



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

**PRESENT: Sri. Srinivasa. S.N. B.A., LL.M.,
Civil Judge & J.M.F.C.,
Savanur.**

O.S.No.184 / 2024

DATED THIS 18TH DAY OF JUNE, 2025

Plaintiffs : Sri Rakesh S/o Ningappa and others

[By Sri. N.S.Patil, Advocate]

V/s.

Defendants : Smt. Lakshnavva W/o Manjunath Agadi
& others.

**[D1 to D5 by Sri V.A.Akkivalli, Advocate]
[D6 by Sri V.B.Turakani, Advocate]**

PARTIES TO I.A. No.II

**Applicant/
Plaintiffs** : Sri Rakesh S/o Ningappa and others

- V/s -

**Opponents/
Defendants** : Smt. Lakshnavva W/o Manjunath Agadi
& others.

I	Provision under which the applications are filed	U/o.39 Rule 1 & 2 of C.P.C.
II	Relief sought for	To restrain the defendant No.1 to 5 from alienating suit schedule B property till disposal of suit.
III	Date on which the application is filed	14-06-2024
IV	Number of applications	I.A.No.II
V	The date of which objections filed by the different opponent	30-09-2024
VI	Date on which the order was passed on said applications	18-06-2025

(Srinivasa. S.N)
Civil Judge & JMFC.,
Savanur.

ORDERS ON I.A.No.II

The plaintiff No.1 has filed this application U/o.XXXIX Rule 1 & 2 of C.P.C., by seeking to restrain the defendant No.1 to 5 from alienating suit schedule B property till disposal of suit, by way of ad-interim temporary injunction, in the interest of justice and equity.

2. In the accompanying affidavit, the plaintiff No.1 has stated that the suit schedule A and B properties are ancestral and joint family properties of plaintiffs and defendants and same are inherited by

their ancestors. The plaintiffs and defendants are in actual and physical possession of the suit properties. The defendant No.1 to 5 without the knowledge of the plaintiffs have created many documents and try to enter their names in the records of the suit B property and defendant No.1 is trying to alienate the same to others. The plaintiffs also have equal Right over the suit B property. They have got prima facie case, balance of convenience and irreparable loss if TI not granted. Hence they prays to allow the application.

3. In response to suit summons, the defendants had appeared through their counsel and filed the written statement and objection to the said IA. In the objection, they denied the entire averments of the affidavit. They contended that the pecuniary value of the suit property exceeds the jurisdiction of this court, and hence the suit itself is not maintainable. The suit B property is not ancestral, but self-acquired property of late Manjunath, who was the husband and father of defendant Nos.1 to 5. They contend that Manjunath did not purchase the said property from ancestral or joint family funds, but from his own income, he has purchased the suit B property and therefore, plaintiffs cannot claim any right over it. It is also stated that Puttavva, wife of late Neelappa, who allegedly contributed funds from pension income, was not a party to the sale deed and hence, the property cannot be claimed as joint family property. The plaintiffs have filed this case only to harass the defendants. They also contend that Manjunath had availed multiple loans against the property. Hence, prays to reject the application.

4. Heard the arguments of counsel for the plaintiffs and defendants and perused the materials available on record at this stage.

5. The points that would arise for the consideration of this court are as follows:-

POINTS

1. Whether the applicants/plaintiffs have made out prima-facie case?

2. Whether balance of convenience is lies in favour of the applicants?

3. Whether irreparable loss will be caused to the applicants if injunction is refused?

4. What order?

6. The findings of this court on aforesaid points are as follows:-

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 following:-

REASONS

7. POINT NO.1: The plaintiffs have filed this suit seeking for partition and separate possession of their respective share in the suit schedule properties and for other reliefs.

8. Sri.N.S.P.Advocate appearing for the plaintiffs argued that the suit schedule A and B properties are ancestral and joint family properties of plaintiffs and defendants and same are inherited by their ancestors. They both are in possession of the suit schedule properties. Behind the back of plaintiffs, they have entered their

names in the revenue records of the suit schedule B property. And they are trying to alienate the same to others. The plaintiffs also have equal Right over the suit B property. Further argued that the Suit B property was purchased by Manjunath from funds given by Puttavva, the widow of Neelappa, who was employed with KPTCL and receiving pension. It is claimed that this property was bought using joint family income and hence the character of the property is ancestral. In order to defeat the legitimate shares of the plaintiffs, the defendants are trying to sell the suit schedule B property which constrained the plaintiffs to file present suit along with instant application for grant of temporary injunction. He argued that they have got prima facie case, balance of convenience lies in their favour and if the TI is not granted it will cause irreparable loss to the plaintiffs. Hence they prays to allow the application.

9. The plaintiffs counsel relied on the following decisions:

(1) The Judgment of Hon'ble High Court of Karnataka reported in 204(3) KCCR 2211 in the case of A.Rajendra Kodgi Vs. A. Sudhir Kodgi, wherein the Hon'ble court has held that.-

“CIVIL PROCEDURE CODE, 1908—Order 39, Rules 1, 2—Temporary injunction-Suit for partition and separate possession-Question as to whether suit property was self-acquired property of defendant or not- To be found out during trial -Existence of joint family reflected by evidence-Temporary injunction if not granted, property could be alienated leading to multiple litigation --Grant of injunction justified.”

