

**IN THE COURT OF THE XLI ADDL. CITY CIVIL &
SESSIONS JUDGE AT BENGALURU CITY
(CCCH.42)**

Dated this the 8th day of October 2025

**PRESENT : SMT. SUMANGALA CHAKALABBI, B.A. LL.B.
(Hons.), LL.M.
XLI Addl. City Civil and Sessions Judge,
Bengaluru**

O.S.NO: 935/2025

PLAINTIFFS	Smt. Vijayakumari V.S. and others
	/Vs/
DEFENDANTS	Dr. Shashidhar and Others.

ORDER ON I.A.NO.5/2025

The present application is filed by the plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, requesting the Court to pass an ad-interim order of temporary injunction restraining the defendants from alienating or creating third party rights in respect of the suit schedule property till disposal of the suit.

2. The affidavit averments are reiteration of plaint averments and hence, the plaint averments are taken up for consideration for disposal of this I.A.

3. The learned counsel for the defendants No.1 and 2 have adopted the written-statement as objections to the present I.A. Similarly the learned counsel for the defendant No.3 has also filed a Memo to adopt the written-statement as objections to I.A.No.5.

4. Initially this court had granted an exparte order of temporary injunction against the defendants restraining them from alienating the suit schedule properties till next date of hearing vide order dated 07.02.2025. On 12.03.2025, this court had vacated the exparte temporary injunction which was operating against the defendants as this court had come to the conclusion that the plaintiffs had not complied the provisions of Order 39 Rule 3A C.P.C. Later on the learned counsel for the plaintiff had filed I.A.NO.4/2025 to recall the order dated 12.03.2025. The said application was also rejected by this

court vide order dated 20.03.2025. In view of the disposal of I.A.Nos.1/2025 and 4/2025, the instant application is filed for grant of temporary injunction against the defendants.

5. Heard both sides on the application. Perused the records.

6. In the facts and circumstances of the case on hand, the following points arise for consideration :

- (1) Whether the plaintiffs have made out a prima facie case ?
- (2) Whether the balance of convenience lies in favour of the plaintiffs ?
- (3) Whether the plaintiffs would suffer irreparable loss and injury, if order of temporary injunction is not granted?
- (4) What order?

7. My answer to the above points are :

Point No.1 – In the Affirmative

Point No.2 – In the Affirmative

Point No.3 – In the Affirmative

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

REASONS

8. Point No.1 to 3:- Since these points are interconnected with each other hence they are taken together for common discussion in order to avoid repetition of facts and evidence.

9. Admittedly, the suit is filed for the relief of partition and separate possession of the plaintiffs' 1/4th share in the suit schedule properties; to direct the defendants to furnish the accounts of the rents received from the schedule properties , profits / income from agricultural land properties of the joint family from 19.,07.2017 till date and to make payment of 1/4th share in the same and further to direct an enquiry into the mesne profits received from the suit property and for the relief of permanent injunction.

10. The brief facts of the plaintiffs' case are that the plaintiffs are the legal heirs of Sri Lakshmisha who was the son of late B. Kempe Gowda and Smt. K.M. Indira. The defendants No.1 to 3 are the children of B. Kempe Gowda and Smt. K.M. Indira. Kempe Gowda expired on 19.07.2017 and Smt. Indira died intestate on 31.03.2024. According to the plaintiffs B. Kempe Gowda and Smt. K.M. Indira had left various movable and immovable properties which are referred as schedule properties and plaintiffs and defendants have succeeded to the same. It is further contended that B. Kempe Gowda had executed a Will dated 04.06.2001 with regard to possession of self acquired properties. But due to the death of B. Kempe Gowda and due to non co-operation by the defendants, the mandate of the Will could not be applied. It is further contended that the husband of plaintiff No.1 died on 25.11.2009 by committing suicide. Thereafter, the plaintiff No.2 worked as a teacher at Deccan International School with the support of her father in law and provided education to plaintiffs No.2 and 3. It is averred

that the 2nd defendant had requested the plaintiffs to join him for registration of the sale deed in respect of site No.1, which was sold in favour of one Rajendra Babu and Pramila. The plaintiffs had obliged to the said request and have joined him in execution of the sale deed as 2nd defendant had shown suicidal tendencies like his elder brother. Further the defendants without the knowledge of the plaintiffs had illegally partitioned a portion of the joint family property situated at Kengeri and when the plaintiffs raised objections regarding the same, a gift deed with respect to site No.4 was made in the name of the 1st plaintiff. The said site No.4 falls within buffer zone and therefore, the plaintiffs were deprived of their valuable share in respect of the property that is meant to them. Therefore, it is contended that the registered partition deed dated 09.12.2020 executed amongst the defendants is null and void and not binding on the plaintiffs. It is further contended that B. Kempe Gowda was an active member of the Bharath Housing Co-operative Society Ltd. and with his influence and cost had acquired two sites

