

IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE AND

J.M.F.C., HUBBALLI

PRESENT:- SMT. SARVAMANGALA K.M.,  
B.A. LL.B

I ADDL. SENIOR CIVIL JUDGE AND JMFC.,  
HUBBALLI.

O.S. No.76/2024

Dated this 06<sup>th</sup> day of September 2025

**PLAINTIFFS** : Shreya D/o Shashidhargouda Patil  
and others.  
since minor represented by their  
natural guardian mother Roopa  
Shashidhargouda Patil.

**//Versus//**

**DEFENDANTS** : ChannabasanGouda S/o  
Siddanagouda Patil and others.

**PARTIES TO I.A.I**

**Applicant** : Shreya D/o Shashidhargouda Patil  
and others.  
since minor represented by their  
natural guardian mother Roopa  
Shashidhargouda Patil.

**//Versus//**

**Opponent** : ChannabasanGouda S/o  
Siddanagouda Patil and others.

- i. *Provision under : Under Order 39 Rule 1 and which application is filed 2 R/w Sec.151 of CPC.*
- ii. *Relief sought for : Seeking an order of temporary injunction, restraining the defendants, their agents, servants or anybody claiming through them from alienating, transferring or creating any charge over the suit properties in the interest of justice and equity.*
- iii. *The date on which application is filed : 19.02.2024*
- iv. *Number of the application : 1*
- v. *The date on which objections are filed by different opponents : 28.05.2024*
- vi. *The date on which orders were passed on the said application : 06.09.2025*

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**ORDER ON I.A. NO.I**

*The counsel for the plaintiff filed an I.A. No.I U/o 39 rule 1 and 2 R/w Sec.151 of C.P.C., seeking an order of temporary injunction, restraining the defendants, their agents, servants or anybody*

*claiming through them from alienating, transferring or creating any charge over the suit properties in the interest of justice and equity.*

*2. The defendant No.1 to 8, 11 and 13 have filed their Written Statement and they have filed memo to adopt the Written Statement as objections to IA No.I.*

*3. Heard arguments by both side.*

*4. On the basis of entire materials available on record the following points arise for my consideration:*

**POINTS**

*1. Whether the plaintiffs have made out prima-facie case?*

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

*3. Whether the hardship would be caused to the plaintiffs if injunction is not granted?*

*4. What order ?*

*5. My answer to the above points are as follows:*

*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**

6. **Point No.1:** *This is the suit filed by the plaintiffs against the defendants for the relief of partition and separate possession and declaration.*

7. *Along with this suit the plaintiffs have filed the present application seeking the relief of temporary injunction against the defendants regarding restraining them from alienating, transferring or creating any charge over the suit properties.*

8. *In the annexed affidavit the natural guardian of plaintiffs stating that the suit properties are the ancestral property and some of the suit properties are purchased in the name of the Joint Family members and in the name of defendant No.1 and 8 after alienating the ancestral properties. The plaintiff No.4 is the wife of defendant No.8 and plaintiff No.1 to 3 are sons and daughter of defendant No.8 and grandsons of defendant No.1. Because of the strained relationship between the plaintiff No.4 and defendant No.8, the plaintiffs No.1 to 3 are under custody of the plaintiff No.4 and she is looking after the welfare, education food and shelter of plaintiff No.1 to 3. The suit properties are joint family properties of the plaintiffs and the defendants. And the suit properties are devolved to the*

*share of deceased Siddangouda Patil and after his death to his sons and daughters i.e., defendant No.1 to 10.*

9. *It is further submitted that the plaintiff No.4 marriage has taken place with defendant No.8 on 13.04.2009 and immediately after span of 15 days of the marriage all the joint family members i.e. defendants started to harass plaintiff No.4 and marital relationship between the plaintiff and the defendant No.8 is spoiled. The defendant No.8 is drunkard and addicted to alcohol and spendthrift and totally neglected the welfare of the plaintiffs No.1 to 3 in respect of their welfare, food and clothes and education. The various Civil, Criminal and matrimonial cases are pending between the parties. Because of torture mental and physical harassment given by the defendants, the plaintiff No.4 being custody of the plaintiff No.1 to 3 started to demand to affect partition of the joint Family properties and give their separate share and to protect the welfare of the Plaintiff No.1 to 3. But the defendants try to escape from the further consequences of pending litigation between the parties. Thereafter the joint family members for that reason by colluding with each other by affraiding for the marital litigation and to avoid the consequences marital litigation going to be filed by the plaintiffs with an intention to*

