

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HANGAL

PRESENT: Smt.Aishwarya Chidanand Pattanshetti, B.COM, LL.M.,
Civil Judge & J.M.F.C., Hangal.

O.S.No.11 of 2023

DATED THIS THE 22nd DAY OF AUGUST 2025

Plaintiff : Smt. Saroja @ Chandravva W/o Ajjappa
Bhoviwaddar
(By Sri.R.V.Wadeyar – Adv.)

V/s.

Defendants : Smt.Manjavva W/o Siddappa Kanneshawara
and another

(Def.No.1 By Sri.S.V.Muradannanavar – Adv.)
(Def.No.2 By Sri.S.B.Lakamapur - Adv.)

PARTIES TO I.A. No.III

**Applicant/
Plaintiff:** Smt. Saroja @ Chandravva W/o Ajjappa
Bhoviwaddar

- V/s -

**Opponent/
Defendants:** Smt. Manjavva W/o Siddappa Kanneshawara
and another

I	Provision under which the application is filed	U/o.XXXIX Rule 1 & 2 of C.P.C.,
II	Relief sought for	Temporary injunction
III	Date on which the application is filed	12-10-2023
IV	Number of application	I.A.No.III
V	The date of which objections filed by the different opponents	06-02-2024
VI	Date on which the order was passed on said application	22-08-2025

(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.

ORDERS ON I.A.No.III FILED U/O XXXIX RULE 1 AND 2 OF C.P.C

The applicant/plaintiff has filed this application U/o.XXXIX Rule 1 & 2 of C.P.C., seeking to restrain the defendant No.1 from selling or alienating the suit schedule property till the disposal of the suit by way of ad-interim temporary injunction.

2. In the affidavit annexed to the application, the applicant/plaintiff by reiterating facts asserted in the plaint, has deposed to the facts that the defendant No.1 is her mother and defendant No.2 is her brother and the

present suit is filed for the relief of partition and separate possession of her share in the suit schedule property.

3. It is further stated that, the originally R.Sy.4 measuring 16 acre 20 guntas of Shrigeri village was property of Kudala Mata and out of the total extent of property, 8 acres was cultivated by the father of the plaintiff and defendant No.2 by name Sri.Siddappa as a tenant from 19-08-1974. Further on 30-04-1979, Sri.Siddappa filed an application before the Land Tribunal, Hangal in Form No.7 and after that on 19-11-1980 again filed application in Form No.1 as the suit schedule property was Dharmic Inam Property.

4. The plaintiff in her affidavit pleaded that, due to ill-health of their father, the defendant No.1 when she had already conceived the plaintiff, married to one Dasatagirsab shek during the said the pregnancy period itself and defendant No.1 was converted to Muslim Community and out of their wedlock one Mobiya and Sarfaraj were born.

5. It is stated that since from birth of plaintiff during the year 1984, the plaintiff was under care and custody of grand parents at Kuppagadde village of Sirasi Taluk and they also performed the marriage of the plaintiff. In the meanwhile the defendant No.1 created and concocted the

documents in her name by colluding with the panchayath officials in respect of the suit schedule property which was granted by the Land Tribunal, Hangal in the name of Sri.Siddappa.

6. It is further stated that, since from minor age the plaintiff was residing in Kuppegadde village, the plaintiff did not know about the suit schedule property and about her father and mother. It is stated that now the plaintiff came to know about all such matters and as such, the plaintiff and defendant No.2 are born out of the wedlock of deceased Siddappa and the defendant No.1. The plaintiff has stated that now the defendant No.1 denied the share in the suit schedule property and the defendant No.1 is trying to alienate the said property and which constrained the plaintiff to file this suit.

