

KARN320001342009



**IN THE COURT OF THE I ADDL., CIVIL JUDGE AND  
J.M.F.C., AT KANAKAPURA**

**Dated: This the 21<sup>st</sup> day of July 2025**

**PRESENT**

**Smt. LATHASHREE B.V., B.A.,LL.B.,**  
I Addl., Civil Judge & JMFC,  
Kanakapura.

**O.S No.15/2009**

**Plaintiff** : Sri. Shivaraju  
S/o Kempegowda,  
Aged about 46 years,  
R/at Maraalthimmanadoddi village,  
Hamlet of Kadahalli,  
Sathanur Hobli,  
Kanakapura Taluk,  
Ramanagara District.

**-Vs-**

**Defendants** 1 Sri. Kempegowda  
S/o Hombegowda,  
Aged about 90 years,  
2 Sri. Boregowda  
S/o Kempegowda,  
Aged about 56 years,  
3 Sri. Kempegowda  
S/o Kempegowda,  
Aged about 50 years,

Defendant No.1 to 3 are  
R/at Maraalthimmanadoddi village,

Sathanur Hobli,  
Kanakapura Taluk,  
Ramanagara District.

4 Smt. Shivamma  
W/o Giridasegowda,  
D/o Kempegowda,  
Aged about 54 years,  
R/at Kemmale Village,  
Sathanur Hobli,  
Kanakapura Taluk.

5 Smt. Gowramma  
W/o Ningegowda,  
D/o Kempegowda,  
Aged about 48 years,  
R/at Achalu village,  
Sathanur Hobli,  
Kanakapura Taluk.

**INTERLOCUTORY APPLICATION No.7**

Plaintiff/ : Sri. Shivaraju  
Applicant

(By Sri. M.G., Adv.)

**-Vs-**

Defendants : Sri. Kempegowda and others  
/Opponents

(D.3 Sri. T.K.R., Adv.)

1	Provision under which the applications are filed	:	Under Order 39 Rule 1 and 2 of C.P.C.
2	Relief Sought for	:	Temporary Injunction
3	The date on which the application is filed	:	21.03.2024
4	Number of the application	:	One

5	The date on which the objection is filed by different opponents :	30.07.2024
6	The date on which the order was passed on the said application :	21.07.2025

**(Lathashree B.V.)**

I Addl., Civil Judge & JMFC,  
Kanakapura.

**ORDERS ON INTERLOCUTORY APPLICATION No.7**  
**FILED UNDER ORDER 39 RULE 1 & 2 OF C.P.C.**

The plaintiff filed Interlocutory Application No.7 under Order 39 Rule 1 and 2 of Code of Civil Procedure praying this court to grant an ad-interim order of temporary injunction to restrain the defendant No.3, his agents, servants, henchmen or anybody claiming right under him from to cut and remove the standing trees situated in the suit schedule properties, pending disposal of the suit in the ends of justice and equity.

**2.** In the annexed affidavit to I.A No.7, the plaintiff goes to submits that, he has filed the suit against the defendants for the relief of partition and separate possession of the suit schedule properties and the said suit was posted for further evidence of plaintiff. In the suit schedule properties there are number of trees therein i.e., 8 neem trees, 3 banni trees, 2 thapala trees, 3 Honge trees, 30 coconut trees, 3 Hippe trees, 3 Nerale trees, 5 teak trees. One of the defendant i.e., defendant

No.3 without having exclusive and independent right, title and interest whatsoever, regarding the trees situated in the suit properties intentionally and deliberately with dishonest intention to defeat and defraud the right and share over the trees is trying to cut and remove the same. In case, the defendant No.3 is allowed to cut and remove the standing trees situated in the suit properties, the plaintiff will suffer great loss and injury and the same cannot be compensated in by any means. Hence, he submits that, he has got prima-facie case for trial and balance of convenience is also in his favour. If the application is not considered, he will be put to irreparable loss and injury. Hence, prays to allow the application.

