

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC
AT JEWARGI

PRESENT: Sri. Sandeep A. Naik B.A., LL.B.,(Spl.)
Senior Civil Judge & J.M.F.C.,
Jewargi.

Dated This the 10th Day of February-2025

ORIGINAL SUIT NO.190/2024

PLAINTIFFS : 1. Mastanbee
W/o Late. Maktum Sab Mullagol,
Age: 60 years, Occ: Household.

2. Khasim Ali
S/o Late. Maktum Sab Mullagol,
Age: 33 years, Occ: Agriculture.

3. Dawal Malik
S/o Late. Maktum Sab Mullagol,
Age: 31 years, Occ: Agriculture,

All are R/o Khanapur S.K,
Tq: Surpur, Dist: Yadagir.

.....(By. Sri.J.V.H., Advocate)

V/s.

DEFENDANT: Dawalabee
W/o Late. Maktum Sab Mullagol,
Age: 65 years, Occ: Agriculture,
R/o Kodchi, Tq: Jewargi,
Dist: Kalaburagi.

.....(By. Sri.B.B.B., Advocate)

PARTIES TO I.A. NO.I

APPLICANT/ : Mastanbee and Others
PLAINTIFFS
V/S

OPPONENT/ : Dawalabee
DEFENDANT

i.	Provision under which the application is filed	U/o 39 Rule 1 and 2 R/w Sec.151 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	28-11-2024
iv.	Number of the application	IA No.1
v.	The date of which the objections are filed by different opponents	06-12-2024
vi.	The date on which the orders were passed on the said application	10-02-2025

ORDER ON I.A No.I FILED BY PLAINTIFFS

U/O 39 RULE 1 & 2 R/w Sec.151 OF C.P.C.

1. The plaintiffs have filed this I.A No.I under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C. praying for temporary injunction against the defendant restraining her from alienating, mortgaging

or creating any type of charge over the suit properties, till disposal of the suit.

2. The plaintiff No.1 sworn to the affidavit annexed to the I.A. No.I and reiterated the entire plaint averments in his affidavit. Therefore, it is necessary to refer the plaint averments ;

3. According to the plaintiffs, one Maktumsab S/o Khasimsab is the ancestor of plaintiffs and defendant. The said Maktumsab had two wives namely Dawalbee i.e., defendant and Mastanbee i.e., plaintiff No.1. The said Maktumsab and plaintiff No.1 had two children's namely Khasimali i.e., plaintiff No.2 and Dawala Malik i.e., plaintiff No.3. The plaintiffs claim that they and defendant are tenants in common and suit properties are their Matruka properties. The suit properties were originally belongs to said Maktumsab. The said Maktumsab has purchased the suit properties through a sale deed dated 05-11-2004. The defendant behind the back and without the knowledge of plaintiff got executed a registered partition deed dated 12-01-2021 and also got executed a registered gift deed dated 08-09-2022 in her favour.

4. The said Maktumsab was age old and was suffering from old age ailments and was not in a sound state of mind since he was bedridden from last 4-5 years and was under the custody of defendant. The defendant by taking undue advantage of fable mind of husband played a fraud upon him and got executed said documents. Deceased Maktumsab had no right to transfer the properties in favour of defendant as such said documents doesn't

confer any right of ownership to the defendant nor extinguish right of plaintiffs.

5. After death of Maktumsab, the plaintiffs and defendant have inherited the suit properties and have become tenants in common and jointly cultivating the suit properties without there being any partition by metes and bounds. But defendant by taking advantage of entry of her name to the record of rights is trying to alienate the suit properties in favour of others only to defeat the rights of plaintiffs. Therefore, plaintiffs are constrained to file this suit. This is all stated to be the cause of action for the plaintiffs to file this present suit.

6. The plaintiff No.1 further stated that they have got prima facie case, balance of convenience lies in their favour and if temporary injunction order is granted no hardship will be caused to the other side. On the other hand, if the application is not allowed, plaintiffs will be put to irreparable loss and injury and it may lead to multiplicity of judicial proceedings. Therefore, they prayed to grant temporary injunction against defendant.

7. The defendant filed memo stating that contents of written statement may be considered as objection to I.A. No.1.

8. The defendant filed her written statement and denied the plaint averments and called upon plaintiffs to prove the same with strict proof. The defendant admitted relationship with the plaintiffs and description of the suit properties and also admitted the nature of property as separate property of Maktumsab but defendant specifically contended that plaintiffs without any

reason left the company of deceased Maktumsab long back and started to reside at Khanapur (S.K) of Shahapur Taluk and completely neglected to look after said Maktumsab. Even plaintiffs did not take proper care nor fulfilled the necessary basic needs of Maktumsab. The defendant alone took the care of deceased Maktumsab till his death. The said Maktumsab is the absolute owner and in possession of suit properties and has given the suit properties to the defendant out of his love and affection towards her and for her benefit through registered documents dated 12-01-2021 and 08-09-2022.

