

**IN THE COURT OF PRL. SENIOR CIVIL JUDGE AND
CJM, GADAG**

PRESENT

**SRI. G.R. SHETTAR., B.com. LL.B (Spl)
PRL.SENIOR CIVIL JUDGE AND CJM, GADAG**

DATED THIS 03RD DAY OF JANUARY, 2026

O.S.No.341/2025

PLAINTIFF:

Kirankumar S/o Hanamantappa Jogin,
Age: 24 years, Occ: Agriculture,
R/o Shyagoti, Tq:Dist:Gadag.

(R/by Sri M.B.Sajjanar., Advocate)

Vs

DEFENDANTS:

1. Kasturevva W/o Hanamantappa Jogin,
Age: 50 years, Occ: Household,
R/o Shyagoti, Tq:Dist: Gadag.
2. Devendrappa W/o Hanamantappa Jogin,
Age: 27 years, Occ: Carpenter,
R/o Shyagoti, Tq:Dist: Gadag.
3. Shankrappa S/o Somarayappa Jogin,
Called himself as Adopted son of Kamalavva
W/o Dyamappa Jogin,
Age: 25 years, Occ: Agriculture,
R/o Shyagoti, Tq:Dist:Gadag.

(Dft.No.1 & 2-R/by Sri.S.G.Gaji., Advocate)
(Dft.No.3-R/by Sri.A.D.B. Advocate)

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PARTIES To I.A. No.I**APPLICANT/
PLAINTIFF :**

Kirankumar S/o Hanamantappa Jogin.

Vs

**OPPONENTS/
DEFENDANTS :**

Kasturevva W/o Hanamantappa Jogin
& others.

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i.	Provision under which the application is are filed	U/o 39 Rule 1 and 2 R/w Sec.151 of CPC
ii.	Relief sought for	For restraining the defendant No.3 from alienating the suit property
iii.	The date on which the application is filed	26/07/2025
iv.	Number of applications	I.A.No.I
v.	Date on which the objections is filed by different opponents	05/12/2025
vi.	Date on which order is passed on said application	03/01/2026

ORDER ON I.A.No.I U/O 39 RULE 1 & 2 OF CPC

Plaintiff has filed the present application praying for restraining the defendant No.3 from alienating the suit property till disposal of the suit.

2. Application is supported by the affidavit sworn to by the plaintiff wherein, it is contended that he has filed the suit for partition and separate possession, propositus Somarayappa died leaving behind his children by name Dyavappa, Kamma, and Manappa. Said Dyavappa his wife Shavakka, daughter Kamalavva, also died. Kamma and Manappa also died leaving behind her daughter Tungamma who is the wife of Manappa, said Manappa and Tungamma died leaving behind their children Hanamantappa and Indirabai, Hanamantappa died leaving behind the plaintiff and defendants No.1 and 2 as his legal heirs, suit property is the ancestral and joint family property, all are in joint possession, no partition is taken place. It is further contended that the defendant No.3 who is no way concerned to the plaintiff's family or suit property, falsely claiming to be the adopted son of Kamalavva and got entered his name of the suit property and then by taking undue advantage of his name appearing in the property records is trying to alienate the suit property, when the plaintiff asked for his legitimate share, the

defendants have refused to effect partition. Hence, the plaintiffs constrained to file the suit and application.

3. After service of summons, the defendant No.3 has filed written statement denying the plaint averments as false except the facts which are specifically admitted and also filed memo adopting the contents of written statement as objections to I.A.No.I. It is contended that suit property was fallen to the share of Dyavappa, after his death Ningappa inherited the suit property and allotted $\frac{1}{2}$ share to Tungamma. These facts are suppressed by the plaintiff. Kamalavva took the defendant No.3 in adoption. After the death of Kamalavva the defendant No.3 applied for mutation but the plaintiff and defendants No.1 and 2 filed objection before the Tahasildar, hence mutation was rejected, then order was passed by the Asst. Commissioner in RTS AP.No.58/2003-04 in name of the defendant No.3 was mutated. It is further contended that plaintiff and defendants No.1 and 2 has filed OS No.43/2006 against the defendant No.3 and one Bharati before the court of Prl.Civil Judge Gadag, but said suit came to be

dismissed on 01.06.2006. RA No.46/2009 and RSA No.5285/2012 preferred against said Judgment and decree were also dismissed by confirming the order of the trial court, the defendant has become owner of the suit property by virtue of registered Adoption deed, the matter is already reached finality as such suit of the plaintiff is hit by Res –Judicata. So, the suit is not maintainable, the plaintiff has not made out prima facie and balance of convenience is also not in his favour. Hence, prayed for dismissal of the suit and application.

