



IN THE COURT OF THE ADDL, SENIOR CIVIL
JUDGE & JMFC., GADAG.

Present: **Smt. Padmashree Ratnakar Patil.,**

B.A. LLB. (Spl.)

Addl. Senior Civil Judge & JMFC., Gadag.

O.S. No. 196/2025

Dated this the 03rd day of June, 2026

PLAINTIFFS : Smt. Gangamma W/o
Veerapakshagouda Dyavanagoudar,
Age: About 75 years, Occ: House
wife, R/o: Devihosur,
Tq: Dist: Haveri and others.

(By Sri. G.B. Javoor, Adv.)

// Versus //

DEFENDANTS : Sri. Banappagouda
S/o.Ganganaouda Dyavanagoudar
Age: about 70 years, Occ: Agriculture,
R/o: Sulla, Tq: Hubballi,
Dist: Dharwad and others.

(By Sri. S.C. Makapur , Adv. For
defendant No. 5 to 7)
(Defendant No. 1 ex-parte)
(Defendant No. 2 to 4 absent)



PARTIES TO I.A NO.I

APPLICANTS : Smt. Gangamma W/o
(PLAINTIFFS) Veerapakshagouda Dyavanagoudar,
and others.

V/S.

OPPONENTS : Sri. Banappagouda
(DEFENDANT) S/o.Ganganaouda Dyavanagoudar
and others

ORDER ON I.A. NO.I FILED U/O 39 RULE 1 AND 2
AND R/W SEC.151 OF CPC

The plaintiff filed this application under Order 39 Rule 1 and 2 and R/W Sec.151 of CPC seeking to restrain the defendant No. 5 to 7 from alienating, transferring or encumbering on the suit properties in any manner until disposal of the suit.

2) The plaintiff sworn with the affidavit and submits that, the plaintiffs filed this suit for the relief of partition and separate possession claiming 1/3rd share



in the suit schedule properties. The plaintiff and defendant No. 1 to 7 are constitutes Hindu Undivided joint family, no partition has been effected in the joint family properties. It is an apprehance of the plaintiff that the defendants may alienate the suit property in order to avoid to allot legitimate share of the plaintiffs. Therefore, prayed to allow the application.

3) On the other hand, defendants No. 5 to 7 appeared through their counsel and filed written statement and also filed a memo on 03.01.2026 stating that the contents of the written statement be consider for objection to IA No.I.

4) The defendant denied all the averments of plaint and contended that the suit of the plaintiff bad for non-joinder of necessary parties. The suit properties are absolute properties of this defendant and along with defendant No.6 and 7. The plaintiffs not properly



described the gemology of the family. Further it is submitted that, the plaintiffs branch is different and the branch of defendants is different, therefore, they cannot claim partition against these defendants. Therefore, prays to dismiss the application.

5] In view of the above said pleading following points arises for consideration of this court:

1. Whether the Plaintiffs prove Prima-facie case?
2. Whether the plaintiffs prove balance of convenience lies in his favour and irreparable loss would be caused to him if injunction is denied?
3. What Order?

6] Heard both side.

7] My finding on the above points is as under:

Point No. 1 : In the Affirmative

Point No. 2 : In the Affirmative

**Point No. 3 : As per final order for
the following;**

**REASONS**

8] **Point No.1** : The plaintiffs filed this suit for the relief of partition and separate possession of the suit properties against the defendants.

9) The plaintiffs submits that, suit properties are joint family properties and no partition has been effected in their family property. It is submitted that, the suit property item No. 3 bearing R.S. No. 118/5A+B standing in the name of defendant No. 6 and suit property item No. 1 bearing R.S. No. 40/1 standing in the name of defendant No. 7 as such defendant No. 6 and 7 made a party to this proceeding.

10] It is further submitted that, suit schedule A item No.2 property bearing R.S. No. 52/3 is Inam land, which has been granted in the name of Virupakshagouda on 16.06.1952, the



Virupakshagowda is doing Pooja work of Maruti devara temple in the Hunasikatti village as such the government has been issued R.S. No. 52/3 property in the name of virupakshagouda. After the death of virupakshagouda the plaintiffs are became whole and sole legal heirs and absolute owners of item No.2 property. The defendants not having any share over the item No.2 property. The defendant No. 5 behind the back of plaintiff mutated the property in his name in the revenue records. The defendant No. 5 Neelappagouda get mutated his name in all agricultural lands colluding with revenue department behind the back of plaintiffs. After that defendant No. 5 gifted the suit item No. 1 and 3 property in favour of his son Mallanagouda and wife Smt. Laximbayi on 17.07.2019. The defendant No. 5 created all these revenue documents in the name of defendant No. 6 and 7. Therefore, plaintiff constrained to file this



application. The plaintiff submits that, there is a prima-facie case and balance of convenience in favor of plaintiff. If the injunction is not granted irreparable loss would be caused to the plaintiff.

