



IN THE COURT OF THE SENIOR CIVIL JUDGE & J.M.F.C.,
DEVADURGA

Present:
Sri.Suresh Annappa Savadi., B.A., L.L.B, (Spl).,

Senior Civil Judge & JMFC, Devadurga.

O.S.No.137/2024

DATED : THIS THE 10th DAY OF JULY 2026

Plaintiff: Renukamma W/o.Hanumantha
and others.

(By Sri.B.S., Advocate)

--V/s--

Defendants: Timmayya S/o. Late Musalayya
and others.

(D.1, 3 to 6 exparte)
(D.2 by Sri.V.M.M.advocate)
(D.7, 9, 10 by Sri.B.H.Advocate)
(D.8(a to d) absent)

Provision under which the application is filed	U/o.XXXIX rule 1 and 2 R/w.Sec.151 of C.P.C.
Relief sought for	Temporary injunction.
The date on which the application is filed	19.10.2024
Number of the application	IA.No.I
The date on which the objections are filed by different opponent	14.10.2025
The date on which the orders were passed on the said application	10.07.2026

**ORDER ON IA NO.I**

The plaintiff filed this IA No.I U/o.39 Rule 1 and 2 R/w.Sec.151 of C.P.C., to restrain the defendants from alienating the suit schedule properties till disposal of the suit.

2. In the affidavit plaintiff contended that the plaintiff filed this suit against the defendants for partition and separate possession in respect of suit schedule properties. The suit schedule lands are the ancestral and joint family properties of the plaintiffs and defendant no.1 to 6. The suit lands were standing in the name of common ancestor Musalayya S/o. Thimmayya. During the period of 1969-70 after the death of common ancestor Musalayya, suit lands mutated in the name of his two sons by name Shivappa and Thimmyya as per mutation No.72. Accordingly the names of Shivappa and Thimmayya jointly entered in concerned records of revenue office till 2000. In the year 2000 the defendant no.2 illegally mutated 03 of suit lands bearing Sy.No.4/೮, Sy.No.20/1/೮, Sy.No.20/3 in his name and one of suit land bearing Sy.No.100/೮ in the name of defendant no.1 and 2 by illegal methods without any lawful partition and without division by meets and bounds, by taking advantage of absence of defendant no.1 in the village and due to illiteracy of defendant no.1 as per mutation No.10 dated 03.08.2001. The defendant no.2 illegally sold the land bearing Sy.No.20/1/೮ measuring 03 acres 25 guntas out of which 01 acre 31 guntas sold to defendant no.7 through sale deed dated 24.04.2006 and again remaining land in said survey number 1 acre 33 guntas was also sold to defendant no.8 as per sale deed



dated 24.06.2003. The purchasers are not the family members and no way concerned to the family of the plaintiffs and defendant no.1 to 6. The defendant no.2 illegally sold the land bearing Sy.No.20/3 measuring 02 acres 20 guntas through registered sale deed dated 05.01.2021. The names of the purchasers were entered in the revenue records and the said mutation entries are not binding on the share of the plaintiff. The suit properties are the ancestral and joint family properties of the plaintiffs and defendants. The plaintiffs and defendants are the joint owners and in joint possession of the suit properties. Till today, partition has not taken place. There is no cordial relation between the plaintiffs and defendants. The plaintiff requested the defendants to effect the partition which has been denied by the defendants. If the application is allowed no loss will cause to the other side, on the other hand the plaintiffs are put to untold hardship. Hence prays to allow the application.

3. On the other hand, the defendants no.7, 9 and 10 have filed objections to this application. In the objection contended that the defendant no.8 died on 09.08.2009 itself. The same is well within the knowledge of the plaintiff. Even then, plaintiff filed suit against a dead person which is not maintainable in the eye of law. Further contended that the plaintiffs are no way relates to the all suit properties. The plaintiffs only relates to Sy.No.100 measuring 01 acre 13 guntas. The plaintiff and defendant No.7, 9 and 10 to harass them filed this false suit. The contents of the affidavit are all false. There is no joint family and joint possession and joint



ownership is existing. Already partition had taken place and as per the said partition the defendant no.2 for his family necessity sold the lands in favour of defendant no.7, 9 and 10 through registered sale deed. Only to harass the defendants filed this suit. The allegations and the pleadings against defendant no.7, 9 and 10 are denied and prays to dismiss the application.

4. Heard both sides.
5. The following points arises for my consideration;
 1. Whether the plaintiffs have made out the prima-facie case ?
 2. Whether the plaintiffs show that the balance of convenience lies in their favour?
 3. Whether the plaintiffs show that, if application is not allowed, the plaintiffs will put to irreparable injury ?
 4. What order ?
6. My answered to the aforesaid points are as under;
 - Point No.1 to 3 : In the negative;
 - Point No.4 : As per final order
for the following

R E A S O N S

7. **POINT NO.1 to 3:** These points are interlinked with each other and to avoid the repetition of facts and separate discussion taken together for common consideration.



8. The plaintiff contended that the plaintiff filed this suit for partition and separate possession against the defendants in respect of suit schedule property. As per the plaintiff, the plaintiff and defendant no.1 to 6 are the family members and they are constituted joint family and they are the joint owners and in possession of the suit property and till today there is no partition among the plaintiffs and defendant no.1 to 6. Further contended that the defendant no.2 illegally got mutated the suit land and sold the lands to defendant no.7 to 10 without the knowledge and consent of the plaintiffs and other defendants. As per the records the defendant no.7 to 10 are the purchasers. For that the defendants appeared and filed the objections to this application. In the objection contended that the defendant no.8 who is the purchaser died long back about more than 15 years and suit filed against a dead person which is not maintainable and also contended that partition had taken place long back and the properties fallen to the share of the defendant no.2 has been sold to the defendant no.7 to 10. Only to harass the defendants filed this false suit.

9. After going through the accompanying affidavit to this application the plaintiff contended that the averments of the plaint was reiterated and there is no specific contention that the suit properties standing in whose name as on the date of filing of the suit and also in the plaint itself specifically pleaded that the names of the purchasers were appearing in the purchased property revenue records. The relief sought by the plaintiff restraining the



defendants from alienating the scheduled properties. But in the accompanying affidavit did not stated that the defendants are trying to alienate the schedule properties. Hence under such circumstances if there is no pleading whether the defendants are trying to alienate the properties or making hectic effort to alienate the properties or going to charge over the property nothing is been stated in the affidavit and also moreover the suit against dead person is not maintainable and moreover in the application also the relief sought against dead person who is one of the defendant. Considering the entire material this court is of the opinion that the plaintiff did not made any prima facie case in respect of this application and also failed to show that the balance of convenience lies in favour of the plaintiffs. Hence this court answered the Point No.1 to 3 in the “negative”.

10. **POINT NO.4:** For the reasons stated in the Point No.1 to 3, this court proceed to pass the following;

ORDER

The plaintiff filed I.A.No.I, U/o.
XXXIX Rule 1 and 2 R/w.Sec.151 of CPC
is hereby rejected.

(Dictated to the stenographer directly on the computer, typed by him, corrected by me and then pronounced in the open court on this the 10th day of July 2026)

(Sri.Suresh Annappa Savadi)
Senior Civil Judge & JMFC.,
Devadurga.