4. Heard the arguments.

5. The points arise for my consideration are:

P O I N T S

I. Whether the plaintiff has made out prima-facie case?

II. Whether the balance of convenience lies in favour of the plaintiff?

III. Whether the plaintiff would be put to irreparable loss, if the T.I. as prayed is not granted?

IV. What order ?

6. My findings on the above points are:

POINT No.I : In the Affirmative

POINT No.II : In the Affirmative

POINT No.III : In the Affirmative

POINT No.IV : As per the final order
for the following:

REASONS

7. **POINTS No.I & II**: Plaintiff has contended that he and the defendants No.1 and 2 constitute joint family, suit property is ancestral and joint family property, no partition is taken place, all are in joint possession, the defendant No.3 who is no way concerned to the plaintiff's family or suit property, falsely claiming to be the adopted son of Kamalavva and got entered his name of the suit property and then by taking undue advantage of his name appearing in the property records is trying to alienate the suit property, when the plaintiff asked for his legitimate share, the defendants have refused to effect partition.

8. Per contra the defendant No.3 has contended that suit property was fallen to the share of Dyavappa, after his death Ningappa inherited the suit property and allotted $\frac{1}{2}$ share to Tungamma, Kamalavva took the defendant No.3 in adoption, her death the defendant No.3 become the owner of the suit property. The plaintiff and defendants No.1 and 2 has filed OS No.43/2006

against the defendant No.3 and one Bharati, said suit came to be dismissed on 01.06.2006, R.A.No.46/2009 and RSA No.5285/2012 filed against said Judgment and decree also dismissed by confirming the order of the trial court. The defendant has become owner of the suit property by virtue of registered Adoption deed. The matter is already reached finality as such suit of the plaintiff is not maintainable and hit by the principle of Res-Judicata.

9. I have gone through the entire material carefully. Plaintiff has claimed that the suit property is the ancestral joint family property of him and defendants No.1 and 2 and the defendant No.3 is no way concerned to the suit property. The defendant No.3 has contended that got title to the suit property by virtue of the registered adoption deed and suit is hit by principles of Res-Judicata. To decide the real dispute between the parties, full-fledged trial is required. Present application has to be decided on the basis of the material produced at this pretrial stage. The defendant No.3 has not produced any material at this stage in support of his

contentions. For granting the temporary injunction, prima facie is to be looked into, prima facie case includes maintainability of suit. On going through the material produced at this pre trial stage suit of the plaintiff is absolutely maintainable and fit of trial. Therefore, I am of the opinion that the plaintiff has made out prima facie case and balance of convenience is also in favour of plaintiff. Hence, I answer the Point No.I and II in the Affirmative.

10. **POINT No. III:** As discussed above, suit of the plaintiff is maintainable and fit for trial and plaintiff has made out prima facie case. The plaintiff has contended that the defendant No.3 by taking undue advantage of his name appearing in the suit properties are trying to alienate the suit property. Purpose of granting temporary injunction is to maintain the state of thing as exists today till disposal of the matter in controversy. If, the defendant No.3 succeed in alienating the suit property, the situation will become irreversible as on the date of disposal of matter and it will lead to multiplicity of proceedings. Under such circumstances if, the

temporary injunction as prayed in I.A.No.I is not granted the plaintiff will be put to irreparable loss than the defendant No.3. Hence, I answer the Point No.III in the Affirmative.

11. **POINT No.IV**: As discussed above, I proceed to pass the following:

ORDER

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

The defendant No.3 is hereby restrained from alienating the suit property in any manner till disposal of the suit.

No order as to cost.

(Dictated to Stenographer, transcribed and typed by him, printed, then corrected and pronounced by me in the open court on this the **03rd day of January, 2026**)

(G.R.SHETTAR)
Prl. Senior Civil Judge & CJM.,
GADAG