(2) The Judgment of Hon'ble High Court of Karnataka reported in 2022(2) KCCR 1872 in the case of S.Shilpa Vs. S.Muralikrishna and others, wherein the Hon'ble court has held that.-

“ CIVIL PROCEDURE CODE, 1908-Order 39, Rules 1 & 2-Suit for partition-Refusal of temporary injunction challenged-Defendant's application seeking temporary injunction to restrain plaintiff from alienating suit schedule properties-Suit for partition all the parties are in the array of plaintiff-Application fo injunction can be filed by plaintiff or defendant-Status quo means 'the condition as is-Whereis-Status quo granted.”

10. Sri.V.A.A.Advocate appearing for the defendants argued that the pecuniary value of the suit property exceeds the pecuniary jurisdiction of this court. The suit schedule B property is self-acquired property of Manjunath. Further argued that the Manjunath did not purchase the said property from ancestral or joint family funds, but from his own income, he has purchased the suit B property, therefore, plaintiffs cannot claim any right over it. The Puttavva was not party to the said sale deed. He argued that earlier Puttavva filed suit O.S.No.143/2023 for partition and separate possession, wherein Puttavva had shown that the Sheelakka had no issues. Therefore there is no cogent documents to prove that these plaintiffs are the legal heirs of the Sheelakka. Further argued that the Manjunath had availed multiple loans against the suit B property from various banks. Hence the Banks are necessary parties to the suit and suit is

hit by non-joinder of necessary parties. On said grounds, it is prayed to dismiss the application with costs.

11. I have perused the application, its accompanying affidavit, pleading of the both the sides and including materials made available on record at this stage by both the sides. The plaintiffs have filed present suit against the defendants seeking for the relief of partition and separate possession of their share in the suit schedule properties. Along with the suit, the plaintiffs have filed this application under order XXXIX Rule 1 and 2 of C.P.C., seeking to restrain the defendant No.1 to 5 from alienating the suit schedule B property to others till the disposal of the suit.

12. It is settled law is that, the grant of temporary injunction is of discretionary and equitable relief and same shall be granted only when the applicant has established prima-facie case, balance of convenience as well as irreparable loss and injury caused to the applicant if the injunction is refused. It is equally settled principle of law is that the applicant need not to establish that he has every chance of success in the suit. What is to be proved that the applicant has arguable case to go on for trial.

13. Bearing in mind said settled principle of law regarding the temporary injunction, it is necessary to analyze the facts and circumstances involved in the suit. The plaintiffs have claimed that suit schedule B property is part of the ancestral and joint family property, and hence, they are co-owners having an undivided share. The plaintiffs contend that the property was purchased in the name of Manjunath using joint family funds, particularly pension money of late Neelappa, by Puttavva. The

defendants, on the other hand, claim that the property was self-acquired property of Manjunath, who was the husband and father of defendants No.1 to 5, and thus it is not joint family property. The question is whether the suit schedule B property is ancestral or self-acquired property, and it cannot be determined at the interim stage. The matter of title cannot be conclusively determined without evidence and trial. Therefore, the court finds that a genuine and substantial dispute exists regarding ownership and character of the property. This creates a prima-facie case in favour of the plaintiffs. The defendants also argued that the pecuniary value of the suit exceeds the jurisdiction of the court. However, at this stage, court can not conclusively determine the market value of the suit property. Hence, in view of all these observations, the plaintiffs have made out prima-facie case at this stage to grant temporary injunction. ***Accordingly, point No.1 is answered in the affirmative.***

14. POINTS No.2 and 3:- The principle of balance of convenience is that which party will suffer more harm if the interim relief is granted or denied. In this case, if an injunction is not granted and the defendants proceed to sell or transfer the property, then even if the plaintiffs succeed in the final judgment, the property may be lost to third parties, creating further multiplicity of proceedings. On the other hand, if the defendants are restrained from alienating the property temporarily, they still retain possession and can continue to enjoy it, subject to final adjudication.

15. Irreparable injury refers to a harm that cannot be compensated by money or rectified through legal remedy after the damage has occurred. In the present case, if the property is alienated during the pendency of the suit, and if the court later finds that the plaintiffs were entitled to a share, they may not be able to recover the property. This may lead to loss of their legal rights, and the only option would be to file fresh suits against third parties. Therefore, the balance of convenience lies in favour of the plaintiffs and refusal to grant injunction would cause irreparable loss to the plaintiffs. ***Accordingly, point No.2 and 3 are answered in the affirmative.***

16. Point No.4:- In the light of said reasons and discussions, this court has proceed to pass following:-

ORDER

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

**Consequently, the defendant No.1 to
5 are hereby restrained from alienating
the suit schedule B property to others, till
the disposal of the suit.**

(Dictated to Stenographer directly on computer, corrected and later initialed by me and then pronounced by me in the open court on this the 18th day of June- 2025)

**(SRINIVASA. S.N)
Civil Judge and JMFC.,
Savanur.**