

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: 16-12-2025.

OS No.45/2025

Plaintiff/s :
Mahendra
(Smt/Sri N.R. Advocate)

VS

Defendant/s :
Laxmi & others.
(D.1 to 7 Smt/Sri C.K.K. Advocate)
(D.8 & 9 Exparte)
(D.10 Smt/Sri M.S.B. Advocate)

RANK IN IA 1

Mahendra : Applicant/s/Plft

VS

Laxmi & 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 and declaration
iii	The date on which the	28-03-2025

	application is filed	
iv	Number of application	One
v	The date on which the objections are filed by different opponents	19-09-2025
Vi	The date on which the orders were passed on the said application	16-12-2025

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

The plaintiff/applicant has filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the defendant No.1 to 7 by way of temporary injunction from alienating the suit lands item No.8 to 15 till disposal of the suit.

2) The plaintiff has sworn to an affidavit in support of IA and stated that one Paramappa S/o Bichappa was common ancestor of the plaintiff and defendants. The said Paramappa had four sons namely the plaintiff, Narasimhalu, Shreshail and Devindrappa and a daughter-defendant No.8. The said Shreshail and Devindrappa died unmarried. The plaintiff and defendants constitute Hindu undivided joint family. The suit items No.1 to 7 are ancestral properties of the plaintiff and defendant No.1 to 7. The said properties were fallen to the share of Paramappa in the partition between the said Paramappa and his brothers. Plaintiff's father purchased land measuring 18 acres 06 guntas in

Sy.No.107 of Pakal village in the name of his elder son Narasimhalu when he was minor. Now Sy.No.107 is divided into 8 portions. The land in Sy.No.74 was jointly purchased by plaintiff's father and his brother Pentappa and in the partition suit the said property was fallen to the share of plaintiff's father.

3) It is submitted that land measuring 7 acres 3 guntas was purchased by plaintiff's father in the name of his son Devindrappa who died unmarried. The suit properties are joint family properties. There was no partition in the joint family. On 02.03.2025 the plaintiff demanded to effect partition in the suit properties and for that the defendant No.1 told that they got decree from the court and he will not give share to the plaintiff in suit item No.7. The defendant No.2 colluding with defendants No.1 and 3 to 7 got filed suit for partition in OS No.54/2023 in respect of land in Sy.No.107. The plaintiff is not party to the said suit. Therefore the said decree is not binding on him. Now the defendants are trying to alienate the suit items No.8 to 15. Hence, prays to allow the IA.

4) After service of suit summons, the defendants No.1 to 7 have appeared through their counsel and filed their written statement. In the written statement the defendant No..1 to 7 have admitted the relationship of the plaintiff and defendants. They have admitted that the suit items No.1 to 7 are ancestral properties of plaintiff and defendants. They

have denied that father of the plaintiff Paramappa purchased land measuring 18 acres 06+ guntas in Sy.No.107 of Pakal village in the name of his elder son Narasimhalu out of the joint family fund when the said Narasimhalu was minor. They have contended that maternal grand father of the Narasimhalu by name Narasappa purchased the said property in the name of Narasimhalu. Therefore, the said property is not the joint family property.

5) It is submitted that Paramappa died in the year 1991. In the year 2007 oral partition took place in the family. In the said partition the plaintiff, his mother and his sister on the one side and Narasimhalu on the other side got divided the joint family properties. In the said partition land in Sy.No.107 was fallen to the share of Narasimhalu. The land measuring 12 acres 06 guntas in Sy.No.56 of Gazlapur village fell to the share defendant No.9 and the plaintiff. Thereafter the defendant No.9 sold above land to one Kamalabai and Mudhyalabai under registered sale deed dtd: 22.01.2008. The plaintiff has not included the said property in the suit. Therefore, suit is not maintainable. Hence, prays to dismiss the suit.

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

- 1) Whether the plaintiff has made out prima facie case?

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

REASONS

9) **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.

10) It is not in dispute that the plaintiff and defendants are descendants of late Paramappa. It is not in dispute that suit item No.1 to 7 properties are ancestral properties the plaintiff and defendants. The RTC extracts of suit items 8 to 15 show that the said properties are standing in the name of legal heirs of Narasimhalu who is elder son of ancestor Paramappa. The certified copy of the registered sale deed dtd: 04.02.1978 shows that land measuring 18 acres 06 guntas in Sy.No.107 of Pakal village was purchased in the name of Narasimhalu when he was 15 years old. The plaintiff has contended that the said property was purchased

by his father Paramappa out of the joint family funds in the name of his elder son Narasimhalu. The defendants have denied the same and contended that maternal grand father of Narasimhalu purchased the said land in the name of Narasimhalu. It is to be noted that in the sale deed the father of said Narasimhalu by name Paramappa is shown as minor guardian of the said Narasimhalu. The same reveals that as on the date of purchasing the property the said Narasimhalu was minor and he had no independent source of income. It is to be noted that it is not in dispute that the suit items No.1 to 7 are ancestral properties and same were in existence during the lifetime of the said Paramappa. Therefore, it can be inferred that the said Paramappa had income from the ancestral and joint family lands.

11) It is pertinent to note that the heavy burden is on the defendant No.1 to prove that the maternal grand father of her husband-Narasimhalu purchased the land in Sy.No.18 in the name of Narasimhalu when he was minor. This issue has to be decided only after the trial. At this stage it cannot be concluded that the maternal grand father of Narasimhalu purchased land in Sy.No.18 and hence it is not the joint family property. Only after full fledged trial only it can be concluded that whether the said property was purchased by father of Narasimhalu or it was purchased by maternal grand father of the said Narasimhalu. Therefore, at this stage the plaintiff has made out prima facie case.

12) 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.

13) 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 item No.8 to 15 till disposal of the suit it is just & necessary to restrain the defendant No.1

to 7 from alienating the suit schedule properties. The plaintiff has stated that now the defendant No.1 to 7 are trying to sell the suit items No.1 to 7. 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 plaintiff. On the other hand if the defendant No.1 to 7 are restrained from alienating the suit properties for some period i.e. till disposal of the suit no prejudice would be caused to the defendant No.1 to 7. Hence I answer Points 1 & 2 in the affirmative.

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

ORDER

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

The defendant No.1 to 7 are hereby restrained by way of temporary injunction from alienating suit item No.8 to 15 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 **16th day of December 2025**)

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