

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: 18.03.2026.

**OS No.133/2025**

Plaintiff/s :  
Ayyamma and Another  
(Smt/Sri R.I. Advocate)

VS

Defendant/s :  
Tippanna & others.  
(D.4 Smt/Sri V.J.M. Advocate)  
(D.1 to 3 Exparte)

**RANK IN IA 2**

Basanna : Applicant/s/deft.No.4

VS

Ayyamma & Anr : Opponent/s/Plaintiffs

i.	Provision under which the application is filed	U/O 39 Rule 1 & 2 of CPC
li	Relief sought for	Suit for partition and separate possession
iii	The date on which the application is filed	04-02-2026
iv	Number of application	One

v	The date on which the objections are filed by different opponents	02-03-2026
vi	The date on which the orders were passed on the said application	18-03-2026

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

The defendant No.4/applicant has filed this application under Order 39 Rule 1 & 2 of CPC and sought to restrain the plaintiffs and defendant No.1 to 3 by way of temporary injunction from interfering with the possession of defendant No.4 over the land measuring 3 acres 24 guntas in Sy.No.272/2 of Benakanahalli village, Tq: Sedam till disposal of the suit.

2) The defendant No.4 has sworn to an affidavit in support of IA and stated that the plaintiffs have filed this suit for partition and separate possession and declaration that sale deed dtd: 10.05.2002 is null and void. At para 5 of the plaint the plaintiffs have admitted that this defendant purchased the suit land through registered sale deed dtd: 10.05.2002. Since from the date purchase this defendant is in possession and enjoyment of the suit property. It is alleged that the plaintiffs and defendant No.1 to 3 are co-parceners of the joint family. It is submitted that defendant No.1 is karta of the family of the plaintiffs. The defendant No.1 alienated the suit property for the legal necessity of the joint family. The

plaintiffs had knowledge about the sale deed and the mutation. Since the defendant No.1 already alienated the suit property the plaintiffs are not having any rights or share in the suit property. He has made out prima facie case and balance of convenience lies in his favour. Hence, prays to allow the I.A.

3) The plaintiffs have filed objections to IA and denied the contents of the affidavit filed in support of the IA and contended that the plaintiffs and defendant No.1 to 3 have been in continuous lawful possession of the suit property. The suit property is their ancestral property. The defendant No.4 fraudulently got created registered sale deed dtd: 10.05.2002. But no possession was delivered to defendant No.4. The alleged sale deed is sham, nominal, without consideration and out come of fraud and misrepresentation. The defendant No.4 who is not in possession of the suit property cannot seek injunction against true and lawful possessors and owners. There is no prima facie case and balance of convenience lies in favour of the plaintiffs. Hence, prays to dismiss the I.A.

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

- 1) Whether the defendant No.4 has made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the defendant No.4?

- 3) What order?
- 5) Perused the records. Heard arguments.
- 6) My answer to the above points are as under:
  - 1) IN THE NEGATIVE
  - 2) IN THE NEGATIVE
  - 3) AS PER THE FINAL ORDER

for the following:

### **REASONS**

7) **POINT No.1 & 2:** Since both these points are interconnected the same are taken together for common discussion.

8) The RTC extract from the year 1993-94 to 1997-98 shows that earlier the suit property was standing in the name of defendant No.1. The RTC extract of the suit property shows that land measuring 3 acres 24 guntas stands in the name of defendant No.4. The certified copy of the registered sale deed dtd: 10.05.2002 shows that the defendant No.1 sold the suit property to defendant No.4. The mutation register shows that as per the sale deed the mutation was effected in the name of the defendant No.4. The defendant No.4 is claiming that the defendant No.1 being karta of the joint family sold the suit property for legal necessity of the joint family. Therefore, the sale deed is binding on the plaintiffs and defendant No.1 to 3. Since the

date of purchase he has been in possession of the suit property. On perusal of the above documents prima facie it appears that the defendant No.4 is in possession of the suit property. The plaintiffs have relied on the unregistered document dtd: 28.04.2003 styled as Nenapina Patra to show that the defendant No.4 acknowledge receipt of Rs.95500/- from defendant No.1 and agreed to execute the sale deed in favour of defendant No.1. It is to be noted that the admissibility, validity and proof of the above document has to be decided during the trial. Therefore, at this stage since the revenue records are in the name of the defendant No.4 it is unsafe to hold that the plaintiffs are in possession of the suit property based on unregistered document dtd: 28.04.2003.

