



**IN THE COURT OF THE HONOURABLE ADDITIONAL CIVIL
JUDGE & JMFC, AT KRISHNARAJANAGAR.**

PRESENT: SMT.ASRINA.,B.A, LLB.
ADDL. CIVIL JUDGE AND JMFC, KRISHNARAJANAGAR.

DATED THIS 28TH DAY OF APRIL, 2025
O.S.No.318/2023

BETWEEN

PLAINTIFFS	<ol style="list-style-type: none">1. Smt.Premamma W/o Sannaramegowda Aged: 66 years2. Shri.Ananda S/o Sannaramegowda Aged 42 years Both are R/at: Munduru Village Saligrama Hobli & Taluk Mysuru District.3. Smt.Nagamma D/o Sannaramegowda, W/o Mahadeva Aged 43 years R/at:Mallegowdanakoppalu Village, Elavala Hobli, Mysuru Taluk & District. <p style="text-align: center;">(By Sri.A.T. Advocate)</p>
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DEFENDANTS	<p>1. Shri.Sannaramegowda S/o Devegowda Aged:70 years.</p> <p>2. Smt.B.K.Manjula D/o M.N.Kumara, Aged 50 years.</p> <p>Both are R/at: Munduru Village Saligrama Hobli, K.R.Nagar Taluk.</p> <p>(Defendant No.1 is placed Ex-parte) (Defendant No.2 By Sri.J.G. Adv)</p>
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IA NO.1**BETWEEN**

APPLICANT/ PLAINTIFFS	Smt.Premamma & others
OPPONENT/ DEFENDANTS	Shri.Sannaramegowda and another

Provision of law	Order 39 Rule 1 and 2 R/w Section 151 of CPC.
Relief sought in the application	For a temporary injunction order to restrain the defendants from alienating

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	and causing interference to the peaceful possession and enjoyment of the plaintiffs over the suit property till the disposal of the above suit.
Date of filing the application	11/07/2023.
Date of filing the objection to the application	19/02/2025
Date of order	28/04/2025.

(SMT.ASRINA)
ADDL.CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.

ORDERS ON IA.NO.1 FILED BY THE PLAINTIFFS UNDER
ORDER 39 RULE 1 AND 2 R/W SECTION 151 OF CPC

Plaintiffs have filed the present suit as against the defendants for the relief of partition and declaration in respect of the registered release deed dated 29/12/2018. Along with the suit the plaintiffs have also filed IA.No.1 under order 39 rule 1 and 2 R/w Sec.151 of CPC praying to restrain the defendants from alienating and interfering with the peaceful possession and enjoyment of the plaintiffs over the suit property till the disposal of the above suit.

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2. In the affidavit accompanying the IA.No.1, the plaintiffs have inter-alia reiterated the plaint averments. It is averred that the plaintiff No.1 is wife and plaintiffs No.2 and 3 are the children of defendant No.1. It is averred that the plaintiffs and the defendant No.1 are the members of Hindu joint family and the suit property is a joint family property of the plaintiffs and the defendant No.1. It is averred that the suit property being the joint family property of plaintiffs and the defendant No.1, all of them have equal share in the suit property. It is averred that the suit property is not yet partitioned between the plaintiffs and the defendant No.1. Therefore, it is averred that the plaintiffs and the defendant No.1 are the co-owners of the suit property. It is averred that with an malafide intention to defeat the legitimate rights of the plaintiffs in the suit property, the defendant No.1 has illegally executed the registered release deed dated 29/12/2018 in favour of the defendant No.2 herein without the knowledge and behind back of the plaintiffs. It is averred that on coming to know about the aforesaid release deed dated 29/12/2018, the plaintiffs have submitted their objections to the Nada Kacheri on the basis of which, the RRT proceeding No.34/2018-19 was initiated. It is averred that, due to Covid-19 pandemic the plaintiffs could not pursue the aforesaid RRT proceedings. Thereby, by using her political and economical influence, the defendant No.2 has illegally

