



**IN THE COURT OF THE SENIOR CIVIL JUDGE
AND J.M.F.C., SHIGGAON**

Present: Sri. Sunil S. Talawar
B.A.LLB..., (Spl.)
Senior Civil Judge & J.M.F.C.,
Shiggaon

DATED THIS THE 24th DAY OF NOVEMBER 2025

O.S.18/2020

Plaintiffs : Taramati W/o Shekarappa
Bendigeri and Others

Vs.

Defendants: Yallamma W/o Rammanna
Bendigeri and others.

I.A.X AND XI/2025

Applicant: Ramalingeshwar S/o Shekarappa
Bendigeri and Others

Vs.

Opponents: Yallamma W/o Rammanna
Bendigeri and others.

ORDER ON I.A.No.XI

The plaintiffs/applicants have filed **I.A.No.XI U/O XXXIX Rule 1 and 2 R/w Sec.151 of CPC** seeking order to grant an ad interim temporary injunction restraining the defendants, their agents, servants, or anyone acting on their behalf from alienating, transferring, conveying, or engaging in any transaction



involving the suit property. Furthermore, requested to prohibit the creation of any charge, encumbrance, lien or claim or any adverse action in any form with respect to the suit properties till disposal of the suit.

2. The plaintiff No.2 has sworn to the affidavit and stated that, the plaintiff No.2 is the son of late Shekharappa S/o Ramanna Bendigeri who passed on 05.08.2011. The suit properties are ancestral properties of plaintiffs from family propositus by name **Late Ramanna Bendigeri**. The plaintiffs are legal heirs of late Shekharappa they are entitled to share in these ancestral properties which were jointly owned by father of plaintiff No.2 and defendants during life time of Shekarappa Bendigeri. The suit agricultural lands Sy.No.89/2 measuring 2 acres of Hanakanahalli village, Shiggaon taluka, Sy.No.85/1 measuring 5 acres of Lakkikoppa village of Shiggaon taluka, Sy.No.77 measuring 2 acres 21 guntas situated at Nellikoppa village, Hanagal taluka and Sy.No.310 measuring 3 acres 11 guntas situated at Bommanahalli village, Hanagal taluka. House properties bearing VPC No.45, VPC No.79/A/1 and VPC No.79/A/2 situated at Bommanahalli village, Hanagal taluka, Haveri district.

3. Further, it is stated in the application affidavit that, the father of applicant Late Shekharappa was employee of Karnataka State Road Transport



Corporation in Hubli. Due to his employment he moved from Bommanahalli to Hubali where he was stationed for work. The suit schedule properties which are located in Bommanahalli and surrounding villages were jointly owned by deceased Shekhrappa and defendants. During absence of deceased Shekharappa the defendants have by taking advantage of his unavailability, wrongfully took possession of the suit schedule properties. They unlawfully assumed control over the properties without the knowledge or consent of his father or the rest of their family. After taking possession the defendants began claiming exclusive ownership of the suit schedule properties, despite knowing that plaintiffs as the legal heirs of Late Shekharappa and they are entitled to an equal share in the properties. The defendants have since refused to recognize their rights and have continued to enjoy the income generated from the properties. Further, it is stated that, the defendants have been receiving rent from the **commercial property VPC No.45** and deriving income from **agricultural properties** for the past four years the defendants have not share any of this income to the plaintiffs, despite multiple oral request made to defendants to account for the earning and distribute their rightful share. The plaintiffs have made several attempts to negotiate with the defendants and have requested them to provide an account of the income generated from the properties. The defendants



have ignored the same. Therefore, the plaintiffs constrained to file this suit against defendants wherein by filing I.A.No.XI they are seeking interim relief as sought for.

4. Per contra, The defendants No. 3 to 10 have filed their objections to the IA No. X wherein they all have admitted that, the suit properties are ancestral properties and the plaintiffs are legal heirs of late Shekharappa S/o Ramanna Bendigeri but specifically contended that, the land Sy.No.89/2 is enjoyed by defendant No.14, land Sy.No.85/1 enjoyed by defendant No.13, land Sy.No.77 enjoyed by defendant No.2 and land Sy.No.310 is under the exclusive possession of defendant NO.13 as such the commercial property with VPC No.45 is in the exclusive possession of defendant No.14. It is specifically contended that, the application of plaintiffs may kindly considered by directing the defendant No.2, 13 and 14 to deposit income slowly from properties Sy.No.77, Sy.No.310 and the commercial property VPC No.45.

