

KARN220015382023



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,**  
**AT CHANNAPATNA**

**PRESENT: SRI.MAHENDRA.M** B.A, LL.B.,

Prl. Civil Judge & JMFC,  
Channapatna.

**Dated this 20<sup>th</sup> day of January 2024**

**O.S. NO.99/2023**

**PLAINTIFF** : Smt.Yashodhamma

**-V/s-**

**DEFENDANTS** : Smt.Ningamma & Others

**I.A.No.II**

**APPLICANT/  
PLAINTIFF:**

Smt.Yashodhamma,  
W/o Late Panchegowda,  
Aged about 61 years,

R/at No.235, 13<sup>th</sup> Main,  
27<sup>th</sup> Cross, 3<sup>rd</sup> Block East,  
Nakallbande, Jayanagara,  
Bengaluru-11.

**(By Sri.K.T.T., Advo.,)**

**V/S**

**OPPONENTS/  
DEFENDANTS:**

1. Smt. Ningamma,  
W/o Late Karigowda,  
Aged about 80 years,

KARN220015382023



2. Sri.Muniyappa,  
S/o Late Karigowda,  
Aged about 65 years,  
  
R/at Chakkaluru Village,  
Maluru Hobli,  
Channapatna Taluk,  
Ramanagara District.
3. Smt.Kamamma,  
D/o Late Karigowda,  
W/o Late Muniyappa(KEB),  
Aged about 63 years,  
  
R/at Rajesh Nilaya,  
6<sup>th</sup> Cross,  
Near Chamundeshwari Chicken Center,  
Rajakempegowda Extension,  
Channapatna.
4. Smt.Jayalakshmi,  
D/o Sakamma,  
Aged about 35 years,
5. Sri. Shivaraj,  
S/o Sakamma,  
Aged about 32 years,  
  
D4 and 5 are R/at No.4/41/C,  
1<sup>st</sup> Main Road,  
Ganigarapalya Circle,  
Byyanapalya Cross,  
100 Feet Road,  
Kanakapura Main Road,  
Bengaluru.
6. Sri.Kalasappa,  
S/o Karigowda,  
Aged about 52 years,

KARN220015382023



R/at No.93, Nakallbande,  
3<sup>rd</sup> Block, Nakallbande,  
Jayanagara,  
Bengaluru-11.

7. Smt.Lakshmi(Thibbamma),  
D/o Late Karigowda,  
W/o Puttamma,  
Aged about 48 years,

R/at No.236, Nakallbande,  
3<sup>rd</sup> Block, Nakallbande,  
Jayanagara,  
Bengaluru-11.

8. Sri.Nagaraju C.K. (Panchegowda),  
S/o Karigowda,  
Aged about 45 years,

R/at No.444, Nakallbande,  
3<sup>rd</sup> Block, Nakallbande,  
Jayanagara,  
Bengaluru-11.

9. Smt.Nagamma,  
D/o Late Karigowda,  
W/o Late S.T.Kariyappa,

R/at Siddalingapura,  
B.M.Road,  
Srirangapatna Taluk,  
Mysore District.

**(By Sri.R.V.K., Advo., for D1and D3 to 6, 8  
to 9. Sri.S.R.U., advo., For D7 and D2 is  
placed exparte.))**

I	<i>Provision under which the application is filed</i>	<i>u/o XXXIX rule 1 and 2 r/w sec.151 of CPC</i>
---	---	--

KARN220015382023



II	<i>Relief sought for</i>	<i>Temporary Injunction</i>
III	<i>The date on which the application is filed</i>	<i>20.02.2023</i>
IV	<i>Number of the application</i>	<i>I A No.II</i>
V	<i>The date on which the objection are filed by deferent opponents</i>	<i>18.07.2023</i>
VI	<i>The date on which the orders were passed on the said application</i>	<i>20.01.2024</i>

Sd/-

(Sri.Mahendra M.)  
Prl. Civil Judge & JMFC.,  
Channapatna.

**ORDERS ON I.A No.II FILED U/O XXXIX RULE 1 AND 2 OF CPC**

**BY THE PLAINTIFF**

The learned counsel for the plaintiff has filed I.A. No.II u/o XXXIX rule 1 and 2 r/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendants, their agents, servants or any other person claimed by them from alienate or creating any encumbrance over the suit schedule properties till pending disposal of the suit.