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mutated the suit property to her name. It is averred that though the defendants had agreed to cancel the aforesaid release deed dated 29/12/2018, but the defendants did not cancel the said document. Therefore the plaintiffs have averred that the acts of the defendants is highly illegal and high handed and the same is against the law. Therefore, the illegal acts of the defendants has to be checked by this court by granting the reliefs as sought for in the instant application. If not the plaintiffs will suffer irreparable loss which cannot be compensated in terms of money. Therefore, having no other efficacious remedy, the plaintiffs were constrained to file the above suit. Apprehending the possibilities of interference on the part of the defendants over the peaceful possession of the suit property and also apprehending the possibilities of alienation of the suit property, the plaintiffs have filed the present suit and by filing the instant application the plaintiffs have prayed to restrain the defendants from alienating and causing any sorts of interference to their peaceful possession and enjoyment over the suit property until the disposal of this suit. The plaintiffs have averred that they have made out a prima facie case and the balance of convenience also lies in their favour. If the order of temporary injunction is not granted to the plaintiffs as sought for in the instant application, then the plaintiffs will be put to irreparable loss and injury which cannot be compensated in

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terms of money. Hence, on the above grounds the plaintiffs have prayed to allow the application.

3. In pursuance to the summons issued by this court, the defendant No.2 has appeared before this court through her counsel and by filing her objections the defendant No.2 has opposed the I.A.No.1. In spite of service of summons on him, the defendant No.1 did not appear before this court. Hence, the defendant No.1 was placed ex-parte.

4. The defendant No.2 has seriously opposed the IA.No.1 by denying the claim of the plaintiffs. The contention of the plaintiffs that the suit property is the joint family property of the plaintiffs and the defendant No.1 was denied by the defendant No.2. The contention of the plaintiffs that the plaintiffs and the defendant No.1 are the Co-owners of the suit property is also denied by the defendant No.2. The claim of the plaintiffs for partition of the suit property was denied by the defendant No.2. By denying rest of the plaint as well as application averments the defendant No.2 has categorically contended that the suit property is a self acquired property of the defendant No.1 and as such the defendant No.1 was a absolute owner of the suit property. It is contention of the defendant No.2 that the defendant No.1 being the absolute owner of the suit property, on 26/05/2016, the defendant No.1 along

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with the plaintiffs No.1 ad 2 herein they had executed the registered agreement for sale agreeing to sell the very same suit property in favour of the husband of the defendant No.2 namely Mr.M.N.Kumar S/o Ningegowda by receiving advance sale consideration from him. It is contention of the defendant No.2 that under the aforesaid agreement for sale, the plaintiffs No.1 and 2 as well as the defendant No.1 have received the advance sale consideration of Rs.1,50,000/- from husband of the defendant No.2 in the presence of witnesses and deed writer of the aforesaid sale agreement. It is contention of the defendant No.2 that as per the terms of said agreement for sale, the plaintiffs No.1 and 2 and defendant No.1 had agreed to sell the suit property in favour of the husband of the defendant No.2 within 3 years from from the date of said agreement for sale. It is contention of the defendant No.2 that since she is a niece of defendant No.1 in relation, the plaintiffs and the defendant No.1 had told the defendant No.2 that since she is their relative, instead of executing the sale deed, they will execute the release deed in her favour. Therefore, it is due to the said reason, instead of executing the registered sale deed in terms of sale agreement dated 26/05/2016, the defendant No.1 herein had executed the registered release deed dated 29/12/2018 in her favour. It is contention of the defendant No.2 that ever since from the date of acquiring the suit property under

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the aforesaid release deed, she is in actual possession and enjoyment of the suit property as its absolute owner by mutating the suit property to her name. It is contention of the defendant No.2 that she has also developed the suit property. Therefore the defendant No.2 has contended that with an malafide intention of obtaining the ex-parte injunction order, the plaintiffs have filed the present false suit by suppressing all the above true facts. The defendant No.2 has contended that if at all the order of temporary injunction is granted in favour of the plaintiffs, then the defendant No.2 will suffer irreparable loss which cannot be compensated in terms of money. Therefore, with the above contentions the defendant No.2 has sought for dismissal of the application.

5. Heard arguments from both the side.

6. Perused the records. After going through the application along with affidavit, objection statement and the relevant documents placed on record, the following points arises for my consideration:

Point No.1: Whether the plaintiffs have made out a prima facie case against the defendants?