9) Before touching the factual matrix of the case this court find it just and proper to consider the legal issue i.e., whether the defendant in a suit can maintain an application U/O 39 Rule 1 and 2 of CPC seeking to restrain the plaintiff/other defendants from interfering with his possession over the suit property. In this regard it is worth to refer the decision of the High Court of Karnataka in the case of Smt.Shakuntalamma and others V/s Kantamma and others reported in AIR 2015 Kant.13, wherein Hon'ble High Court held as under:

*A careful reading of the aforesaid provisions discloses that the court is empowered to grant three types of orders under three different and distinct*

*situations. Firstly when the property is in dispute is in danger of being wasted, damaged or alienated or wrongfully sold in execution of a decree, temporary injunction to prevent the same can be granted. The second situation arises when the disputed property is under the threat of being removed or disposed off by the defendant with the intention of defrauding his creditors who include the plaintiff also. The third situation is when the defendant threatens to dispossess the plaintiff or otherwise causes injury to the plaintiff in respect of disputed property.*

*Clause (a) of Order XXXIX rule 1 of CPC provides that where any suit it is proved by affidavit or otherwise, that any property in dispute in a suit is in danger or being wasted, damaged or alienated “by any party” to the suit, or wrongfully sold in execution of a decree, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property. The reason is obvious. After institution of the suit, the plaintiff may act detrimental to the interest of the defendant in the subject matter of the suit by allowing it to be wasted or damaged or alienated and in such an event, the defendant can take recourse to making application U/O XXXIX Rule 1(a) CPC.*

*What Clause (b) of Order XXXIX Rule 1 of CPC envisages is that a plaintiff can seek temporary injunction when there is a threat by the defendant to dispose of the property with a view to render the decree that may be passed in the suit unless or infructuous. Similarly, under Clause (c) of Order XXXIX rule 1 Cpc whenever the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may restrain dispossession of the plaintiff until the disposal of the suit or until further orders.*

*The Legislature has consciously used the words “any party to the suit” in Rule 1(a) of Order XXXIX CPC but the same is conspicuously missing in Clauses (b) and (c). However, the words “the defendant threatens” appearing in Clauses (b) and (c) of rule 1 of Order XXXIX Cpc make it clear that the court can grant an order of temporary injunction only in favour of the plaintiff because the Legislature has expressly not included the words “plaintiff threatens” and also not used the words “any party to the suit” in these clauses.*

10) In view of the above principle of law laid down by the Hon'ble High Court the defendant cannot maintain an application seeking temporary injunction against the plaintiffs restraining the plaintiffs/other defendants from interfering with possession of the defendant. Moreover, U/O 39 Rule 1

(b)(c) of CPC the court can grant and order of temporary injunction only in favour of the plaintiff and not in favour of any of the defendants.

11) Therefore, it can be held that the present application filed by the defendant No.4 is not maintainable. When once the application itself is not maintainable the question of establishing prima facie case does not arise. However, it is open for the defendant No.4 to file separate suit for appropriate relief before the appropriate forum. But in this case he cannot seek temporary injunction against the plaintiffs as sought in the I.A. at hand. Hence, I answer points 1 and 2 in the Negative.

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

### **ORDER**

The application i.e., IA No.2 filed by the defendant No.4 under Order 39 Rule 1 & 2 of CPC is hereby dismissed.

(Dictated to the Stenographer directly on computer, the same revised, corrected and pronounced in the open court on this the **18<sup>th</sup> day of March 2026**)

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