9. The defendant has become the absolute owner and is in lawful possession of the suit schedule properties on basis of the said registered deeds as such as on the date of death of Maktumsab, he was not the owner of suit properties as such question of inheritance to suit properties of plaintiffs doesn't arise. Even the defendant has sold portion of suit property i.e., Sy.No.91/7 i.e., 2 acres in favour of one Saleema W/o Tajuddin through a registered sale deed dated 01-12-2024. Therefore, suit of the plaintiffs is not maintainable and deserves to be dismissed. Therefore, defendant prayed to dismiss the suit and prayed to dismiss I.A.No.I.

10. On considering I.A No.1, affidavit, written statement cum objection and arguments on I.A No.1, the points that would arise for my consideration are as under:

POINTS

1. Whether the plaintiffs/applicants has made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiffs/applicants?
3. Whether the irreparable loss and injury would be caused to the plaintiffs/applicants if the temporary injunction is refused?
4. What order?

11. The plaintiffs' counsel vehemently argued that plaintiffs have made out a prima facie case and balance of convenience lies in their favour and if the application is not allowed, plaintiffs would be put to irreparable injury. Further if defendant is not restrained from alienating the suit properties and she alienates the suit properties then it may leads to multiplicity of proceedings which cannot be compensated in terms of money. Therefore, he prayed to allow the application.

12. Per contra, counsel for defendant forcefully argued that plaintiffs have not made out a prima facie case and balance of convenience doesn't lies in favour of plaintiffs. Further she is the absolute owner of the suit properties. As on the date of death of said Muktumsab he was not the owner of the suit properties as such he did not left any estate behind him therefore question of plaintiffs inheriting suit properties doesn't arise. Therefore, he prayed to dismiss I.A. Therefore, application filed by plaintiff is not

maintainable. Therefore, he prayed to dismiss I.A.No.I

13. My answer to the above points are as 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

14. **Point No.1:** It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C. (1) plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the party seeking the relief and (3) that the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come to court with clean hands and place all the materials before the court so that, the court will be satisfied about the prima facie case in favour of the party seeking the order. At the same time, court cannot conduct a mini trial nor can court express its opinion regarding merits of the case while dealing with the applications of this nature. Only function of the court at this interlocutory stage is to see does the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal of granting

temporary injunction loss of hardship would be caused to which side. It is useful to refer decision of **Kashinath Sansthan v. Srimad Sudhindra Thirtha Swamy**, reported in **AIR 2010 SC 296** the court prescribed the criteria for temporary injunction as follows:

"In order to grant an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well-settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction is granted.

15. It is also necessary to mention here that "Prima facie case" not to be confused with "prima facie title" which has to be established on evidence at the trial. Prima facie case is a substantial question raises bona fide which needs investigation and a decision on merits.

16. Now keeping in mind the aforesaid aspects let us consider the present application in hand. Before adverting further it is necessary to see the facts of the case. The plaintiffs have filed this suit for the relief of partition and separate possession in the suit schedule properties. It is the specific case of plaintiffs that they and defendant are tenants in common and jointly cultivating

the suit properties. Further the suit properties belong to Maktumsab and after his death the plaintiffs and defendant have inherited the suit properties as such plaintiffs and defendant have definite share in the suit properties. Therefore, plaintiffs are entitled for share in the suit properties, whereas defendant though admitted the relationship and nature of the properties as separate property of Maktumsab but taken specific contention that said Muktumsab has given suit properties to her through registered partition deed and gift deed as such as on the date of his death said Muktumsab doesn't not have right, title or interest over suit properties therefore said Muktumsab died without leaving any estate as such question of plaintiffs inheriting the suit properties doesn't arise. Further on basis of registered partition deed and gift deed she has become absolute owner of the suit properties and even she alienated some portion of Sy.No.91/7 in favour one Saleema W/o Tajuddin through registered sale deed.

