

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE & J.M.F.C.,**  
**AT: SRIRANGAPATNA.**

**:Present:**

**SMT. ROOPA M .D**

**B.A (L) L.L.B.**

**PRL. SENIOR CIVIL JUDGE & JMFC COURT,**  
**SRIRANGAPATNA.**

**O.S.No.53/2020**

**Dated on this the 14<sup>th</sup> day of September 2022**

**Plaintiff/s:**

**1. Sri.Cheluvaiah,**

S/o Late Narayanappa,  
Aged about 60 years,

**2. Sri.Tulasikumara,**

S/o Late Narayanappa,  
Aged about 54 years,

**3. Smt.Lakshmi,**

W/o Late Varadaraju,  
Aged about 45 years,

**4. Sri.Punith,**

S/o Late Varadaraju,  
Aged about 23 years,

**5. Smt.Triveni,**

W/o Late Honnaiah,  
Aged about 45 years,

Plaintiffs No.1 to 5 are r/at Palahalli village,  
Srirangapatana Taluk.

**6. Smt.Girija,**

W/o Siddaraju,  
Aged about 48 years,  
R/at Kumpara Koppalu,  
Mysore.

**7. Smt.Lakshmamma,**  
W/o Venkatachala,  
**Aged about 46 years,**  
R/at Anchedoddi village,  
Malavalli Taluk.

**(By Sri.K.S.Nanjundegowda-Adv.)**

**V/s**

**Defendant/s:** **1. Smt.Gayathri,**  
W/o Late Vyramudi,  
Aged about 50 years.  
**2. Sri.Umesh,**  
S/o Late Vyramudi,  
Aged about 30 years.  
**3. Sri.Lokesha,**  
S/o Late Vyramudi,  
Aged about 38 years.  
**4. Sri.Kumara,**  
S/o Late Bettaiah,  
Aged about 54 years.

Defendants No.1 to 4 are r/at Palahalli village,  
Srirangapatana Taluk.

**5. Smt.Savithri,**  
W/o Nagaraju,  
Aged about 60 years.  
R/at Nazarbad, Mysore.  
**6. Smt.Lakshmi,**  
W/o Shankara,  
Aged about 55 years.  
r/at Basthipura village,  
Belagola Hobli,  
Srirangapatana Taluk.  
**7. Sri.Narasimha,**  
S/o Late Narayanappa,  
Aged about 58 years.

**8. Sri.Prajwal,**  
S/o Late Honnaiah,  
Aged about 21 years.  
Defendants No.7 & 8 are r/at Palahalli village,  
Srirangapatana Taluk.

**(D1 to D6 -By Sri.D.Siddaraju-Adv.  
D7 -By Sri.M.Mahadevu-Adv.  
D8 -By Smt.Swomya.M.M-Adv.)**

**I.A.No.I**

**APPLICANT/S: Sri.Chaluvaiah & others.**

**/Vs./**

**OPPONENT/S: Smt.Gayathri and others**

**ORDERS ON I.A.NO.I**

The plaintiffs have filed this application U/O XXXIX Rule 1 and 2 R/W Sec.151 of CPC against the defendants praying to grant for ad-interim of temporary injunction restraining the defendants from alienating the suit schedule properties till the disposal of the suit.

**2 The brief contents of plaint are as under:**

It is the case of the plaintiffs that one Shikari Chaluvaiah had two sons by name Bettaiah and Narayana. The said Bettaiah had four sons by name Vyramundi,

Savithramma, Laxmamma and Kumara. Vyramudi died leaving behind him, his wife Gayathri and sons Umesh and Lokesh. The said Narayana died leaving behind him, Chaluvaiah, Narasima, Varadaraju, Tholasikumar and Honnaiah, Girija and Kumari (Laxmi). Varadaraju, the third son died leaving behind him his wife Lakshmi and son by name Punith. Honnaiah died leaving behind his wife Triveni and son by name Prajwal. Plaintiffs along with defendant No.7 are lineal descendants of Narayanappa. Plaintiffs along with defendant No.8 are lineal descendants of Honnaiah. The suit schedule properties are the joint family properties and are in joint possession of the plaintiffs and the defendants. The plaintiffs have half share in the suit schedule properties.