7. In response to suit summons, the defendant No.1 has appeared through her counsel and filed her written statement and separate objections to instant application. In spite of service of summons the defendant No.2 has remained absent before the Court and has been placed as *exparte*. In the objections the defendant No.1 has stated that her written statement is the part and parcel of the present objections. The defendant No.1 has specifically contended that the suit of the plaintiff and the present

application is based on false and concocted assertions of facts and therefore, not maintainable under the law and thereby denied each and every averment of the application as false. The defendant No.1 has contended that originally the suit schedule property was property of Sri.Siddappa and Sri.Siddappa died on 16-08-1983 and thereafter the defendant No.1 was in peaceful possession of the said property and thereafter the defendant No.1 married to Dastagirisab Shekh as 2nd marriage and she has converted to Islam. It is stated that before the said conversion the khata of the suit schedule property was already changed into the name of the defendant No.1. It is further contended that there is no relationship of plaintiff with the original propositus Sri.Siddappa and with the defendant No.1 and as such the plaintiff has no share in the suit schedule property. It is contended that the plaintiff has not made out a prima facie case, balance of convenience does not lie in her favour and if the present application is allowed it will cause irreparable loss to the defendant No.1 than to the plaintiff. On these grounds, the defendant No.1 has prayed to dismiss the present application with costs.

8. Having heard and on perusal of the materials on records, the following points that would arise for my consideration:

1. ***Whether the plaintiff has made out prima-facie case?***
2. ***Whether the balance of convenience lies in favour of plaintiff?***
3. ***Whether the comparative hardship and injury caused to the plaintiff is more when compared the same to the defendant No.1?***
4. ***What order?***

9. My findings on the above points are as under;

Point No. 1 : In the Affirmative,

Point No. 2 : In the Affirmative,

Point No. 3 : In the Affirmative,

Point No. 4 : As per final order,

for the following;

-: R E A S O N S :-

10. **Point No.1 to 3:-** Since, these three points are interconnected with each other, the determination of which requires common facts and materials. Hence, these points are taken together for common discussion, in order to avoid repetition of facts. Admittedly, the plaintiff has filed the present suit for the relief of partition and separate possession of her share and other reliefs against the defendants in respect of the suit schedule property. Before having discussion on the merits of the application, it is just and necessary to bear in mind that, the interim order of

injunction would be granted as an aid to the main relief. It is pertinent to note that, at this budding stage of the proceedings the Court need not conduct a mini trial. It is also necessary to bear in mind that, even after placing of the requisite materials in respect of aforesaid three ingredients, the Courts are required to consider the conduct of the parties, their approach in seeking equitable relief and has to exercise its discretionary power while granting an order of Temporary injunction as per the provisions of Specific Relief Act.

11. Perused all the documents produced by the plaintiff. Before discussing the merit of the application, it is appropriate to highlight the admitted facts of this case. There is no dispute that R.Sy.No.4 measuring 8 acres at Shrigeri Village of Hangal Taluk is standing in the name of the defendant No.1 by name Smt. Manjavva W/o Shivappa Kaneshwara and the mode of possession is mentioned as Form No.10. And further there is no dispute that the suit schedule property was granted to late Siddappa Kaneshwara. It is to be noted that as per Apex Court in **NAGINDAS RAMDAS V/s DALPATRAM ICHHARAM @ BRIJARAM AND ORS, 1974 AIR 471**, it is held that Admissions in pleadings or judicial admissions, admissible under Sec.58 of Evidence Act, made by the parties or their

agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions.

12. In a suit for partition and separate possession the burden is heavily on the plaintiff to prove that he/she and the defendants are the members of the joint family and the suit schedule property is ancestral or joint family property. The defendant No.1 has denied her relationship with the plaintiff and contended that the plaintiff is not having any relationship with the deceased Shivappa nor with her. It is pertinent to note that the defendant No.1 has filed the written statement as Smt.Hawabi W/o Dastigirisab Shek and affixed her thumb impression, but she has received the summons as Smt.Manjavva W/o Siddappa Kaneshwara. In the written statement the defendant No.1 has contended that as she is illiterate she has received the suit summons as Smt.Manjavva W/o Siddappa Kaneshwara and she has further contended that after her conversion to Islam she was not called as Smt.Manjavva W/o Siddappa Kaneshwara. Further in the birth certificates of the plaintiff and the defendant No.2 produced by the plaintiff show the name of Smt.Manjavva as their mother. In the death certificate of late Shivappa there are no details about his wife and he has died on 16.08.1983. In the birth certificate of the plaintiff, the date of birth is 11.05.1984 and the

name of the father is Shivappa Kaneshwara and name of the mother is Smt.Manjavva. The defendant No.1 has admitted her relationship with Sri.Siddappa and she is claiming his property but she is denying the children born out of her wedlock with Sri.Siddappa.