*deprive the share in the Joint Family properties go on alienating the No.8 and to his family members i.e., the plaintiffs. The plaintiffs resisted the act of the defendants and requested them to protect their interest of the suit properties and their share for their future livelihood, welfare and education food etc. But the defendants without heeding the words and requests of the plaintiffs, illegally without plaintiffs knowledge with an intention to deprive their share sold to the suit properties at Sl. No.1, 3, 5 to defendant No.14 to 16 and 17, without allotting the plaintiffs share in the said property and illegally gain themselves without protecting plaintiffs interest and share over the suit properties. Said alienation is not for the welfare and interest of the plaintiffs No.1 to 3 and their share in the alienated properties. After the knowledge of the alienation of the said properties plaintiffs requested the defendants more so to defendant No.1 and 8 to protect their interest by allotting the share in the suit properties. But the defendant No.1 started his illegal act of harassing me and filed O.S. No.39/2020 before V<sup>th</sup> Additional Civil Judge, Hubballi and the same is pending for adjudication. Except this the defendant No.1 also approached Senior Citizen Forum to oust the plaintiffs No.1 to 3 and 4 from the house but the Hon'ble court*

*protected the interest of the minors and dismissed the claim of defendant No.1 on 05.03.2022. Therefore, the intention of the defendants is very clear, ill -motivated to deprive the share of the plaintiffs in the suit properties. The Joint Family properties are also got divided between the defendants themselves without allotting the share to the plaintiffs and defendant No.8 family. The defendants got registered the Registered Watni Patra dated:07.01.2022, which is not binding upon the plaintiffs and their share over the suit properties. The defendants played fraud against plaintiffs without allotting any share to the son defendant No.8 in the suit properties with an intention to deprive the share of the plaintiffs in the suit properties. When this is the fact the defendants are in hurried attempts to alienate the suit properties with an intention to deprive the share of the plaintiffs. And if the defendant succeeded in their attempts then the whole purpose of filing this suit will be frustrated and plaintiffs rights over the suit property will be curtailed and we will be on roads without any shelter of our own. Hence, prayed to allow the I.A.*

*10. The objections of the defendant No.1 to 8, 11 and 13 is that the suit properties are not properly described and the description which is made in paragraph No.2 of the plaint and also schedule*

*annexed to plaint are not admitted. It is further contended that Shri. Siddangouda Patil was the owner of the properties comprised suit schedule B-1 to 6 properties. During his lifetime, he had married one Basamma and out of their wedlock defendant No.1 was only born subsequently wife of Siddangouda Patil died. Thereafter, he had married another wife by name Kashamma. Out of their wedlock as many as five issues were born i.e. defendant No. 2 to 6. The above said persons got partitioned the above said properties on 02.06.2009 mutually, subsequently to avoid unnecessary technicalities and give more effect to the above said partition in legal manner, the heirs of Shri. Siddangouda Patil got registered the above said partition deed on 15.12.2021. It is to be submitted that as per the partition which is effected on 02.06.2009, the properties comprised in R.S. No.100 measuring 19 acre 1 guntas situated at Unkal Village, Tq: Hubballi out of which an area to the extent of 4 acres 10 guntas was fallen to the share of defendant No.1, an area to the extent of 2 acres out of R.S. No. 66/1A+1B/3 situated at Bengeri, Tq: Hubballi, is fallen to the share of the defendant No.1, an area to the extent of 2 acres out of R.S. No. 66/1A+1B/3 situated at Bengeri, Tq: Hubballi is fallen to the share of defendant No.2, an area to the extent of 4 acre 11*

