

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

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

DATED: THE 12TH DAY OF AUGUST 2025
OS. NO.26 OF 2023

Plaintiffs : : Sowmya and others

V/s

Defendants: : K. Thibbaiah and others

ORDER ON IA-10

Applicants :

- 1. Sowmya S/o**
Late.Sundaresha,
Aged about 34 years,
Government Employee.
- 2. Parinitha S Gowda,**
D/o Late Sundaresha,
Aged about 5 years, Minor.
- 3. Punarva S Gowda**
S/o Late Sundaresha,
Aged about 3 years, Minor.
2 and 3 minor R/by natural
Guardian/Mother Plaintiff No-1.

All are R/of Bevinahalli village,
Kothathi Hobli, Mandya Taluk.
Mandya District.

(Represented by Sri B.A.G., Advocate)

V/s

Opponents:

1. **K. Thibbaiah,**
@Thibbegowda, S/o
Kundagalasana Thibbaiah,
Aged about 80 years.
Agriculturist,
2. Jagadeesha.G.T S/o
Thibbaiah @ Thibbegowda,
Aged about 30 years,
Engineer,
Both are R/at Gattahalli
village, Kowdle Dakale,
Koppa Hobli,
3. Sundaramma @ Sharada
W/o Late. Sureshgiri Aged
about 40 years, House wife.
No.55, New No.60, 34th
Main, Kumaraswamy Layout,
2nd stage, Bangalore South,
J.P.Nagar, Bangalore-78.

Represented by Sri H.M.,
Advocate)

ORDER ON IA NO.1

The plaintiff has filed the present application under Order 39 Rule 1 and 2 R/w section 151 of CPC seeking temporary injunction against the defendants restraining them from alienating suit schedule properties or creating encumbrance thereon pending disposal of the suit.

2. The plaintiff No.1 sworn to affidavit to the present application and stated that the defeated No.2 and 3 and her husband are the children of the defeated No.1. The defendants have not looked after the plaintiffs after the death of husband of the plaintiff No.1. The defendants are attempting to create third party documents in respect of suit schedule properties. The suit schedule properties are wet lands irrigated by KRS water, they valuable and fertile land fetching good income. The defendants have no legal necessity to create third party document in respect of suit schedule properties. They with an intention to deprive the right of plaintiff No.2 and 3 are attempting to alienate suit schedule properties. Therefore, the present application is filed seeking temporary injunction against the defendants to restrain them from alienating suit schedule properties or creating encumbrance thereon pending disposal of the suit.

3. The defendants No.1 and 2 have appeared through their counsel and filed their written statement and also filed memo of adoption adopting the contents of written statement as objections to the present application. It is admitted by them that suit schedule item No.1 to 5 and 8 properties are ancestral properties. But it is their specific contention that suit schedule

item No.6, 7, 9 to 11 properties are self acquired properties of defeated No.1. They contend that there was no surplus income in the ancestral properties to acquire the said properties. The defendant No.1 by earning income on his own acquired the said properties. The defendant No.1 and 2 are ready to give the share of the plaintiffs in ancestral properties. Therefore, they prayed for dismissal of the suit as well as IA No.1.

4. Heard both sides.

5. Now, the following points arise for consideration of this Court :

1. Whether plaintiff has made out prima facie case in his favour?

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

3. Whether irreparable loss or injury will be caused to the plaintiff, if temporary injunction is not granted in his favour at this stage?

4. What order?

6. Now, 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:

R E A S O N S

7. POINTS NO.1:- The present suit is filed for partition and separate possession of 1/4th share of the plaintiffs No.2 and 3 in the suit schedule properties. The plaintiffs contend that suit schedule properties are ancestral properties of plaintiff No.2 and 3 and they are coparceners. On the contrary the defendants No.1 and 2 contend that suit schedule item No.6 and 7, 9 to 11 properties are self acquired properties of the defendant No.1. But they have admitted that suit schedule item No.1 to 5 and 8 properties are ancestral properties. The defendant No.1 being elder member of the family appears to be kartha of joint family. There is presumption under law that any property acquired by kartha of the joint family is joint family property. However, he has got opportunity to prove the contrary. Until the contrary is proved, it can be presumed that the properties claimed to be self acquired properties of defendant No.1 are also ancestral and joint family properties. Therefore, at this stage, prima facie case

exists in favour of the plaintiffs. Accordingly, **Point No.1 is answered in the Affirmative.**

8. Point No.2:- It is the contention of the plaintiffs that the defendant No.1 and 2 are attempting to create third party rights on the suit schedule properties. If the defendants are not restrained by way of temporary injunction pending disposal of the suit, they may alienate or create encumbrance over the suit schedule properties. If the plaintiffs succeed in suit, there may be difficulties in getting their share in the suit schedule properties, if they are sold pending disposal of the suit. It will lead to multiplicity of the proceedings. On the other hand, if the defendants are restrained by way of temporary injunction pending disposal of the suit from alienating suit schedule properties no inconvenience will be caused to them as the properties will be available to them if they succeed in proving their contention. Therefore, at this stage, balance of convenience lies in favour of the plaintiffs. Accordingly **Point no.2 is answered in the Affirmative.**

9. Point No.3:- The plaintiffs contend that if the defendants are not restrained by way of temporary injunction

from alienating suit schedule properties, the defendants may defraud the plaintiffs from getting their shares in the suit schedule properties if they succeed in the suit. If the defendants are not restrained by way of temporary injunction at this stage, they may create third party rights or encumbrance over the suit schedule properties, which will cause hindrance to the plaintiffs in getting their shares in the suit schedule properties if they succeed in the suit. If the property is not available or if the property is encumbered, the right of the plaintiffs in getting their legitimate share if they succeed in the suit will be affected. That cannot be compensated in terms of money. Therefore, if temporary injunction is not granted at this stage, irreparable loss and injury will be caused to the plaintiffs. Accordingly **Point No.3 is answered in the Affirmative.**

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

O R D E R

**I.A.No.1 filed by the plaintiffs under
Order 39 Rule 1 and 2 r/w Sec.151 of
C.P.C is hereby allowed.**

The defendants are hereby restrained by way of temporary injunction from alienating or creating encumbrance over the suit schedule properties pending disposal of the suit.

No order as to costs.

(Dictated to the Stenographer, transcribed by her, the transcript corrected and pronounced by me in the open court on this the 12th day of August 2025)

(MOHANAKUMARI N.B.)

**Addl. Senior Civil Judge & JMFC.,
Maddur.**