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**IN THE COURT OF CIVIL JUDGE AND JMFC., JEWARGI.**

**Present:- Sri.Kashinath V. Uppar, B.Sc., LL.B.,
Civil Judge and JMFC,
Jewargi.**

Dated : This the 20nd day of February-2025

O.S.No.94/2021

Between:**: Plaintiffs**

Syed Bee W/o Syed Sab, (D/o late Kasimsab Gangapur)
Age: 45years, Occ: Agriculture & household,
R/o Ijeri, tq: Jewargi,
Dist: Kalaburagi.

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

V/s

: Defendants

1. Jainabee W/o late Khasim Sab Gangapur,
Age: 65years, Occ: Agriculture & household,
R/o Ijeri, tq: Jewargi, Dist: Kalaburagi.
2. Lal Ahmad S/o late Khasim Sab Gangapur,
Age: 40years, Occ: Agriculture,
R/o Ijeri, tq: Jewargi, Dist: Kalaburagi.
3. Syed Sab S/o late Khasim sab Gangapur,
Age: 40years, Occ: Agriculture,
R/o Ijeri, tq: Jewargi, Dist: Kalaburagi.
4. Ameena Begum W/o Abdul Basha
(D/o late Khasim sab Gangapur),
Age: 34years, Occ: Agriculture & household,
R/o Ijeri, tq: Jewargi, Dist: Kalaburagi.
5. Imam sab S/o Abdul Sab,
Age: 36 years, Occ: Agriculture,

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R/o Ammapur, tq: Shorapur, dist: Yadagiri.

6. Abedabegum W/o Mohd. Jaffer Ladaf,
Age: 38 years, Occ: Agriculture,
R/o Ijeri, tq: Jewargi, dist: Kalaburagi.

7. Shakuntala W/o Devindra Sajjan,
Age: 28 years, Occ: Agriculture & household
R/o Ijeri, tq: Jewargi, dist: Kalaburagi.

8. Iramma W/o Yankappa Awaradi,
Age: 63 years, Occ: Agriculture
R/o Ijeri, tq: Jewargi, dist: Kalaburagi.

(by Sri. B.B., Advocate)

PARTIES TO I.A. NO.II

APPLICANT/S : Syed Bee W/o Syed Sab,
PLAINTIFF (D/o late Kasimsab Gangapur)

V/S

OPPONENT/ : 1. Jainabee W/o late Khasim Sab
DEFENDANTS Gangapur & others

1	Provision under which the application is filed	U/O.39 Rule 1 & 2 of CPC.
2	Relief sought for	Not to alienate
3	The date on which the application is filed	25-05-2022
4	Number of application	I.A.No.2
5	The date which the objection are filed by different opponents	02-07-2022
6	The date on which the orders were passed on the said application	20-02-2025

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ORDER ON I.A No.II FILED BY PLAINTIFF

U/O 39 RULE 1 & 2 OF C.P.C.

I.A.No.2 is filed by the Learned Counsel for the Plaintiffs under Order 39 Rule 1 and 2 R/W Sec. 151 of the Code of Civil Procedure for seeking the relief of Temporary Injunction in favour of the Plaintiffs and thereby restraining the Defendant No.2 from alienating, mortgaging or creating any type charge over suit schedule properties till the disposal of the suit.

2. The Plaintiff sworn to an affidavit in support of the application, wherein she has stated that, she is the daughter of one Maheboobee deceased and Khasimsab deceased. The said Maheboobee was the first wife of deceased Khasimsab. The said Maheboobee and Khasimsab are dead. The defendant No.1 is the second wife of Khasimsab and defendant No.2 to 4 are the children of said Khasimsab born through defendant No.1.

3. The plaintiff and defendant No.1 to 4 are the tenants-in-common after the death of Khasimsab and his wife Maheboobee. The suit properties were owned and possessed by deceased Khasimsab who dead on 28-06-2018 leaving behind him the plaintiff and defendants No.1 to 4 as heirs and successors. The plaintiff and defendants No.1 to 4 succeeded to the suit properties after the death of said Khasimsab and became the joint owner and in joint

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possession of the same and join cultivator and sharing the yields but the suit properties have not been partitioned by metes and bounds.