*guntas out of R.S. No.100 measuring 19 acres 1 guntas situated at Unkal Village is fallen to the share of defendant No.1 and R.S. 888/3 measuring 3 acres 30 guntas situated at Kusugal Village Tq: Hubballi is fallen to the share of defendant No.2. That the property comprised in R.S. No.68/2B measuring 2 acres 20 guntas situated at Bengeri Village, Tq: Hubballi, an area to the extent of 3 acres out of R.S. No.115/A/2 situated at Goppankoppa village, Tq: Hubballi and R.S. No.120/3 measuring 3 ares 20 guntas situated at Unkal Village, Tq: Hubballi are fallen to the share of defendant No.4, an area to the extent of 2 acre 12 guntas out of R.S. No.120/1 situated at Unkal village, Tq: Hubballi is fallen to the share of defendant No. 8, an area to the extent of 2 acre 12 guntas out of R.S. No. 120/1 situated at Unkal Village, Tq: Hubballi is fallen to the share of defendant No.10, an area to the extent of 2 acre out of R.S. No.115/A/2 situated at Goppankoppa, Tq: Hubballi is fallen to the share of defendant No.11, R.S. No.66/1b measuring 2 acres 20 guntas situated at Bengeri, Tq: Hubballi is fallen to the share of defendant No.11 and R.S. No.115/58 measuring 37 guntas is fallen to the share of defendant No.11 and properties comprised in R.S. No. 28A measuring 1 acre 22 guntas and R.S. No. 5 measuring 20 guntas and R.S. No. 32*

*measuring 20 guntas respectively situated at Nagashettikoppa village, Tq: Hubballi jointly allotted to the share of the defendant No.1, 2, 4, 8, 10 and 11 to 13. That as per the above said partition the names of respective shares holder came to be entered in the record of rights and the above said partition is acted upon. Thereafter, the defendant No.1 and 2 have sold some of the properties which are allotted to them. However, to avoid some future complications the defendant No.1 to 6, 9, 11 to 13 got registered the partition deed.*

*11. It is further contended that the suit of the plaintiff itself is not maintainable. Therefore, without admitting the case of the plaintiffs if at all the plaintiffs are entitled for any share at the best they can claim only share in the defendant No. 8. Therefore, the suit for partition by the plaintiffs against all the heirs of Shri. Siddangouda Patil and by including all the properties again nonest in law and is liable to be dismissed.*

*12. In order to ascertain the prima-facie case of the plaintiffs and in the light of the arguments canvassed by the learned counsel for the plaintiffs and defendants this court carefully perused the*

*materials on record, the list of documents of the plaintiffs consists of certified copy of CTS extracts and records of rights, certified copy of registered Watni Patra dated:07.01.2022 and certified copy of registered sale deed dated:14.07.2005, certified copy of sale deed dated:03.07.2014, birth certificate of plaintiff No.1 to 3, records of rights, Krushi Passbook, mutation extracts, Mutation entries, certified copy of Order passed in MWPSCA/CR/26/2021-22 by Assistant Commissioner of Dharwad, certified copy of reply letter, certified copy of judgment No.S.C. No.38/2020, acknowledgmen to the complaint given to SHO, Keshwapur Police, endorsement given by SHO, Keshwapur Police for the complaint given by the plaintiffs, endorsement letter dated:26.04.2021, certified copy of the complaint given to the Women Police Station, Hubballi with FIR, Xerox copy of Order passed by A.C. Dharwad, certified copy of Recovery petition in Crl. Misc. No.406/2023 of Family Court, Hubballi, xerox copy of the sale agreement dated:04.02.2011, 9 electricity bills, 4 xerox copies of Aadhaar cards of plaintiffs, certified copy of the Recovery petition in Crl. Misc. No.409/2024 and copy of summons in O.S. No.39/2020.*

13. *On the other hand, the defendants relied upon copy of legal notice and deposition in S.C. No.38/2020, certified copy of written statement in Original Suit No.39/2020 on the file of this Court.*

