

KAKL410007872022



IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC.,
AT MULBAGAL

Present: **Sri.GOWDA JAGADEESHA RUDRE**

B.Com., L.L.B.

Senior Civil Judge and JMFC., Mulbagal.

DATED ON THE 20th DAY OF August-2025

O.S.75/2022

Plaintiff/s	V/s	Defendant/s
Smt.Girijamma & Another.		Sri.B.N.Chandrappa & 4 Others.

PARTIES TO I.A. No.1

Applicant/Plaintiff	V/s	Opponent/Defendant No.1 & 2
Smt.Girijamma & Another.		Sri.B.N.Chandrappa & 4 Others.

Provision under which application is filed.	:	Under Order 39 Rule 1 and 2 of CPC.
Relief sought for.	:	To restrain the Defendants from alienating/encumber the suit schedule properties.
The date on which application is filed	:	02.06.2022.
The date on which the objection/written statement is	:	03.07.2023.

filed.		
The date on which the orders passed on the said application.	:	20.08.2025.

ORDERS ON I.A.No.1

The Plaintiffs have filed this application under Order 39 Rule 1 and 2 of CPC seeking ad-interim temporary injunction order against the Defendants, their servants, agents or representatives or any person claiming under them from alienating or encumbering the suit schedule properties in any manner till disposal of the suit.

2. The Plaintiff No.2 has sworn an affidavit wherein she stated that, the Plaintiff No.1 is her mother and her mother is deaf and dumb cannot speak. She being grand-daughter of Nanjappa well conversant with the facts of the case. It is stated that, the propositor of the family was one Najappa and he had begotten 6 children and they are the Plaintiff No.1, Defendant No.1 to 3 and late Somappa and Sadashivappa. The suit schedule properties are ancestral and joint family properties consisting of Plaintiff No.1 and Defendant No.1 to 3. The Defendant No.1 acted as Kartha of the family. The Plaintiffs and Defendant No.1 to 3 have subscribed their hard labour and improved the joint family properties. As of now the

suit schedule properties are mutated in the name of Defendant No.1 as per MR.No.36-6/1997-1998 and MR.No.19/2006-2007.

3. It is further averred that, the Defendant No.1 to 3 in collusion alienated Item No.15 and 16 in favour of Defendant No.4 and 5 as per registered sale deed dated 22.03.2021 and 27.02.2016 which are not binding on the share of Plaintiff No.1. It is further averred that, the Plaintiff No.1 questioned the Defendant No.1 to 3 about allotment of share to her mother, as she could not able to speak. However, the Defendant No.1 to 3 denied to allot her mother share. Therefore, the Panchayat was conveyed on 10.05.2022 wherein also the Defendant No.1 to 3 refused to allot legitimate share of the Plaintiff No.1. Hence, the Plaintiff No.1 is constrained to file this suit seeking her 1/4th share in the suit properties. The Plaintiffs have got prima-facie case for trial and balance of convenience tilt in their favour. If Defendants No.1 to 5 succeed in alienating the suit schedule properties pending disposal of the suit they will be put to irreparable loss and injury. **With these averments, the Plaintiffs prays to allow their application.**

4. The Defendants appeared through their advocate and among them Defendant No.1 filed his written statement, which was adopted

by the rest of the Defendants by filing memo to that effect. The Defendants have denied the entire plaint averments in toto and called upon the Plaintiffs to put strict proof of the same. Under the heading of true facts of the case from Para No.12 of their written statement specifically contended that, the ancestor of the family was one Bhadrappa and Bhadramma couple. They had begotten 2 children namely 1) Muneeramma and 2) Nanjappa. In-turn Muneerama begotten lonely daughter by name Eramma. Second son Nanjappa married daughter of his own sister/ಅಕ್ಕನ ಮಗಳು. However, said Nanjappa and Eramma did not begot any issues therefore, the Nanjappa contracted second marriage with Rudramma. From the said marriage, totally 6 children were born and they are Defendant No.1 to 3, late Somappa and Sadhashivappa.

5. However, Defendants specifically denied the relationship of Plaintiff No.1 with late Nanjappa. These Defendants further contended that their father Nanjappa performed marriages of Defendant No.2 and 3 by availing hand loan. Therefore, the Defendant No.1 had discharged all loan by selling portion of the lands standing in his name to meet his family necessity. It is further contended that, in order to grab the suit schedule properties, the

Plaintiffs have filed this suit without there being any right, title and interest in and over the properties. It is further contended that, the Defendant No.4 and 5 are in exclusive possession and enjoyment of Item No.15 and 16 of the suit schedule properties. Thereby, the Plaintiffs are having no prima-facie case and balance of convenience does not tilt in their favour. If temporary injunction order is granted as sought the Defendants will be put to great hardship and injury. **With these contentions, the Defendants prays for dismissal of the application with cost.**

6. Based upon the above said respective contentions of the Plaintiffs and Defendants, the following points arose for consideration of the Court.

Point No.1: Whether the Plaintiffs have established the existence of prima-facie case in their favour at this stage of the suit?