13. The defendant No.1 is trying to blow hot and cold at the same time and the documents themselves speak and the conduct of the defendant No.1 shows that the apprehension of the plaintiff that the defendant No.1 may alienate or sell the suit schedule property to others is legitimate one. It is to be noted in a reported decision in **AIR 2008 Supreme Court 2291-Mandali Ranganna & Others etc., Vs. T. Ramachandra & Others**, wherein Hon'ble Apex Court it is held that:-'Besides consideration of basic elements, Court must consider conduct of parties.' The ratio held in the above decision is aptly applicable to the present case.

14. In the present suit there is serious dispute about the relationship of the plaintiff with the defendant No.1 and with the deceased Sri.Shivappa and at this stage it cannot be said that the plaintiff and the defendant No.2 are the children of the defendant No.1 and the deceased Sri.Shivappa. Further the plaintiff and the defendants can neither be called as the co-sharers at this stage.

15. It is to be noted that as per **GUJARAT BOTTLING CO.LTD V/s COCA COLA COMPANY 1995(5) SCC 545-** wherein the Hon'ble Apex Court held that the object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

16. Further as per **Order 39 of CPC** any order made temporarily prohibiting the defendant not to alienate, or to change or to damage the property in dispute during the pendency of the suit is called temporary injunction. In the case on hand, on the basis of the documents produced by the parties to the suit, at this juncture this Court has to ascertain what are the fair chances of plaintiff succeeding in the suit after termination of trial?. The plaintiff has placed sufficient materials before the Court that, there exist a triable issue and the determination of which requires a trial. Therefore, as per the settled principles, when there exists a triable issue, it amounts to establishing of the prima facie case. The materials placed before the Court discloses that, there is serious dispute between the plaintiff and the defendants in respect of their relationship and the suit for partition and separate possession gets a

momentum only when relationship is proved. The Temporary Injunction would be granted as an ancillary or an aid to main relief to protect the rights of the parties as per the settled principles.

17. The comparative hardship and irreparable loss or injury, which would be caused to the plaintiff is more if an order of Temporary Injunction is not granted, when compared the same to the hardship and irreparable injury which would be caused to the defendant No.1 if an interim order of Temporary Injunction is granted. It is to be noted in **2015(1) ICC 376- SMT.SHAKUNTHALAMMA AND OTHERS V/s SMT. KANTHAMMA AND OTHERS-** wherein the Hon'ble High Court of Karnataka, has held that Scope of Interim injunction, when can be granted, Court empowered to grant three types of orders under three different and distinct situations, firstly when the property was in danger of being wasted, damaged, alienated or wrongfully sold in execution of a decree, secondly when the disputed property was under the threat of being removed or disposed off by the defendant with the intention of defrauding his creditors and thirdly when the defendant threatens to dispossess the plaintiff or otherwise causes injury to the plaintiff in respect of disputed property.

18. In view of ratio held in above said decisions and my discussions, I am of the considered opinion that, the plaintiff has made out a prima-facie case at this stage to grant temporary injunction as prayed. When, the plaintiff has made out prima-facie case, then certainly balance of convenience also lies in favour of plaintiff. In such circumstances, if temporary injunction as prayed is not granted in favour of plaintiff, the irreparable hardship will be caused to the plaintiff than the defendant No.1. With these observations, I answer the **Point No.1 to 3 in the AFFIRMATIVE.**

19. **Point No.4:-** In view of my findings to the Point No. 1 to 3, I proceed to pass the following;

ORDER

***I.A.No.III filed by the plaintiff
U/o.XXXIX Rule 1 & 2 of C.P.C., is
hereby allowed.***

***Consequently, the defendant No.1
is hereby restrained from selling or
alienating suit schedule property till
the disposal of the suit by way of ad-
interim temporary injunction.***

(Dictated to Stenographer, directly typed by him on computer, once corrected and later initialed by me and then pronounced by me in the open court on this the 22nd day of August - 2025)

***(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.***