

KAMS700000822024



**IN THE COURT OF SENIOR CIVIL JUDGE AT  
T. NARASIPURA.**

**PRESENT**

**SRI. HANUMANTHA G.H.**

B.A.L., LL.M.

SENIOR CIVIL JUDGE, T. NARASIPURA.

**O.S. NO.06/2024.**

**DATED THIS 19<sup>th</sup> DAY OF OCTOBER, 2024.**

**PLAINTIFFS :**

Smt. Sharadamma  
W/o Late Parthasarathi,  
D/o Late Puttegowda,  
Age: 60 years,  
R/at: Goravanahalli,  
Bannur Hobli, T. Narasipura taluk  
and another.

(By Sri. K.K. Nandish, Advocate)

**Vs.**

**DEFENDANTS :**

Smt. Puttathayamma  
W/o Late Puttegowda,  
Age: 85 years,  
R/at: Dasegowdana koppalu,  
Bannur Hobli, T. Narasipura taluk  
and another.

(By Smt. B.M. Kavya, Advocate)

## **PARTIES TO I.A. NO.1**

**Applicants/  
Plaintiffs** : 1. Smt. Sharadamma and another.

**Vs.**

**Opponents/  
Defendants** : 1. Smt. Puttathayamma and another.

i	Provision under which the application is filed	Order XXXIX Rules 1 and 2 of CPC.
ii	Relief Sought for	Temporary Injunction
iii	The date on which the application is filed	12.01.2024
iv	Number of the application	1
v	The date on which the objection is filed by opponents.	10.06.2024.
vi	The date on which the order was passed on the said application	19.10.2024.

## **ORDER**

The plaintiffs have filed I.A. No.1 under Order XXXIX Rules 1 and 2 of C.P.C to pass an order of temporary injunction restraining the defendants and their henchmen from alienating the suit properties in any manner pending disposal of the case.

2. In an affidavit of I.A and the plaint, the plaintiffs have stated that they, the defendant No.2, one Sundaramma and D.P. Sathish are the children of the defendant No.1 and one Puttegowda. The said Puttegowda, Sundaramma and D.P. Sathish died. The said D.P. Sathish died before his marriage. Hence, the

plaintiffs and the defendants are the legal heirs of said Puttegowda.

The suit properties are ancestral and joint family properties of the plaintiffs and the defendants. The partition is not taken place in them. The plaintiffs and the defendants have equal share over them. The plaintiffs requested the defendants to effect the partition on 20.12.2021. But, they came to know that the defendants, the said D.P. Sathish and one D.S. Marigowda, D.S. Rajesh and D.S Ravi children of the brother of the said Puttegowda entered into panchayathparikath on 19.10.2010 and divided the family properties. The defendant No.1 got his name entered to the suit properties with the consent of the defendant No.1 and said D.P. Sathish. The plaintiffs have not given any consent to the said partition and khatha. Hence, they have filed the suit for partition and separate possession of 2/4 share in the suit properties and I.A. No.1 for the relief mentioned above.

**3.** The defendants have filed the written statement. Learned counsel for them has filed a memo to treat the written statement as objection to I.A. The defendants have admitted the relationship of them and the plaintiffs. They have contended that the plaintiffs have not included all the family properties and brought other family members including the husband of the said

Sundaramma. Hence, the suit is bad for partial partition and non joinder of necessary parties. Accordingly, the defendants have prayed to reject I.A.

4. I have heard the arguments of learned counsel for both sides and perused the materials on record.

5. The points for consideration are as under:

1. Whether the plaintiffs have got a prima facie case?

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

3. Whether the plaintiffs suffer irreparable loss and injury if an order of temporary injunction is refused?

4. What Order?

6. The answers to the above points are:-

Points No.1 to 3 : Partly in the affirmative.

Point No.4 : As per final order.

### **REASONS**

7. **POINTS NO.1 TO 3**:- They are taken together for common discussion to avoid repetition of facts and documents.

**8.** Learned counsel for the plaintiffs has prayed to allow I.A for the grounds mentioned in the plaint and I.A. But, learned counsel for the defendants has prayed to reject I.A for the contentions raised in the written statement.

**9.** After perusal of the pleadings of both parties, it is found that the plaintiffs seek the relief of partition and separate possession in the suit properties. But, the defendants have denied the claim of them. Therefore, the trial is certainly necessary to adjudicate the claim of the plaintiffs. In the mean time, if the suit properties are alienated, it leads to multiplicity of proceedings. Hence, an order restraining the party from alienating the suit properties is generally passed in a suit for partition.

**10.** The perusal of the RTC of the item No.1 of the suit properties produced by the plaintiffs shows the name of the defendant No.2 for 2023-2024. The perusal of demand register extract of item No.2 of them shows the name of him for 2018-2019. Hence, an apprehension of the plaintiffs that the defendant No.2 may alienate the items No.1 and 2 of the suit properties is found to be acceptable. Therefore, it is necessary to prevent the defendant No.2 from alienating them. Hence, if he is restrained as prayed in I.A, it avoids multiplicity of proceedings. Therefore, the plaintiffs have made out their case relating to granting of an

interim order to prevent the defendant No.2 as prayed in I.A relating to the items No.1 and 2 of the suit properties.

**11.** The perusal of the demand register extract produced by the plaintiffs shows the name of the said D.P. Sathish to the item No.3 of the suit properties for 2018-2019. There is no document to show that the khatha of the property came to be changed to the names of the defendants No.1 and 2. Hence, there is no question of preventing the defendants from alienating the said property since still it is in the name of the deceased Sathish. Thus, the plaintiffs have not made out ground to grant T.I relating to the said property. Accordingly, the **points No.1 to 3** are answered **partly in the affirmative.**

**12. POINT NO.4**:- In view of the findings on the points No.1 to 3, I proceed to pass following.

### **ORDER**

I.A. No.1 filed by the plaintiffs under Order XXXIX Rules 1 and 2 of C.P.C. for the relief of temporary injunction is partly allowed.

The defendant No.1 is temporarily restrained from

alienating the items No.1 and 2  
of the suit properties till disposal  
of the case.

There is no order as to costs.

(Dictated to the Stenographer directly on computer, typed by him, corrected and  
then pronounced by me in the open court on this 19<sup>th</sup> day of October, 2024)

**(HANUMANTHA G.H.),**  
Senior Civil Judge,  
T. Narasipura.

(A Separate order is passed and pronounced in the open court)

**ORDER**

I.A. No.1 filed by the plaintiffs under Order XXXIX Rules 1 and 2 of C.P.C. for the relief of temporary injunction is partly allowed.

The defendant No.1 is temporarily restrained from alienating the items No.1 and 2 of the suit properties till disposal of the case.

There is no order as to costs.

Senior Civil Judge,  
T. Narasipura.