3. After the death of Bettaiah, his wife Gayathri was managing the affairs of the family. The said Gayathri was not managing the affairs of family in proper manner and providing accounts. When the same was questioned, she gave an evasive reply. On perusal of khatha, it is seen that khatha was changed behind the back of the plaintiffs. The plaintiffs requested the defendants to effect partition and the defendants have ignored the same. Therefore, the present suit for partition and separate possession.

4. Pursuant to the suit summons the defendants No.1 to 6 appeared and filed the written statement.

**5. The contents of the written statement of defendants No.1 to 6 is as under:**

The defendants No.1 to 6 have admitted their relationship with the plaintiffs and contended that Shikari Chaluvaiah had two children by name Bettaiah and Narayana and his wife's name is Arasamma. Bettaiah did not have a wife by name Gayathri. Bettaiah's brother name is Narayana. The said Bettaiah had four sons by name Vyramundi, Savithramma, Laxmamma and Kumara. Vyramudi died four years ago. Vyramudi's wife is Gayathri and their children are Umesha and Lokesh. They are the parties to the present suit as plaintiffs and defendants No.1 to 3. Bettaiah and Arasamma have expired. Narayana's wife is Ratnamma. Their children are Chaluvaiah, Narasimaha, Varadaraju, Tholasikumar and Honnaiah, Girija and Laxmamma. Varadaraju and Honnaiah have expired. The said Narayana and Rathnamma have expired.

6. On 27.07.1981, Srirangapatana Land Acquisition Tribunal granted item No.1 of the suit schedule properties to Bettaiah and his name has been registered in the revenue records. As such, item no.1 property is self acquired property of Bettaiah and item No.2 of the property was given to Bettaiah by one Shikari Chaluvaiah. As such, the said item No.1 and 2 properties are exclusive properties

of Bettaiah and only Bettaiah his family members have right over the suit schedule properties.

7. The children of Narayana and daughter in laws and grand children have no right over the suit properties. In spite of the same on 15.07.2022, the said Bettaiah effected partition including wife of Narayana viz., Ratnamma and son of Narayana by name Narasimha. The suit schedule properties were divided as ABCDEFG properties. 'B' schedule property and 'C' schedule property were allotted to Ratnamma and Narasimha. 0.49 guntas was allotted to the wife of Narayana by name Ratnamma. 0.40 guntas was allotted to Narasimha s/o Narayana. In spite of the same the plaintiffs have filed the present suit. The suit is one for partition and separate possession.

8. Along with the plaint, I.A No.I came to be filed under Order XXXIX Rule 1 and 2 r/w Section 151 of C.P.C., seeking ad-interim order of temporary injunction in favour of the plaintiffs restraining the defendants from alienating the suit schedule properties.

9. Allowing the I.A is objected by the defendants by adopting the written statement as objection to I.A No. I.

10. The following points arise for my consideration:

**POINTS FOR CONSIDERATION ON IA NO.I**

*1. Whether the plaintiffs have made out a prima-facie case in their favour?*

*2. Whether the balance of convenience lies in favour of the plaintiffs?*

*3. Whether the plaintiffs will be put to irreparable loss or injury if the application is dis-allowed?*

*4. What Order?*

11. My findings 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 the final Order,*

*for the following:*

**:REASONS:**

**12. Point No.1:** It is the contention of the plaintiffs that the suit schedule properties are the joint family properties of plaintiffs and defendants. The defendants behind the back of the plaintiffs have mutated their names in the revenue records and are not allotting the shares of the plaintiffs and trying to alienate the suit schedule properties. Therefore, the present I.A.

13. Pursuant to the suit summons defendant No.1 to 6 appeared and filed written statement and adopted the same was objection to I.A. No.1 and contended that item No.1 of the property was granted to Bettaiah by Land Tribunal and item No.2 was given to Bettaiah by his father. Though the

said properties are exclusive properties of Bettaiah, in order to get harmony of family, a partition was effected on 15-07-2022. The wife of Narayana was allotted 49 guntas and son of Narayana was allotted 40 guntas and the khatha was also effected in their name. Therefore, the present I.A is liable to be dismissed.