3. After service of summons, counsel for the defendant No.3 has filed objection to the above said application.

**4. The gist of the objection averments filed by the defendants is as under:**

It is submitted by defendant No.3 in the objection that, defendant No.1 is the father of plaintiff and the defendant No.2 to 5. The suit schedule properties are the ancestral and self acquired properties of the defendant No.1 and the defendant No.1 purchased the item No.3, 4 and 6 of the suit schedule properties. The defendant No.1 acquired the item No.2 and 5 in a family partition effected between himself and his brothers. He had purchased the

item No.1 of the suit property out of his own funds under a registered sale deed dated 08.11.2000 from Chikkaswamachari S/o late.Mariyachari and revenue records of the suit schedule properties are standing in the name of defendant No.1.

Further submitted that, about 15 years back the defendant No.1 effected partition of his properties as well as self acquired properties among his sons and inducted them into the possession of their respective shares. In the said partition, the suit item No.3 and half share in suit item No.5 fell to the share of defendant No.1 and item No.4 and 6 fell to the share of defendant No.2 and they are in possession and enjoyment of the said properties. Similarly, the defendant No.3 got the item No.1 under a registered gift deed dated 23.10.2008 executed by the defendant No.1 and half share in item No.5 of the suit properties and also the plaintiff got item No.2 of the suit properties. Hence, the entire family properties were divided among the plaintiff and defendants No.1 to 3 under oral partition and accordingly they are in possession and enjoyment of the same.

Further submitted that, the plaintiff left the village and settled in Bengaluru and was not in possession of the property. As already partition was effected and the question of effecting partition once again does not arise at all. Hence, it is submitted that, the present application is

to be rejected as the suit is itself is not maintainable.  
Hence, prays to dismiss the application.

5. Heard both the sides.

6. The following points arise for the  
consideration by this court is as under:

1. Whether the interlocutory application  
No.7 filed under Order 39 Rule 1 and 2 of  
C.P.C. by the plaintiff deserves to be  
allowed?

2. What Order?

7. Upon hearing of the arguments and on  
perusal of documentary evidence available on record, the  
findings of this court to the above points are as under:

Point No.1 : In the Affirmative;  
Point No.2 : As per final order  
for the following:

### **REASONS**

8. The facts and circumstances of the present  
matter i.e., the said Interlocutory application as well  
as the objections raised therein has been duly  
summarized in the factual aspects of the matter  
above, hence, in order to avoid repetition of facts,  
this court proceeds to discuss the important  
contentions which is taken for due ascertainment in

pursuance to the said application made therein along with the objections.

9. Now, it is just and necessary to discuss certain points relating to the ingredients of temporary injunction which includes prima-facie case, balance of convenience and irreparable loss. Wherein, the prima-facie case means the case in which there is serious question which needs to be tried by this court and the same requires detailed trail. It is true that burden of proving the prima-facie case through the pleadings and documents is on the plaintiff. If the plaintiff proves the prima-facie case and balance of convenience and irreparable loss then the applicant/ plaintiff is entitled for temporary injunction.

10. Further, the temporary injunction granted at the initial stage will be in force until further orders or until the final disposal of the suit on merits depending on the nature of each case. Similarly, proving of prima-facie case is harbinger to

consider the other aspects such as balance of convenience and irreparable loss. In the light of above well settled principles of law, this court proceeds to analyze the present application.

11. **Point No.1:** Now, the present suit is filed by the plaintiff seeking for the relief of partition and separate possession with respect to suit schedule properties and it is the specific contention of the plaintiff that, the suit schedule properties are the ancestral and joint family properties of the said plaintiff and defendants. Through the said application the plaintiff has raised the apprehension that, the defendant No.3 specifically is trying to cut and remove the standing trees in the suit schedule properties and if the same happens that would defraud the right of the plaintiff. Hence, prays to consider the application.

12. In contra, the specific contention of defendant No.3 through the said objection is that,

there was already an oral partition amongst the said defendants and plaintiffs and accordingly they are having possession of their particular share as per the said partition. Hence, the defendant No.3 submits the suit in itself is not maintainable. Hence, the application cannot be considered. However, the averments of the written statement as well as objection reflects that he admits the relationship amongst them.

