

KAHS510002242024



Presented on : 22-01-2024

Registered on : 22-01-2024

Decided on : 24-10-2025

IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC., BELUR**Present:-****Smt. Salma A.S.****B.B.A., LL.B.,(Hons)****Addl. Civil Judge and JMFC., Belur.****Dated this, the 24th day of October, 2025****O.S. No. 42/2024**

Manoj Y.C. S/o Chandrashekhar and another

...Plaintiff

-Versus-

H.T. Venkategowda S/o late Thimmegowda and others

....Defendants

I.A. No.II

Pooja Y.C. D/o Chandrashekhar

..Applicant/plaintiff No.2

-Versus-

H.T. Venkategowda S/o late Thimmegowda and others

..Opponents/Defendants

(By- **Sri. C.M.P.**, Advocate for Plaintiff)(By- **Sri. C.M.C.**, Advocate for Defendant No.1 to 3)

1	Provision under which the application is filed	U/o 39 rule 1 and 2 of CPC
2	Relief sought for	Temporary Injunction
3	The date on which the application is filed	22.01.2024
4	Number of the application	1
5	The date on which the objections are filed by different opponents	03.08.2024
6	The date on which the orders were passed on the application	24.10.2025

ORDERS ON I.A. NO.II

The the plaintiff has filed IA No.II under order 39 rule 1 and 2 of CPC with a prayer to restrain the defendants from alienating and creating any charge over the suit schedule properties till disposal of the suit.

2. In support of the IA plaintiff No.2 has filed an affidavit contending that, the present suit is filed for the relief of partition and separate possession. That the defendant No.1 is the grand father of the plaintiffs. That the defendant No.1 Venkategowda had 3 children i.e., Rajalakshmi, Harish and Krishnamurthy. That the 1st daughter of the defendant No.1 Rajalakshmi had died on 20.05.2004. That the plaintiffs are her children. That the 2nd and 3rd defendants are the sons of Venkategowda. That the suit schedule item No.1 to 4 properties are ancestral proerties of defendant No.1. That the suit schedule item No.5 and 6 property is purchased out of the income derived from suit schedule item No.1 to 4 properties. That the defendant No.1 being the Karta of the family got entered his name in the revenue records. That there

was no partition with respect to the suit schedule properties till date. That the plaintiffs requested the defendants to partition the suit schedule properties and allot the 1/4th share of their mother to them, but the defendants refused to do so. That the defendant No.2 and 3 have got changed the Khata of the suit schedule item No.1 to 3 in their name illegally and is trying to alienate the same. Hence the present IA. That the prima-facie case and balance of convenience lies in favour of the plaintiffs and if IA is not allowed the plaintiffs will be put to irreparable loss and injury that cannot be compensated in terms of money.

3. That the defendants have filed a memo stating that, the contents of written statement may be treated as objection to IA. The defendants have filed the written statement contending that, the suit of the plaintiffs is not maintainable either on law or on facts. That the plaintiffs have no right to claim partition in the suit schedule properties. That the suit is bad for non inclusion of all the joint family properties and nonjoinder of necessary parties. That the suit schedule properties are not the properties of plaintiffs family. That the property bearing Sy No.121 measuring 35 guntas, property bearing Sy No.15/13 measuring 1 acre 0.1 gunta and property bearing Sy No.13/1 measuring 34 guntas is purchased by defendant No.1 out of his own income, as such the suit schedule item No.4 to 6 properties are the self acquired properties of defendant No.1. That as per the sale deed all the revenue records are transferred in the name of defendant No.1. That the suit schedule item No.1 to 3 properties and the remaining property standing in the name of defendant No.1's brother, which is the property of defendant No.1's father is entered in the name of

