

KAKL400020892025



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
AT MULBAGAL

: PRESENT :

Sri. HARISH G., M.B.A. LLB.,
Prl. Civil Judge & JMFC., Mulbagal.

DATED THIS THE 11th DAY OF JUNE, 2026.

O.S.No.272/2025

Plaintiff/s : Smt. Rathnamma,
W/o late Subbachary,
Aged about 75 years,
R/a Mopurahalli village,
Tayalur hobli,
Mulbagal taluk,
Kolar district.

(Reptd., by Sri.**M.V.H.**, Advocate)

-Vs.-

Defendant/s : 1. Channakeshava V.,
S/o late Subbachari,
Aged about 40 years.

2. Rukmani,
D/o late Subbachari,

Aged about 35 years.

Both are residing at;
Mopurahalli village,
Tayalur hobli,
Mulbagal taluk,
Kolar district.

(Reptd., by Sri.**G.V.**, Advocate)

IN IA No.I

Applicant/plaintiff/s : Smt. Rathnamma

-Vs-

Opponents/defendant/s : Channakeshava V., & Anr.

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ORDER ON IA No.I

The learned counsel for plaintiff has filed IA No.I U/o XXXIX Rule 1 & 2 of CPC seeking temporary injunction restraining the defendants, their agents and PA holders from alienating or creating, encumbrance over the suit schedule property, pending disposal of this suit.

2. Application is supported by affidavit of the plaintiff, wherein she has stated that, herself and defendants constitute joint Hindu family. The suit schedule property is an ancestral

property of plaintiff and defendants. Subbachari mutated his name after the death of his father namely- Ramachari. Said Subbachari having two wives i.e., plaintiff and Smt. Lalithamma. Subbachari has begotten son by name- Radhakrishna through the plaintiff and the defendants No.1 and 2 are children of said Subbachari through his 2nd wife namely – Smt. Lalithamma. Mother of defendants No.1 and 2 died long back. The Plaintiff, her son and defendants are only the legal heirs to succeed the estate of deceased Subbachari. Though, the plaintiff and her son are having legitimate right over the suit schedule property, the defendants after the death of Subbachari have created gift deed dated 04.10.2019 and are making a hectic efforts to alienate or encumber the suit schedule property in order to knock off the share of the plaintiff. Alleged gift deed is illegal one and not binding on the plaintiff. It is stated that plaintiff is having prima-facie case and the balance of convenience lies in her favour. If this application is allowed, no hardship will be caused to the defendants. Hence, it is necessary at this juncture to restrain the defendants from alienating or creating encumbrance over the suit schedule property.

3. In pursuance of summons and notice on IA No.I, the defendants No.1 & 2 are appeared through their respective counsels and filed separate written statements. The defendants

No.1 & 2 have denied entire averments of the plaint and contended that, one Subbachari was common ancestor of defendants No.1 & 2 has acquired suit schedule property through his father by way of pavathivarasu and became an absolute owner in possession and enjoyment of suit schedule property. Said Subbachari got married one Lalithamma and this defendants No.1 & 2 are his only children. Said Subbachari out of love and affection has executed a registered gift deed dated 13.09.2004 in favour of the defendant No.2. Accordingly, the defendant No.2 became an absolute owner in possession and enjoyment of suit schedule property by mutating her name. The defendant No.2 later words executed a registered gift deed dated 04.10.2019 in favour of her brother i.e., defendant No.1 pertaining to suit schedule property. As per aforesaid gift deed, the defendant No.1 became an absolute owner in possession and enjoyment of suit schedule property. The plaintiff is no way concerned to the family of the defendants and as such claiming partition doesn't arise.

4. It is also contended by the defendants that, plaintiff is the wife of one Byregowda of Mopurahalli village, Tayalur hobli, Mulbagal and have begotten B. Radhakrishna as their children. Said Subbachari has married only Smt. Lalithamma and defendants are his legal heirs have succeeded his estate. The

plaintiff is neither wife of Subbachari, nor the joint family member with the defendants. Hence, the plaintiff is not entitled for partition in respect of suit schedule property. On all these grounds, prays to dismiss application.

5. Heard arguments of learned counsel for plaintiff and learned counsel for defendants. Scrutinized the records of the case.