13. Here it is to be noted that the present suit is of the year 2009 and the stage of set down for leading further evidence of plaintiff. Meanwhile, the plaintiff has raised the said apprehension by pressing I.A No.7. At this stage when the trial has commenced, the court cannot dwell into the merits of the factual circumstances based upon the present application. As already observed the relationship is admitted by the defendant No.3. However, it is the contention that, the said ancestral and joint family properties pertaining to the said plaintiff and defendants have

already been divided through oral partition. The said aspect can only be adjudicated for taken consideration after the completion of full fledged trial with cogent materials and documents comprising oral evidence. Hence, at present the court can only see whether there is a need pertaining to ascertaining the prayer of the plaintiff and also to protect the interest of both the parties as the suit is one for partition and separate possession. No doubt, at this outset on prima-facie, the plaintiff has shown that there exists a prima-facie and arguable case on hand. Further, as the relationship is admitted there is semblings of right been reflecting in the present matter.

14. Moving further, regarding the suit schedule properties and whether there was a partition or not and as to whether the plaintiff is entitled for the share with respect to all the suit schedule properties is a matter of trial as already narrated. But till then protection of the said property and its subject matter

becomes a crucial aspect. On the other hand, when the contentions of defendant No.3 is taken for due ascertainment there are certain crucial aspect raised by the said defendant also. Hence when such being the case at this juncture to protect the interest of both the parties as well as the subject matter an order of status-quo will suffice the purpose. Wherein, neither of the parties will be placed into any loss or injury until the disposal of the suit on merits.

15. Hence, when such being the facts and circumstances to maintain property as it is i.e., without any disturbance becomes a crucial aspect till disposal of the suit for a fair adjudication. Hence, as already stated an order of status-quo would suffice the very purpose of protecting both the interest of the parties and also the subject matter i.e., schedule property and with this regard, it is beneficial to rely upon the decisions.

16. In view of the observation made above, it is beneficial to refer the decision **ILR 2004 Karnataka**

**4076 (Fakirasab V/s. Syed Sab and Others)**

wherein it is held that,

*“While considering an application for grant of temporary injunction, the right and need of respective parties should be considered and the schedule property should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit, succeeds in the suit, he would not be put to irreparable and uncompensatable loss. The object is to keep the property in status-quo so that if would be available to the plaintiff, if he ultimately succeeds in the suit”.*

17. Further it is also beneficial to rely on the decision of the Division Bench of Hon’ble High Court of Karnataka reported in **1975 (1) KAR.L.J. 142 (State of Karnataka Vs. S. Venkataraj)** which reads thus:

*“The object of an interim injunction is to keep things in status-quo, so that if at the hearing the plaintiff obtains a judgment in his favour, the defendants will have been prevented in the meantime from dealing with the property in such a way as to make that judgment ineffectual, A temporary injunction maintaining the status-quo may properly issue whenever the question of law or fact to be ultimately*

*determined in a suit is grave and difficult and injury to the moving party will be immediate certain and great if denied while the loss or inconvenience to the opposing party will be comparatively small and insignificant if granted”.*

18. Hence, with the above observations and as per the principles laid down of the Hon’ble Superior courts, this court is of the opinion that a status-quo order needs to be crept in the matter for the protection of the said property as well as the intent of the both the parties needs to be protected till the disposal of the suit. Hence, as the plaintiff has made out a prima-facie case, the application is duly taken for consideration. However, the court has ascertained the contentions raised by both the parties and has come to an opinion that the status-quo over the suit schedule property will suffice the very purpose of application. Hence, with all these observations, ***this court answered Point No.1 in the Affirmative.***

**19. Point No.2:** In view of above made observations on Point No.1, this court proceeds to pass the following:

**ORDER**

The Interlocutory Application No.7 under order 39 Rule 1 and 2 R/w Sec.151 of CPC filed by the plaintiff is hereby considered and allowed in following terms.

Both the plaintiff and defendants on record or anybody on their behalf are directed to maintain status-quo over the suit schedule properties until disposal of the suit.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me in the Open Court on 21<sup>st</sup> day of July 2025)

**(Lathashree B.V.)**

I Addl., Civil Judge & JMFC,  
Kanakapura.