

**IN THE COURT OF THE I-ADDITIONAL SENIOR CIVIL JUDGE AND
JMFC, MADDUR**

Present: **MOHANAKUMARI N.B., L.L.M.**
I-Additional Senior Civil Judge and JMFC,
Maddur, Mandya District

DATED: THE 10TH DAY OF JULY 2026

OS. NO.152 OF 2025

Plaintiff : **Smt. Sumithra,**

V/s

Defendants: **Smt. Jayamma and others.,**

ORDERS ON IA NO.I

Applicants : **Smt. Sumithra.,**
V/s

Opponent: **Sri. C.S. Ravi**

ORDER XXXIX RULE 1 AND 2

This application is filed by the plaintiff under Order XXXIX Rule 1 and 2 read with Section 151 of CPC seeking temporary injunction against the defendant No.8 restraining him from alienating or creating encumbrance over the application schedule property pending disposal of the suit.

2. In the affidavit filed to the application, it is stated that the present suit is filed for partition and separate possession. The suit schedule properties are ancestral and joint family properties. No partition has taken place in the joint family. After the death of the father of the plaintiff, defendant No.3 is managing the joint family affairs. He is not looking after the joint family properties in proper manner and he is utilizing joint family income for his vices. The suit schedule properties are yielding good income to meet the joint family needs. There is surplus income to the joint family. There was no antecedent debt to the joint family. The defendant No.3 changed khatha of the application schedule property to his name illegally as per MR. No.33/2003-04. The plaintiff came to know that the defendant No.3 executed sale deed dated 10.04.2006 of application schedule property in favour of the defendant No.7, behind the back of the plaintiff and defendant No.1, 2, 4 to 6. The defendant No.7 executed sale deed dated 30.08.2010 of the application schedule property in favour of the defendant No.8. The defendant No.8 is making attempts to sell application schedule property in favour of the defendant No.9 and 10. The defendant No.8 executed agreement of sale dated

02.08.2025 in favour of the defendant No.9 and 10. The said agreement of sale is created and concocted under suspicious circumstances. It is not binding on the legitimate share of the plaintiff in the suit schedule properties. Therefore, this application is filed seeking temporary injunction against defendant No.8 in respect of application schedule property which is suit schedule Item No.4 property.

3. The defendant No.8 has filed his written statement and memo to consider his written statement as objection to IA No.1. In the written statement, defendant No.8 denied the entire case of the plaintiff as false. It is specifically contented that the defendant No.3 for his joint family legal necessity sold suit Schedule Item No.4 property under registered sale deed dated 10.04.2006 in favour of the defendant No.7 for valuable consideration. The khatha in respect of the said property was made out in the name of defendant No.7 as per MR No.102/2005-2006. The defendant No.7 was in possession and enjoyment of the land purchased by him as absolute owner. The defendant No.8 purchased Suit Schedule Item No.4 property from the defendant No.7 through sale deed dated 30.08.2010 for valuable

consideration. The Khatha has been made out in his name as per MR No.16/2010-11. He was in possession and enjoyment of the same as absolute owner as per sale deed. The defendant No.8 executed agreement of sale of Suit Schedule Item No.4 property in favour of defendant No.9 and 10 for valuable consideration and received advance sale consideration of Rs.1,50,000. Under the agreement of sale possession of the property is delivered to the defendant No.9 and 10. The suit is collusive between the plaintiff and the defendant No.1 to 6. Therefore, it is prayed to dismiss suit as well as IA No.1.