6. Having heard arguments and on scrutiny of evidence placed on record, following points arise for my consideration :-

1. Whether the plaintiff establishes prima-facie case?
2. Whether the plaintiff proves that, balance of convenience lies in her favour?
3. Whether the plaintiff proves that, she will be put to irreparable loss and injury, if application is not allowed?
4. What order?

7. My answers to the above points are as under;

Points No.1 to 3: ***“answered accordingly”***

Point No.4 : As per the final order,
for the following;

REASONS

8. **Points No.1 to 3:** These points are interrelated to each other. Finding on point No.1 will have a bearing on others. Hence, to avoid repetition of facts, I have taken two points together for common consideration.

9. Perused the entire case file. The plaintiff has filed this suit seeking relief of partition in respect of suit schedule property against defendants No.1 & 2. In the instant application, the plaintiff sought temporary injunction restraining the defendants, their agents, PA holders from alienating and creating charge over the suit schedule property pending disposal of the suit. It is the specific contention of the plaintiff that she is legally wedded wife of one Subbachari and out of their wedlock have begotten son by name Radhakrishna. Further, the defendants No.1 & 2 are also children of said Subbachari through his 2nd wife Smt. Lalithamma. Both, plaintiff and defendants constitute joint Hindu family and suit schedule property is ancestral property acquired by said Subbachari through his father. After the death of Subbachari, the defendants have created gift deed dated 04.10.2019 and are trying to alienate the suit schedule property to deprive legitimate share of the plaintiff.

10. In support of her case, the plaintiff has relied upon the following documents;

1. Copy of Adhaar card, Election ID card of the plaintiff.
2. Copy of elderly person pension order issued in favour of the plaintiff.
3. Copy of marriage invitation card.
4. Copy of Adhaar card, Transfer certificate, Election ID card, Pan card of the son of the plaintiff.
5. Copy of order sheet and joint memo in C.M.C.No.73/2021.
6. Copy of death certificate of R. Subbachari who died on 29.09.2024 at Shettikallu village.
7. Copy of endorsement issued by Nangali police dated 09.02.2012.
8. Copy of RTC's pertaining to Sy.No.35/1 measuring 3 acres 36 guntas for the year 1964-65 to 1992-93 wherein the name of Ramachari is shown as possessor and cultivator.
9. Copy of RTC's pertaining to Sy.No.35/1 measuring 3 acres 36 guntas for the year 1993-94 to 2001-02, wherein, the name of Narayanachari S/o Ramachari and Subbachari S/o Ramachari mutated their name to an extent of 1 acre 38 guntas each as per M.R.No.23-6/1996-97 as per pavathivarasu.

10. RTC pertaining to Sy.No.22/1 measuring 39 guntas of Shettikallu village, wherein, the name of plaintiff mutated her name by deleting name of Subbachari to an extent of 0.19.08 guntas under pavathivarasu as per M.R.No.H1/213-14 dated 17.07.2013.
11. MR.No.M.R.No.H1/213-14 dated 17.07.2013.
12. Copy of G tree certificate
13. Copies of tax paid receipts.
14. Copy of gift deed dated 04.10.2019 pertaining to suit schedule property executed by the defendant No.2 in favour of defendant No.1.

11. On the other hand, the defendants No.1 & 2 have contended that, plaintiff is no way connected to Subbachari and the defendants. Rather, the plaintiff is wife of one Byregowda of Mopaurahalli village and they have begotten son by name Radhakrishna. Said Subbachari only married to Smt. Lalithamma and the defendants No.1 & 2 are only children of Subbachari. The father of defendants towards love and affection executed a registered gift deed dated 13.09.2004 in favour of the defendant No.2 pertaining to suit schedule property. Thus, the defendant No.2 being an absolute owner in possession of enjoyment of suit schedule property executed gift deed in favour of defendant No.1 who is none other than her brother.

12. In support of their defence, the defendants have relied upon the following documents;

1. Copy of G tree Declaration certificate.
2. Original Gift deed dated 13.09.2004 executed by Subbachari in favour of defendant No.2 pertaining to suit schedule property.
3. Original Gift deed dated 04.10.2019 executed by the defendant No.2 pertaining to suit schedule property in favour of defendant No.1.
4. Certified copy of sale deed dated 11.05.1998 in respect of Sy.No.319/2 executed by Kamma and her son in favour of B. Radhakrishna S/o Byregowda.
5. Copy of order in RA551/2013-14 dated 29.04.2016 by Assistant Commissioner ,Kolar.
6. RTC pertaining to Sy.No.35/1 and 35/3.
7. Xerox copy of lease deed dated 02.09.2023
8. RTC pertaining to Sy.No.169 of Shettikallu village for the year 2025-26 standing in the name of plaintiff.

