

KAHS810023222021



**IN THE COURT OF THE C/C I ADDL CIVIL JUDGE &
JMFC., SAKALESH PURA**

-.PRESENT:-

Sri. Lakshmi Narasimha R.V. B.A.L., LL.B.,

C/c I Addl. Civil Judge & JMFC., Sakaleshpura

Dated this the 25th day of February, 2026

O.S. NO.194/2021

PLAINTIFFS : Sri. K. Mohaddin Kunjni and
others

V/s.

DEFENDANTS : Sri. K. Ibrahim and others

I.A. No. II

Plaintiffs/Applicants : Sri. K. Mohaddin Kunjni and
others

V/s.

Defendants/Opponents: Sri. K. Ibrahim and others

**ORDERS ON APPLICATION FILED BY THE PLAINTIFFS
UNDER ORDER XXXIX RULE 1 AND 2 OF C.P.C**

The plaintiffs have filed this application under Order XXXIX Rule 1 and 2 of CPC, praying this Court to pass an order of ad interim temporary injunction restraining defendant



No.4, his agents, henchmen or anybody claiming on his behalf from alienating or creating any encumbrance over the suit schedule properties till disposal of the suit.

2. In the affidavit annexed along with the application, plaintiff No.1 has averred that they have filed the present suit for the relief of partition and separate possession in respect of the suit schedule properties. The plaintiffs, one Mohammad and defendant No.1 are the children of Mohiddin Kutty. The said Mohiddin Kutty has acquired the suit schedule properties. He died intestate. Hence, the suit schedule properties are the joint family properties and no partition has been effected till this day. Hence, the plaintiffs and defendant No.1 being the legal heirs of Mohiddin Kutty, are entitled to the share over the suit schedule properties. After the demise of Mohiddin Kutty, the revenue records got mutated in the name of defendant No.1. When the plaintiffs approached defendant No.1 to effect partition, he did not oblige for the same. When they culled out the documents, came to know that defendant No.1 in collusion with one K.A.Khader executed a registered



sale deed dated 11.04.2012 in respect of the suit schedule properties and land bearing Sy No.152 belonging to Khader. Defendant No.1 has no exclusive right to execute the sale deed in favour of defendant No.4. Hence, the said sale deed is not binding on the plaintiffs. Now defendant No.4 is trying to alienate the suit schedule properties in favour of third parties. The plaintiffs have got prima-facie case and balance of convenience in their favour. If the application is not allowed, they would be put to irreparable loss and injury. Accordingly, pray to allow the application.

3. Upon the service of summons, defendant No.4 has appeared before the court through his counsel and filed written statement cum objections. It is the contention of defendant No.4 that defendant No.1 and one Dr.K.A.Khader proposed to sell the suit schedule properties and accordingly, he has purchased the suit schedule properties 20 years back and he is in possession and enjoyment of the same. Defendant No.1 purchased item No.2 property through a registered sale deed dated 26.04.1972 from one Puttegowda S/o Manjegowda. He



has also purchased Item No.3 property and revenue records got mutated in his name vide M.R.No.4/1985-86. Thereafter, defendant No.4 purchased the suit schedule properties through a registered sale deed dated 11.04.2012 and he is in possession of the same. The suit schedule properties are the absolute properties of defendant No.1 and K.M.Khader. The plaintiffs have no any rights over the suit schedule properties. Accordingly, prayed to dismiss the application.

4. On basis of the application, plaint, written statement, objections and documents on record the following points that arise for determination of this Court.

1. Whether the plaintiffs have made out prima-facie case in their favour?
2. Whether the balance of convenience lies in favour of the plaintiffs?
3. Whether the plaintiffs will be put to great hardship and irreparable loss, if order of temporary injunction is not granted?
4. What order?



5. Heard arguments. perused the application, affidavit, objections and records placed before this court. The learned counsel for defendant No.4 has also filed written arguments and relied upon the following decisions:

a. AIR 1963 PAT 375

b. C.R.P No.235/2019 dated 20.10.2023 of Hon'ble High Court of Delhi.

6. My findings on above points are as follows.

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: In the Negative

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

::REASONS::

7. **Point No.1 to 3:** Since these points are interconnected with each other, they are taken together for the discussion in order to avoid repetition of the facts and circumstances.

8. The plaintiffs have filed the present suit for the relief of partition and separate possession in respect of the suit



schedule properties. They have contended that suit schedule properties are originally belonging to their father Mohiddin Kutty and he died intestate. Hence, they are joint family properties and partition has been effected till this day. It is to note here that under Mohammedan law, there is no concept of joint family properties unlike Hindu law. On perusal of the copy of the sale deed dated 11.04.2012, produced by the plaintiffs, it appears that defendant No.1 and one Dr. K.M.Khader have sold the suit schedule properties and other properties in favour of defendant No.4. After lapse of more than 20 years, the plaintiffs have come up before the court challenging the sale deed. On perusal of the sale deed, it appears on prima-facie that it is recited as some of the properties are self acquired properties of defendant No.1 purchased under a sale deeds.

9. On the other hand, at this stage, the plaintiffs have not produced any documents to show that how they are having rights over the suit schedule properties. Hence, under these circumstances, at this stage it appears on prima-facie that, the



plaintiffs have failed to make out the prima-facie case and balance of convenience in their favour. Further if the application is allowed it is defendant No.4 who would put to irreparable loss and injury in comparison with the plaintiffs. However, if the plaintiffs succeed in the suit, their rights are not certainly vanished. Accordingly, point No.1 to 3 are answered in the *Negative*.

10. **Point No.4:** For the above discussed reasons, this Court proceeds to pass the following.

::ORDER::

IA No.II filed by the plaintiffs under order XXXIX Rule 1 and 2 of C.P.C. is hereby dismissed.

No order as to costs.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the 25th day of February, 2026]

(Lakshmi Narasimha R.V.)
C/c I Addl. Civil Judge and JMFC,
Sakaleshpura.