



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

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

DATED THIS THE 18th DAY OF DECEMBER 2025

O.S.75/2025

Plaintiff : Smt. Nirmala W/o Veerappa
Danappanavar

Vs.

Defendants: Chanabasappa S/o Veerabhadrappe
Myageri and others

I.A.Nos.II/2025

Applicant: Smt. Nirmala W/o Veerappa
Danappanavar

Vs.

Opponents: Chanabasappa S/o Veerabhadrappe
Myageri and others

I.A.Nos.III/2025

Applicant: Sri Basavaraj S/o Siddappa
Nandennanavar (Deft.No.12 & 17)

Vs.

Opponents: Smt. Nirmala W/o Veerappa
Danappanavar



ORDER ON I.A.No.II and III

The plaintiff/applicant has filed I.A.No.II U/O XXXIX Rule 1 and 2 R/w Section 151 of CPC seeking temporary injunction restraining the defendants No.12, 16 and 17 from constructing any house or building in suit schedule 'A' Sl. No.5) R.S.No.12/13 measuring 0.05 guntas, 6) R.S.No.12/14 measuring 0.02.8 Anne, 7) R.S.No.12/15 measuring 0.02.08 Anne, 13) R.S.No.12/27 measuring 0.05 Annnas all properties are situated at Chikkabendigeri village, Shiggaon taluka till disposal of the suit.

The defendants No.12 and 17 have filed I.A.No.III U/O XXXIX Rule 4 R/w Section 151 of CPC seeking the order to vacate the exparte temporary injunction granted in favour of plaintiff by this court on 18.06.2025.

2) The plaintiff has sworn to the affidavit and stated that the suit properties are the joint family properties and both plaintiff and defendants No.1 to 6 are the members of Hindu Joint family. There is no partition in the suit schedule properties and the defendant No.1, 7, 8, 10, 12 to 17 by taking undue advantage of the names appearing in the RTC of suit land are trying to transfer the same in order to deprive the valuable rights of the plaintiff. The plaintiff is having 1/7th share in the suit properties. The



defendants taking undue advantage of their names appearing in the RTC of above suit lands are in hurry to erect construction over the suit property. If any construction erected in the suit land then this plaintiff will suffer much more. Therefore, if alienation is taken place then the plaintiff will put into great loss. The plaintiff has got prima facie case and balance of convenience lies in her favour. Therefore, prayed to allow the application.

3) The defendants No.12 and 17 have filed objections to I.A.No.I wherein they have contended that, the defendant No.12 and 17 are the respective members of Sri Veerabhadreshwar Gadduge Seva Sameeti and the defendant No.12 and 17 have purchased the suit property for the construction of the Gadduge. The plaintiff having knowledge of the same has filed false case against them which is not at all maintainable in the eyes of law. Therefore, prayed to reject the application with cost.

4) The defendant No.14 to 16 have also filed their written statement wherein their pleadings are also prima facially assumes more importance in order to decide the I.A.No.I and III. It is specifically contended by the defendant No.14 to 16 that, the land Sy.No.12/15 measuring 2 guntas 8 annas was the property of defendant No.8 and for his family necessity



he sold the same to the defendant No.14. The land Sy.No.12/17 reconstructed Sy.No.12/19 measuring 2 guntas 8 annas was earlier belongs to defendant No.9 and he was sold the same to the defendant No.15. As such the land Sy.No.12/27 measuring 5 guntas was earlier belongs to defendant No.10 and he was sold it to the defendant No.16. Therefore, by virtue of registered sale deed dated 17.03.2020, 17.12.2024 and 16.11.2018 the defendant No.14 to 16 became absolute owner of the same properties. The defendant No.1 to 6 and the plaintiff are having knowledge about the same hence there is no relief available pertaining to these properties.

5) The defendant No.7 has also filed his written statement which is adopted by defendant No.8 to 10. It is specific stand of defendant No.7 to 10 that, the land Sy.No.12/3 measuring 2 acres 7 guntas and land Sy.No.12/8B+C measuring 3 acres 8guntas and land Sy.No.12/8A measuring 30 guntas was fallen to the share of defendant No.1 and for which D .No.613 was certified. The defendant No.1 has sold out the land Sy.No.12/2B+C measuring 1 acre 10 guntas out of 3 acres 18 guntas and land Sy.No.12/8A measuring 30 guntas to the husband of defendant No.7 by name Yallappagouda S/o Basanagouda Katteppagoudar for Rs.46,000/-. The said Yallappagouda reported died and defendant No.7 to 11 are the successors of above said



properties. The defendant No.7 to 10 have also pleaded about the alienation of properties in respect of land Sy.No.12/13, 12/14 and 12/10 and prayed to reject the application with cost.