defendant No.1 only for the purpose of maintaining the family. That the defendant No.1 has obtained loan from bank and has developed the said property. That the defendant No.1 has performed the marriage of plaintiff's mother Rajalakshmi grandly by giving gold ornaments to her and her husband. Even after the plaintiffs were born gold and silver ornaments were gifted. That those gold ornaments are not included in the suit schedule. That the plaintiffs with an intention to take share in the self acquired property of defendant No.1 has filed a false suit. It is denied that the suit schedule item No.1 to 4 properties are the ancestral properties of defendant No.1 and out of the income derived from the said property the suit schedule item No.5 and 6 properties were purchased. Further it is denied that in spite of repeated requests the defendants failed to partition the suit schedule properties and allot the share of the plaintiffs. That the plaintiffs have no right over the suit schedule properties and there is no cause of action to file the present suit. Hence prayed to dismiss the suit.

4. Heard learned counsel for the plaintiffs and defendants.

5. After perusal of the records of the case, the following points would emerge for my consideration:

1. Whether the plaintiffs have made out a prima-facie case?
2. Whether the balance of convenience is lies in favour of the plaintiffs?
3. Whether the plaintiffs would be put to untold hardship and irreparable loss if the temporary injunction is not granted?

4. What order?

6. My findings on the above points are as under:

Point No.1: Partly in the Affirmative,

Point No.2: Partly in the Affirmative,

Point No.3: Partly in the Affirmative,

Point No.4:As per final order for the following:

REASONS

7. **Point No.1 to 3:** I have taken these three points together for my common discussion as they are inter-linked with each other in order to avoid repetition of the same.

It is the contention of the plaintiffs that, the suit schedule properties are the ancestral properties of defendant No.1. That in spite of repeated request the defendants failed to effect partition and allot the share of the plaintiffs. That suit schedule item No.1 to 4 properties are the ancestral properties of defendant No.1. That the suit schedule item No.5 and 6 properties are purchased out of income derived from suit schedule item No.1 to 4 properties.

8. As such all the suit schedule properties are joint family properties. The defendants have filed the written statement by admitting the relationship, but has contended that the suit schedule item No.4 to 6 properties are purchased by defendant No.1 under registered sale deeds out of his own income. As such it is the self acquired properties. That the suit schedule item No.1 and 3 properties are inherited by defendant No.1 from his mother Puttamma, as such during the lifetime of defendant No.1 the

plaintiffs have no right over the said properties. That the suit schedule item No.2 property is allotted to the share of defendant No.1 in the partitioned between defendant No.1 and his brother. Hence the plaintiffs have no right over the suit schedule properties.

9. It is not in dispute that the plaintiffs are the grand children of defendant No.1. For the plaintiffs to claim birth right in the properties of their mother, it must be either joint family property or ancestral property. Hence here it is important to know what is an ancestral property and joint family/ Coparcenary property.

The conception of a Joint Hindu Family constituting a Coparcenary is that of a common male ancestor with his lineal descendants in the male line within four degrees counting from, and inclusive of, such ancestor or three degrees exclusive of the ancestor. Thus, a male member of a joint family and his sons, grandsons and great grandsons constitute a Coparcenary. A coparcener acquires a right in the Coparcenary property by birth but his right can be ascertained in definite terms only when a partition takes place.

The Hon'ble Apex Court of India between **Vineeta Sharma V/s Rakesh Sharma & Others (Supra)** at Page 34 Para 24 has held as under:

“Coparcenary property is the one which is inherited by a Hindu from his father, grandfather, or great grandfather. Property inherited from others is held in his rights and

cannot be treated as forming part of the coparcenary. The property in coparcenary is held as joint owners”.

*Ancestral property is a species of Coparcenary property. Ancestral property is acquired by unobstructed heritage. **The Hon’ble Apex Court of India between Shyam Narayan Prasad v. Krishna Prasad, reported in (2018) 7 SCC 646 at page 651 para 12, defined “Ancestral Property” as ‘the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherit it, acquire an interest and the rights attached to such property at the moment of their birth.***

JOINT FAMILY PROPERTY

Property acquired with the aid of ancestral property and property acquired by individual coparceners without such aid, but treated by them as property of the whole family.