11] The defendant counsel at the time of argument submitted the copy of the documents along with memo on 16.03.2026 stating that, suit properties are purchased by family of defendants. Therefore, the said properties are absolute properties of defendants. The plaintiffs are no way concerned to the this branch of family. In order to gulp the property of defendants plaintiffs filed this suit. But in order to ascertain these fact trail is required. At this juncture plaintiffs claiming that, they are also having share in all the suit properties and prayed for restrained the defendants from alienating the suit property.



12] It is the specific case of the plaintiff that, defendant No. 5 to 7 get mutated their name in the revenue records. But however, they do not have any right over the suit properties. As per the pleadings of defendants the suit properties are absolute properties and they are in the possession of the suit properties. In order to ascertain these facts full fledged trail is required. No doubt if injunction is not granted, by taking a advantage name appearing in the revenue records the defendants may sell the property. The property should be kept in tact till disposal of the suit. If the injunction is not grant it will cause multiplicity of the proceedings.

13] Looking to the pleading of the both side parties, in order to ascertain above said facts trail is required. Till then suit property should be kept intact. If the defendant is alienate the suit schedule property it will cause multiplicity of the proceeding.



The Hon'ble High court of Karnataka in its recent order passed in MFA 101088/20 dated 24.08.2020 Between Shree Samathan Mahabaleshwar Deva Gokarna and others Vs U.F.M. Ananthraj and others.

The Hon'ble High Court laid down following principle of law that discretion of the court, while granting order to temporary injunction in favour of the plaintiff, must meet following requirement,

(i) Existence of prima facie as pleaded necessitating protection of rights of issue of Temporary injunction.

(ii) when the need for protection of plaintiffs rights is compared with or weighed against the need for protection of defendants rights, or material infringement of defendants rights, the balance of convenience in favour of the plaintiffs or defendants.



(iii) clear possibilities of irreparable injury being caused to the plaintiffs if the temporary injunction is not granted. in addition the temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiffs conduct is free from blame and he approaches the court with clean hands.

The Hon'ble High court above said decision coted this citation reported in ILR 2006 (KAR)3961 between Reebok Company Vs Gomzi Active.

para 15] A party would be entitle to relief under order 39 Rule 1 and 2 provided it satisfies the court that it has a prima-facie case, that balance of conveniences in his favour and that irreparable loss and injury would be caused to him if interim relief is not granted. The aforesaid three phrases, as emphasized time and again, are not rhetoric phrases



but elastic words to meet a wide range of situation in given set of facts and circumstantial. The Burden is always on the plaintiff/applicant to satisfy the court that a prima-facie case exists in his favour.

14] Looking to the facts and circumstances of the case the plaintiff has at this juncture established the prima-facie case in their favour. For these reasons this court holds point no 1 In the Affirmative.

15] **Point No.2 :** Injunction relief is equitable relief. If the injunction is granted no hardship or loss would be caused to the defendant No. 5 to 7. Since defendants are denying the ownership over the suit property, therefore balance of convenience is lies in favour of plaintiffs. Moreover if injunction is not granted, it will cause irreparable hardship to the plaintiffs and it will cause multiplicity of the proceedings. At this juncture as guidelines laid by the



Hon'ble High court, the plaintiffs have satisfied all the three ingredients. For all these reasons and discussions this court holds point No.2 in the affirmative.

16] **Point No. 3:** In the result proceed to pass the following order.

:O R D E R:

The application No.I filed U/o 39 Rule 1 and 2 and R/w Sec.151 of CPC by plaintiffs is hereby allowed.

The defendant No. 5 to 7 are restrained from alienating/creating any charge over the suit schedule property in any manner as prayed in the application till disposal of the suit.

(Dictated to the typist directly on computer typed by her, the same is corrected and then pronounced by me in the open court on this the 03rd day June 2026)

(Smt. P.R.Patil)
Addl. Senior Civil Judge and
JMFC, Gadag.