6) The defendants No.12 and 17 have filed application under Order XXXIX Rule 4 R/w Sec.151 of CPC seeking to vacate the exparte temporary injunction granted by this court on the above said contentions.

7) The plaintiff has filed objections to the I.A.No.III wherein it is contended that, the plaintiff has got every chance of success in the matter and any alienation taken place then her right in respect of 1/7th share will be deprived. Hence prayed to reject the application with cost.

8) Heard both side on I.A.Nos.II and III

9) Perused the materials of this case.

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

1 Whether the plaintiff /applicant has 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 *Whether the defendants
No.12 and 17 have
made out grounds to
vacate the exparte
temporary injunction
granted by this court?***

5 *What order?*

11) My answer to the above points are as here
under:-

Point No.1:- In the negative

Point No.2:- In the negative

Point No.3:- In the negative

Point No.4:- In the Affirmative

***Point No.5:- As per final order
for the following:***

REASONS

12) **Point No.1 to 4:-** Point No.1 to 4 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, the
written statement, objections to the I.A.No.I and
documents produced by the defendant s No.12 and 17.



Therefore, I have taken point No.1 to 4 for discussion jointly to avoid repetition.

13) Before entering into the heart of present applications it is relevant here to discuss the real lis between the parties as to prima facially appreciate the balance of convenience lies in whose favour. In this regard this court referred the plaint statement of fact which prima facially disclose that, the plaintiff by claiming one of the daughter of original propositus Chanabasappa has claimed suit for partition and separate possession in respect of suit properties. She claims 1/7th share in the suit properties. On the other hand the defendants No.12 and 17 claims that, they are absolute owner in possession of suit property Sy.No.12/18 measuring 2 guntas 8 annas, Sy.No.12/19 measuring 2 guntas 8 annas and Sy.No.12/26 measuring 5 guntas. It is the contention of defendants No.12 and 17 that, the above said land have been fallen to the share of defendant No.9 and 10 as per MR No.H6/2018-19. The defendants No.9 and 8 have sold out the land to the extent of 2 guntas 8 annas to the defendant No.12 and the defendant No.10 has sold out 5 guntas of land to the defendant No.13. Therefore, as per sale deed executed by defendant No.9 and 10 the defendant No.12 became owner in possession of the suit properties. Hence the said defendants are constructing Gadduge of



Veerabhadreshwar by obtaining permission from competent authority. The defendant No.12, 16 and 17 are not having any individual interest over the suit property but it is for the benefit of devotees of Sri Veerabhadreshwar Gadduge Seva Sameeti. Therefore, the injunction order cannot be granted as against the true owner of the suit properties.

14) As to substantiate their pleadings the plaintiff has produced RTC of suit lands. Further, the plaintiff has also produced the D.No.613 in-respect of suit properties and it is related to the apasath vatni (ಅಪಸಾತ ವಾಟಿ). On the basis of D.No.613 the name of defendants No.1 to 6 came to be mutated in the RTC extract of suit properties. Further, the plaintiff has also produced the certified copy of sale deed dated 16.08.2024 which prima facially show that one Kattigoudar Channabasanagouda S/o Yallappagouda had executed sale deed pertaining to land Sy.No.12/15 measuring 00 acres 2 guntas 8 annas in favour of the defendants No.12 and 17. As such the defendant No.14 has executed sale deed in respect of land Sy.No.12/15 measuring 00 acre 2 guntas 8 annas in favour of defendant No.1. The plaintiff has produced certified copy of sale deed dated 17.12.2024 in respect of land Sy.No.12/27 measuring 00 acre 5 guntas wherein one Mahesh Myageri who is defendant No.16 has executed sale deed in favour of defendant No.10. Further,