Point No.2: Whether the Plaintiffs have established the existence of balance of convenience in their favour?

Point No.3: Whether the Plaintiffs further prove that if the order of temporary injunction is not granted they will be put to irreparable loss and hardship?

Point No.4: What order?

7. Perused the pleadings and documents available on record. Heard the arguments from both sides.

8. My finding to the above Points is as follows-

Point No.1 : In the Affirmative

Point No.2 : The balance of convenience lies in favour of Plaintiffs.

Point No.3 : Comparative hardship is more to the Plaintiffs.

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

REASONS

9. **POINT No.1:-** In order to consider the application under Order 39 Rule 1 & 2 read with Section 151 of CPC, the Court should satisfy three ingredients namely, prima-facie case, balance of convenience and irreparable injury to the Plaintiffs if injunction is not granted. The existence of a prima- facie goes in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima-facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court. Further questions of balance of convenience and irreparable loss need not be considered since the Plaintiff would fail at the very first stile itself. But if there

was a prima-facie case then other consideration governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction. In other words the existence of a prima-facie case or even a very strong prima-facie case does not permit leap-forgoing by the plaintiff directly to an injunction without crossing the other hurdles in between. Even granting that the Plaintiff has an invincible prima-facie case, he will not be entitled exhibits justice, to the grant of an injunction, unmindful of other consequences. If the consequences of granting an injunction are detrimental in nature then an injunction will not be granted even though the Plaintiff might have an unbeatable prima-facie case.

10. With this prelude let Court proceed further to ascertain about the prima-facie case to grant temporary injunction in favour of Plaintiffs. The Plaintiffs have contended that Plaintiff No.1 and Defendant No.1 to 3 constitute Hindu undivided joint family and suit properties are their joint family properties. At this stage, it is relevant to note that, the Defendants in their written statement denied the claims of the Plaintiffs by denying relationship of Plaintiff No.1 as daughter of late Nanjappa. The burden is upon the Plaintiff

No.1 to show that, she is daughter of Nanjappa with cogent evidence. At this stage, the Plaintiffs have produced family tree notarized by the Notary public claiming to be daughter of late Nanjappa. On the other hand, Defendants have produced the family tree issued by the Tahasildar, Mulbagal wherein, the name of Plaintiff No.1 does not find place. Looking at the rival pleadings it is quiet clear that, the burden is upon the Plaintiff No.1 to prove before the Court she is daughter of Nanjappa.

11. To prove relationship of Plaintiff with late Nannjappa, the plaintiffs have only relied upon a notarized affidavit of the family tree wherein the names of the plaintiffs is mentioned. Here itself it is necessary to note that the Genealogy Tree issued by the Notary is not a conclusive evidence to prove the relationship between the parties in a partition suit, it is merely a document that outlines the lineage or family structure based upon the information given by the declarant which the Notary certifies. However, it is not definitive proof of relationships in the eyes of law.

12. At this stage, in order to ascertain said disputed fact, the Court cannot hold mini trial at this stage. Whether Plaintiff No.1 is daughter of Nanjappa is to be proved only by leading evidence. At

this stage, Court cannot expect documents in conclusive proof of relationship. The Court has perused the revenue document wherein, the name of the Defendant No.1 mutated in revenue documents. If Defendant No.1 succeeded the alienating the subject matter of the properties during pendency of the suit will result in unnecessary complication. Looking at the facts and circumstances of the case, the Court is of the opinion that the Plaintiffs are having prima-facie case for trial. Accordingly, the above point is answered in the Affirmative.

13. **Point No.2 and 3:-** These points are interlinked to each other, hence they are taken up together for common discussion and to avoid repetition of facts.

14. In addition to the above discussion if the Defendants are allow to sell or creating charge of the subject matter of the properties in favour of the stranger there will be Plaintiff No.1 will be put hardship and also will lead to multiplicity of the proceedings. Therefore, it is better to keep properties intact until the controversy decided. It is better not to permit to Defendants to sell the undivided share of the parties in the suit properties until dispute is adjudicated. Hence, the Court is of the opinion that the Plaintiffs are

having balance of convenience in their favour and comparatively hardship is more to the Plaintiffs rather to the Defendants. In order to avoid future complications the Court is of the opinion that the Defendants must be restrained from alienating or disposition of the suit properties to stranger in any manner till disposal of the suit. With these observation, the Court is answers Point No.2 and 3 in favour of the Plaintiffs.

15. **POINT No.4:-** For the foregoing reasons, the Court proceed to pass the following:-

ORDER

I.A.No.1 filed by the Plaintiffs under Order 39 Rule 1 and 2 of C.P.C is allowed.

Thereby, the Defendants and all persons claiming through them are hereby restrained by an order of Temporary Injunction from alienating or encumber/create charge or disposition of the application/suit schedule properties in any manner in favour of anybody till disposal of the suit.

Parties shall bear their own costs.

(Dictated to the Adalat AI software, revised and corrected then pronounced by me in the open Court on 20th day of August-2025)

(Gowda Jagadeesha Rudre)
Senior Civil Judge & JMFC,
Mulbagal.