5. The defendant No.1, 2, 11, 12 and 14 have also filed objections to the I.A.No.X and XI wherein they have contended that the contentions taken in the written statement be treated as objections to the I.A.No.X and XI. It is specifically contended that, the plaintiffs themselves are not sure about who are all the



defendants in the possession of properties and from whom they are getting lavani, kore and rent. There is no specific pleadings in the application as to grant the relief in favour of the plaintiffs. It is specifically contended that, **the defendant No.14** has acquired the **land Sy.No.89/2** from the government under schedule caste and schedule tribe welfare scheme whereas the **defendant No.2** has purchased **land Sy.No.77** and the defendants No.2 and 14 are cultivating the same. It is also contended that, the gram panchayath property No.78/1 standing in the name of Channavva W/o Malleshappa Bendigeri, property No.78/2 standing in the name of Somanna Ramappa Bendigeri, property No.78/3 is standing in the name of Bapu Ramanna Bendigeri, the property No.78/4 is standing in the name of Subhas Ramanna Bendigeri and finally the property No.45 is standing in the name of Sunita W/o Bhangarappa Bendigeri as per resolution of gram panchayath Bommanahalli dated 16.12.2008. The plaintiffs have suppressed all these material facts and filed false application. It is also contended that, the suit properties as to show that of ancestral properties no documents produced here with. Therefore, prayed to reject the application with cost.

6. Heard both side.
7. Perused the materials of this case.



8. The points that arose for the consideration of this court are as here under:-

1 Whether the plaintiffs / applicants have got prima-facie case for the grant of temporary injunction?

2 Whether the balance of convenience lies in favour of the plaintiffs/ applicants?

3 Whether the plaintiffs will be put to irreparable loss or injury, if an order of temporary injunction is not granted?

4 What order?

9. My answer to the above points are as here 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:*

REASONS

10. **Point No.1 to 3:-** Point No.1 to 3 are inter linked with each other and based on same material facts those are made available in the form of plaint, affidavit and documents produced by the plaintiff and



Written Statement, objection to the I A, documents produced thereon. Therefore, I have taken point No.1 to 3 for discussion jointly to avoid repetition.

11. Before entering into the heart of present application it is relevant here to discuss the fact that, the plaintiffs have filed present suit for partition and separate possession in respect of land Sy.No.89/2, 85/1 situated at Lakkikoppa village and land Sy.No.77, 310 situated at Bommanahalli village in Hangal taluka. The VPC No.45, 79/A/2 and 79A/2 situated at Bommanahalli are the suit subject properties. The plaintiffs claims that these properties are ancestral properties as of now available for partition among the parties. The defendants No.1, 2 11 to 14 have filed written statement wherein they have denied fact that, the suit properties are the joint family properties. In the year 2006 the deceased Ramappa 7 sons and defendant No.1 mother had partitioned the suit properties among themselves as per memorandum of partition. The land Sy.No.311 fallen into the share of Shekhappa, Somappa, Bangareppa S/o Ramappa Bendigeri and land Sy.No.85 fallen to the share of Malleshappa, Shivappa, Subhas, Bapu S/o Ramappa Bendigeri and remaining portion of 3 acres situated at Lakkikoppa village fallen to the share of Malleshappa, Shivappa, Shekhappa, Somappa, Subhash, Bapu and



Bangareppa S/o Ramappa Bendigeri. Therefore, the present application of plaintiffs is not maintainable.

12. In order to prima facially substantiate their pleadings both the plaintiffs and defendants have produced the documents pertaining to suit properties. The pleadings of defendants is as such they are disputing the fact that, the suit properties are ancestral joint family properties as of now available for partition. Under the circumstances the material lis between the parties are whether the plaintiffs are entitled to get any share in the suit properties. On the basis of material proposition of fact this court has all ready formulated in all five issues and those are closely related to whether suit properties are ancestral and joint family properties. It is also fact in issue that, the defendants No.2, 11 to 14 have claimed the properties land Sy.No.89/2 measuring 2 acres 14 guntas as their self acquired properties and in the year 2006 itself the partition has been taken place in the family and which was already acted upon the joint family members. Therefore, on the basis of pleadings both plaintiffs, defendant No.2, 11 to 14 they have claimed their respective right over the suit properties. It is apparent on record that, on the said issues the plaintiffs still not stepped into witness box.



