

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND  
J.M.F.C. AT CHINCHOLI**

PRESENT

Sri. Dattakumar Jawalkar, B.B.A. LL.B. (Hons.) LL.M.  
Addl. Civil Judge and J.M.F.C.,  
Chincholi

**Dated:12<sup>th</sup> day of June 2023**

**O.S. No.69/2022**

**Plaintiff:**

Chanrakala @ Shailaja W/o  
Chandrashekhar Patel,  
Age: 37 Years, Occ: Household, R/o  
Kondurga Village Mandal Kondurga of  
District Maheboob Nagar(T.S)

(By Sri.M.S.Sunkad, Advocate)

**V/s**

**Defendants:**

1. Chandrashetty S/o Basappa Sharad,  
Age: 71 Years, Occ: Agril, R/o Miriyan  
village of Taluka Chincholi, Dist:  
Kalaburagi.

2. Shivarajamma W/o Chandrashetty  
Sharad, Age: 65 years, Occ: Household  
Age: 32 Years, R/o H.No.8-1159 Gunj  
R/o Miriyan village of Taluka Chincholi,  
Dist: Kalaburagi.

3. Veerpakshappa S/o Chandrashetty  
Age: 41 years, Occ: Agril, R/o Miriyan  
village of Taluka Chincholi, Dist:  
Kalaburagi.

4. Saikumar S/o Late Basavaraj,  
Age: 19 years, Occ: Student, R/o

Miriyam village of Taluka Chincholi,  
Dist: Kalaburagi.

5. Sai Ganesh S/o Late Basavaraj,  
Age: 17 years, Occ: Student( Minor  
under the care and custody of  
defendant No.1 Chandrashetty) R/o  
Miriyam village of Taluka Chincholi,  
Dist: Kalaburagi.

6. Ravi S/o Venkatrao Maratha,  
Age: 42 years, Occ: Agril,  
R/o Miriyam village of Taluka Chincholi,  
Dist: Kalaburagi.

(Defendant No.1 to 5 by Sri. M.D.A  
Anwarkar, Defendant No. 6. by Sri. S.  
Kalaskar Advocate.)

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### **ORDER ON I.A. No. II**

The Plaintiff has filed the present Application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 along with the Plaint seeking Temporary Injunction restraining the Defendants from alienating, mortgaging, transferring or creating charge over the suit property pending disposal of the suit.

2. **Brief facts:** The Plaintiff has filed the present suit against the Defendants for Partition, Separate possession, Correction of revenue records and declaring that the sale deed bearing No. 719/2009-10 dated 29-06-2009 executed by Defendant No.3

in favour of Defendant No.6. is null and void and not binding on the Plaintiff. The Plaintiff has stated in her affidavit accompanying the Application that the suit Schedule property is the joint family property of Defendant No. 1 to 5. Previously the Defendant No. 1 for the benefit of the family has transferred suit property in the name of Defendant No. 2. The Defendant No. 1 and 2 had three children they are Plaintiff, Defendant No. 3 and father of Defendant No. 4 and 5. The Defendant No.3 started to look after the family affairs and behind the back and without knowledge of the Defendant No. 1 and 2 he got transferred the suit property in his name without the knowledge of the Plaintiff. On 29-06-2009 the Defendant No.3 executed the registered sale deed in favour of Defendant No.6. On 28-02-2022 and 10-03-2022 the Plaintiff approached the Defendant No. 1 to 5 and requested them to give her share. On refusal by the Defendants to give share the Plaintiff, has filed the present suit.

3. The Defendant No. 1 to 5 appeared through their counsel and have not filed the written statement and objection to I A No. II. The Defendant No. 6 appeared through his counsel and filed written statement along with the memo to treat written statement as objection to the I A No. II.

4. The Defendant No. 6 has filed the written statement denying the averments of the Plaintiff and further submits that the suit schedule property is the Stridhana Property of Defendant No.2. Hence the suit schedule property is not a joint family property of Defendant No. 1 to 5 and the Plaintiff. The Defendant No. 2 was the only daughter to her father and the suit schedule property was inherited from her father Nagappa. The Defendant No. 2 due to love and affection has given consent for mutation of the suit schedule property in the name of her son i.e., Defendant No.3. The Defendant No. 3 has sold the suit property in favour of Defendant No. 6 through registered sale deed dated:29-06-2009. The Plaintiff and the other defendants were having knowledge about the registered sale deed. Hence prays to dismiss the application.
5. Heard the learned Counsel for the Plaintiff and Defendant No.1 to 5. Learned Counsel for Defendant No.6 did not argue on IA No.II even after giving sufficient opportunity.
6. That upon perusal of the materials placed on record the following points arise for the consideration of this Court:

