

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Yamanappa Karehanumanthappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No.411/2024

Dated this the 2nd day of August - 2025

Plaintiff : Smt. Kasturi W/o. Narayan Khalate
(Before marriage Kasturi D/o. Yogappa Garag).

.Vs.

Defendants : Raghavendra S/o. Mahadevappa Garag
and others.

PARTIES TO IA No.I

Applicant : Smt. Kasturi W/o. Narayan Khalate
(Before marriage Kasturi D/o. Yogappa Garag).

.Vs.

Opponents : Raghavendra S/o. Mahadevappa Garag
and others.

ORDER ON IA No.I U/o.39 Rule 1 AND 2 OF CPC

This suit is filed by the plaintiff for the relief of partition and separate possession. I.A. No.I is filed by plaintiff U/o.39 Rule 1 and 2 R/w. Section 151 of CPC seeking temporary injunction as against defendants from alienating the suit property pending disposal of the suit.

2. In support of the application, plaintiff has sworn affidavit stating that the suit property is joint family property and parties are co-owners and co-sharers of the same. The defendants No.1 to 3 are attempting to sell the suit property to third party without any partition and separate possession. If they succeeded in disposing off the suit property, she will be put to great loss and hardship. She has got fair chances of success in the matter and she has made out a prima facie case and balance of convenience lies in her favour. Hence, prayed to allow the application.

3. On issuance of suit summons, defendants No.1 to 3 have appeared and filed written statement. They have contended that the propositus Yogappa died on 04.12.1987 leaving behind his wife Tulasavva, a son- Mahadevappa and daughters by name Bakulabai, Kasturibai, Gandharibai and Kamalabai as his legal heirs. The said daughters have given consent wardi to enter the name of Mahadevappa alone and as per the said consent wardi the name of Mahadevappa was mutated to the suit property. Hence, without challenging the said mutation the suit filed by the plaintiff is not maintainable. Hence, the plaintiff has failed to establish the three golden rules of injunction as such the application is not sustainable either in law or on facts. Hence, prayed to reject the application.

4. I have heard both sides and perused the pleadings of the parties, I.A. as well as documents relied by both the parties to the suit. The following points arise for my consideration:

1. Whether the plaintiff has made out prima facie case?
2. Whether the balance of convenience is in favour of the plaintiff?
3. Whether the plaintiff would suffer irreparable injury, if her prayer for temporary injunction is dis-allowed?
4. What order?

5. My answer to the above points are as under.

Points No.1 to 3 : In the Affirmative.
Point No.4 : As per final order,
for the following:

REASONS

6. **Points No.1 to 3:** The relationship between the parties is not in dispute. The suit property is joint family property and parties are co-owners and co-sharers of the same. The propositus Yogappa died on 04.12.1987 leaving behind his wife Tulasavva, a son- Mahadevappa and daughters by name Bakulabai, Kasturibai- present plaintiff, Gandharibai and Kamalabai as his legal heirs. The defendants No.1 to 3 are the sons of Mahadevappa, who is brother of plaintiff. After the death of Yogappa the name of

his son Mahadevappa was mutated to the suit property bearing survey No.98A/8A as varsa. The defendants No.1 to 3 in their written statement para No.17 taken contention that the plaintiff and other legal heirs given consent wardi to enter the name of Mahadevappa alone on 30.09.1988. The plaintiff has disputed the revenue entries. Whether the plaintiff given consent or not yet to be decided by this court. After mutating his name, Mahadevappa transferred his right in the suit property to his sons i.e. defendants No.1 to 3. Now the defendants No.1 to 3 have partitioned the said property and entered their names to their respective share in the suit property. Since the relationship is not disputed, the full pledged trial is required to consider whether plaintiff has got share or not. The relief claimed by the plaintiff is partition and separate possession. Defendants have not disputed nature of the suit property. So, considering all these facts, this Court is of the considered opinion that the full pledged trial is required to decide the case on merits. If the suit property is transferred during pendency of the suit, then it will leads to multiplicity of proceedings, which is not permissible in the eyes of law. The suit property has to be preserved as it is pending disposal of the suit. So, without expressing any opinion on merits of the case, this Court is of the considered opinion that at this stage plaintiff has made out prima facie case with respect to suit property. The balance of convenience leans in her favour. If the temporary

injunction is refused, she will be put to hardship. Hence, I answer points No.1 to 3 in **in the Affirmative**.

7. **Point No.4:** In view of my answer to points No.1 to 3 as stated above, I proceed to pass the following;

ORDER

The I.A. No.1 filed by the plaintiff U/o.39 Rule 1 and 2 of CPC is allowed.

The defendants are restrained from alienating the suit property, by granting temporary injunction, pending disposal of the suit.

The costs shall follow the event.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **2nd day of August - 2025**)

(Yamanappa Karehanumanthappa)
Prl. Senior Civil Judge, Hubballi.