Point No.2: Whether the balance of convenience lies in favour of the plaintiffs?

Point No.3: If the order of temporary Injunction is not granted in favour of the

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plaintiffs, whether the plaintiffs will suffer irreparable injury or hardship which cannot be compensated?

Point No.4: What order?

7. My answers to the above points are as hereunder:

Point No.1 : In the Negative.

Point No.2 : In the Negative.

Point No.3 : In the Negative.

Point No.4 : As per the final orders for the following:

REASONS

8. POINT NO.1: Plaintiffs have filed the present suit as against the defendants for the relief of partition and declaration. By filing the instant application the plaintiffs have prayed to restrain the defendants from alienating and causing any sorts of interference to the peaceful possession of the plaintiffs over the suit property until the final adjudication of the above suit.

9. In an application filed under Order 39 Rule 1 and 2 of CPC the plaintiffs must show that they have a prima-facie case. The plaintiffs have filed the present suit by contending that themselves and the defendant No.1 are the members of Hindu joint family and the suit property is their joint family property. It is the contention of the plaintiffs that with an intention to defeat their

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legitimate un-divided 3/4th share in the suit property, the defendant No.1 has illegally executed the registered release deed dated 29/12/2018 in favour of defendant No.2 in respect of the suit property. With these pleadings the plaintiffs have filed the present suit for partition.

10. On the other hand, the defendant No.2 has seriously contested the suit by contending that way back on 26/05/2016 itself the plaintiffs No.1 and 2 along with the defendant No.1 they had executed the registered agreement for sale agreeing to sell the present suit property in favour of the husband of the defendant No.2 namely Mr.M.N.Kumar by receiving the advance sale consideration of Rs.1,50,000/- from him and since the defendant No.2 is a family member of defendant No.1 i.e., defendant No.2 is a niece of defendant No.1, as per the say of plaintiffs and the defendant No.1, the registered release deed dated 29/12/2018 was executed in her favour instead of executing the registered sale deed in favour of her husband as per the terms of aforesaid agreement for sale.

11. During the course of hearing on the present application, learned counsel for the defendant No.2 has produced the original agreement for sale dated 26/05/2016 registered as a document No.MIR-1-00809/2016-17. The aforesaid sale agreement is a

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registered document and the same prima-facie establishes that the plaintiffs No.1 and 2 along with the defendant No.1 herein they had executed the aforesaid agreement for sale in favour of the husband of the defendant No.2 namely Mr.M.N.Kumar S/o Ningegowda agreeing to sell the present suit property in his favour by receiving advance sale consideration of Rs.1,50,000/- from him. It is significant to note here that though the plaintiffs No.1 and 2 are the parties as well as signatories to the aforesaid sale agreement, but the plaintiffs have suppressed the fact of execution of aforesaid sale agreement in favour of the husband of the defendant No.2 in respect of the suit property and so also the plaintiffs have suppressed the receipt of advance sale consideration of Rs.1,50,000/- from husband of the defendant No.2. Thereby, the plaintiffs have totally suppressed the aforesaid sale transaction, which they had done in respect of the present suit property in favour of the husband of the defendant No.2. Hence, the plaintiffs are guilty of suppressing the material facts. The same prima-facie establishes that the plaintiffs have not approached this court with clean hands.

12. Further, along with the plaint, the plaintiffs have produced the certified copy of the registered release deed dated 29/12/2018 registered as a document No.3795/2018-19 executed by the defendant No.1 in favour of the defendant No.2 in respect of the

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suit property. The last page of the said document discloses that the plaintiffs have obtained the certified copy of the aforesaid release deed way back on 11.09.2019 itself. Hence, the very document produced by the plaintiffs prima-facie depicts way back on 11/09/2019 itself the plaintiffs were aware of the execution of the aforesaid release deed dated 29/12/2018 by the defendant No.1 in favour of the defendant No.2 in respect of the suit property. Even the averments made by the plaintiff at para No.7 of the plaint also establishes that the way back in the year 2018-19 itself they had initiated the R.R.T proceedings before the Tahasildar, challenging the aforesaid release deed dated 29/12/2018. Hence, on combined reading of the copy of the release deed dated 29/12/2018 produced by the plaintiffs along with the averments made at para No.7 of the plaint prima-facie establishes that the way back back on 11/09/2019 itself the plaintiffs had knowledge regarding the execution of the aforesaid release deed dated 29/12/2018 in favour of the defendant No.2 in respect of the suit property. But, the plaintiffs have filed the present suit in the year 2023, i.e., after the lapse of nearly five years. Hence, the same prima-facie establishes that for five long years, the plaintiffs have slept over their rights. The law says that ***Vigilantibus non dormientibus jura subveniunt***, meaning thereby, the law aids the vigilant and not those who sleep over