plaintiff has also produced certified copy of sale deed dated 01.07.2022 wherein the defendant No.13 has executed sale deed in favour of defendant No.10 in respect of land Sy.No.12/14 measuring 00 acre 2 guntas 8 annas. Upon perusal of the all these title deed pertaining to above said properties it clearly appears that, alienation was acted upon and the defendant No.12 and 17 became owner of the above said properties. It is apprehension on the part of plaintiff that the defendant No.12 and 17 may erect construction over the suit properties in order to deprive her valuable rights. Here the defendant No.12 and 17 are the non other than representative of Sri Veerabhadreshwar Gadduge Seva Sameeti Chikkbendigeri (ಶ್ರೀ ವೀರಭದ್ರೇಶ್ವರ ಗದುಗೆ ಸೇವಾ ಸಮಿತಿ, ಚಿಕ್ಕಬೆಂದಿಗೇರಿ) and by filing objections to the I.A.No.II they have shown their intention not to sale or transfer these properties to the others but for the benefit of devotees of Shri Veerabhadreshwar Gadduge they are intending to erect construction over the suit property. Therefore, since the defendant No.12 and 17, defendants No.7 to 10 are the title holder of the above said properties and the plaintiff is challenging the alienation of the same but the partition as per D.No.613 prima facially disclose the earlier partition in the above said properties. On the other hand the defendant No.12 and 17 have referred their title deed over the above said properties on the basis of title deed and there is no



prima facie case appear in favour of the plaintiff. At this stage of proceedings in order to set aside the respective sale deed in respect of above said properties and the D.No.613 which was certified in the year 1994 the plaintiff need to place evidence. The documents and pleadings of the plaintiff cannot be held a prima facie case at this stage of proceedings for the simple reason that, the defendant No.12 and 17 are the title holder in respect of suit properties. As rightly pointed by learned advocate for defendant No.12 and 17 it is well settled principle of law that the injunction order cannot be granted as against the true owner of the property. Here, it prima facially appears that the defendants No.12 and 17 are the true owners of the above said properties. Therefore, the balance of convenience lies in their favour rather than the plaintiff. Meaning thereby the plaintiff is not having prima facie case to grant temporary injunction in relation to above said properties.

15) But here, the defendant No.12 and 17 are having better knowledge about the fact that the suit being initiated by the plaintiff as against them claiming partition and separate possession. Therefore, as already discussed trial yet to be commenced from both the side as to decide the real lis between the parties. The defendants No.12 and 17 have claimed absolute ownership over the suit property based on the sale



deeds. Therefore, since the material lis between the parties are as such it is necessary here to impose condition on defendant No.12 and 17 that, in case of success in the matter by the plaintiff they shall maintain the earlier position in respect of suit property by removing all the abstractions as provided in Section 144 of Civil Procedure Code. However, the peculiar circumstances of the matter is as such it is a public divine as the defendant No.12 and 17 are intending to construct Veerabhadreshwar Gadduge in suit land. The public interest is involved in the matter and defendant No.12 and 17 are not having any personal interest over the suit properties. At this stage of proceedings in the considered opinion of this court the construction of Veerabhadreshwar Gadduge cannot be stopped for the simple reason of filing suit for partition and separate possession in respect of the suit land. The interest of public cannot be restrained by way of temporary injunction restraining the defendant No.12 and 17 not to construct Sri Veerabhadreshwar gadduge in the suit property. Therefore, when the public interest is involved in the matter the plaintiff has no prima facie case to grant temporary injunction against the defendant No.12 and 17 who are the true owner of the suit property as on the date of filing of the suit. For all these reasons I.A.No.III deserved to be allow pertaining to the suit properties claimed by defendants NO.12 and 17.



Hence, considering all these aspects, I answer **point No.1 to 3 in the Negative and point No.4 in the affirmative.**

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

O R D E R

***I.A.No.II filed by the plaintiff/
applicant U/Order XXXIX Rule
1 and 2 of Code of Civil
Procedure is hereby rejected.***

***I.A.No.III filed by the
/applicants defendants No.12
and 17 U/Order XXXIX Rule 4
of Code of Civil Procedure is
hereby allowed.***

***The temporary injunction
order granted against
defendant No.12 and 17 is
hereby vacated.***

***Looking to the facts and
circumstances of the matter no
orders as to cost.***

*(Dictated to the Stenographer, typed by him, revised and corrected by me
and then pronounced in the open court on this the 18th day of December
2025)*

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

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