### POINTS FOR CONSIDERATION

1. Whether the Plaintiff has made out prima-facie case in his favour for the grant of Temporary Injunction?
2. Whether the Balance of Convenience lies in the favour of plaintiff?
3. Whether any irreparable injury/loss will be caused to the Plaintiff if the Temporary Injunction is not granted?
4. What Order?
7. The findings to the above points as under:

Point No. 1: In the Negative

Point No. 2: In the Negative

Point No. 3: In the Negative

Point No. 4: As per the Order for the following:

### REASONS

8. **Point No. 1:** It is the contention of the Plaintiff that the suit schedule property is the joint family property of Plaintiff and Defendant No.1 to 5. The Defendant No.3 without the knowledge of Plaintiff and Defendant No.1 and 2 has mutated the suit schedule property in his name and sold the suit schedule property to Defendant No.6. Whereas the Defendant No.6 has taken contention that suit schedule property is the Stridhana property of

Defendant No.2 which was received by her through her father. Due to love and affection the defendant No.2 agreed to mutate the suit property in the name of defendant No.3. Accordingly the Defendant No.3 sold the suit schedule property to the Defendant No.6 vide registered sale deed dated:29-06-2009.

9. In order to substantiate the contention of the Plaintiff she has produced the RTCs of the suit property from the year 2006-07 to 2021-22, Mutation Register of the suit schedule property and Certified copy of the registered sale deed dated:29-06-2009. The Defendant No.6 has not filed any document to substantiate his defence.
10. The RTCs of the suit schedule property for the year 2007-2008 shows the name of Defendant No.2 as the possessor. RTC of the suit schedule property for the year 2008-09 shows the name of Defendant No.3 as the possessor. RTCs of the suit schedule property from the year 2009-10 to 2021-22 shows the name of defendant No.6 as the possessor. The Mutation Register dated:30-06-2009 shows that the suit property was mutated in the name of Defendant No.6 from Defendant No.3 through sale deed. The sale deed dated:29-06-2009 shows that the Defendant No.3 has sold suit schedule property to the Defendant No.6. Even though the Defendant

No.6 has not produced any documents, the burden still lies on the Plaintiff to prove her case. In the present case none of the documents shows that the suit schedule property is the joint family property of Plaintiff and Defendant No.1 to 5. Therefore this court is of the opinion that the Plaintiff has not established the prima facie case. Hence point No.1 is answered in Negative.

11. **Point No. 2:** It is the case of the Plaintiff that the balance of convenience lies in her favour. The main dispute between the parties is whether the suit schedule property is the joint family property or not. The Plaintiff has produced the RTCs which shows that in the year 2006-07, the Defendant No.2 was in the possession. There is no documentary proof to show that the suit schedule property was purchased by the Defendant No.1 in the name of Defendant No.2. The Defendant No.3 has already sold the suit schedule property on 29-06-2009 in favour of the defendant No.6. From 2009 the Defendant No.6 is in possession of the suit schedule property. The RTCs produced by the Plaintiff herself shows that the Defendant No.6 is in possession of the suit schedule property from 2009. Such being the case the Plaintiff has tried the present case after 14 years from the date of execution of the sale deed. Hence this court is

opinion that balance of convenience lies in the favour of the Defendant No.6. Therefore Point No.2 is answered in Negative.

13. **Point No. 3:** As already stated in the reasoning to the Point No. 1 and 2, the Plaintiff has not established the prima face case and the balance of convenience the lies in the favour of the Defendant No.6. Such being the case if the present application is allowed irreparable loss and injury might be caused to the Defendant No.6 were as of the present application not allowed no harm or loss wold be caused to the Plaintiff as the documents shows that she is not in possession of the suit schedule property. Hence, Point No. 3 is answered in Negative.
14. **Point No.4:** In view of the findings of this Court to the Point Nos. 1 to 3, this Court proceeds to pass the following:

### **ORDER**

**I.A. No. II filed by the Plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 is hereby dismissed.**

*(Dictated to the stenographer, directly on the computer,  
then corrected and pronounced by me in the Open Court on  
this the 12<sup>th</sup> day of June 2023)*

*(Dattakumar Jawalkar)  
Addl. Civil Judge & J.M.F.C  
Chincholi*