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their rights. Hence, the present application suffers from delay, latches and acquiescence.

13. Further, during the course of arguments on the present application, learned counsel for the defendant No.2 has also produced the RTC's of 1.22.08 guntas of land in the Sy.No.405/1 and 0.10.08 guntas of land in Sy.No.114 of Munduru village, Saligrama Taluk. The aforesaid RTC's prima-facie establishes that apart from the present suit property, there are aforesaid mentioned properties, which stands in the name of defendant No.1 herein. But the plaintiffs have not included those properties to this suit and the plaintiffs have not sought partition in respect of the aforesaid properties. Rather, the plaintiffs have sought for partition only in respect of the present suit property, which is already given to the defendant No.2 by executing the aforesaid registered release deed dated 29/12/2018. Hence, even the said conduct of the plaintiffs in filing the present suit exclusively in respect of the present suit property which is already disposed off in favour of the defendant No.2 creates doubt on the genuineness of the claim made by the plaintiffs in this suit.

14. Furthermore, learned counsel for the defendant No.2 has also produced the copy of registered release deed dated 08/07/2016 registered as a document No.MIR-1-01384/2016-17. The said

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document prima-facie establishes that the defendant No.1 herein had released an extent of 8 guntas of in Sy.No.401/3 of Munduru village in favour of the one Mr.Sakegowda S/o Late Devegowda. But the plaintiffs have not challenged the disposition of the aforesaid 8 guntas of land in Sy.No.401/3 made by the defendant No.1 herein in favour of aforesaid Mr.Sakegowda. The plaintiffs have not even challenged the aforesaid release deed dated 08/07/2016 in this suit. Rather, the plaintiffs have only chosen to challenge the release deed dated 29/12/2018, which is executed in favour of the defendant No.2 herein. Hence, non-inclusion of all the aforesaid properties by the plaintiffs to this suit as well as the conduct of the plaintiffs in not challenging the other alienations/dispositions made by the defendant No.1 in favour of the others also creates serious doubt regarding the genuineness of the claim made by the plaintiffs in this suit. Hence, when the conduct of the plaintiffs is doubtful, when the plaintiffs have suppressed the material facts and also when the claim of the plaintiffs suffers from delay, laches and acquiescence, it cannot be said that there exists a prima-facie case. Accordingly, for what has been discussed above, I answer **Point No.1 in the Negative.**

15. POINTS NO.2 & 3: Since the discussion on these two points are interconnected, in order to avoid repetition, the above points are taken up together for a common discussion.

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16. In an application filed under Order 39 Rule 1 and 2 of CPC, apart from proving the *prima facie* case, the plaintiffs also must invariably prove that the balance of convenience lies in their favour and so also it is incumbent on the part of the plaintiffs to prove that if an order of temporary injunction is not granted then the plaintiffs will suffer irreparable loss and injury.

17. The present suit is at the very initial stage and therefore, in the absence of the evidence, the present application has to be decided based on the averments made by the parties to the suit in their respective pleadings and the material placed before the court. Learned counsel for the defendant No.2 has produced the RTC of the suit property for the year 2018-19. The same prima-facie projects the name of the defendant No.1 herein as an absolute owner and possessor of the suit property. The registered release deed dated 29/12/2018 bearing document No. 3795/2018-19 prima-facie establishes that by claiming the suit property to be his self acquired property, the defendant No.1 herein had released the suit property in favour of the defendant No.2 herein. Hence on combined reading of the RTC's of the suit property for the year 2018-19 along with the recitals made in the aforesaid release deed dated 29/12/2018, the same prima-facie establishes that the defendant No.1 being the absolute owner, he

