

KAMS500002562021



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC
NANJANGUD**

Present : **Sri. Kamalaksha D., B.A., LL.B.,**
Senior Civil Judge & J.M.F.C.,
Nanjangud.

Dated this the 27th day of July 2026

O.S./57/2021

Plaintiffs

1. Nagamma D/o late Chikkathayamma,
aged about 68 years,
2. Rathnamma D/o Nagamma and late
Chikkanna,
aged about 55 years,
3. G.C.Murthy S/o Nagamma and late
Chikkanna,
aged about 49 years,
4. Kanya D/o Nagamma and late
Chikkanna,
aged about 45 years,

Plaintiffs No.2 to 4 are represented by
their GPA Holder, Mother 1st plaintiff.
All are residing at Gowdarahundi
Village, Chikkaiahnachatra Hobli,
Nanjangud Taluk.

-V/s-**Defendants**

1. Gowramma W/o late Puttamadappa,
aged about 70 years,
2. Rathnamma D/o late Puttamadappa,
aged about 50 years,
3. Devammanni @ Bharathi,
D/o late Puttamadappa,
W/o Basavaraju,
aged about 48 years,
residing at Udbur Village,
Mysuru Taluk.
4. Jagadeesh S/o late Puttamadappa,
aged about 45 years,
5. Suguna W/o Keerthi,
C/o late Puttamadappa,
aged about 38 years,
6. Mahadevamma W/o late Nanjappa,
D/o late Devamma,
aged about 70 years,
7. Sannamma D/o late Devamma,
aged about 68 years,
8. Chinnamma W/o late Mallappa,
D/o late Devamma,
aged about 66 years,
residing at Hullahalli Village,
Matada Beedhi,
Hullahalli Hobli,
Nanjangud Taluk.

9. Kempanna dead (D.20 is L.R. of D.9)
10. Shivamma D/o late Devamma,
aged about 63 years,
11. Kamalamma D/o late Devamma,
aged about 55 years,
12. Shivarajappa K.
S/o late K.Kalingappa,
aged about 60 years
13. Kamalamma W/o Chandrashekara,
D/o late K.Kalingappa,
aged about 58 years,
residing at Kattehunsuru Village,
Hullahalli Hobli,
Nanjangud Taluk.
14. Shivaleela W/o Rajashekara,
D/o K.Kalingappa,
aged about 56 years,
opposite to College,
Hediyala Village, Hullahalli Hobli,
Nanjangud Taluk.
15. Nagaraju S/o late K.Kalingappa,
aged about 52 years,
16. Mahesha K. S/o late K.Kalingappa,
aged about 40 years,
17. Rajamma W/o late Nandaraju,
aged about 45 years,

18. N.Siddalingaswamy
S/o late Nandaraju,
aged about 23 years,
19. G.N.Shivakumar S/o late Nandaraju,
aged about 23 years,
20. Devamani W/o Mahadevaswamy,
aged about 42 years,
residing at Echagalli Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.
21. Kempadevamma D/o late Kalappa,
W/o Mariswamappa,
aged about 78 years,
22. Mahadevaswamy S/o late Puttanna,
aged about 50 years,
residing at Rampura Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.
23. D.K.Yadunath
S/o late B.S.Kenchegowda,
aged about 64 years,
residing at No.697, 3rd Cross,
Chitrabhanu Road,
Kuvempunagar, E and F Block,
Mysuru City.
24. K.S.Lakshmanagowda
S/o K.K.Subbarayagowda,
aged about 64 years,
residing at No.54, 1st Main,
2nd Stage, T.K.Layout,
Saraswathipuram, Mysuru City.

25. B.M.Latha W/o K.Shivarajappa,
aged about 50 years,
 26. Neethashree D/o K.Shivarajappa,
aged about 25 years,
residing at Chamanahallihundi
Village, Hampapura Hobli,
H.D.Kote Taluk.
 27. S.Abhishekh S/o K.Shivarajappa,
aged about 20 years,
- defendants No.1 to 12, 15 to 19, 21,
25 and 27 are residing at
Gowdarahundi Village,
Chikkaiahnachathra Hobli,
Nanjangud Taluk.

I.A. VIII

Applicant : G.C.Murthy
 3rd plaintiff
 (By Sri.N.U., Adv.)

-V/s-

Opponents: Gowramma and others
 ... defendants
 (By Sri. H.P.S., Adv. for D.1 to 5,
 10 to 12, 15 to 20, 25 & 27
 Sri. K.S.M., Adv. for D.24)

ORDER ON I.A. VIII UNDER ORDER XXXIX
RULES 1 & 2 OF CPC

The 3rd plaintiff has filed this application on the above said provision for the relief of temporary injunction to be issued against the defendants restraining them from alienating the application schedule properties till disposal of the suit.

2. In the affidavit it is sworn that, the suit is filed for the relief of partition and separate possession of the suit schedule properties. During the pendency of the above suit, the defendants are trying to alienate the suit schedule properties by creating the charge over the same without the consent of the plaintiffs. If the defendants are succeeded by alienating the suit schedule properties, it will create multiplicity of proceedings and to avoid the same it is better to restrain defendants from alienation of the suit schedule properties. Hence, the plaintiffs prayed to allow the application.

