

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: 17-01-2025.

**OS No.99/2024**

Plaintiff/s :  
Sharadamma D/o Narasappa.  
(Smt/Sri R.B, Advocate)

VS

Defendant/s :  
Narasappa S/o Chandappa and another  
(D.1 & 2 , Smt/Sri N.R., Advocate)

**RANK IN IA 1**

Sharadamma : Applicant/s/Plfts

VS

Narasappa & another : 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 filed	13-08-2024
iv	Number of application	One

v	The date on which the objections are filed by different opponents	15-01-2025
vi	The date on which the orders were passed on the said application	17-01-2025

**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 defendants 1 and 2 by way of temporary injunction from alienating the suit properties till disposal of the suit.

2) The plaintiff has sworn to an affidavit in support of IA and stated that one Chandappa S/o Narasappa Matnalli was the head of the family. After his death defendant No.1 got entered his name in the revenue records of Sy.No.821/Aa and after bifurcation it became New Sy.Number i.e., Sy.No.92/1. The defendant No.1 married one Kashamma and plaintiff is daughter of defendant No.1 through his first wife Kashamma. The defendant No.2 is second wife of defendant No.1 and she is not having any issues.

3) Such being the facts the defendant No.2 got entered her name in the revenue records behind the back of the plaintiff. The suit properties are joint family properties of plaintiff and defendants. The plaintiff and defendant No.1 are coparceners of the joint family. There is no partition in the joint family. Previously the suit properties were standing in

the name of the ancestor Chandappa. The plaintiff came to know that the defendant No.1 executed registered Partition deed dated 5.2.2020 and got mutated suit item No.2 in the name of defendant No.2. The plaintiff inquired the defendant No.1 but he did not give proper answer.

4) It is submitted that the suit properties are joint family properties. Therefore, the defendant No.1 alone was not competent to execute partition deed. The said partition deed is illegal. The plaintiff requested defendants 1 and 2 to get cancel the partition deed and effect partition in the suit properties. But they have refused to effect partition. Now they are trying to alienate the suit properties. Hence, prays to allow the IA.

5) After service of suit summons, the defendants have appeared through their counsel and defendant No.1 filed written statement and defendant No.2 has not filed any written statement. The defendant No.1 in his written statement has denied that one Kashamma is first wife of defendant No.1 but admitted that the plaintiff is daughter of defendant No.1 and Kashamma. He has denied that the defendant No.2 is the second wife of defendant No.1. He has denied rest of the plaint averments and submitted that the defendant No.1 married plaintiff's mother and after the birth of the plaintiff her mother got customary divorce. Thereafter the defendant No.1 married defendant No.2.

Therefore, the defendant No.2 is legally wedded wife of defendant No.1. The defendant No.1 settled his half share in the land in favour of defendant No.2 for her maintenance. When the plaintiff asked for his share the defendant No.1 was ready to give share to the plaintiff in the land standing in the name of defendant No.1. But the plaintiff at the instance of her son wanted entire land. The plaintiff even threatened defendants 1 and 2. The defendant No.1 is ready to give half share to the plaintiff. Hence, prays to dismiss the IA.

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 ORDER

for 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) The RTC extract from the year 1978-79 to 1979-80 shows that earlier the suit item No.1 was standing in the name of Chandappa who is father of the defendant No.1. The RTC extract from the year 1973-74 to 1977-78 shows that suit item No.2 was standing in the name of Chandappa. Therefore, prima facie it appears that the suit properties are ancestral and joint family properties of the plaintiff and defendant No.1. Admittedly, plaintiff is the daughter of defendant No.1 through his first wife. Therefore, the plaintiff and defendant No.1 are coparceners of the joint family and accordingly they are having share in the suit properties.

11) The certified copy of the registered Partition Deed dated 5.2.2020 shows that the defendant No.1 and 2 entered into partition deed and in the said partition suit item No.1 was allotted to the share of defendant No.2 and suit item No.2 was allotted to the share of defendant No.1. It is true that the defendant No.1 is having half share in the suit properties. But it is to be noted that under the Hindu Law the coparceners own the properties jointly and they will have equal rights in every inch of the joint family properties until partition is effected. Therefore, the defendant No.1 without the consent of the plaintiff cannot give his half share to the defendant No.2 until partition is effected in between the

plaintiff and defendant No.1. Therefore, the validity of the partition deed has to be decided only after the trial. Therefore, prima face it appears that the plaintiff has made out a case to go for a trial.

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 schedule properties till disposal of the suit it is just & necessary to restrain the defendants 1 and 2 from alienating the suit schedule properties. The plaintiffs have stated that now the defendants 1 and 2 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 and 2 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 and 2. 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 plaintiffs under Order 39 Rule 1 & 2 of CPC is hereby allowed.

The defendants 1 and 2 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 **17<sup>th</sup> day of January 2025.**)

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