

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: 21.01.2026.

OS No.147/2024

Plaintiff/s :
Chandrashekhar and Another.
(Smt/Sri S.K.R. Advocate)

VS

Defendant/s :
Mahesh
(Smt/Sri R.M. Advocate)

RANK IN IA 1

Chandrashekhar & Anr : Applicant/s/Plfts

VS

Mahesh : Opponent/s/Deft.

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	09-12-2024
iv	Number of application	One

v	The date on which the objections are filed by different opponents	22-08-2025
vi	The date on which the orders were passed on the said application	21-01-2026

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 defendant by way of temporary injunction from alienating the suit properties till disposal of the suit.

2) The minor guardian of plaintiffs has sworn to an affidavit in support of IA and stated that previously one Shivaputrappa S/o Basappa and Chandrashekhar S/o Basappa were the owners of the suit properties. The said Shivaputrappa and Chandrashekhar are brothers. The suit properties are joint family properties of plaintiffs and defendant. The father of the defendant got partitioned the properties and in the said partition suit properties were fallen to the share of the defendant. Therefore the plaintiffs are also having shares in the suit properties. The defendant is addicted to consuming alcohol and gambling and he is trying to alienate the suit properties behind the back of the plaintiffs. Therefore, the next friend-mother of the plaintiffs conveyed panchayat and demanded share of the plaintiffs in

the suit properties. But the defendant refused to effect partition. Hence, prays to allow the I.A.

3) After service of suit summons, the defendant appeared through his counsel and filed his written statement. In the written statement the defendant has denied entire plaint averments and contended that the suit is bad for non joinder of necessary parties. The suit item No.4 is self acquired property of the defendant. The suit properties are not ancestral and joint family properties of the plaintiffs and defendant. The plaintiffs have no rights in the suit properties. 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 plaintiffs have made out prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiffs?
- 3) What order?
- 5) Perused the records. Heard arguments.
- 6) 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

7) **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.

8) The plaintiffs in order to prove their case have produced RTC extracts of the suit properties and the same show that suit items No.1 and 2 were standing in the name of late Chandrashekhar who is uncle of the defendant. The RTC extracts from year 2017 to till date show that suit items No.1 and 2 are now standing in the name of defendant. In column No.10 the mode of possession is shown as inheritance. The RTC extracts of suit item No.3 show that earlier suit item No.3 was standing in the name of father of defendant by name Shivapurtrappa and now the same is standing in the name of the defendant. The mutation registers show that earlier suit properties were standing in the names of father of the defendant Shivaputrappa and his brother Chandrashekhar and the same were mutated in the name of the defendant on the basis of inheritance. The same shows that the defendant acquired the suit properties through his father and uncle. The panchayat records show that suit items No.5 still stands in the name of late Chandrashekhar. The same also shows that suit item No.5

belongs to joint family of the plaintiffs and defendant.

9) The E-khata extract of suit item No.4 shows suit item No.4 stands in the name of the defendant. The defendant has contended that the same is his self acquired property. But he has not pleaded that he is having source of income other than from the suit lands and out of his own income he purchased suit item No.4 property. Further he has also not produced sale deed to show that he purchased the suit item No.4 property. The plaintiffs have prima facie shown the existence of lands with the joint family. Therefore, it can be presumed that joint family had income out of the joint family lands. Therefore, it has to be presumed that suit item No.4 was purchased out of the joint family funds. On the other hand now the burden shifts on the defendant to prove that he had independent source of income to purchase suit item No.4 property and the same is his self acquired property. Therefore, at this stage it cannot be concluded that the suit item No.4 property is not the joint family property. It has to be decided during the trial. Therefore, at this stage the plaintiffs have made out prima facie case.

10) 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.

11) 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 defendant from alienating the suit schedule properties. The plaintiffs have stated that now the defendant is trying to sell the suit properties. Therefore, if he succeeds in his 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 defendant is restrained from alienating the suit properties for some period i.e. till disposal of the suit no prejudice would be caused to the defendant. Hence I answer Points 1 & 2 in the affirmative.

12) **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 defendant is 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 **21st day of January 2026**)

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