10. In the present case the plaintiffs have stated that the suit schedule item No.1 to 4 are the ancestral properties of defendant No.1 that out of the income derived from suit schedule item No.1 to 4 properties the suit schedule item No.5 and 6 were purchased. The counsel for the defendants have contended that the suit schedule item No.4to 6 are the self acquired properties of the

defendant No.1. In order to substantiate the same the counsel for the defendants has produced sale deed dated 09.03.1998 with respect to suit schedule item No.4 bearing Sy No..13/1 measuring 0.34 guntas, further he has produced sale deed dated 25.01.2001 with respect to suit schedule item No.5 i.e., property bearing Sy No.125 measuring 0.35 guntas and has also produced sale deed dated 17.06.2008 with respect to suit schedule item No.6 property bearing Sy No.15/3 measuring 1.01 acre. Further the counsel for the defendant has also produced mutation extracts and RTCs which prima facie shows that the suit schedule item No. 4 to 6 was purchased by defendant No.1 under various sale deeds.

11. Further the plaintiffs have contended that, the suit schedule item No.1 to 3 properties are the ancestral properties of the defendant No.1. The plaintiffs themselves have produced mutation registers and RTC extracts of suit schedule item No.1 bearing Sy No.51/1 measuring 0.13 guntas and suit schedule item No.3 bearing Sy No.119/3 measuring 0.30 guntas. That on perusal of the same it is found that originally the suit schedule item No.1 and 3 were standing in the name of Puttamma i.e., the mother the defendant No.1 and subsequently the name of defendant No.1 is entered to item No.1 and 3 of the suit schedule properties. That on perusal of the RTCs and MR it prima facie shows that the suit schedule item No.1 and 3 properties are inherited by defendant No.1 from his mother Puttamma. Hence it is an obstructed heritage. Hence the plaintiffs cannot claim birth right in the same. During the lifetime of defendant No.1 the plaintiffs cannot claim share in the suit schedule item No.1 and 3 properties since it is inherited by defendant No.1 from his mother.

12. Further the plaintiffs have produced RTC extracts of property bearing Sy No.48/2 measuring 0.05.08 guntas i.e., suit schedule item No.2. That in the said RTC in column No.11 it is mentioned that as per Partition. It is the contention of the plaintiffs that the said property is the ancestral property of the defendant No.1. That as per RTC the said property was entered in the name of defendant No.1 based on the partition. Hence it is a matter of evidence to know whether the said property is ancestral property or not. Hence at this stage it is necessary to protect the interest of the plaintiffs with respect to suit schedule item No.2 property.

13. That the defendant No.1 by producing three sale deed have prima facie shown that the suit schedule item No.4 to 6 was purchased by him. That the plaintiffs have not produced any document nor has pleaded as to the income from the joint family. As such at this stage this court cannot hold that the suit schedule item No.4 to 6 properties are purchased out of joint family income. It is a matter of evidence. Further even in the evidence if the plaintiffs are able to show that the suit schedule item No.4 to 6 is purchased out of joint family income. The rights of the plaintiffs are protected under section 47 of the transfer of property Act. Hence **Point No.1 to 3 are answered Partly in the affirmative.**

14. Point No.4: For the aforesaid reasons and discussions made supra, I proceed to pass the following:

ORDER

IA No.II filed by the plaintiffs under Order 39 Rule 1 and 2 of Code of Civil Procedure is hereby **Partly allowed.**

The defendants or anybody claiming under them are hereby restrained from alienating or creating charge over the suit schedule item No.2 property till disposal of the suit.

Prayer with respect to item No.1 and 3 to 6 is hereby rejected.

Under the facts and circumstances of the case, no order as to cost.

*(Dictated to Stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court on this, the **24th day of October, 2025**)*

(Smt. Salma A.S.)
Addl. Civil Judge and JMFC., Belur.