14. *On perusal of the same it is noticed to the court that, this is the suit filed by the plaintiffs who being the wife and children of defendant No.8 seeking partition in respect of the suit schedule properties mentioned therein regarding their 1/5th share each i.e., 4/5<sup>th</sup> share jointly in the suit properties and seeking declaration that alleged registered Watni Patra dated:07.01.2022 is illegal, null and void and not binding upon the plaintiffs and their share in the suit schedule properties and further seeking declaration regarding sale deed dated:07.04.2022 registered in favour of defendant No.17 in respect of property bearing R.S. No.5/ 1A+1B/2 property at Sl. No.2(I) of schedule B of the suit properties is illegal and not binding upon their share, further seeking declaration regarding registered sale deeds in respect of B schedule properties at Sl.No.1 dated:14.07.2005 in favour of defendant No.14 and the sale deed dated:03.07.2014 in respect of Sl. No.3 property in favour of defendant No.15 dated:08.04.2004 in respect of Sl. No.5 property in favour to defendant No.16 is illegal, null and void and not binding*

*upon the plaintiffs shares. As per the contention of the plaintiffs they are the wife and children of defendant No.8 and the plaintiff No.1 to 3 are the grandsons of defendant No.1, because of the strained relationship between the husband of wife i.e., plaintiff No.4 and defendant No.8, the plaintiff No.1 to 3 are under the custody of the plaintiff No.4 who is the natural mother. Further as per the contention of the plaintiff that the suit schedule properties are joint family ancestral properties from fore fathers of the plaintiffs and the defendants and as per her contention till today no partition has taken place in between the joint family members in respect of the suit schedule properties. Further taken contention that there is a various Civil and Criminal and Matrimonial cases and Sessions cases are pending between the plaintiff No.4 and her husband defendant No.8 as well as defendant No.1 to 11. Therefore, she started to demand to affect partition of the joint family properties to protect the welfare of the minors, but the defendants have denied the same, the defendant No.8 who being the father of plaintiff No.1 to 3 totally neglected and discarded the welfare of the minor and the defendants have colluding with each other with an intention to deprive the share in the joint family properties started to alienate the suit properties*

*without any partition, but recently in the month of November-2023 the plaintiff obtained the records of rights, they came to know that the defendant No.1 to 4 without their knowledge illegally sold the property to the defendant No.14, 15, 16 and 17 as stated in the plaint. Therefore, the intention of the defendants is clear that illmotivated to deprive the share of the plaintiffs in the suit properties. Therefore, she filed the present suit for the above said relief as sought in the plaint. But, on the otherhand, the very contention of the defendants is that Sri. Siddanagouda Patil was the owner of the properties comprised suit schedule B(1) to (6) properties. After the death of Siddanagouda Patil in the year 02.06.2009 the defendant No.1 to 6 got partitioned the above said properties mutually thereafter registered partition was taken place dated:15.12.2021. And as per the partition deed the defendant No.1 to 6, 9, 11 to 13, 8 and 10 have allotted some of the properties, out of which defendant No.1 and 2 have sold some of the properties. Hence, the suit of the plaintiffs is not maintainable, if at all the plaintiffs have entitled for any share at the best they can claim only share in the defendant No.8 therefore the suit for partition by the plaintiffs against all heirs of Sri. Siddanagouda Patil and by*

*including all the properties again nonest in law and liable to be dismissed. Further taken specific contention that the suit suffers from non joinder of necessary parties and misjoinder and nonjoinder of properties, suit for partial partition without including all the properties is liable to be dismissed and Court fee paid by the plaintiffs is insufficient as they are excluded from possession of the suit properties. Therefore, they prayed for dismiss the said suit of the plaintiff with exemplary costs.*

*15. On careful perusal of the entire materials available on record it is noticed to the Court that there is no dispute in between the parties regarding relationship of the plaintiffs is concerned. Further, they have denied the said properties are ancestral properties, the very contention taken by the defendants is that the partition was effected on 02.06.2009 in respect of the properties, later on 15.12.2021 said partition deed got registered. But as per the contention of the plaintiffs the suit schedule properties are ancestral and joint family properties and there is no partition taken place in respect of the suit schedule properties. Moreover, regarding sale of some of the properties by the defendant No.1 and 2 is concerned, the*

*defendants have clearly admitted the said fact. Whether the partition was taken place or not and the plaintiffs having right over the said partitioned property or not and whether the sale of the properties by the defendant No.1 and 2 is binding or not binding upon the minors plaintiffs is to be decided after full fledged trial only. Further, in order to decide and come to the conclusion regarding the same the trial of the both parties are very important.*

