

KADK610011152023



**IN THE COURT OF THE CIVIL JUDGE AND JMFC AT
MOODBIDRI, DAKSHINA KANNADA**

PRESENT: **SRI. CHANDRAIAH B. P.**, B. A. LL.B.,
I Additional Civil Judge, Mangaluru,
Dakshina Kannada
C/c of Civil Judge & JMFC, Moodbidri, Dakshina
Kannada.

Dated this the 27th day of March 2026

O. S. No.141/2023

PLAINTIFFS:

- 1.Mrs. Rajeevi Suvarna, aged about 68 years, D/o late Kuddu Pandith, W/o late Seetharam Suvarna, R/at Kuddu Pandith House, Talipady Village, Aikala Post, Mulki Taluk.
- 2.Mrs. Prema Salian, aged about 64 years, D/o late Kuddu Pandith, W/o. late Megharaj Salian, R/at Kuddu Pandith House, Talipady Village, Aikala Post, Mulki Taluk.
- 3.Mrs. Parvathi Salian, aged about 62 years, D/o late Kuddu Pandith, W/o late Shrinivas Salian, R/at Kuddu Pandith House, Talipady Village, Aikala Post, Mulki Taluk.

(By Mr. Sharath Shetty D., Advocate)

- Versus -

DEFENDANT:

Mrs. Shambavi, aged about 72 years, D/o late Kuddu Pandith, W/o. late Sundara Salian, R/at Kuntalpady House, Talipady Village, Aikala Post, Mulki Taluk.

(By Mr. Jayaprakash Bhandary., Advocate)

**PARTIES ON INTERLOCUTORY APPLICATION No.II
and VII**

APPLICANTS: Mrs. Rajeevi Suvarna and others.

- V/s -

OPPONENT: Mrs. Shambavi.

**COMMON ORDERS ON INTERLOCUTORY
APPLICATION No.II and VII**

The interlocutory application No.II is filed by the plaintiff under order XXXIX rule 1 of Code of Civil Procedure and prays to pass an order of temporary injunction, restraining the defendant, her son, her men and servants, agents and all persons claiming under them from constructing any building or structure in the plaint schedule property or from cutting and removing any existing tree growth in the plaint 'A' schedule properties, pending disposal of the suit.

The interlocutory application No.VII is filed by the plaintiff under order XXXIX rule 1 and 2 of Code of Civil Procedure and prays to pass an order of temporary injunction, restraining the defendant, her men, relatives, servants, agents and all persons claiming under her from printing and distributing pamphlets, invitations, literatures, collecting money from the public or any person, making any alteration to the existing temple or Gudi of the deity Sri. Mahadevi Ammanooru, existing in the plaint 'A' schedule property mentioned as 'B' schedule property, in the name of alleged rituals called as Brahmakalashotsava or any other ceremony therein, pending disposal of the suit.

2. This interlocutory application No.II is supported with an affidavit sworn by the second plaintiff and stated that immovable property situated at Talipady Village of Mulki Taluk, comprised in Sy. No.40, measuring 0.50 cents (hereinafter called as suit schedule 'A' property), originally belonged to the plaintiffs and defendant. The RTC's of suit schedule 'A' property is jointly mutated in their joint as per MR order No.132/1998-99, dated 19.11.1998. Ever since then they are in joint possession and enjoyment of the

said property by mutating all the revenue records. The plaintiffs have been requesting the defendant to co-operate in dividing the suit schedule property as per law and deliver their share. But, defendant is illegally refusing for partition and harassing them.

3. It is further stated that entire suit schedule properties are liable to be divided into four fair and equal share and the plaintiffs and defendant each are entitled to $\frac{1}{4}$ share. The plaintiffs are constructed three separate residential houses in the suit schedule property with the consent of defendant. Now, the defendant is making all preparation to construct new building in the suit schedule property. The plaintiffs are objected for construction of the building by the defendant. But, inspite of objection, the defendant without getting permission from the local Panchayath illegally, unauthorized and forcibly planning to construct the building in the suit property with an intention to defraud the plaintiffs.