bearing No.273 in the name of 2nd defendant under the registered sale deed dated 22.12.1999 and site No.505 in the name of 3rd defendant under the registered sale deed dated 07.06.1997. Similarly, he had acquired site No.144 in the name of his wife Indira under the sale deed dated 15.02.2001. It is averred that site No.273 is now transferred to the 3rd defendant by way of registered gift deed dated 23.02.2011, but the said gift deed is not binding on the plaintiffs. Similarly, K.M. Indira had executed another gift deed in respect of site No.144 on 27.09.2022 in favour of 3rd defendant and the said gift deed is also not binding on the plaintiffs. According to the plaintiffs the repeated requests for effecting partition in the schedule properties has not been complied and the defendants have failed to allot plaintiffs' 1/4th share in the suit schedule properties. It is further contended that the residential house property bearing No.132 situated at Jayachamarajendra Extension is acquired by B. Kempe Gowda in the name of his wife Indira is also required to be partitioned. But the documents

pertaining to the said property are not available with the plaintiffs. Hence, in this regard the above suit is filed.

11. The defendants No.1 and 2 have filed common written-statement denying the plaint averments. The defendants No.1 and 2 have taken up the following contentions in the written-statement. The defendants No.1 and 2 have admitted the acquisition of item Nos.1 by B. Kempe Gowda. They have further admitted that item No.2 of the suit property was acquired by B. Kempe Gowda in the name of his wife Indira. They have contended that it was Smt. Indira who had acquired item No.6 of the suit property under Gift deed dated . 27.11.1967 . According to the defendants No.1 and 2 the rental income of item No.6 has been utilized for the purchase of residential site at item No.3 of the suit schedule property by Indira under the sale deed dated 05.06.2000. Therefore, item No.3 is the self acquired property of K.M. Indira. Further, K.M. Indira had executed registered gift deed in favour of defendant No.3 on

27.09.2022 and as such the defendant No.3 is the owner of item No.3. The defendants have further contended that Smt. K.M. Indira had filed O.S.No. 7938/1996 before City Civil Judge, Bengaluru for the relief of partition against her brothers. Later on the matter was settled through a compromise decree and Smt. K.M. Indira was allotted 10 guntas in sy.no.4/1 of Kengeri Village. There upon the defendants have entered into registered partition deed along with Smt. K.M. Indira on 09.12.2020 and 2nd defendant was allotted with site No.1. Since the plaintiffs were residing in USA, the plaintiffs are not parties to the registered partition deed dated 09.12.2020. However, on return of first plaintiff Smt. K.M. Indira gifted site No.4 in favour of the 1st plaintiff under the registered gift deed dated 25.06.2021. Therefore, the properties which are the subject matter of the registered partition deed are not the joint family properties of the plaintiffs and defendants and as such, the plaintiffs have no claim over the same. It is further contended that item No.4 of the suit property is self acquired property of defendant

No.3 and as it was acquired under the registered sale deed dated 07.06.1997. Similarly, the defendant No.2 is the owner of item No.5 as he had purchased the same through an auction purchase under the registered sale deed dated 06.12.1999 and as on the date of purchase of item No.4, the 2nd defendant has sufficient income from his hardware shop and hence, item No.4 is not joint family property. The defendant No.2 has gifted item No.5 in favour of the defendant No.3 and therefore, the defendant No.3 is the absolute owner under the registered gift deed dated 23.02.2011. The defendants No.1 and 2 have further contended that the plaintiffs and defendants have purchased site No.150 situated at Banashankari in the name of 1st plaintiff out the joint family funds and another property bearing Ni,21341 at California in the name of plaintiff No.2 out of the joint family funds. The plaintiffs have intentionally not included these properties and hence, the suit is bad for on inclusion of other joint family properties acquired out of joint family funds. The defendants have

further contended that only item No.1, 2 and 6 to 8 are for partition and sought for dismissal of the suit.

12. The defendant No.3 has reiterated the defence of defendants No.1 and 2 and sought for partition in respect of item Nos. 1, 2 and 6 to 8 along with the prayer to dismiss the suit.

