

**IN THE COURT OF THE CIVIL JUDGE JMFC,
PONNAMPET.**

**PRESENT : Sri.Shrinath A, B.A.L, L.L.B.,
Civil Judge & JMFC.,
Original Suit No.71/2025**

Dated this the 6th day of March 2026

Plaintiffs : Sri.C.N.Pavithra Kumar,
S/o: Late Narayana,
Age: 45 years,
R/o: Hysodlur Village,
Hudikeri Post,
Ponnampet Taluk, Kodagu.

(By Sri.K.P.Bopanna, Advocate)

-Vs-

Defendants: :1. Sri.C.M.Machaiah,
S/o: Late Muthanna,
Age: 78 years,
2. Smt.Chendira Shanthi,
W/o: C.M.Machaiah.
Age: 76 years.
3. Sri.C.M.Dany,
S/o: C.M.Muthanna,
Age: 40 years.

All are residents of;
Hysodlur Village,
Hudikeri Post,
Ponnampet Taluk,
Kodagu.

(By Sri.M.G.Rakesh, Advocate)

**PARTIES TO I.A.II**

**PLAINTIFF/
APPLICANT** : Sri.C.N.Pavithra Kumar,

-V/s.-
**DEFENDANTS/
OPPONENT :** Sri.C.M.Machaiah & 2 Others,

**ORDERS ON I.A.NO.II FILED BY THE PLAINTIFF UNDER
ORDER XXXIX RULE 1 and 2 OF CPC**

The plaintiff has prayed for temporary injunction to restrain the defendants or anyone claiming under the from interfering with plaintiff's lawful possession and enjoyment in the petition schedule properties till disposal of the suit.

2. In the accompanying affidavit it is contended that second defendant is his mother. After the death of his father the second defendant has married first defendant. He and one Asha are the children of the second defendant out of first marriage and defendant no.3 is the son of other defendants. It is said that his grandfather C.C.Muddaiah and the grandfather of defendants C.G.Machaiah are



brothers and during their life time there was oral partition and they were living separately with separate possession properties. Plaintiff had joined Army and came out of it on medical grounds on 28.03.2002 and from then he is managing the petition properties till then the defendants were managing his properties. The grandfather was said to have inherited the suit schedule properties and thereafter to his father the same were inherited. It is said that in O.S.No.141/2024 his sister has filed the suit for partition in respect of only two properties upon the instigation of defendants. Earlier to that the plaintiff had filed O.S.No.92/2014 where his lessee had filed such suit for prohibitory injunction. It is further said that defendant no.1 and his brother have also partitioned among themselves the properties orally. However they are eyeing on these suit properties by filing various suits in O.S.No.25/1982 and in



O.S.No.92/2006 for partition and in O.S.No.41/2012 where the partition has been disputed with regard to the allotment of the shares.

3. The defendant no.2 and her mother was looking after these properties and upon negotiation there was family settlement where the document dated 11.11.2014 has been executed out of free will in his favour and thereafter he is in lawful possession and enjoyment of the said properties that belonged to his father. Another agreement has been executed between him and his mother dated 05.06.2023 in respect of item no.2 suit properties because of defendant no.3 was interfering. Contrary to this family arrangements and the settlements, defendant no.3 having colluded with the Revenue official have mutated the item no.3 suit property in the name of defendant no.2 and private complaint is pending. Defendant no.3 has interfering trying



to criminal trespass in the suit property on the eastern side when he was getting work through his labourers on 13.12.2025 at 9,00am and there has been interference with regard to harvesting of coffee crops and hence filed this application.

