



**IN THE COURT OF CIVIL JUDGE & JMFC., AT: AFZALPUR.**

**PRESENT**

**Sri. ANIL AMATE**, B.A. LLB(Hon's) ,  
Civil Judge & JMFC.,  
AFZALPUR.

**Dated this the 15<sup>th</sup> day of November-2025**

**O.S. No. 18/2023**

**PLAINTIFF:** Smt. Shobha W/o Premayya Hiremath  
D/o Basayya Hiremath, Age: 36 years,  
Occ: Housewife, R/o Nagarahalli village,  
Tq and Dist: Vijaypur.

***(By Sri. S.J.G. Advocate)***

**V/s**

**DEFENDANTS:** 1. Basayya S/o Irayya Hiremath,  
Age:70 years, Occ: Nil,  
R/o Tellonagi village, Tq: Afzalpur,  
Dist: Kalaburagi,

2. Smt. Parwati W/o Basayya Hiremath,  
Age: 60 years, Occ: Nil,  
R/o Tellonagi village, Tq: Afzalpur,  
Dist: Kalaburagi,

3. Irayya S/o Basayya Hiremath,  
Age: 40 years, Occ: Agriculture,  
R/o Tellonagi village, Tq: Afzalpur,  
Dist: Kalaburagi,

KAKB320022332022

O.S.No.18/2023



4. Smt. Gouramma W/o Gurilingayya  
D/o Basayya Hiremath, Age: 37 years,  
Occ: Housewife,,  
R/o Kattisangavi village,  
Tq: Jewargi, Dist: Kalaburagi.
5. Satish S/o Sidram Bagali,  
Age: 36 years, Occ: Agriculture,  
R/o Tellonagi village, Tq: Afzalpur,  
Dist: Kalaburagi,
6. Ramzan S/o Maheboob Sab,  
Age: 38 years, Occ: Agriculture,  
R/o Tellonagi village, Tq: Afzalpur,  
Dist: Kalaburagi,

***(D-1 to 3, 5 & 6 by Sri. S.S.P. Advocate  
D-4 by Sri. S.G.A. Advocate.)***

**PARTIES IN I.A.NO. I**

**APPLICANT:** Smt. Shobha W/o Premayya Hiremath  
D/o Basayya Hiremath.

**V/s**

**OPPONENTS:** Basayya & Others.

**ORDER ON I.A.NO.I**

The plaintiff has filed suit for partition and separate possession against the defendants and filed this IA No.I for restrain the



defendants from not to alienate, mortgage or create any kind of charge over the suit property Sy.No.116 and its hissa No.116/6,116/7,116/8, totally measuring 14 acres 09 guntas situated at Tellonagi village in Afalpur taluka until the disposal of the suit.

2. In support of above said application the plaintiff filed the affidavit and contended that the suit property was purchased by the grand father of the plaintiff by name Irayya S/o Basayya Mathpati, after his demise the suit property was mutated divide and mutated in the name of defendants as to extent of 04 acres 08 guntas in name of the defendant No.1 which is numbered as Sy. No.116/7, to extent of 04 acres 22 guntas in name of the defendant No.2 which is numbered as Sy. No.116/8, to extent of 05 acres 19 guntas in name of the defendant No.3 which is numbered as Sy. No.116/6, the defendant No.2 taking advantages of her name in the ROR of suit property executed registered sale deed in favour of defendant No.5 to the extent of the 01 acres 11 guntas in the year 2022 behind back of the plaintiff, which is numbered as Sy.No.116/8. The defendant No.2 sold the suit land to the extent of 01 acres 07 guntas in favour of the defendant No.6. The defendant No.1 also executed sale deed to the extent of 00 acres 26 guntas in favour of the defendant No.5. and in favour of defendant No.6 to the extent of the 00 acres 28 guntas, the defendant No 1 and 2 sold



out the portion of suit property in favour of the defendant No.5 and 6 and defendants not heed the request of the plaintiff's for effect the partition and separate possession in the suit property, they postponing the same one and other reasons, now the defendants taking undue advantages of the the fact trying to alienate the suit property behind back of the plaintiffs, if the defendants succeed in to do so, it cause huge irreparable loss and multiplicity of proceedings. Hence in order to safeguard the interest of the plaintiffs restraining the defendants is necessary. Hence prayed for allow the application.