13. The learned counsel for plaintiff in his arguments reiterated averments of plaint. It is further submitted that, the plaintiff is the first wife of Subbachari. Since the relationship of the plaintiff with Subbachari is disputed, the plaintiff has produced Aadhaar cards, Election ID cards of herself and her son

Radhakrishna at this stage. Further, the plaintiff has also placed pension order copy. These documents clearly goes to show that plaintiff as wife of Subbachari and not wife of Byregowda as alleged by the defendants. The plaintiff and defendants constitute joint Hindu family and the defendants after death of Subbachari have created Gift deed dated 04.10.2019 in respect of suit schedule property and same is not not binding on the plaintiff. The defendants by taking undue advantage of their names are trying to alienate and create encumbrance over the suit schedule property. The plaintiff has made out prima-facie case and balance of convenience lis in her favour. If injunction is rejected, the plaintiff will be put to untold hardship. With these submission, learned counsel for plaintiff prays to allow IA No.I.

14. As against this, the learned counsel for defendants have vehemently argued that, the plaintiff is wife of one Byregowda of Mopurahalli village and is no way connected to Subbachari, defendants & suit schedule property. Subbachari has married Smt. Lalithamma and out of their wedlock these defendants No.1 & 2 are born. Said Subbachari out of love and affection towards defendant No.2 (his daughter) executed a Regd., Gift deed dated 13.09.2004. Thus, the defendant No.2 being an absolute owner in possession and enjoyment of suit schedule property executed a Regd., Gift deed dated 04.10.2019

in favour of her brother i.e., defendant No.1. Since, the plaintiff is not at all wife of late Subbachari, she is not entitled for any partition and also temporary injunction. The defendants have placed order of Asst. Commissioner, in which, mutation order in favour of the plaintiff is set-aside and no any appeal is filed against the said order. Sy.No.22/1 and Sy.No.169 of Shettikallu village, is still standing in the name of late Subbachari. Since, the plaintiff failed to establish his relationship, she is not entitled for relief sought for. Accordingly, prays to dismiss the IA No.I.

15. On perusal of pleadings & documents produced by either side, at this stage, there is no dispute among the parties, that suit schedule property bearing Sy.No.35/1 measuring 1 aces 38 guntas situated at Ramachandrapura village, which is part and parcel of Sy.No.135/1 totally measuring 3 acres 38 guntas stood in the name of Ramachari and after his death, his two sons namely-1) Narayanachari & 2) Subbachari, have got mutated their names to an extent of 1 acre 18 guntas each. Hence, it is clear that, suit schedule property is originally belonging to Subbachari.

16. The defendants have strongly objected relationship of the plaintiff with said Subbachari and suit schedule property. It is the contention of the defendants that, their father married

only Smt. Lalithamma & out of their wedlock, these defendants No.1 & 2 are born. The defendants being the only legal heirs of late Subbachari have inherited his estate. The plaintiff is wife of one Byregowda of Mopurahalli village, is claiming herself as a wife of Subbachari. The plaintiff at this juncture, in order to establish her relationship with Subbachari has able to produce copies of Aadhar card, Election ID card of herself and her son by name- Radhakrishna. The plaintiff has also produced pension order certificate, marriage invitation card, transfer certificate & pan card of her son. These documents goes to show that, the plaintiff is wife of Subbachari. On the other hand, the defendants have placed certified copy of sale deed dated 11.05.1998 in support of their contention that, the property bearing Sy.No.319/2 of Mustoor village, wherein, said property was purchased by B. Radhakrishna S/o Byregowda from one Kalamma & her son.

17. Since, the core issue in the present suit revolves around the relationship of the plaintiff with Subbachari, same has to be decided in the full-fledged trial after conclusion evidence of either parties. Hence, this Court cannot make any comment an issue of relationship of the plaintiff with Late Subbachari as the said dispute is between the parties to the suit

from long back i.e., by filing objection before the Tahsildar in mutating the name of plaintiff in the year 2011-12.

