

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
SEDAM

PRESENT:

Sri SAGAR GURUGOUDA PATIL
B.A., LL.B(Spl.)
Senior Civil Judge & JMFC, Sedam

Dated: 07-01-2025.

OS No.64/2021

Plaintiff/s :
Santosh S/o late Basawaraj & others
(Smt/Sri N.R, Advocate)

VS

Defendant/s :
Smt.Ayyamma and others
(D.1 & 2, Smt/Sri H.S.R., Advocate)
(D.4 by Smt/Sri.P.G.C. Advocate)
(D.3(a to e) Absent)

RANK IN IA 1

Santosh and others : Applicant/s/Plifts

VS

Ayyamma & others : Opponent/s/Defts

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
ii	Relief sought for	Suit for partition and separate possession
iii	The date on which the application is	29-09-2021

	filed	
iv	Number of application	One
v	The date on which the objections are filed by different opponents	27-05-2022
vi	The date on which the orders were passed on the said application	07-01-2025

ORDERS ON IA 1
Under Order 39 rule 1 & 2 of CPC

The plaintiffs/applicants have filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendants 1 to 3 by way of temporary injunction from alienating the suit properties till disposal of the suit.

2) The plaintiff No.1 has sworn to an affidavit in support of IA and stated that the plaintiffs and defendants are joint family members and coparcners. The suit properties are Hindu joint family properties. The plaintiffs and defendants are in joint possession and enjoyment of the suit properties. The father of the plaintiffs died on 15.1.2021. After his death the plaintiffs approached the defendants and demanded their share in the suit properties. But the defendants 2 and 3 got mutated one suit land in their names behind the back of the plaintiffs. Other lands are standing in the name of the defendants 1 and 2. Now the defendants 1 to 3 are trying to alienate the suit properties. Hence, prays to allow the IA.

3) After service of suit summons, the defendants 1

to 3 have appeared through their counsel and filed their written statement. In their written statement the plaintiffs have not made Mallappa as parties to the suit. Therefore, the suit is bad for non joinder of necessary parties. They have admitted that the suit properties are the joint family properties of the plaintiffs and defendants and the said Mallamma. They have also admitted that the plaintiffs are grand sons of late Devappa and defendants 2 and 3 are sons of the said Devappa. Further they have admitted that the plaintiffs and defendants constitute Hindu joint family and there is no partition in the joint family. The defendants have denied the rest of the plaint averments.

4) The defendants have submitted that the plaintiffs have not included all the joint family properties in the suit. Therefore, the suit is not maintainable. The lands in Sy.No.19/1 and 82/5 are also joint family properties. The plaintiffs and defendants are having equal share in the said properties. The defendants are claiming share in the said properties and they are ready to pay court fee. They pray to decree the suit in respect of suit properties and non suited properties i.e., lands in Sy.No.19/1 and 82/5.

5) On the basis of the above facts the following points arise for my consideration:

- 1) Whether the plaintiffs have made out prima facie case?

- 2) Whether the balance of convenience lies in favour of the plaintiffs?
 - 3) What order?
-
- 6) Perused the records. Heard arguments.
 - 7) My answer to the above points are as under:
 - 1) IN THE AFFIRMATIVE
 - 2) IN THE AFFIRMATIVE
 - 3) AS PER THE FINAL ORDER

for the following:

REASONS

8) **POINT No.1 and 2:** Since these two points are inter related they are taken up together for common discussion to avoid repetition of the facts.

9) The Pahanies at Ex.P.1 to P.5 show that the suit properties are standing in the name of defendant No.1. It is not in dispute that the suit properties are joint family properties of the plaintiffs and defendants. The death certificate shows that the plaintiffs' father Basavaraj died on 15.1.2021. The certified copy of the registered Gift deed dated 30.6.2021 is at Ex.P.9, wherein the defendant No.1 gifted suit item No.1 property in favour of defendants 2 and 3. In the RTC extract at Ex.P.1 it is seen that from the year 2011 to 2021 the suit item No.1 property was standing in the

name of defendant No.1 and in column No.10 the mode of possession is shown as ancestral. The same prima facie shows that the suit item NO.1 property is ancestral property. Therefore, the defendant No.1 cannot gift the ancestral property. Therefore, the validity of the said gift deed has to be decided during the trial.

10) The defendants have contended that the plaintiffs have not made one Mallamma as party to the suit. But the records reveal that subsequently the plaintiffs got impleaded the said Mallamma as defendant No.4. The defendants have further contended that the suit is one for partial partition. It is settled law that suit for partial partition is not maintainable. Therefore, the plaintiffs will face the risk of that aspect. The defendants in their written statement have prayed to give share to them in the non suited properties. But they have not filed any counter claim furnishing suit schedule including non suited properties. Therefore, unless and until counter claim is filed the decree cannot be passed in respect of non suited properties. Since the fact that the suit properties are the joint family properties and the plaintiffs and defendants are the joint family members is not in dispute it can be held that the plaintiffs have made out prima facie case.

11) At this stage it is useful to refer the decision of the Hon'ble High Court of Karnataka in the case of Chinnamma VS Nagaraj, reported in ILR 1995 KAR 1561

wherein the Hon'ble High Court held as under:

CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908) - Order 39 Rules 1 & 2 - Disputes relating to agricultural lands & joint family property : grant of interim orders - Principles.

HELD:

Disputes relating to agricultural lands and disputes relating to joint family property are quite common in the Civil litigation of this Country. Courts have therefore been required to evolve certain broad principles which have now become almost well defined while dealing with disputes of this type which principally take into account the fact that the litigation takes some time and that if certain changes take place in the character of the property under dispute during the interim period, that it would only give rise to further litigation and sometimes renders the relief itself infructuous. For this purpose, more as a measure of safety, caution and legal expediency, the Courts have culled out certain well defined principles which ordinarily ought not to be departed from. One of this principles is that where there is a dispute in relation to immovable property which happens to be vacant, that if the property were to be encumbered, alienated, built upon or if third party rights are permitted to be created during the interim period that the situation might become and in fact does become totally irreversible by the time the Court passes final orders. It is a well defined principle of law that a Court is required to be equally fair to the defendant Nos.1 & 7s as also to the parties who have approached the Court and therefore, necessary safety precautions in relation to the plaintiffs' interest are also of some consequence. This is in fact essence of the principle behind the grant for interim orders.

12) The above principle of law is aptly applicable to the case at hand. In this case in order to avoid creating of third party rights over the suit schedule properties till disposal of the suit it is just & necessary to restrain the defendants 1 to 3 from alienating the suit schedule properties. The plaintiffs have stated that now

the defendants 1 to 3 are trying to sell the suit properties. Therefore, if they succeed in their attempt and alienate the suit properties to third parties it will complicate the matter and lead to multiplicity of suits and also cause irreparable loss & untold hardship to the plaintiffs. On the other hand if the defendants 1 to 3 are restrained from alienating the suit properties for some period i.e. till disposal of the suit no prejudice would be caused to the defendants 1 to 3. Hence I answer Points 1 & 2 in the affirmative.

13) **POINT No.3**: For the foregoing reasons, the following:

ORDER

The application filed by the plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendants 1 to 3 are hereby restrained by way of temporary injunction from alienating suit schedule properties till disposal of the suit.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **7th day of January 2025.**)

(SAGAR GURUGOUDA PATIL)
Senior Civil Judge & JMFC, Sedam.