3. On the other hand the defendants filed objections stating that the entire facts of the application are totally false and away from truth, because the suit schedule properties are not joint family properties as of now. The husband of the plaintiff i.e., K.Chikkanna and his brothers had already effected partition of the family properties several decades ago and have been enjoying their respective shares. Therefore, the alleged joint status pleaded in the plaint does not arise at all. During the course of trial, the plaintiff's own son examined as P.W.1 has specifically admitted in his evidence that his father K.Chikkanna and his brothers had already divided the properties among themselves. He also admitted that the plaintiff's sons have also partitioned the properties belonging to their father and they are separately enjoying their respective shares. The admissions of P.W.1 completely demolished the case of plaintiffs, because evidence of P.W.1 is not at all enough to establish the nature of the schedule properties. The plaintiffs are suppressed many facts deliberately, because the plaintiffs

own and possesses land bearing Sy.No.234/2 measures 4 acres 8 guntas. The deliberate omission of the said fact should have been mentioned in the plaint with an intention to defeat the truth. The suit of the plaintiffs is bad for partial partition. There is no prima-facie case and balance of convenience not lies in their favour. Hence, prayed to reject the application.

4. Heard the arguments. Perused pleadings and materials placed on record. The points that arise for my consideration are:

1. Whether the plaintiff No.3 proves prima-facie case to grant temporary injunction ?
 2. Whether the plaintiff No.3 further proves that balance of convenience lies in his favour?
 3. Whether irreparable injury will cause to the plaintiff No.3 if temporary injunction is rejected?
 4. What order ?
5. The above points are answered as follows :-

Points No.1 to 3 : In the negative

Point No.4 : As per final order
for the following:-

REASONS

6. **Point No.1:-** There are five documents produced before this court by the plaintiffs. The first criteria for grant of temporary injunction is appearance of prima-facie case. A person need not enter into the witness box to prove the prima-facie case. Materials available in the case file may enough to establish the prima-facie case. The learned counsel for the plaintiffs argued that, the defendants are making hectic attempt to alienate the schedule properties before ending the matter. Whereas the learned counsel for the defendants argued that, the plaintiffs have utterly failed to prove prima-facie case and balance of convenience. It is further argued by the learned counsel for the defendants that, the plaintiffs had filed O.S.97/2018 and 51/2019 prior to this suit and said suits were withdrawn by the plaintiffs. Though it is not important, it is pertinent to just refer the say of P.W.1 in

the evidence. He says that O.S.97/2018 was filed for partition and separate possession before this court and O.S.51/2019 was filed before the Prl. Civil Judge and J.M.F.C., Nanjangud and both of the suits were withdrawn. After withdrawing the suits the plaintiffs sold out the property of Sy.No.208/4 in favour of one Bhargava before filing of this suit. However, P.W.1 says that sold out property is joint family property, but the burden is upon the plaintiffs to say the purpose of alienation of the property of Sy.No.208/4, because the witness of the plaintiffs repeatedly asserted that all the properties are joint family properties.

7. Now the question arises before the court that, why the plaintiffs have sold out the property of Sy.No.208/4 before filing of this suit knowing its nature as joint family property. Similarly one of the brothers of P.W.1 by name Sakalesh sold Sy.No.349/2 to one Basavanna. The said property is the ancestral property and the same came to his share through partition. Sy.No.348/1 and 349/3 are

also ancestral properties. It is important to say that P.W.1 admitted the fact of partition of the family properties through registered partition deed dated 07.07.2020. Now the question arise before the court that, for what purpose the plaintiffs have withdrawn earlier suits filed for the relief of partition and separate possession. Suppose the suit schedule properties are joint family properties and plaintiffs were really deserved to get their shares, the said suit could have been maintained till determination of the rights of the parties. So, the above said reason clearly shows that the plaintiffs have filed the present application only to cause some sort of obstruction to the defendants. There is no prima-facie case is appeared by the attempt of the plaintiffs. When the materials do not speak about the prima-facie case, it is not proper to grant temporary injunction. Hence, **point No.1 is answered in the negative.**

8. **Points No.2 and 3:** These points are taken together for common discussion. As mentioned above, person who

seeks temporary injunction must prove prima-facie case, then subsequent criteria or ingredients like balance of convenience and irreparable injury will open for discussion. But in the present dispute the plaintiffs have failed to prove prima-facie case, therefore discussion of balance of convenience and irreparable injury would not arise for consideration. Therefore, **points No.2 and 3** are answered **in the negative**.

9. **Point No.4:-** In view of the findings on the above points, this Court proceeds to pass the following:

ORDER

I.A.VIII filed by the plaintiff No.3 under
Order XXXIX Rules 1 and 2 of CPC is rejected.

No order as to cost.

(Dictated to the stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in open Court on this the 27th day of July 2026).

(Kamalaksha D.)
Senior Civil Judge & J.M.F.C.,
Nanjangud.