*16. During the course of argument the counsel for defendant relied upon the decision reported in*

- 1. ILR 1989 Kar 1701*
- 2. 2010 (5) KCCR 3221*
- 3. 2017 (5) KCCR SN335*
- 4. 2020 (1) KCCR 494*
- 5. 2017 (5) KCCR 578*
- 6. ILR 1999 KAR 3037*
- 7. AIR 2008 Calcutta 68*

*17. On the other hand, counsel for plaintiffs relied upon a decisions in MFA No.6434/2024 of Hon'ble High Court of Karnatka 13.12.2024.*

18. On perusal of the document submitted by the plaintiffs it is noticed to the Court that suit properties are the ancestral properties and standing in the name of defendants. Admittedly, already the defendant No.1 and 2 have sold some of the properties in favour of defendant No.14 to 17. During the course of argument the counsel for defendant No.1 to 8, 11 to 13 vehemently argued that the plaintiffs are the branch of Channabasanagouda nor on Siddanagouda, moreover partition was effected in between the brothers of Siddanagouda and suit properties are fallen to the share of Siddanagouda who is the father of defendant No.1. Therefore, above said suit schedule properties are self acquired properties of Siddanagouda. Therefore, the plaintiffs have no birth right in the suit schedule properties and not inherited from their fore fathers. Therefore, there is no prima-facie reveals in favour of the plaintiffs, when they did not establish prima-facie in favour of them question of granting the above said order does not arise. In this regard they relied upon the above said decisions reported in ILR 1989 Kar 1701 in between Gourishankara Swamigalu Vs. Sri. Siddaganga Math, wherein this decision the Hon'ble Supreme Court held that existence of prima-facie case is harbinger to investigate other aspects, if no

*prima-facie case, balance of convenience and irreparable loss need no consideration.*

*Further relied upon the decision reported in 2010(5) KCCR 3221 in between Kashimath Samsthan and another Vs. Srimad Sudhindra Thirthaswami and another wherein this decision the Hon'ble Supreme Court of India held that when the party approaching to the Court is unable to prove the prima-facie case, temporary injunction has to be refused even if such party makes out a case for balance of convenience and irreparable injury.*

*Further relied upon the decision reported in 2017 (5) KCCR Sn.336 wherein this decision the Hon'ble High Court held that when the suit is not maintainable temporary injunction cannot be granted.*

*Further relied upon the decision reported in 2020(1) KCCR 494 wherein this decision the Hon'ble High Court of Karnataka held that when the party has not established existence of prima-facie case, irreparable injury and balance of convenience not justifiable.*

*Further relied upon the decision reported in 2017 (5) KCCR 578 wherein this decision the Hon'ble High Court of Karnataka held that while considering the application for grant of injunction Court will not only consider existence of prima-facie balance of convenience,*

*irreparable injury but also conduct of parties as relevant consideration to grant on refusal as it is an equitable relief.*

*Further relied upon the decision reported in ILR 1999 KAR 3037 in between Eswaraiah Vs. B.S. Siddalingappa, wherein this decision the Hon'ble High Court of Karnataka held that no injunction can be granted against coowner or persons in joint possession.*

*Further relied upon the decision reported in AIR 2008 Calcutta 68, wherein this decision the Hon'ble Calcutta High Court held that suit for permanent injunction by a cosharer against other cosharers to restrain them from exercising their right over any part of property in joint possession without claiming partition thereof is not maintainable.*

*The last two decisions is no way concerned to the suit of the plaintiff as the plaintiff filed present suit on hand for the relief of partition and separate possession not for permanent injunction.*

*19. So far as remaining decisions are concerned, when the plaintiff has fails to establish prima-facie case then only other two ingredients that balance of convenience and irreparable loss are not justifiable, but in the present suit on hand the plaintiffs have*

*establish prima-facie case, therefore the above said decisions are not applicable to the case on hand.*