2. The plaintiff has filed sworn to an affidavit in support of I.A. No.II and stated that, the plaintiff has filed this suit for the relief of partition and separate possession over the suit schedule properties. The suit schedule properties are the ancestral properties of plaintiff and defendant No.2 to 9. They are joint possession and enjoyment over the suit

KARN220015382023



schedule properties. The defendant No.1 and 2 managing the affairs of family and cultivated the suit schedule properties and given some portion to the plaintiff and other defendants. The 2<sup>nd</sup> defendant managed the family. The plaintiff demanded to defendant No.2 to partition. He agreed to give the partition. Thereafter, the 2<sup>nd</sup> defendant refused to effect partition and try to transfer the Katha in respect of suit schedule properties into his name and try to alienate the suit schedule properties. If this application is not allowed the plaintiff will be put irreparable loss and injury which cannot be compensated. **Hence, prayed that grant on temporary injunction against the defendants by allowing the I.A. No.II.**

3. The defendant No.7 submitted that, no objection to allow the IA No.II. The defendant No.1, 3 to 6 and 8 to 9 have filed a memo seeking treated as written statement may be objection to IA No.II. This court has allow the memo and perused the written statement filed by these defendants. These defendants are denied the entire averements of the plaint except relationship. These defendants further contended that, there is not alleged joint family is in existing. During the life time of husband of 1<sup>st</sup> defendant he performed the marriage of the plaintiff out of the joint family funds and

KARN220015382023



also by incurring the debts from his relatives and friends. Apart from provided the land as well as two houses to the plaintiff out of the joint family. The plaintiff has filed false suit. Nearly 1 lakh rupees has been spent towards the marriage expenses of the plaintiff and also provided gold and silver ornaments. One house has been purchased in the name of plaintiff and Kariyappa. The said house was given to the plaintiff, but the plaintiff not included the same in the suit. The suit of the plaintiff is bad for non-joinder of necessary parties.

4. These defendants further contended that, after performed the marriages of all children of Karigowda, after his death the 1<sup>st</sup> defendant effected the devision of all joint family properties to plaintiff and defendants by orally. As per oral partition the Katha has been mutated into their respective names. Some of the properties stands in the name of Karigowda, the plaintiff taking said advantage and filed this false suit. The 1<sup>st</sup> defendant by way of registered relinquishment deed given to the property to 6<sup>th</sup> defendant. The 6<sup>th</sup> defendant given requisition for change of Katha into his name but the plaintiff objected to same before revenue authority. The plaintiff has suppressed the material facts and

KARN220015382023



filed this false suit. Hence prayed that dismiss the suit of the plaintiff with cost.

5. Now the following points arise for consideration of this court:-

**POINTS**

1. Whether the plaintiff has made out prima-facie case in her favour?
2. Whether the plaintiff has made out balance of convenience in her favour?
3. Whether this I.A. No.II is rejected, the plaintiff will be put to irreparable loss and injury which can not be compensated?
4. What order?

6. Heard the arguments from the counsel for the plaintiff and defendants.

7. This court has perused the materials on record and answer the above said points are as follows:-

**Point No.1 : In the Affirmative**

**Point No.2 : In the Affirmative**

**Point No.3 : In the Affirmative**

**Point No.4 : As per the final order**

**for the following:-**

KARN220015382023



### REASONS

8. POINT NO.1 to 3:- These three points are interrelated, hence they are taken together for discussion to avoid repetition.

9. The case of the plaintiff that, the suit schedule properties are the ancestral and joint family properties of herself and defendants. The defendants are refused to effect partition. They are tried to sell the suit schedule property in favour of some person. The defendants are denied the averements of the plaint and contended that, already oral partition took place in the family of plaintiff and defendants. The present application filed by the plaintiff seeking temporary injunction against the defendants.

10. The plaintiff has produced genealogical tree affidavit, computerized RTC's and mutation register extracts in respect suit schedule properties. As per the plaint averements the suit schedule properties are ancestral and joint family properties of their family. The said fact is decided after full-pledge-trial. The preservation of suit schedule properties is required till decide the suit on merits. The application filed by the plaintiff is deserves to be allowed. If this application is allowed no injustice caused to the

KARN220015382023



defendants. To avoid multiplicity proceedings the application filed by the plaintiff is deserves to be allowed. The plaintiff has made out prima-facie case and balance of convenience in her favour. **With these observations this court has answered the Point No.1 to 3 in the Affirmative.**

**11. Point No.4:-** For the above discussion on point No.1 to 3, this court proceeds to pass the following :-

**ORDER**

I.A.No.II u/o 39 Rule-1 and 2 of  
CPC., filed by the plaintiff is hereby  
allowed.

Temporarily restraining the  
defendants, their agents, servants or  
anybody acting under them from alienate  
or encumbering the suit schedule  
properties till disposal of the suit.

No order as to cost.

(Dictated to the Stenographer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 20<sup>th</sup> day of January-2024)

Sd/-  
(Sri.Mahendra M.)  
Prl.Civil Judge & JMFC.,  
Channapatna.

KARN220015382023



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC,  
AT CHANNAPATNA**

**PRESENT: SRI.MAHENDRA.M** B.A, LL.B.,

Prl. Civil Judge & JMFC,  
Channapatna.

