



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

PRESENT

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

Dated this the 10th day of March-2026

O.S. No.89/2025

Plaintiffs:

1) Bhagyashree D/o Shantgouda Patil
Age: 26 years, Occ: Student,
R/o Shivur Tq. Afzalpur,
Dist. Kalaburagi.

2) Smt. Umashree D/o Shantgouda Patil
Age: 25 years, Occ: Student,
R/o Kalaburagi.

(By Sri. PBP Advocate)

V/s

Defendants:

Shantgouda S/o Siddalingappa Patil
Age: 60 years, Occ: Agriculture,
R/o Shivur, Tq. Afzalpur
Dist. Kalaburagi.

(By Sri. DDD Advocate)

PARTIES IN I.A. NO. I

Applicants:

1) Bhagyashree D/o Shantgouda Patil
Age: 26 years, Occ: Student,
R/o Shivur Tq. Afzalpur,
Dist. Kalaburagi.



2) Smt. Umashree D/o Shantgouda Patil
Age: 25 years, Occ: Student,
R/o Kalaburagi.
(By Sri. PBP Advocate)

V/s

Opponent : Shantgouda S/o Siddalingappa Patil
Age: 60 years, Occ: Agriculture,
R/o Shivur, Tq. Afzalpur
Dist. Kalaburagi.
(By Sri. DDD Advocate)

ORDER ON I.A.NO. I

The plaintiff has filed suit for partition and separate possession against the defendant and filed this IA No.I for restrain the defendant from not to alienate, mortgage or create any kind of charge over the suit property bearing Sy. No. 91/1 measuring 05 acres 27 guntas, situated at Shivur village in Afalpur taluka, until the disposal of the suit.

2. In support of above said application the plaintiff has filed affidavit by the plaintiff stated that, the suit property is ancestral property of the plaintiffs and of the defendant, which earlier standing in the name of the grand father of plaintiffs namely Sinddalingappa, he was died on 28.06.2003, after his demise suit property was mutated to the extent of 16 acres 06 guntas in the name of the grand mother Smt. Gangabai, she was died on



28.01.2018, during the life time of her partitioned among her children, accordingly defendant name was mutated to his share in the year 2012-13, plaintiffs have got their legitimate share in the suit property, the plaintiffs and defendant are in joint possession of the suit property, the defendant addicted bad habits and borrowed hand loans for fulfill his bad habits, the plaintiffs have heard that the defendant intended to sell the suit property , hence the plaintiffs approached to defendant on 01.12.2025 and requested for their 1/3rd share in the suit property, he refused to partition the suit property, the plaintiff has apprehension that the defendants may alienate or create the charge over the suit property, therefore to restrain them filed the present application and prayed for the allow the same.

3. On the other side, the Defendant No.1 has filed Written statement and filed memo to treat the WS as Objection to I.A. No. I. He denied the all averments of the plaint and the defendant specifically contended that the plaintiffs have suppressed the real facts that the settlement between the plaintiffs and of the defendant. The plaintiffs have agreed to clear the loan and get partition in the property. The plaintiffs have not included all properties in this suit, hence suit of the plaintiffs is bad for partial partition, the plaintiffs have not all the necessary parties in the suit hence is bad for non joinder of necessary parties, the defendant further contended that the defendant has spent huge amount for



education and livelihood of the plaintiffs by taking the hand loans and private finance, if the plaintiffs ready to clear the debts the defendant is ready give share in the suit property , the defendant is age old person has no alternative ways except this suit property to clear the debts, the mother of plaintiffs i.e., wife of the defendant has taken 10 tola gold , to avoid the burden of clearance loan of the defendant the plaintiffs have filed this suit, hence prayed for reject the IA No.I in the interest of justice and equity.

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 thier favour?
2. Whether the plaintiff prove the balance of convenience lies in their favour?
3. Whether the plaintiff prove that in event of not allowing I.A.No.I, their 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 partly affirmative.

Point No.3: In the partly 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. This is suit of the plaintiff for the partition and separate possession, contended that the suit property is ancestral and joint family property and the plaintiff seeking her share therein.

9. 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.

10. So far as the prima facie case, balance of convenience and irreparable loss are concerned, it is pertinent to note that as per the assertion made in their pleadings, there is no denial of relationship or share of the plaintiffs, but there is dispute that debt borrowed by the defendant is to be cleared, who has to clear is question mark, the defendant contention is that he being age old person he is unable to repay the debts , he has choice of this suit property for the clear the debt raised by him, the suit property is standing in his name, already two time the matter was refereed before the mediation, the plaintiffs have not been appeared before the mediation, however the defendant is ready to give the share of the plaintiffs as they claimed if they ready to clear the loans, the



defendant himself saying that he has no option other than suit property to clear the loans, under the facts and circumstances of the suit, no doubt the as per the admission of the defendant the plaintiffs have rights over the suit property , hence there is prima facie case of the plaintiffs, in respect of balance of concerned, the defendant has not produced any documents in respect of he has borrowed the loans, however as per the assertion of the plaintiffs themselves the defendant has borrowed the loans, whether its for the bad habits of defendant or for the education and livelihood of the plaintiffs, in this regard it needs trail where the plaintiffs claimed to be lagalhiers who are inherits defendant assets, therefore the balance of convenience and irreparable loss concerned lies in favour of the both side, if the defendant not restrained from alienation during the pendency of this suit, there is chances multiplicity of litigation, to avoid the same it is just and proper to restrain the defendant from alienation of suit property, for the above made observation this court is answered the points No.1 in the affirmative, point 1 and 2 are in the partly affirmative.

11. Point No.4:- For the foregoing reasons, this court 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 is hereby allowed.



The defendant is here by restrained to alienate, mortgage or create any kind of charge over the suit property bearing Sy. No. 91/1 measuring 05 acres 27 guntas, situated at Shivur village in Afalpur taluka until the further order.

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 10th Day of March-2026)

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