14. The plaintiffs have filed the following documents.

1. Computerized sale agreement dated: 05.07.2022.
2. Genealogical tree
3. Dead certificate of Narayanappa
4. Thirteen RTC extracts issued by  
Tahasildar, Srirangapatna.

15. The defendants have not filed any documents.

16. When the case stood posted for plaintiff evidence, the plaintiffs have filed the present application U/sec.39 rule 1 and 2 r/w sec.151 of CPC along with a memo and agreement for sale between legal heirs Vyramudi and Raghu with respect to suit schedule properties. Allowing the said application is objected by the defendants stating that there is an effective partition effected between family members of Bettaiah and Narayana and hence, the plaintiffs are not entitled for share in the suit schedule properties.

17. The defendants have contented that the suit schedule properties are the exclusive properties of

Bettaiah and the heirs of Narayan have not right over the same. In support of the same, no documents have been produced. Whether the suit schedule properties are exclusive properties of Bettaiah or whether the partition has been affected between the heirs of Naryana and Bettaiah is matter of trial. The admission of the defendants that a share is allotted to Naryana's wife and son prima-facie appears that the suit schedule properties are the joint family properties. The agreement of sale produced by the plaintiffs prima-facie proves that there are attempts to sell the suit schedule properties. In such circumstances, alienation of the suit schedule properties would create multiplicity of proceedings. The defendants have relied upon a decision reported in **AIR 1956 SC 548 (Mohammad Baqar And Others. vs Naim-Un-Nisa Bibi and Others.**

*7. Then, there is the question of limitation. The parties to the action are co-sharers, and as under the law, possession of one co-sharer is possession of all co-sharers it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period.*

18. The defendants have also relied on the commentary of Law of Injunction and argued that injunction cannot be granted against co-owners. I have perused the said

decision and the extract provided from the commentary. It is pertinent to note that in the case on hand, injunction is not claimed with respect to interference and injunction is claimed from alienating the suit schedule properties. A distinction needs to be made here. If the suit schedule properties are alienated, the same would lead to multiplicity of proceedings and the alienation would be without the consent of all the co-sharers. In such circumstances grant of injunction is a need. In such circumstances, I am of the opinion that with all due respect decision relied by the defendants cannot be made applicable in the case on hand and the plaintiff has made out a prima-facie case. Therefore, I answer point No.1 in the Affirmative.

**19. Point Nos.2 and 3:** *As both these points are inter-linked to each other, the same is taken up for common discussion to avoid repetition of facts and for the purpose of brevity and convenience.*

20. The plaintiffs have made out a prima-facie case in their favour. The balance of convenience lies in favour of the plaintiffs and if the temporary injunction is not granted, the plaintiffs will suffer irreparable injury which is greater than the injury suffered by the other side. If the suit schedule properties are alienated, it will lead to multiplicity of proceedings and the plaintiffs will suffer

irreparable loss if they make out a case on merits. The documents produced by the plaintiffs, at this stage does prove that the balance of convenience lies in favour of the plaintiffs and that the plaintiffs will be put irreparable loss and injury if this application is not allowed. Therefore, I answer Point Nos.2 and 3 in the Affirmative.

**21. Point No. 4:** For the reasons stated in point Nos.1 to 3, I proceed to pass the following:

**ORDER**

*IA.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 of Civil Procedure Code is hereby allowed.*

*The defendants are hereby temporarily restrained from alienating the suit schedule properties, until further orders.*

*(Dictated to the Stenographer, transcribed by her, printout taken thereof, corrected by me and then pronounced it in open court this the 14<sup>th</sup> day of September, 2022.)*

**(ROOPA.M.D)**  
**PRL. SENIOR CIVIL JUDGE & JMFC.**  
**SRIRANGAPATANA.**

(Order is pronounced in the open court vide separate order)

**ORDER**

*IA.No.I filed by the plaintiffs under Order XXXIX Rule 1 and 2 of Civil Procedure Code is hereby allowed.*

*The defendants are hereby temporarily restrained from alienating the suit schedule properties, until further orders.*

*Call on 26.09.2022.*

Prl. Senior Civil Judge & JMFC.  
Srirangapatana.