**Dated this 20<sup>th</sup> day of January 2024**

**O.S. NO.99/2023**

**PLAINTIFF** : Smt.Yashodhamma

**-V/s-**

**DEFENDANTS** : Smt.Ningamma & Others

**I.A.No.II**

**APPLICANT/  
PLAINTIFF:**

Smt.Yashodhamma,  
W/o Late Panchegowda,  
Aged about 61 years,

R/at No.235, 13<sup>th</sup> Main,  
27<sup>th</sup> Cross, 3<sup>rd</sup> Block East,  
Nakallbande, Jayanagara,  
Bengaluru-11.

**(By Sri.K.T.T., Advo.,)**

**V/S**

**OPPONENTS/  
DEFENDANTS:**

1. Smt. Ningamma,  
W/o Late Karigowda,  
Aged about 80 years,
2. Sri.Muniyappa,  
S/o Late Karigowda,  
Aged about 65 years,

KARN220015382023



R/at Chakkaluru Village,  
Maluru Hobli,  
Channapatna Taluk,  
Ramanagara District.

3. Smt.Kamamma,  
D/o Late Karigowda,  
W/o Late Muniyappa(KEB),  
Aged about 63 years,

R/at Rajesh Nilaya,  
6<sup>th</sup> Cross,  
Near Chamundeshwari Chicken Center,  
Rajakempegowda Extension,  
Channapatna.

4. Smt.Jayalakshmi,  
D/o Sakamma,  
Aged about 35 years,

5. Sri. Shivaraj,  
S/o Sakamma,  
Aged about 32 years,

D4 and 5 are R/at No.4/41/C,  
1<sup>st</sup> Main Road,  
Ganigarapalya Circle,  
Byyanapalya Cross,  
100 Feet Road,  
Kanakapura Main Road,  
Bengaluru.

6. Sri.Kalasappa,  
S/o Karigowda,  
Aged about 52 years,  
R/at No.93, Nakallbande,  
3<sup>rd</sup> Block, Nakallbande,  
Jayanagara,  
Bengaluru-11.

KARN220015382023



7. Smt.Lakshmi(Thibbamma),  
D/o Late Karigowda,  
W/o Puttamma,  
Aged about 48 years,  
  
R/at No.236, Nakallbande,  
3<sup>rd</sup> Block, Nakallbande,  
Jayanagara,  
Bengaluru-11.
8. Sri.Nagaraju C.K. (Panchegowda),  
S/o Karigowda,  
Aged about 45 years,  
  
R/at No.444, Nakallbande,  
3<sup>rd</sup> Block, Nakallbande,  
Jayanagara,  
Bengaluru-11.
9. Smt.Nagamma,  
D/o Late Karigowda,  
W/o Late S.T.Kariyappa,  
  
R/at Siddalingapura,  
B.M.Road,  
Srirangapatna Taluk,  
Mysore District.

**(By Sri.R.V.K., Advo., for D1and D3 to  
6, 8 to 9. Sri.S.R.U., advo., For D7 and  
D2 is placed exparte.)**

I	<i>Provision under which the application is filed</i>	<i>u/o XXXIX rule 1 and 2 r/w sec.151 of CPC</i>
II	<i>Relief sought for</i>	<i>Temporary Injunction</i>
III	<i>The date on which the application is filed</i>	<i>20.02.2023</i>
IV	<i>Number of the application</i>	<i>I A No.III</i>

KARN220015382023



V	<i>The date on which the objection are filed by deferent opponents</i>	18.07.2023
VI	<i>The date on which the orders were passed on the said application</i>	20.01.2024

**Sd/-**  
**(Sri.Mahendra M.)**  
**Prl. Civil Judge & JMFC.,**  
**Channapatna.**

**ORDERS ON I.A No.III FILED U/O XXXIX RULE 1 AND 2 OF**  
**CPC BY THE PLAINTIFF**

The learned counsel for the plaintiff has filed I.A. No.III u/o XXXIX rule 1 and 2 r/w Sec.151 of C.P.C for seeking the relief of temporary injunction restraining the defendants, their agents, servants or any other person claimed by them from interfere with peaceful possession of the plaintiff over the suit schedule properties along with the defendants till pending disposal of the suit.