4. It is further stated that second plaintiff has made out prima facie case for grant of an ad-interim exparte order of injunction and balance of convenience is in her favour.

5. This interlocutory application No.VII is supported with an affidavit sworn by the second plaintiff and stated that there has been in existence a Gudi or shrine, dedicated to the family deity Sri. Mahadevi Ammanooru in a portion of the plaint 'A' schedule property, from the days of the father of the plaintiffs late Kuddu Pandit, which is described under schedule 'B' of the plaint situated at Talipady Village of Mulki Taluk. The plaintiffs are entitled to preserve and worship the deity in the said Gudi by reserving and providing a portion of the property in which it is existing, in the proposed partition of the suit property by making an arrangement for its maintenance, management and common worship by parties to the suit and their respective legal heirs, representatives and successors for generations to come.

6. It is further stated that the defendant with the support and instigation of her son, is printing and distributing pamphlets and other literatures, collecting huge money from the public in the name of the deity and has indulged in gross mismanagement and misappropriation of money in the name of alleged Brahmakalashothsava of the deity. Since it is a family deity with a right to common worship by the plaintiffs,

as being done by them all these years, the defendant or any other person has no right to do any of the aforesaid acts during the pendency of the suit in the guise of the alleged Brahmakalashothsava. Hence, prays to allow these applications.

7. In the written statement, the defendant has entirely denied the plaint averments as false and it is specifically contended that the plaintiffs were not in the suit property after their marriage and were residing far away in their husband's houses. It was the defendant who was taken care and protected the suit property and also managing and worshiping the goddess namely Mahadeviammanooru and other several deities existing therein. Later they came and forged signature of the defendant and entered to the suit property and obtained Government monetary benefits illegally.

8. It is further stated that there are three residential houses constructed in the joint right plaint 'A' schedule property for residential purpose of the plaintiffs and the defendant, which are liable for partition into four equal shares along with plaint 'A' schedule property. The Gudi or shrine dedicate to the goddess Shree Mahadeviammanooru and other several deities existing

in the plaint 'A' schedule property was rebuilt in its present condition by her some years ago in the place of the old dilapidated small Gudi in which she was performing poojas and rituals of the deities. The defendant has been in exclusive possession and management of the said Gudi, poojas and rituals and accordingly she has acquired legal and civil right to manage the affairs of the Gudi and deities and to worship the deities peacefully and without any interference from the plaintiffs and anybody else. Mainly on these grounds, the defendant has sought to dismiss the applications.

9. Heard.

10. Upon hearing arguments and perusal of materials placed on records, the following points would arise for consideration of this court;

P O I N T S

1. Whether the plaintiffs have made out a prima facie case to grant an order of temporary injunction?

2. Whether balance of convenience lies in favour of the plaintiffs?

3. Whether any irreparable injury and hardship would cause to the plaintiffs, if an order of temporary injunction is not granted ?

4. What order ?

11. Upon hearing and on perusal of the materials on record, this court has proceeds to answer the aforesaid points as under;

POINT No.1 To 3: In the Negative.

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

REASONS

12. **POINT No.1:** The plaintiffs are filed this suit for partition of plaint 'A' schedule properties into 4 fair and equal shares, allotment and delivery of $\frac{1}{4}$ share each in favour of the plaintiffs. The plaintiffs also filed interlocutory application No.II along with plaint and prays to pass an order of temporary injunction restraining the defendant and all persons claiming under them from constructing any building or structure in the plaint schedule property or from cutting and removing any existing tree growth in the plaint 'A' schedule properties. During the pendency of the suit the plaintiffs also filed another interlocutory

application No.VII and sought to restrain the defendant from printing and distributing pamphlets, invitations, literatures, collecting money from the public or any person, making any alteration to the existing temple or Gudi of the deity Sri. Mahadeviammanooru existing in the plaint 'A' schedule property, in the name of the alleged rituals called Brahmakalashotsava or any other ceremony therein. The plaintiffs are successful to obtain ex parte temporary injunction order against the defendant, said order is extended from time to time and still in force. After appearance, defendant has denied the case of the plaintiffs and sought to dismiss the suit. Therefore, prima facie case is to be made out by the plaintiffs. In order to consider, whether the plaintiffs have made out prima facie case or not, the court has to look into the pleadings and also the documents available on records.