3. On the other side the defendant No.1 to 3 and 5 filed their separate written statement along with memo for treat the written statements as objection to IA No. I and as per the defendant No.1 to 3 are admitted the relationship with the plaintiff. They denied that the suit property was purchased by the grand father of the plaintiff. During time of demise of the grand father the plaintiff was not born hence she is not entitled for the any share, the oral partition took place, as per the that partition mutation effected, at that time the plaintiff not raised any objection thereby she relinquished her right. The sale deed transaction made within knowledge of the plaintiff, the sale was made for the family necessities and for the welfare of the plaintiff. The defendant No.1 being the Kartha of the family for the repayment of the handloan taken for the marriage of the plaintiff and defendant No.3 and 4 the



defendant No.1 sold the land. At the time of the marriage of the plaintiff the defendant No.1 given the 10 tola gold 08 lakhs rupees. The plaintiff not raised any objection to sale at time of performing the sale transaction. The sale deed executed by the defendant No.1 ad 2 binding upon the share of the plaintiff. There is no cause of action to the plaintiff to institute the present suit against the defendants. Hence prayed for the reject the IA No. I. The defendant No.5 contended that, the plaintiff not given the clear description of the suit property hence suit is hit by the order VII rule 3 of the CPC. Further the denied the all the averments of the plaint for want of knowledge. The defendant No.5 is bonafide purchaser of the suit property portion, hence the suit against the this defendant is not maintainable. Hence prayed for the rejection of the IA No.I.

4. Heard both sides arguments, peruse documents available on record.

5. In view of above the following points that would arise for consideration on I.A.No.I is as follows:-

1. Whether, at this stage the plaintiff has made out a prima facie case lies in her favour?
2. Whether the plaintiff prove the balance of convenience lies in her favour?



3. Whether the plaintiff prove that in event of not allowing I.A.No.I, she will be put to irreparable loss and injury?

4. What Order?

6. Answers to the above points is 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 the following:-

### **REASONS**

7. **POINT NO.1 TO 3:-** Since these points are inter alia, hence they are taken together for common discussion.

8. It is well settled principles of law that, in order to decide the application filed under order XXXIX Rules 1 & 2 of CPC, the basic principles that are to be considered are prima-facie case, balance of convenience and irreparable loss shall be taken into consideration.

9. So far as the prima facie case, balance of convenience and irreparable loss are concerned, firstly the plaintiff has to establish the prima-facie case, the relationship between the defendant No.1

KAKB320022332022

O.S.No.18/2023



to 4 is admitted fact, the plaintiff filed suit for partition and separation against the defendant No.1 to 4 and the claim of the plaintiff is suit property is joint family property which was purchased by her grand father, without consent and knowledge of her defendant No.1 to 4 mutated their name after demise of her grand father and latterly some portion of suit property alienated in favour defendant No.5 and 6 by the defendant No.1 and 2, in is respect the ROR of suit property and divided hissa are produced, in there the names of defendants appearing, other side defendants main contention there was oral partition among them for which the plaintiff raised any objection and she relinquished her right over suit property, defendant No.1 sold the portion suit property for the family necessities and of the marriage of the plaintiff. Therefore, under these circumstances, there is need to be determined the right of the plaintiff in the suit property, the plaintiff established prima facie case, if an injunction order granted no harm will be going to cause to the defendants, the balance of convenience tilt in favor of the plaintiff rather than defendants. So far as the irreparable loss is concerned, as above said supra the plaintiff established prima facie case and balance convenience in her favour. As per the assertion of the plaintiff and defendants, definitely at this stage, no irreparable loss will cause to defendants rather than the plaintiff. Therefore, this court is of opinion that, refusing the injunction order would be caused multiplicity of proceeding .



Therefore as above made observation this court is answered the points No.1 to 3 are in the affirmative.

**10. POINT NO.4:-** For the foregoing reasons, I proceed to pass the following:

**:- O R D E R :-**

The I.A.No.I filed U/O XXXIX Rule 1 & 2 of CPC filed by the plaintiffs dated 09.10.2023 is hereby allowed. The defendants are hereby restrained from not to alienate, mortgage or create any kind of charge over the suit property Sy.No 116 and and its hissa No.116/6,116/7,116/8, totally measuring 14 acres 09 guntas situated at Tellonagi village in Afalpur taluka until the disposal of the suit.

No order as to cost.

*(Dictated to the Stenographer, directly on computer, typed by him, corrected by me, signed and then pronounced in open court on this the 15<sup>th</sup> Day of November-2025)*

**(Sri. Anil Amate)**  
**Civil Judge & JMFC,**  
**Afzalpur.**