

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

PRESENT

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

DATED THIS 03RD DAY OF JUNE, 2026

O.S.No.469/2025

PLAINTIFFS:

1. Jyotika W/o Shantaveerappa Hugar,
Age: 22 years, Occ: Agriculture/Household,
R/o Halageri, Tq:Dist:Koppal.
2. Anjali D/o Manjunath Hugar,
Age: 17 years, Occ: Student,
C/o Sharanappa Hugar,
R/o Kalasapur, Tq:Dist:Gadag.
(Plff No.2 minor represented by guardian-
sister plaintiff No.1 Jyotika W/o
Shantaveerappa Hugar)

(R/by Smt.Rekha Konnur., Advocate)

Vs

DEFENDANTS:

1. Shankrappa S/o Rathnappa Hugar,
Age: 70 years, Occ: Agriculture,
R/o Kalasapur Tq:Dist:Gadag.
2. Sharanavva W/o Shankrappa Hugar,
Age: 60 years, Occ: Household,
R/o Kalasapur Tq:Dist:Gadag.
3. Renuka W/o Ashok Hugar,
Age: 43 years, Occ: Household,
R/o Kalasapur Tq:Dist:Gadag.
4. Kumari Madhushree D/o Ashok Hugar,
Age: 17 years, Occ: Student,
R/o Kalasapur Tq:Dist:Gadag.

5. Kumara Puttaraj S/o Ashok Hugar,
Age: 15 years, Occ: Student,
R/o Kalasapur Tq:Dist:Gadag.
6. Kumara Akash S/o Ashok Hugar,
Age: 12 years, Occ: Student,
R/o Kalasapur Tq:Dist:Gadag.

(Defendant No.4 to 6 are minors represented
by their natural mother – defendant No.3 Renuka
W/o Ashok Hugar)

7. Sharanappa S/o Shankrappa Hugar,
Age: 42 years, Occ: Agriculture,
R/o Kalasapur, Tq:Dist:Gadag.
8. Fakeerappa S/o Shankrappa Hugar,
Age: 38 years, Occ: Agriculture,
R/o Kalasapur, Tq:Dist:Gadag.
9. Nagendrasa S/o Rajansa Merawade,
Age: 48 years, Occ: Business,
R/o Betageri, Tq:Dist:Gadag.
M:9448838202
10. Tippansa S/o Rajansa Merawade,
Age: 69 years, Occ: Business,
R/o Mallikarjun Road, Betageri,
Tq:Dist:Gadag. M:9448596286
11. Vandanabai W/o Mahadevasa Merawade,
Age: 59 years, Occ: Household,
R/o Mallikarjun Road, Betageri,
Tq:Dist:Gadag. M:9448596286
12. Gurunath S/o Rajansa Merawade,
Age: 63 years, Occ: Business,
R/o Mallikarjun Road, Betageri,
Tq:Dist:Gadag. M:9448596286

(Dfts.No.1 to 7-R/by Sri Y.B.Basavaraddi, Advocate)

(Dft.No.8 – Ex-parte)

(Dfts.No.9 to 12-R/by Sri C.S.Rachayyanavar., Advocate)

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

Jyotika W/o Shantaveerappa Hugar
& Another.

Vs

**OPPONENTS/
DEFENDANTS :**

Shankrappa S/o Rathnappa Hugar
& others.

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i.	Provision under which the application is filed	U/o 39 Rule 1 and 2 R/w Sec.151 of CPC
ii.	Relief sought for	To restrain the defendant No.9 to 12 from alienating the suit properties
iii.	The date on which the application is filed	10/10/2025
iv.	Number of application	I.A.No.II
v.	Date on which the objection is filed by different opponent/s	30/04/2026
vi.	Date on which the order is passed on the application	03/06/2026

**ORDER ON I.A.II U/O 39 RULE 1 & 2
R/W SEC.151 OF CPC**

Plaintiffs have filed the present application praying for restraining the defendants No.9 to 12 from alienating the suit properties in any manner till disposal of the suit.

