

KAMD210021592024



IN THE COURT OF CIVIL JUDGE & J.M.F.C.,
KRISHNARAJAPETE

Present: SMT.ARPITHA.K.V.,
B.A. LL.B., LL.M.
C/C CIVIL JUDGE & J.M.F.C.,
KRISHNARAJAPETE.

DATED THIS 6th DAY OF AUGUST-2025

O. S. No. 824/2024

Plaintiff : 1. Babushekar.K.R
S/o Puttamadappa
@ Rajashekarappa, K.C.
Aged about 48 years,
R/at #125,
Nagamangala Road,
K.R.Pete Town,
K.R.Pet Taluk,
Mandya District.

V/S

Defendants : 1. Puttamadappa @ Rajashekara.K.C
S/o K.S.Chennappa,
Aged about 80 Years,
2. Bramarambha
W/o Puttamadappa
@ Rajashekara.K.C
Aged about 74 years,
3. Dinesha.K.R.
S/o Puttamadappa

- @ Rajashekara.K.C.
Aged about 57 years
4. Sharathkumar.K.R
S/o Puttamadappa
@ Rajashekara.K.C.
Aged about 57 years

1 to 4 are R/o Door No.#125,
Nagamangala Road,
K.R.Pete Town,
K.R.Pet Taluk,
Mandya District.

5. Sheela.K.R.
W/o Somashekara @ Prakasha,
Aged about 44 years,
R/o Nimishambha Bangalya Store,
Anitha Convent Road,
Malavalli Town, Malavalli Taluk,
Mandya District.

I.A. NO.II

APPLICANT :- Dinesha.K.R

V/S

OPPONENT:- Babhushekar.K.R

ORDERS ON I.A NO.II.

The Applicant/Defendant no.3 has filed the present application under Order XXXIX Rule 1 and 2 of C.P.C seeking an order of this court to restrain the Defendants no.1 and 5 from alienating, transferring or creating encumbrance upon the suit schedule properties till disposal of the suit.

2. The applicant/defendant no.3 has sworn in the affidavit that the plaintiff has instituted the suit with respect to the properties which are ancestral properties of the plaintiff and the defendants no.2 and 3. The applicant admits that the plaintiff is entitled for 1/5th share in the suit schedule properties and the defendant/ applicant have also sought their relief by way of counter claim seeking their share in the suit schedule property. Accordingly the defendants no.1, 4 and 5 are also entitled for share in the suit schedule properties.

3. The applicant further submits that the defendants no.1 and 5 does not hold the absolute right and share over the suit schedule properties. The defendants no.1 and 5 have got the documents created and accordingly have got their names mutated in the suit schedule properties.

4. The defendants no.1 and 5 with a malafide intention are trying to alienate the item no.3 and 4 of the suit schedule properties and accordingly the applicant would have submitted requisition to the Sub -Registrar, K.R.Pete on 20.06.2025. Accordingly the Sub-Registrar stated that an order of the court was necessary. Since the defendants no.1 and 5 are trying to alienate the suit schedule properties to third party, it is necessary that they are restrained from alienating, transferring or creating encumbrance upon the suit schedule properties.

5. The defendants no.1 and 5 have submitted their objection to the present application contending that the application made by the defendant no.3 is not maintainable as the plaintiff and the defendant no.3 colluding with each other have come up with the present application. The suit properties are the self acquired properties of the grand father of the defendant no.1 and would have obtained the said properties through a Will. The Item No.4 of the suit schedule property was given to defendant no.5 through a gift deed and accordingly the same cannot be considered as ancestral property of the plaintiff and the defendants. None of the parties except defendant no.5 has any right over the suit property and accordingly prays to dismiss the application with costs.

6. Heard and perused the materials placed on record. Following points arise for consideration of this court.

1. Whether the applicant/defendant no.3 has made out Prima facie case?
2. Whether the applicant/defendant no.3 proves that the Balance of Convenience lies in his favour?
3. Whether the applicant/defendant no.3 proves that he will suffer from irreparable loss or injury if the said application is not allowed?
4. What order?

7. The aforesaid points are answered as hereunder:

Points No.1 to 3: In the Affirmative

Point No.4: As per order for the following'

REASONS

8. **Points No.1 to 3:** Since these three points are interlinked with each other they are taken up together for common discussion in order to avoid repetition of facts.

9. The present suit has been instituted for the relief of Partition and Separate possession against the defendants. The defendant no.3 states that the plaintiff and all the defendants are entitled for equal share in the suit schedule properties. But the defendants no.1 and 5 taking advantage of the documents having registered in their names, are trying to alienate the suit schedule properties. Since the suit is one for partition and separate possession, the real question in controversy i.e., determining the nature of the properties and the share of each parties to the suit, can only be determined upon completion of trial. Accordingly this court observes that if the defendants no.1 and 5 are restrained from alienating, transferring or creating encumbrance upon suit schedule properties, no prejudice will be caused to the plaintiff and the other defendants.

10. Accordingly it can be said that the defendant no.3 has made out prima facie case to allow the application. Further if the defendants no.1 and 5 are restrained, no prejudice would be caused to the other side. Accordingly it can be said that no irreparable loss or injury will be caused to the other parties to the suit. Accordingly it can be observed here that no inconvenience is caused to any of the parties.

11. Since the parties to the suit are members of the Hindu Undivided Joint family, as the adjudication is pending, this court is of the opinion that in order to keep the properties in tact it will be necessary that the defendants no.1 and 5 are restrained from alienating, transferring or creating encumbrance of the suit schedule properties till disposal of the suit in the interest of justice and equity. Accordingly Points No.1 to 3 are answered in the Affirmative.

12. **Point No.4:** In lieu of the above made discussion, this court proceeds to pass the following:-

ORDER

IA No.II filed by the applicant/defendant
no.3 is hereby allowed.

Defendants no.1 and 5 and their agents
are hereby restrained from alienating,
transferring, creating, encumbrance upon

the with suit schedule properties till
disposal of the suit.

(Dictated to the Stenographer directly on computer, typed by him, corrected by
me and then pronounced in the open Court on 06.08.2025)

(Smt. Arpitha K.V.)
C/C Civil Judge and JMFC,
K.R.Pete.