13. As the I.A.No.XI filed by the plaintiffs is taken into consideration they are seeking temporary injunction against the defendants restraining them from alienating, transferring, conveying, or engaging in any transaction involving the suit property. The plaintiffs are wanted to call for the income of suit properties also. It is admitted by the plaintiffs through sworn affidavit that, the defendants are in the possession of suit properties. Meaning thereby either they are admitting the fact that, they are out of possession or claiming possession over the suit properties. It is well settled principle of law that, presumption can be drawn that, all the joint family members are in joint though they reside in a separate roof or place of resident. But this presumption cannot be made applicable in respect of properties that, the family members are all in joint possession of the property and there is no such presumption in respect of properties. The plaintiffs have to establish the fact that, the suit properties are in joint or the defendant are in possession of the same and getting handsome income from it where they are also entitled for the share in the income. It is admitted fact that, the suit schedule A properties are agriculture land. Further, the suit schedule B properties wherein VPC No.45 as per plaintiffs case is a commercial property and VPC No.79A/1 and 79A/2 are the residential property. It is the peculiar case of the plaintiffs that, the defendants



are getting income from agricultural lands and suit B properties by way of rent. In this regard the plaintiffs have given description of the commercial shops by producing photographs of the same. But here, the defendants No.2, 11 to 14 are claiming their absolute right over the suit properties that to since from 2006. The plaintiffs have not at all produced any documents pertaining to the fact that they also contributed to construct commercial and residential house in the said suit B properties. On the other hand the plaintiffs have not at all stated that of joint cultivation in respect of suit schedule A properties. They all require the evidence from the both parties. Because the plaintiffs have produced the RTC and property extract of suit properties as to claim their share in the suit properties by stating that all the suit properties are joint properties. But comparative determination of right is required in the matter as the defendant No.1, 2, 11 to 14 have specifically contended about the land Sy.No.89/1 being granted by the government and the land Sy.No.89/2 being the self acquired property of defendant No.14 and the commercial property situated at Bommanahalli village are under the respective ownership of the parties as discussed above. As to substantiate their pleadings these defendants have also produced documents pertaining to apasat vatni and the property extract of suit schedule B properties wherein they have contended about the partition of the



year 2006. On the other hand there is specific stand in relation to VPC No.78 of Bommanahalli village that same was purchased on 29.08.1985 from Malleshappa Bendigeri. The certified copies of aptsat vatni and the mutation entries are also produced by these defendants. Here, the prayer of the plaintiffs are as such they want to seek order that to restrain the defendants from alienating, transferring, conveying or engaging in any transaction involving the suit properties. But here the plaintiffs as well as the defendants have knocked the door of this court with a specific stand in relation to the suit properties are ancestral joint family properties and the aptsat partition of the year 2006, grant of land by the government, purchase from their vendor etc., which denotes the self acquired properties of defendants. Under the circumstances as to reach logical end of litigation between the parties if the suit properties kept intact till final disposal it is helpful to the both parties to prove their rival stands. If at all any alienation taken place during the pendency of this suit the plaintiffs will suffer much more as the defendants are not. Because the property extracts and RTCs are in the names of defendants. On the other hand if the properties kept intact then it restrict the multiplicity of proceedings among the parties. This view of mine is supported by the pleadings of defendants that they have not pleaded about their willingness to alienate the suit properties to



the other as to make convent for their financial needs. For the all above reasons the plaintiffs application deserve to be allowed for the simple reason that this court can pass order against the defendants restraining from alienating, transferring, conveying, or engaging in any transaction involving the suit properties. Therefore, there is prima facie case made out by the plaintiffs as to allow the application and question arise about balance of convenience and irreparable loss. Therefore, this court is having no hesitation to hold that there is prima facie case to grant temporary injunction against the defendants.

Therefore, considering all these aspects, I answer **point No.1 to 3 are in the Affirmative.**

14. **Point No.4:-** In view of the above discussion, I proceed to pass the following:

ORDER

I.A.No.XI filed by the plaintiffs /applicants U/Order XXXIX Rule 1 and 2 of CPC is hereby allowed in the following manner.

The defendants, their agents, servants or any one acting on their behalf are hereby restrained by way of temporary



injunction from alienating, transferring, conveying, or engaging in any transaction involving the suit properties till disposal of the suit.

Looking to the facts and circumstances of the case the parties shall bear their own cost.

(Dictated to the Stenographer, typed by him, revised and corrected by me and then pronounced in the open court on this the 24th day of November 2025)

**(Sunil.S. Talawar)
Senior Civil Judge and JMFC,
Shiggaon**

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