2. Application is supported by the affidavit sworn to by the plaintiff No.1 wherein it is contended that they have filed the suit for partition and separate possession and contended that the plaintiffs are the children of one Manjunath who is the predeceased son of the defendant No.1, they and defendants No.1 to 8 constitute joint family, suit properties are the ancestral and joint family properties, all are in joint possession, no partition is taken place. This being the fact the defendants No.1, 2, 7, deceased Ashok and 8 colluding with each other have sold the suit Sl.No.1(1) Sy.No.208/10 (old Sy.No.208/1C) in favour of defendant No.9 on 02.09.2015 and also Sl.No.1(2) property to the defendant No.10 to 12 on 15.06.2017. The plaintiffs came to know about these transactions in August 2025. Said alienations are made without knowledge and consent of the plaintiffs as such same are not binding on the rights of the plaintiffs in the suit properties. When the plaintiffs asked the defendants No.1 to 8 to allot their share in the suit properties but they have not responded properly. The plaintiffs further learnt that the

defendants No.9 to 12 are trying to alienate the suit properties or to create third party interest. Hence, the plaintiff constrained to file the suit and the application.

3. After appearance, the defendants No.8 has remained Ex-parte. The defendants No.1 to 7 though appeared but not filed the written statement. The defendant No.12 has filed written statement and memo adopting the written statement as objection to I.A.No.II. The defendants No.9 to 11 have adopted the written statement of defendant No.12. In the written statement the defendant No.12 has denied the plaint averments as false and suit as not maintainable. It is further contended that the defendant No.1-Shankrappa was the absolute owner in possession and he had every right to deal with the suit properties. The defendant No.1 representing to be absolute owner, for his family and legal necessity and also to discharge of family loans has sold the suit properties in favor of the defendants No.9 to 12 through registered sale deeds dated:02.09.2015 and 15.06.2017 and they have been put in possession, their

names have been mutated to the suit properties and they are the bonafide purchasers for value, when suit properties are alienated by one Shankrappa S/o Ratnappa Hugar and such alienation is consented by his heirs, there is no cause of action arose to the plaintiffs and defendants to seek partition and suit properties are not available for partition. It is further contended that after purchase the defendants No.9 to 12 have got converted the suit properties to non-agriculture by order of the Deputy Commissioner Gadag dated:09.10.2018, layout has been approved by the Gadag-Betageri Town planning Authority, ADLR, Gadag, has approved KJP as per NAG/2019-20, recognized the plot numbers, which included road, civic amenities. Thus the suit properties as claimed by the plaintiffs are not available as such suit of the plaintiffs is not maintainable. The plaintiffs are not in possession of the suit properties as on the date of suit as such they cannot seek for partition and separate possession and injunction as prayed for. It is further contended that suit is not properly valued and court fee paid on the plaint is insufficient, cause of action shown

by the plaintiffs is imaginary, suit is barred by limitation. The plaintiffs have filed suit only to harass the defendants No.9 to 12. Hence, prayed for dismissal of the suit and IA No.II with cost.

4. Heard the arguments.

5. The points arise for my consideration are:

P O I N T S

- I. Whether the plaintiffs have made out prima-facie case?
- II. Whether the balance of convenience lies in favour of the plaintiffs?
- III. Whether the plaintiffs 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:

R E A S O N S

7. **POINTS No.I & II**: Plaintiffs have contended that they and defendants No.1 to 8 constitute joint family, suit properties are the ancestral and joint family properties, all are in joint possession, no partition is

taken place. This being the fact the defendants No.1, 2, 7, deceased Ashok and 8 colluding with each other have sold the suit properties in favour of defendant No.9 to 12, said alienations are made without knowledge and consent of the plaintiffs as such same are not binding on the rights of the plaintiffs in the suit properties, when the plaintiffs asked the defendants No.1 to 8 to allot their share in the suit properties but they have not responded properly. The plaintiffs learnt that the defendants No.9 to 12 are trying to alienate the suit properties or to create third party interest.