4. Objections filed by the defendant no.3 to the said application denying of any such oral partition or of that of any family settlement between defendant no.2 and the plaintiff and on the other hand item no.1 suit property is said to have been partitioned between the defendants under oral partition and which share was allotted to defendant no.2 and accordingly defendant no.2 has mutated her name and upon such mutation gift deed has been executed in favour of defendant no.3 vide registered document. The item no.2 and 3 properties are subjected to suit in O.S.No.141/2024 that is pending adjudication before



Hon'ble Senior Civil Judge, Virajpet which is filed by the sister of the plaintiff herein. Further it is contended that item no.3 schedule property is wetland and there is no coffee cultivation as contended. In respect of item no.3 schedule property, it is said that it belongs to defendant no.1 since the name of pattedar is Kariappa as reflected in the RTC and that consent of his children the mutation of such property has been transferred to the name of defendant no.3 as per mutation proceedings dated 07.10.2023. Such property has been sold to one Sistla Bhargava Ram vide registered sale deed dated 15.05.2024 wherein the original Sy.No.80/4 has been now renumbered Sy.No.80/67. It is said that plaintiff is not in possession of any of these schedule properties and the plaintiff is filing false complaints and the suits without prima facie case and possession and hence prays to dismiss the application.



5. Heard advocate for plaintiff and defendants.

6. Perused the documents filed by both the parties and the pleadings following points are arise for my consideration:-

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

2. Whether the balance of convenience lies in favour of plaintiff?

3. Whether irreparable injury would be caused to the plaintiff if an order of temporary injunction is not granted?

4. What Order?

7. My answers to the aforementioned points are as under :

Points No.1 to 3: In the Negative,
Point No.4 : As the final order
for the following.

REASONS

8. **POINTS NO.1 to 3 :-** This suit for bare temporary injunction. The plaintiff is relying on family settlement and



one agreement executed between him and his mother defendant no.2. It is pertinent to note that plaintiff's sister has also filed suit in O.S.No.141/2024, wherein the said documents executed by his mother would also have been challenged wherein his sister has also claimed for right in two of such properties. These documents are executed without the consent of his sister as evident from the document and therefore his sister is agitating her right in separate partition suit. Therefore there is no exclusive possession of plaintiff established by execution of such family settlement and of the said agreement. Further it is pertinent to note that the suit properties are not standing in the name of plaintiff as item no.1 is in the name of defendant no.3 through executed gift deed by their mother defendant no.2 and therefore the intention of defendant no.2 on one hand executing the alleged family settlement



with plaintiff and on the other hand executing the gift deed in favour of defendant no.3 do not show prima facie case of execution of such family settlement.

9. Further for to consider a document as family settlement, first element to be established that there is a consent of all the family members who are having interest in the such suit schedule properties. It is of item no.2 and 3 suit properties his sister has filed suit for partition that is pending adjudication. With regard to item no.5 suit property, as per the Jamabandi produced by the plaintiff, and as stated by the defendants, such property is in the name of pattedar Kariappa and therefore it is said to be the property of defendant no.1. The plaintiff has relied on the oral partition effected between his ancestors and there is no definite documentation of their ancestors having inherited the schedule properties, which is to be considered only after



the conclusion of the trial. No prima facie is established to show the absolute possession of plaintiff based on the family settlement or of that of the agreement executed by his mother defendant no.2. It is further noted that item no.5 suit property has been sold and is in possession of one Sistla Bhargava Ram. Therefore the exclusive possession of plaintiff over any of the suit properties has not been established prima facie either through documents or by any other note. It is seen that plaintiff was in Army and having coming back, arrangement made between his family members for plaintiff having acquired exclusive possession over these suit properties has not been prima facie shown by the plaintiff. Since prima facie is not established, the question of discussing on the balance of convenience and irreparable hardship do not arise. Hence for the above reasons points no. 1 to 3 in the Negative.



10. **Point No.4**:- In view of the forgoing observations and discussions, I proceed to pass the following :-

ORDER

The application filed by the plaintiff in IA No.II under Order 39 Rule 1 and 2 of CPC is hereby dismissed.

(Dictated to the stenographer directly on computer, then corrected, signed and pronounced by me in open court on this the 6th day of March 2026)

- sd -
(Shrinath A)
Civil Judge & JMFC
Ponnampet.

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