4. The defendant No.9 and 10 have filed their written statement and also filed memo to consider their written statement as objection to IA No.1. In the written statement, they have denied the case of the plaintiff as false. It is specifically contented that the defendant No.3 for his joint family legal necessity sold suit Schedule Item No.4 property under registered sale deed dated 10.04.2006 in favour of the defendant No.7 for valuable consideration. The khatha in respect of the said property was made out in the name of defendant No.7 as per MR No.102/2005-2006. The defendant No.7 was in possession and

enjoyment of the land purchased by him as absolute owner. The defendant No.8 purchased Suit Schedule Item No.4 property from the defendant No.7 through sale deed dated 30.08.2010 for valuable consideration. The Khatha has been made out in his name as per MR No.16/2010-11. He was in possession and enjoyment of the same as absolute owner as per sale deed. The defendant No.8 executed agreement of sale of Suit Schedule Item No.4 property in favour of defendant No.9 and 10 for valuable consideration and received advance sale consideration of Rs.1,50,000. Under the agreement of sale possession of the property is delivered to the defendant No.9 and 10. The suit is collusive between the plaintiff and the defendant No.1 to 6. Therefore, it is prayed to dismiss suit as well as IA No.1.

5. Heard arguments. Perused the materials place on record.

6. The points that arise for consideration of this Court are :

- 1. Whether the plaintiff has made out prima facie case in her favour?**
- 2. Whether irreparable loss or injury will be caused to the plaintiff, if temporary injunction is not granted in her favour at this stage?**

3. Whether balance of convenience lies in favour of plaintiff at this stage?

4. What order ?

7. The findings of this Court to the above points are as under :-

Point No.1 : In the Affirmative
Point No.2 : In the Affirmative
Point No.3 : In the Affirmative
Point No.4 : As per final order for the following:

REASONS

8. POINTS NO.1 :- It is the case of the plaintiff that the suit schedule properties are ancestral and joint family properties. The present suit is filed for partition and separate possession. It is apprehension of the plaintiff that the defendant No.8 is making hectic efforts to alienate the Suit Schedule Item No.4 property. It is alleged by the plaintiff that the defendant No.3 created sale deed in favour of defendant No.7. Thereafter the defendant No.7 created sale deed in favour of defendant No.8. At present the defendant No.8 created and concocted agreement of sale in favour of defendant No.9 and 10. The defendant No.8 to 10 in their objections have contended that the defendant No.3 sold suit

Schedule Item No.4 property in favour of the defendant No.7 for joint family legal necessity. Whether suit Schedule Item No.4 property is sold by the defendant No.3 for family legal necessity or not is a matter of trial. It is the allegation of the plaintiff that there was no legal necessity for the family to alienate suit Schedule Item No.4 property. It is also alleged that the defendant No.3 was not managing the joint family affairs for the benefit of joint family, but he was utilizing joint family funds for his vices. The said fact triable issue. Therefore this Court is of the considered view that the plaintiff has got prima facie case in her favour at this stage. **Accordingly point number 1 is answered in the Affirmative**

9. Point No.1 and 2: If the defendant No.8 is not restrained by way of temporary injunction, he may alienate suit schedule Item No.4 property. If the plaintiff succeeds in her suit, the suit schedule Item No.4 property may not be available for plaintiff to get her share. In such situation, it will cause irreparable loss and injury to the plaintiff if property is not available. Even if the suit schedule Item No.4 property is alienated during the pendency of the suit, it will be subject to

provisions of Section 52 of the Transfer of Property Act. However if the defendant No.8 is not restrained by way of temporary injunction from alienating suit schedule Item No.4 property, he may create unnecessary encumbrance or he may alienate suit schedule Item No.4 property and it will cause multiplicity of proceedings. On the other hand, If injunction is not granted, no irreparable loss or injury will be caused to defendant No.8, as the property will be available for him if he proves his contention. Hence, balance of convenience lies in favour of the plaintiff.

Accordingly, point numbers 2 and 3 are answered in the affirmative.

10. Point No.4 :- For the reasons stated and findings given on the above Points, this court proceed to pass the following :

ORDER

IA No.1 filed under Order No.XXXIX Rule 1 and 2 of CPC is hereby allowed.

Defendant No.8 is hereby restrained by way of temporary injunction from alienating or creating

**encumbrance over the suit schedule
Item No.4 property pending disposal
of the suit.**

(Dictated partly to the Stenographer and transcribed by her, and dictated partly through Adalath AI. Order corrected and signed by me, then pronounced by me in the Open Court on this the 10th day of July, 2026)

**(MOHANAKUMARI N.B.)
I-Addl. Senior Civil Judge & JMFC.,
Maddur.**