17. At this stage the relationship between the parties is not in dispute and even the suit property was originally belongs to Maktumsab W/o Khasimsab is not in dispute and even the gift deed and partition deed discloses that said Maktumsab and defendant got partitioned suit property Sy.No.91/3 measuring 4 acres of Mudabal (B) village and in the said partition deed dated 15-01-2021 defendant was allotted 2 acres of land and Maktumsab was allotted 2 acres of land in Sy.No.91/3. Further gift deed dated 08-09-2022 was gifted by said Maktumsab in favour of defendant.

As such it is clear that Muktumsab was the absolute owner of the suit properties.

18. At this stage interlocutory stage it is necessary to mention here that court cannot conduct a mini trial and try to resolve difficult question of law and facts. While dealing with this kind of applications seeking temporary injunction the court has to see whether plaintiffs have made out prima facie case, balance of convenience lies in whose favour and irreparable hardship or loss will be caused to which side in the event granting or refusing temporary injunction. At this interlocutory stage plaintiffs have produced record of rights of suit properties which are standing in the name of defendant and defendant did not denied the relationship nor denied that suit property was originally belongs to Maktumsab. It is the apprehension of plaintiffs that defendant is trying to alienate suit schedule properties. The aspects of validity of the partition deed and gift deed and also entitlement of plaintiffs to the relief sought are all aspects which are required to be adjudicated in the present suit and it requires a full-fledged trial.

19. At this stage, it is necessary to observe here that the court cannot conduct a mini trial at the time of adjudicating the applications of this nature at this stage this court cannot express its opinion regarding merits of the case. While dealing with the applications of this nature the only function of the court is to see do the applicant has made out a prima-facie case and balance of convenience is in whose favour and in case of refusal to grant temporary injunction the loss or hardship would be caused to which side. The plaintiffs have produced record of rights of suit

properties and it is not in dispute that suit properties are standing in the name of defendant as such apprehension of plaintiffs that defendant may alienate the suit schedule properties infavour of others cannot be ruled out. Even said apprehension becomes stronger since defendant has already alienated portion of suit property infavour of another. Thus it can be opined that plaintiffs have made out an arguable case and therefore whenever there is an arguable case is made out then it can be said that plaintiffs have made out a prima-facie case. Hence, I answered **Point No.1 in the Affirmative.**

20. **Point No.2 and 3** :- Both these points are taken up together for common discussion to avoid repetition of facts. The court has to see that does the applicant will sustain such injuries which cannot possibly and adequately remedied by way of damage and said damage would be inadequate in case of success of applicant. Considering the question of balance of convenience is concerned court has to see the mischief or inconvenience of either parties or otherwise it is necessary or proper to maintain status-quo till the adjudication of dispute is finally decided. The ingredients have to be established by the party who seeks injunction in his favour. The grant of injunction being the discretionary relief the party who claims such relief should come to the court with clean hands and place all the materials before the court so that court will satisfy about the case in favour of the party seeking the order.

21. It is to be noted here that plaintiffs have sought for temporary injunction against defendant from alienating the suit schedule property. Admittedly, it is not in dispute that record of rights of the suit schedule properties stands in the name of defendant. Therefore, possibilities of alienating suit schedule property by defendant in favour of others cannot be ruled out. In this sense, I hold that the balance of convenience lies in favour of plaintiff and not in favour of defendant. Now as regard to the hardship is concerned. If in case temporary injunction is not granted and defendant alienates suit properties it would lead to multiplicity of proceedings and plaintiffs will be put to hardship. On the other hand, if temporary injunction order is granted no hardship will be caused to the defendant, since if in case plaintiffs fails to succeed in the suit then ultimately defendant can deal with the suit properties as per her whims and fancies. The plaintiffs are under apprehension that defendant is trying to alienate the suit schedule properties in favour of others. Therefore, I am of the view that if I.A No.1 is not allowed, plaintiffs would be put to heavy and irreparable loss on the other hand defendant will not be put to any hardship. Hence, I answered **Point No.2 and 3 in the Affirmative.**

22. **Point No.4** :- In view of my findings on Points No.1 to 3, the plaintiff is entitled to the relief of temporary injunction which he has sought for. Hence, I proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiffs under

Order 39 Rule 1 & 2 R/w Sec.151 of
C.P.C., is hereby allowed.

The defendant is hereby restrained
by an order of temporary injunction from
alienating, mortgaging or creating any
charge over the suit schedule properties,
pending disposal of the suit.

Cost of this application will follow
the result of this suit.

For Issues by 28-04-2025.

(Dictated to the Stenographer directly on Laptop, typed by him, corrected and then
pronounced by me in the Open Court on this 10th Day of February -2025).

(Sandeep. A. Naik)
Senior Civil Judge,
Jewargi.