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had released the suit property in favour of the defendant No.2 herein by executing the aforesaid registered release deed. The M.R.No.17/2019-20 produced by counsel for the defendant No.2 prima-facie establishes that on the basis of the aforesaid release deed dated 29/12/2018, the suit property was duly transferred and mutated to the name of the defendant No.2 herein way back on 05/07/2019 itself. Hence, the materials placed on record by the parties prima-facie establishes that the defendant No.2 has semblance of right over the suit property. Further, the recitals made in the aforesaid release deed dated 29/12/2018 prima-facie establishes that as on the date of execution of the aforesaid release deed itself, the possession of the suit property was duly handed over to the defendant No.2 herein. Hence, the materials placed on record by the parties prima-facie establishes that the defendant No.2 has semblance of right and possession over the suit property.

18. Further, the counsel for the defendant No.2 has produced the acknowledgment dated 06/09/2019 issued by the Saligrama P.S. as per reference No.537/2019. The same prima-facie establishes that way back on 06/09/2019 itself, the defendant No.2 herein had lodged a complaint as against the illegal act of interference caused by the plaintiff No.1 and defendant No.1 to her peaceful possession over the present suit property. Hence, the materials

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placed on record prima-facie projects the act of interference on the part of the plaintiffs and the defendant No.1 to the possession of the defendant No.2 over the suit property. Accordingly, I hold that the balance of convenience and element of hardship lies in favour of the defendant No.2 and not in favour of plaintiffs.

19. The materials placed on record *prima facie* depicts that the defendant No.2 has a semblance of right over the suit property. On the other hand, the plaintiffs have failed to make out a *prima facie* case. As held in Point No.1, the plaintiffs have approached the court with un-clean hands by suppressing the material facts. As held above, in spite of having knowledge regarding the release deed dated 29/12/2018 way back on 11/09/2019 itself, the plaintiffs have slept over their rights for nearly 5 long years. The claim of the plaintiffs also suffers from delay, laches and acquiescence. Furthermore, the very conduct of the plaintiffs in targeting the present suit property, which is already released in favour of the defendant No.2 by ignoring the other alienations/dispositions made by the defendant No.1 and also by ignoring the other properties which stands in the name of the defendant No.1, itself creates doubt regarding the genuineness of the claim made by the plaintiffs. Hence, when the plaintiffs have approached the court with un-clean hands, when the conduct as well as case of the plaintiffs is doubtful and the same suffers from

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delay, laches and acquiescence, no relief of injunction can be granted in favour of the plaintiffs.

20. Further in the present application, the plaintiffs have sought for two different reliefs. In the present application the plaintiffs have prayed to restrain the defendants from alienating the suit property and also to restrain the defendants from causing interference to the peaceful possession of the plaintiffs over the suit property. Sec.23 of Karnataka Civil Rules of Practice imposes bar on seeking multiple reliefs in a single application. Hence, in view of the bar contained in Sec.23 of Karnataka Civil Rules of Practice, the present application filed by the plaintiffs seeking two different reliefs is not maintainable. Hence, even in this count also the present application deserves to be dismissed.

21. Further, in the plaint as well as in the instant application, the plaintiffs have pleaded that even the defendant No.1 is also a co-owner of the suit property. On the other hand, the plaintiffs have also sought for injunction order as against the defendant No.1 from causing interference to their possession over the suit property. Thereby, to the contrary to their own pleadings, the plaintiffs are seeking injunction against the defendant No.1, who according to them, is also a co-owner of the suit property. Accordingly for what has been discussed above, **I answer points**

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No.2 and 3 in the Negative.

22. POINT NO.4: In view of my foregoing discussions on points No.1 to 3, I proceed to pass the following:

ORDER

IA.No.1 filed by the plaintiffs under Order 39 Rule 1 and 2 R/w Sec.151 of CPC is hereby dismissed with costs of Rs.1,000/-.

It is further made it clear that the observations made in this order is only restricted to decide the IA.No.1 and the same will not come in the way during the final disposal of the above suit.

(Dictated to the Stenographer, typed by her, and the transcript revised and corrected by me and then pronounced in the open court on this **28st day of April-2025**)

**(SMT. ASRINA)
ADDL. CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR.**