4. Plaintiff further submitted that, the defendants No.1 to 4 stealthily behind the back and without the knowledge of plaintiff have got entered in the ROR of the suit properties in the name of defendant No.1 and 2. The defendant No.2 taking undue advantage of his name in ROR has sold the suit properties to the defendants No.5 and 6 through registered sale-deed bearing Document No.4174/2020 dated 14-09-2020, 1430/2011-12 dated 30-06-2011 in respect of Sy.No.340/4 measuring 03 acres out of 06 acres and Sy.No.340/2 measuring 04 acre 28 guntas out of the suit properties by assigning separate hissa numbers. The defendant No.6 again sold the suit property measuring 04 acre out of 04 acres 28 guntas in Sy.No.340/2 purchased by her to the defendant No.7 through registered sale deed bearing documents No.7911/2017-18 dated 29-01-2018. The defendant No.2 has no absolute right to sell the suit properties as the plaintiff is also the heir and successor of deceased Khasimsab. The defendant No.5 to 7 will not become owner on the basis of said sale-deeds. Hence, the same are not binding on the rights and share of plaintiff.

5. Plaintiff further submitted that, already that the plaintiff and defendant No.1 to 4 become the joint owners and in joint possession of suit properties upon the death of Khasimsab and the plaintiff

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being the heir is having 1/5th share in the suit properties. The plaintiff had approached to the defendant No.1 to 4 on 10-07-2021 and demanded to partition the suit properties and allot her 1/5th share in the suit properties but the defendant No.1 to 4 denied to do so. Hence, the plaintiff constrained to file suit for partition and separate possession and declaration that the sale-deed bearing document No.4172/2020 dated 14-09-2020, 1430/2011-12 dated 30-06-2021 and 7911/2017-18 dated 29-01-2018 are not binding on the right and share of plaintiff. It is stated that the Plaintiff has made out prima facie case, the balance of convenience leans in their favour and if the equitable relief of temporary injunction is not granted in favour of the Plaintiffs, then the Plaintiffs will be put to irreparable loss and hardship. **With these averments, the Plaintiffs have sought for allowing I.A. No.1.**

6. The Defendants have appeared through their Counsel and filed their written statement along with memo to consider the written statement as objections to I.A.No.2. In the written statement defendants No.2 and 3 admitted the relationship with plaintiff, but they denied that, after death of late Khasimsab plaintiff and defendants are the joint owners and in possession without partition and without knowledge and behind the back of sale-deeds were executed in favour of defendant No.5 and 6. Subsequently in favour of defendant No.7 and they are not binding on the rights of the plaintiff. And she is approached to defendants on 10-07-2021 and

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demand for allotment of her share and she constrained to file this suit.

7. Defendants further submitted that, during the life time of Khasimsab, to avoid the future conflicts with his free will and consent made oral family arrangement/partition in the year 1983 in which land Sy.No.340/A measuring 10 acre 27 gutnas was given to the defendant No.2 and Sy.No.464/A measuring 07 acre 03 guntas was kept for his life time maintenance. The said allotment in the family arrangement certified by mutation No.230/1998 dated 01-10-1983 since than the defendant No.2 has been peaceful possession and enjoyment of the said land. And now the same is numbered as Sy.No.340/1. The said fact is within the knowledge of plaintiff and entire villagers, defendant No.2 is developed the land allotted to him by spending huge amount and made fertility one. The plaintiff and her family members including father of plaintiff not challenge the said mutations allotted by the defendant No.2. The defendant No.2 alienate the land to the extent of 03 acre in favour of defendant No.5 for the family and legal necessity of with consent of plaintiff in Sy.No.340/B. The remaining land measuring 06 acres has been gifted orally by Khasimsab in presence of witnesses on 10-06-2010. The said Khasimsab declare that, he gifted the suit land and deliver the possession in favour of defendant No.2 and 3. The defendant No.2 and 3 same accepted the gift and have been in possession enjoyment of the suit land. It is contended that the Plaintiffs have not made out