2. The plaintiff has filed sworn to an affidavit in support of I.A. No.III and stated that, the plaintiff has filed this suit for the relief of partition and separate possession over the suit schedule properties. The suit schedule properties are the ancestral properties of plaintiff and defendant No.2 to 9. They are joint possession and enjoyment over the suit schedule properties. The defendant No.1 and 2 managing the affairs of family and cultivated the suit schedule properties

KARN220015382023



and given some portion to the plaintiff and other defendants. The 2<sup>nd</sup> defendant managed the family. The plaintiff demanded to defendant No.2 to partition. He agreed to give the partition. The defendant No.2 and others are interfere with possession of the plaintiff over the suit schedule properties. The plaintiff is entitled to share in the suit schedule properties. If this application is not allowed the plaintiff will be put irreparable loss and injury which cannot be compensated. **Hence, prayed that grant on temporary injunction against the defendants by allowing the I.A. No.III.**

3. The defendant No.7 submitted that, no objection to allow the IA No.III. The defendant No.1, 3 to 6 and 8 to 9 have filed a memo seeking treated as written statement may be objection to IA No.III. This court has allow the memo and perused the written statement filed by these defendants. These defendants are denied the entire averements of the plaint except relationship. These defendants further contended that, there is not alleged joint family is in existing. During the life time of husband of 1<sup>st</sup> defendant he performed the marriage of the plaintiff out of the joint family funds and also by incurring the debts from his relatives and friends. Apart from provided the land as well as two houses to the

KARN220015382023



plaintiff out of the joint family. The plaintiff has filed false suit. Nearly 1 lakh rupees has been spent towards the marriage expenses of the plaintiff and also provided gold and silver ornaments. One house has been purchased in the name of plaintiff and Kariyappa. The said house was given to the plaintiff, but the plaintiff not included the same in the suit. The suit of the plaintiff is bad for non-joinder of necessary parties.

4. These defendants further contended that, after performed the marriages of all children of Karigowda, after his death the 1<sup>st</sup> defendant effected the devision of all joint family properties to plaintiff and defendants by orally. As per oral partition the Katha has been mutated into their respective names. Some of the properties stands in the name of Karigowda, the plaintiff taking said advantage and filed this false suit. The 1<sup>st</sup> defendant by way of registered relinquishment deed given to the property to 6<sup>th</sup> defendant. The 6<sup>th</sup> defendant given requisition for change of Katha into his name but the plaintiff objected to same before revenue authority. The plaintiff has suppressed the material facts and filed this false suit. **Hence prayed that dismiss the suit of the plaintiff with cost.**

KARN220015382023



5. Now the following points arise for consideration of this court:-

**POINTS**

1. Whether the plaintiff has made out prima-facie case in her favour?
2. Whether the plaintiff has made out balance of convenience in her favour?
3. Whether this I.A. No.III is rejected, the plaintiff will be put to irreparable loss and injury which can not be compensated?
4. What order?

6. Heard the arguments from the counsel for the plaintiff and defendants.

7. This court has perused the materials on record and answer the above said points are as follows:-

**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 order**

**for the following:-**

KARN220015382023



### REASONS

8. POINT NO.1 to 3:- These three points are interrelated, hence they are taken together for discussion to avoid repetition.

9. The case of the plaintiff that, the suit schedule properties are the ancestral and joint family properties of herself and defendants. The defendants are refused to effect partition. They are tried to sell the suit schedule property in favour of some person. The defendants are denied the averements of the plaint and contended that, already oral partition took place in the family of plaintiff and defendants. The present application filed by the plaintiff seeking temporary injunction against the defendants.

10. The plaintiff has produced genealogical tree affidavit, computerized RTC's and mutation register extracts in respect suit schedule properties. As per the plaint averements the suit schedule properties are ancestral and joint family properties of their family. The said fact is decided after full-pledge-trial. In this stage cannot decide the alleged joint possession of plaintiff and defendants. Against co-owner cannot grant the injunction with respect to possession. Whether the plaintiff is in joint possession with defendants in

KARN220015382023



respect of suit schedule properties it is decided after full-pledge-trial. In this stage application filed by the plaintiff is not maintainable. **With these observations this court has answered the Point No.1 to 3 in the Negative.**

**11. Point No.4:-** For the above discussion on point No.1 to 3, this court proceeds to pass the following :-

**O R D E R**

**I.A.No.III u/o 39 Rule-1 and 2 of  
CPC., filed by the plaintiff is hereby  
dismissed.**

**No order as to cost.**

(Dictated to the Stenographer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 20<sup>th</sup> day of January-2024)

Sd/-  
**(Sri.Mahendra M.)  
Prl.Civil Judge & JMFC.,  
Channapatna.**

KARN220015382023



**Order pronounced in open court**  
**(Vide Separate Order sheet)**

**O R D E R**

I.A.No.II u/o 39 Rule-1 and 2 of CPC., filed by the plaintiff is hereby allowed.

Temporarily restraining the defendants, their agents, servants or anybody acting under them from alienate or encumbering the suit schedule properties till disposal of the suit.

No order as to cost.

Sd/-  
Prl. Civil Judge & JMFC.,  
Channapatna

**Order pronounced in open court**  
**(Vide Separate Order sheet)**

**O R D E R**

I.A.No.III u/o 39 Rule-1 and 2 of CPC., filed by the plaintiff is hereby dismissed.

No order as to cost.

Sd/-  
Prl. Civil Judge & JMFC.,  
Channapatna