18. It is also disclose from the record that, plaintiff claiming to be the wife of Subbachari mutated her name in respect of Sy.No.22/1 measuring 19.08 guntas and Sy.No.169 measuring 1 acre situated at Shettikallu village, Mulbagal taluk which are not subject matter of this court. The defendant No.1 of the present suit filed objection and RRT.Dis/Cr.H29/2011-12 proceedings were initiated and finally the Tahsildar ordered to mutate the name of plaintiff over said Sy.No.22/1 & 169 properties. The defendant No.2 has challenged said order of Tahsildar in RA No.551/2013-14 before Asst. Commissioner, Kolar & in said appeal, an order of Tahsildar in RRT.Dis/Cr.H29/2011-12 dated 29.06.2013 was canceled and ordered to mutate the name of original LRs of late Subbachari after due enquiry.

19. Even after, such litigation among the parties, the plaintiff has not uttered a single word about said Sy.No.22/1 & 169 properties in the present suit. The plaintiff has filed this suit only in respect of suit schedule property bearing Sy.No.35/1 measuring 1 acre 38 guntas of Ramachandrapura village & has

not included said Sy.No.22/1 & 169 standing in the name of Subbachari as on the date of filing of this suit.

20. It is also necessary to state here that, the defendants have produced original Regd., Gift deed dated 13.09.2004 executed by Subbachari in favour of his daughter ie., the defendant No.2 in respect of suit schedule property. The plaintiff in respect of said Regd., Gift deed dated 13.09.2004 has neither averred in the pleadings, nor sought any relief against said gift deed. However, the plaintiff has contended that, the alleged Regd., gift deed dated 04.10.2019 pertaining to suit schedule property executed by the defendant No.2 in favour of defendant No.1. Since, the plaintiff has not challenged gift deed dated 13.09.2004, same presumed to be valid document.

21. Upon these observation, it is clear that the plaintiff has not approached this Court with clean hands by suppressing material facts. An order of temporary injunction is discretionary and equitable remedy. The party who suppress the material facts does not deserve to get any discretionary relief of temporary injunction. The principle of equity is that, "**he who seeks equity must do equity**".

22. Though, the plaintiff able to prima-facie establish relationship with late Subbachari, she has not come before the

Court by disclosing all properties standing in the name of late Subbachari and its status. Since, the defendants have disputed the relationship of the plaintiff with late Subbachari, said fact cannot be concluded only on the basis of documents produced by the plaintiff at this stage. Rather, it has to be decided by way of full-fledged trial.

23. Considering the over all facts & circumstances, this Court is of the firm opinion that, either parties shall maintain status-quo in respect of suit schedule property, which will not dis-favour either parties. If, injunction is granted, then the plaintiff may take advantage of the situation and if injunction is rejected, the defendants may alienate the suit schedule property which will create third party interest. In this background, even though the other properties standing in the name of Subbachari is not included as a subject matter while passing this order, said properties may be included at later stage. Hence, the status-quo order is proper & it ensures neither parties are harmed by taking into the consideration of either parties and also to protect the nature of suit schedule property in order to avoid multiplicity of proceedings.

24. The defendants have produced copy of unregistered lease deed pertaining to part of suit schedule property executed

by defendant No.1 in favour of one Ravi Kiran for establishment of Petrol bunk. Said document is not at all disputed by the plaintiff at this stage. Hence, validity of said lease deed is subject to final decision of this suit. Hence, without prejudice to the merits of the case, either parties are directed to maintain status-quo, till disposal of the suit. Accordingly, **points No.1 to 3** are answered **accordingly**.

25. **Point No.4**: For the foregoing reasons, I proceed to pass the following;

ORDER

IA No.I filed by the plaintiff U/o XXXIX Rule 1 & 2 r/w Sec.151 of CPC is hereby **disposed** in following terms;

Either parties to the suit are directed to maintain **status-quo** in respect of suit schedule property, till disposal of the suit.

Ad-interim temporary injunction order is stands **vacated**.

Validity of Lease Agreement dated 02.09.2023 is subject to final decision of the suit.

Looking into the peculiar facts & circumstances
of the case, there will be no order as to costs.

(Dictated to the Stenographer Grade-III directly on computer,
computerized by him, corrected by me and then pronounced in the
Open Court on this **11th day of June, 2026**)

(Harish G.)
Prl. Civil Judge & JMFC.,
Mulbagal.