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prima facie case, balance of convenience does not in their favour and if the equitable relief of temporary injunction is granted infavour of the Plaintiffs, then the Defendants will be put to irreparable loss and hardship. **With these contentions, the Defendants have sought for rejection of I.A No.2.**

8. Heard the arguments of the Learned Counsel appearing for the parties and perused the materials on record.

5. Now the following points arise for consideration of this Court are.

Point No.1: Whether the Plaintiffs have made out prima-facie case for grant of Temporary Injunction as sought for?

Point No.2: Whether the balance of convenience lies in favour of the Plaintiffs?

Point No.3: Whether the Plaintiffs will be put irreparable loss and hardship, if IA No.2 is not allowed?

Point No.4 : What Order?

9. The findings of this Court on the above said 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 the final order for the following*

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REASONS

9. **Point No.1** :- At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

10. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

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11. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

12. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

13. In order to ascertain the prima facie case, this Court has carefully perused the materials on record. According to the plaintiff the suit schedule properties were owned and possessed by the deceased Khasimsab. Who died on 28-06-2018, leaving behind him the plaintiff and defendant No.1 to 4 are succeed to the suit properties after death of Khasimsab. Plaintiff produce the old records of Sy.No.340, measuring 10 acre 27 guntas, which is standing in the name of Khasimsab S/o Gudusab. The name of Khasimsab has been rounded up and name of defendant No.2 was appeared in the ROR in the year 1984. The present suit properties are standing in the

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name of defendant No.2. The defendant No.2 filed his objection that, during the life time of Khasimsab with his free will and consent in the year 1983 in land Sy.No.340/A measuring 10 acre 27 guntas, was given to the defendant No.2 and land Sy.No.464/A measuring 07 acre 03 guntas was kept for life maintenance of Khasimsab. The contention taken by the defendant No.2 it required full-pledged trial. At this stage, this court cannot go to mini trial. The present suit properties are standing in the name of defendant No.2. The apprehension of the plaintiff that, defendant No.2 may chances to alienate the suit properties. Hence, the apprehension of plaintiff cannot be ruled out. At this stage, if the Defendant No.2 alienates the suit schedule properties, then it will lead to multiplicity of proceedings and it will cause hardship to the parties. After considering all these aspects, this Court is of the opinion that the Plaintiffs have made out prima facie case for grant of temporary injunction. **With these observations, this court has answered Point No.1 in the Affirmative.**

14. **Point No.2 & 3:-** Point No.2 and 3 are inter-connected; hence in order to avoid the repetition of facts, the above said points are taken up for common discussion.

15. The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative

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mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

16. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that she will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to her by which she can protect himself from the consequences of apprehended injury.

17. After considering the materials on record this Court is of the opinion that if the Defendant No.2 alienates the suit schedule properties, then the Plaintiffs will be put to hardship and in turn it will leads to multiplicity of proceedings. If the Defendant No.2 is temporarily restrained from alienating the suit schedule properties till the disposal of the suit, no loss or hardship will be caused to the Defendant No.2. The balance of convenience leans in favour of the Plaintiffs and if the temporary injunction is not granted in favour of the Plaintiff, then the Plaintiff will be put to irreparable loss and hardship and the

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same cannot be compensated in any way. **With these observations, this court has answered Point No.2 and Point No.3 in the Affirmative.**

17. **Point No.4:-** For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

ORDER

I.A.No.2 filed by the Learned Counsel for the Plaintiffs under Order 39 Rule 1 and 2 R/W Sec.151 of CPC is hereby allowed.

By way of granting temporary injunction infavour of the Plaintiff, Defendant No.2 is temporarily restrained from alienating the suit schedule properties till further order.

No order as to cost.

(Typed by me on the laptop, corrected and then pronounced by me in the Open Court on this 20th Day of December-2024).

(Kashinath V. Uppar)
Civil Judge & JMFC,
Jewargi.