No.3, defendant No.1, defendant No.4 and 5 respectively. The Halesh died leaving behind his wife plaintiff No.2 and his children. The plaintiffs being the legal heirs of Late. Harish and Halesh have share in the suit schedule property. That there was a oral partition among the family members in respect of the suit schedule property and they were in possession of their share in the suit schedule property. Thereafter they left Harihar and started to reside at Chitradurga for work. After the death of Harish the plaintiff asked for their share in the suit schedule property and the same is denied by the defendants. Hence, the present suit and application.

3. Per contra, the defendants filed memo stating to adopt their written statement as objection to the application. Wherein the defendants contended that even though the suit schedule property was allotted to the propositus M. Mailappa during his life time, after his death the defendant No.6 constructed house from the earnings of her job which was given to her after the death of her husband. It is specifically contended that there was oral partition among the family and the amount for the share of plaintiffs is utilized for the medical treatment of Late. Harish. Therefore the plaintiffs having no any right title and interest over the suit schedule property. On these grounds prays to reject the application.

4. Heard Ld. Counsel for plaintiff. The defendants have not submitted their arguments on application even after sufficient opportunities, hence defendants hearing on I.A. No.1 is taken as nil.

5. The following points arise for this Court determination;

- 1) Whether the plaintiffs have made out prima-facie case?
- 2) Whether plaintiffs have made out the balance of convenience in their favour?
- 3) Whether the plaintiffs will be put to irreparable injury, if the temporary injunction as claimed by is refused?
- 4) What Order?

6. This Court findings on the above points are as under:

Point No.1: In the Affirmative.

Point No.2: In the Affirmative

Point No.3: In the Affirmative

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

REASONS

7. Point No.1 to 3 : These points are interlinked with each other, therefore in order to avoid the repetition of facts, these points are taken together for discussion. In order to get the order of temporary injunction plaintiffs have to show that, prima facie case is in their favour and balance of

convenience lies in their favour. Further they have to show that in case of temporary injunction order as sought by is not granted, they will be put to heavy and irreparable loss, which cannot be compensated in terms of money.

8. Keeping the above cardinal principles in mind, this Court has gone through the materials placed on record. The specific case of the plaintiffs is that, they are entitled to share in suit schedule property and relied on the following documents i.e., Genealogical affidavit, Notarized copies of Aadhar cards, Encumbrance certificate, Building plan, Boundaries and Tax paid receipt.

9. It is pertinent to note that, the relationship of the parties is not in dispute and admittedly the suit schedule property was granted to propositus M.Mailappa during his life time and after his death katha of the suit schedule property changed in the name of his wife by name Hovakka i.e., defendant No.6. The specific contention of the defendant No.6 is that there was a oral partition among the family members and share amount of Late. Harish is utilized for his treatment itself, therefore the plaintiffs are not entitled to share in the suit schedule property. Such contention needs adjudication of the matter. But at this stage the Court cannot held mini trial and adjudicate the matter on merits. At this stage the admission as to the relationship and the nature of the property by the defendant shows the prima facie case of the plaintiffs.

10. That based on the averments made in the application as well as the documents produced by the plaintiffs it can be said the plaintiffs have made out prima facie case. Mere prima-facie case itself is not a ground to grant injunction. The plaintiffs/Applicants have to show that, the balance of convenience is also lies in their favour and in case the defendants succeeded in their illegal act, they will be put into heavy and irreparable loss, which cannot be compensated in terms of money. However at this juncture, any opinion on merits of the case will prejudice the minds of the parties. Further, if the injunction order is granted, no substantive loss would be caused to the defendants. If the temporary injunction is not granted, the plaintiffs will be put more hardship rather than the defendants. Therefore, considering the facts as discussed herein above, at this juncture, the balance of convenience lies in favour of the plaintiffs. Further in case if temporary injunction is not granted, the plaintiffs will be put to heavy and irreparable loss rather than the defendants. Therefore, this Court is of the opinion that, it is just and proper to grant temporary injunction order as sought for in favour of the applicant. Accordingly, the point No.1 to 3 are answered in the Affirmative.

11. Point No.4: In view of the above discussion, this Court proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiffs U/O. XXXIX Rule 1 & 2 R/w Sec. 151 of CPC., is hereby allowed.

The defendants, their followers, henchmen and who acts on behalf of them are hereby restrained by way of temporary injunction from alienating or otherwise encumbering of the suit schedule property till next date of hearing.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the open Court on this the 28th day of January 2026)

(Jyoti Ashok Pattar)
C/c II Addl. Civil Judge & JMFC.,
Harihar.