8. The defendants No.1 to 7 though appeared but not filed the written statement and not denied the plaint averments at this stage. The defendant No. 9 to 12 have denied the plaint averments and contended that the defendant No.1-Shankrappa was the absolute owner in possession having every right to deal with the suit properties, he representing to be absolute owner, for his family and legal necessity and also to discharge of family loans has sold the suit properties in favor of the

defendants No.9 to 12 through registered sale deeds and delivered the possession, such alienation is consented by his heirs, their names have been mutated to the suit properties and they are the bonafide purchasers for value. After purchase the defendants No.9 to 12 have got converted the suit properties to non-agriculture, formed layout, same has been approved by the Gadag-Betageri Town planning Authority and ADLR, Gadag has approved KJP, recognized the plot numbers, which included road, civic amenities. Thus the suit properties as claimed by the plaintiffs are not available as such suit of the plaintiffs is not maintainable. The plaintiffs are not in possession of the suit properties as on the date of suit as such they cannot seek for partition and separate possession and injunction as prayed for. Suit is not properly valued and court fee paid on the plaint is insufficient, cause of action shown by the plaintiffs is imaginary, suit is barred by limitation.

9. I have gone through the entire material carefully. Plaintiffs have filed the suit for partition and separate

possession claiming share in the suit properties and contended that they and defendants No.1 to 8 constitute joint family and the plaintiffs are having legitimate share but the defendants No.1, 2, 7, deceased Ashok and 8 have sold the suit properties in favor of defendants No.9 to 12. At this stage defendant No.1 to 8 have not disputed the relationship between them and plaintiffs and nature of the suit properties as claimed by the plaintiffs. The contesting defendant No.9 to 12 have contended that the defendant No.1 representing to be the absolute owner has sold the suit properties, as such they are the bonafide purchasers of the suit properties.

10. Learned counsel for the defendants No.9 to 12 during has argued that the plaintiffs have shown the suit properties as revenue lands but it is clear from the material produced by the defendants that suit properties have been converted to non-agriculture, residential plots have been formed and thereby the properties lost the identity of revenue lands, the plaintiffs knowingly filed the suit without proper description of the suit properties,

the suit properties in the form as claimed by the plaintiffs are not at all available, therefore, suit of the plaintiffs is not maintainable. It is further argued that even if the suit of the plaintiffs is fit for trial but no prima facie case is made out and balance of convenience is in favour of the defendants No.9 to 12.

11. On going through the material it could be seen that, the plaintiffs have shown the suit properties as revenue lands but according to the defendant No.9 to 12 the suit properties are converted from revenue land to non-agriculture purpose, layout is formed and its nature is changed but it is pertinent to note that the properties are same. To decide the real dispute between the parties, full-fledged trial is required. Present application has to be decided on the basis of material produced at this pre trial stage. 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 plaintiffs is absolutely maintainable and fit for trial.

Therefore, I am of the opinion that the plaintiffs have made out prima facie case and balance of convenience is also in favour of plaintiffs. Hence, I answer the Point No.I and II in the Affirmative.

12. **POINT No.III** : As discussed above, suit of the plaintiffs is maintainable and fit for trial. In this case, after filing the suit, Ex-parte temporary injunction was granted and same has been extended further. Purpose of granting temporary injunction is to maintain the state of thing as exists today till disposal of the matter in controversy. Admittedly, suit properties are standing in the name of defendants No.9 to 12. If the said defendants alienate the suit properties, 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 is not granted, the plaintiffs will be put to irreparable loss than the defendants. Hence, this point is answered in the Affirmative.

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

ORDER

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

The defendant No.9 to 12 are hereby restrained from alienating the suit properties 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 **03rd day of June, 2026**)

Sd/-

(G.R.SHETTAR)

**Prl. Senior Civil Judge & CJM.,
GADAG**