13. The plaintiffs in order to prove the prima facie case, have produced the computerized RTC's of the plaint 'A' schedule property, Family Genealogy of Mr. Kudda Pandith, Invitation of Navarathri Mahotsava.

14. This Court has carefully perused the materials on record in order to ascertain the prima facie case. There

is no dispute in between the parties regarding relationship. On perusal of RTC of Sy. No.40/1A2 of Talipady Village for the year 2023-2024 and another RTC of above survey number for the year 2019-2020, it prima facie appears that suit schedule 'A' property is standing in the name of defendant and the plaintiffs jointly. On perusal of the RTC, it prima facie appears that there exists Devi Gudi in the plaint 'A' schedule property i.e., plaint 'B' schedule property. These facts are not disputed by the both the parties.

15. Now, the case of the plaintiffs that the defendant is making all preparation to construct new building in the suit schedule property illegally, unauthorizedly without getting permission from the local panchayath. But, the plaintiffs are not produced any materials to show that the defendant is making all preparation to construct new building or cutting existing trees in the suit schedule 'A' property.

16. Further, case of the plaintiffs that defendant along with her son Sadananda has started causing serious interference to the rights to common worship and management of deity and Gudi. Further case of the

plaintiffs that defendant by printing and distributing pamphlets, other literatures, collecting huge money from the public in the name of deity. In support of their contention, they produced invitation of Navarathri Mahotsava started on 22.09.2025 to 01.10.2025. Except this document, the plaintiffs are not produced any materials in this regard and Navarathri Mahotsava is already over. Further, the plaintiffs are claims the rights of common worship and management of deity and Gudi. It is settled law that a co-sharer can not get injunction against the other co-shares.

17. As per the pleadings of the parties and prima facie materials on records it shows that parties are in joint possession and enjoyment of the suit schedule properties. So, the status of the parties are the co-sharers of the suit schedule properties. The defendant claims exclusive possession and management of the said Gudi, poojas and rituals. But, there is no materials before the court to accept the claims of the defendant at this stage. Therefore, this suit requires trial to determine the facts in issues. As discussed above there is no dispute in between the parties that they are the co-sharers of the suit schedule properties. It is settled law that co sharer can not seek injunction

against another co-sharer without proving their exclusive possession over the suit schedule properties. Thus, the remedy is available to the parties to seek partition. Therefore, this court is of the opinion that the plaintiffs are made out prima facie case for trial but failed to made out prima face case to grant temporary injunction against the defendant as sought by the plaintiffs. Hence, exparte temporary injunction order earlier granted by this court against the defendant is liable to be vacated. Accordingly, this court answer point No.1 in the Negative.

18. **POINT No.2 and 3:** For the sake of convenience these two points are taken up together for common discussion. As per the discussion above, the plaintiffs are failed to establishing prima facie case for granting temporary injunction in their favour. Under such circumstances, question of balance of convenience and irreparable loss and injury to the plaintiffs does not arise. Therefore, this court answer point No.2 and 3 in the Negative.

19. **POINT No.4:** In view of findings to the point No.1 to 3, this court proceed to pass the following;

ORDER

The interlocutory application No.II filed under Order XXXIX rule 1 of CPC by the plaintiffs is hereby dismissed.

The interlocutory application No. VII filed under Order XXXIX rule 1 and 2 of CPC by the plaintiffs is hereby dismissed.

Consequently, exparte temporary injunction order earlier granted by this court against the defendant is vacated.

No order as to cost.

(Dictated to the Stenographer, after transcription, typed by her, corrected by me and then pronounced in the open court on this the 27th day of March, 2026.)

Sd/-

(SRI. CHANDRAIAH B. P)
CIVIL JUDGE & JMFC,
MOODBIDRI, D.K. (C/c).