20. *On the other hand, the counsel for plaintiff relied upon the decision reported in MFA No.6434/2024 (CPC) dated:13.12.2024 in between Mr. Parth Ghorpade Vs. Mr. Indrajeet D. Ghorpade, wherein this decision the Hon'ble High Court of Karnataka held that the question with regard to nature of the property and acquisition of the property, whether it includes the joint income of the family or whether it has been purchased out of his own income or whether his father had purchased the property along with son, these are the aspects that to be tried. The trial Court comes to the conclusion that the matter requires to be tried regarding nature of the property and entitlement of share. When the pleadings are very clear that the property belongs to the great grandfather and grandfather of the plaintiffs and also no disposition as a sole coparcener, but subsequent to the birth of the plaintiffs, the principles laid down by the Apex Court in the judgment referred supra. The Appellants come to the aid of the plaintiffs. The trial Court failed to take note of the material on record, particularly the case o the facts the acquisition of the property by the great grandfather, hence the trial court ought to*

*have granted the relief of temporary injunction not to alienate the suit schedule property.*

21. *Wherein this case as per the contention of the plaintiffs the suit properties are ancestral and joint family properties, some of them have earned from the joint family income and without knowledge of the plaintiffs they created documents like partition deed and sale deeds without allotting the respective shares of the minor plaintiffs. Whether such sale deed is legal or illegal and whether the partition deed is legal or illegal, whether the plaintiffs have right over the said properties are not is to be considered after full fledged trial and in order to come to the conclusion regarding genuinity of the sale deeds and partition deed the trial of the both parties is necessary.*

22. *At this stage without going in to the merits of the case and without holding the mini trial, this court has considered the aspect of prima-facie case. At this stage, the courts makes it very clear that, this court is looking towards the prima-facie case and not prima-facia title. It is settled principles of law that at the time of disposing of temporary injunction application, the court cannot go in to the prima-*

*facie title and only to consider whether the plaintiff has made out prima-facie case for grant of interim relief.*

23. *On perusal of the materials available on record it is noticed to the court that, if the defendants are allowed to alienate the suit schedule properties it would really cause multiplicity of the proceedings, moreover there is a prima-facie in favour of the plaintiffs regarding rights of the suit properties is concerned, whether it is legal or illegal it should be protected till decide the case on merits, if the relief is granted no hardship would caused to any of the parties. On contrary, the parties to the suit can get their relief subject to decree.*

24. *Hence, this court is of the opinion that, in this stage there is a prima facia reveals in favour of plaintiffs, Hence, I am of the considered opinion that, the plaintiffs have establish the prima-facie case in their favour, after considering all these facts, this court has answered **point No.1 in the Affirmative.***

25. **Point No.2 and 3:** *As these points are inter connected with each other, I have taken these points together for consideration in order to avoid repetition of facts.*

*The second condition for granting temporary injunction is that, the balance of convenience must be in favor of applicant. In other words the court must be satisfied that, the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing injunction will be greater than that, which is likely to be caused to the opposite party by granting it.*

*26. The object of the interlocutory injunction is to protect the plaintiff against the injury by violation of his right for which, he could not be adequately compensated if issues were resolved in his favor at the trial.*

*27. These are all the facts can be considered after full fledged trial. Anyhow, the plaintiff filed the above said application seeking an order of restraining the defendants from alienating the suit schedule properties pending disposal of the suit. In such circumstances, if we presume that the plaintiffs have get the relief in respect of the suit schedule properties it will not cause any hardship to the defendants otherwise the situation of the properties will be reversible at the time of suit is disposed off. Therefore there are sufficient grounds on record to hold that, the balance convenience*

and irreparable loss lies in favor of plaintiffs if injunction is not granted. In view of the above discussion, I answered **point No.2 and 3 in the Affirmative.**

28. **Point No.4:** On the basis of my reasons on point Nos.1 to 3, I proceed to pass the following

### **ORDER**

The I.A No.I filed by the learned counsel for the plaintiffs under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

Accordingly, the defendants are hereby restrained from alienating or creating any document in respect of the suit schedule properties till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, directly on Computer and typed by her. The same is corrected and then pronounced by me in the open court on this the **06<sup>th</sup> day of September 2025**)

sd/-  
(SMT. SARVAMANGALA K.M.,  
I Addl. Senior Civil Judge & JMFC.,  
Hubballi.