13. Along with the plaint the plaintiffs have produced notarized copy of family tree of Kempe Gowda, death Certificate of Kempe Gowda, Indira, copy of the Will dated 04.06.2001, copy of the death certificate of Lakshmisha, sale deeds dated 07.07.2021, copy of the partition deed dated 09.12.2020 and gift deed dated 25.06.2021, copy of the sale deeds dated 22.12.1999 and 07.06.1997, certified copy of the sale deed dated 15.02.2001 and certified copy of the gift deeds dated 23.02.2011, 27.09.2022 along with the legal notice dated 09.09.2024 etc.,

14. The defendant No.3 has filed a Memo along with the documents o 19.08.2025, containing the copy of the final decreein O.S.No. 7338/1996, copy of the gift deed dated 23.11.1967, copy of the sale deed dated 05.06.2000, 07.06.1997, 06.12.1999, 07.08.2019 and gift deeds dated 27.09.2022 and 23.02.2011.

15. After adverting to the materials on record, it is evident that the plaintiffs have sought for the relief of partition in respect of 8 items of the suit schedule property along with the relief of accounts and mesne profits. According to the plaintiffs, item Nos.1 to 5 of the suit schedule properties are acquired by late Kempe Gowda, who is the father in law of plaintiff No.1 and item Nos.7 and 8 are the ancestral properties of late Kempe Gowda. According to the plaintiffs item No.6 is now standing in the name of K.M. Indira, but the building was constructed by late Kempe Gowda out of his retirement funds.

16. The defendants in their written-statement have denied the claim of the plaintiffs specifically with regard to item Nos.3 to 5 of the schedule properties and have sought for partition only in respect of item Nos. 1, 2 and 6 to 8. According to the defendants , the item No.3 to 5 are the absolute properties of defendant No.3 ; item No.3 was purchased by late Indira out of rental income of item No.6 which was gifted to her by her late mother Rajamma and item No.4 was purchased by defendant No.3 and later on item No.4 was gifted in favour of defendant No.3 and therefore, item Nos.3 to 5 are not amenable for partition. Though the defendants No.1 to 3 have contended that item Nos. 4 and 5 are the self acquired properties, but they have not produced any documents to substantiate their claim at this stage. Even though the defendant No.2 has contended that he has purchased item No.5 out of his income from hardware shop, there is no material to that effect at this stage . The defendants no doubt have sought for inclusion of other properties which are purchased in the name of

plaintiffs No.1 and 2 and have contended that the suit is bad for non joinder of other properties. The proprietary of right and entitlement of the plaintiff in the schedule properties is the subject matter of the suit. It is well settled that while granting temporary injunction the Court cannot be regarded to deal with the suit on merits. The proceedings pertaining to the grant of temporary injunction are supplementary proceedings and the Court should refrain from giving a finding on the merits of the case. However, a person seeking a temporary injunction must satisfy the Court as to the existence of the following conditions :

1. There is a serious question to be tried in the suit and that on the facts before the court there is a probability of he being entitled to the relief asked for by him ;
2. the court's interference is necessary to protect him from the species of injury which the court calls irreparable, before his legal right can be established on trial ; and

3. The comparative mischief or inconvenience which is likely to issue from withholding the injustice will be greater than which is likely to arise from granting it.

17. At this stage the court is of the opinion to keep the property intact and to avoid multiplicity of proceedings, a restraint order is necessary to protect the suit properties till adjudication of the suit as the plaintiff has made out a prima facie case for trial and the court's interference is necessary to protect him from the species of injury which the court calls irreparable. Hence, the materials on record make out a prima facie case and the balance of convenience lies in favour of the plaintiffs. If the plaintiffs are not granted with the relief sought in this application, they would suffer hardship and inconvenience. Therefore, the present application deserves to be allowed. Accordingly Point **No.1 to 3 are answered in the Affirmative.**

18. Point No.4 :- In view of my finding on Point No.1 to 3, I proceed to pass the following:-

ORDER

I.A. No.5/2025 filed by the plaintiffs under Order XXXIX Rule 1 and 2 read with Section 151 of C.P.C. is hereby allowed.

The defendants are hereby restrained from alienating or creating third party rights in respect of the suit schedule properties, till disposal of the suit.

No order as to costs.

(Dictated to the Stenographer Grade-I, transcribed by her and the transcription corrected by me and pronounced in the open court, on this the **8th day of October 2025**).

(SUMANGALA CHAKALABBI)
XLI Addl. City Civil and Sessions Judge,
Bengaluru.

