



**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C., AT MAGADI.**

Present: Sri. Shivakumar R., B.A.L., LL.B.,
Additional Senior Civil Judge & JMFC, Magadi.

Dated: 3rd Day of May 2025

ORIGINAL SUIT NO.444/2021

Plaintiff :- Smt. Parvathamma,
W/o. Late. Gangarudraiah,
D/o. Late. Channabasavaiah,
Aged about 70 years,
R/at: No.42, Channanayakanapalya,
2nd Stage, Muniswamappa Layout,
Nagasandra Post,
Bangalore - 560 073.

(By **Sri. M.S.N.** Advocate)

--V/s--

Defendants :- 1. Smt. Mamatha,
W/o. Somashekar,
D/o. Late. Basavarajaiah,
Aged about 40 years,
R/at: Byandahalli,
Dasanapura Hobli,
Kadabagere Post,
Bangalore North Taluk.

2. Sri. Siddalingaiah,
S/o. Late. Basavarajaiah,



Aged about 35 years,
R/at: Nandihalli, Urdgere Hobli,
Erehalli Post, Tumkur Taluk &
District.

3. Smt. Rajamma,
D/o. Late. Siddalingamma,
Aged about 62 years,
4. Smt. Siddagangamma,
D/o. Late. Siddalingamma,
Aged about 60 years,
5. Sri. Gurusiddaiah,
S/o. Late. Siddalingamma,
Aged about 58 years,
6. Sri. Mahadevaiah,
S/o. Late. Siddalingamma,
Aged about 56 years,

D3 to 6 are R/at: Soolivara Village,
Tavarekere Hobli,
Bangalore South Taluk.

7. Smt. Virupakshamma,
D/o. Late. Kempeeramma,
Aged about 55 years,
8. Sri. Nataraju,
S/o. Late. Kempeeramma,
Aged about 48 years,



9. Sri. Umashankar,
S/o. Late. Kempeeramma,
Aged about 45 years,
10. Sri. Shivakumar,
S/o. Late. Kempeeramma,
Aged about 40 years,

D7 to 10 are R/at:
Chikkaveeraiahnapalya,
Tavarekere Hobli,
Bangalore South Taluk.

11. M/S. Kissan Enterprises, Tavarekere
Represented by its proprietor,
Sri. T. G. Narasimhamurthy,
S/o. T. V. Gangaraju,
Aged about 42 years,
R/at: Tavarekere Village & Hobli,
Bangalore South Taluk.
12. M/S. Reserve Bank,
Employees Housing Welfare Society,
Represented by its Director &
Authorized Signatory,
Sri. Venkatahanumanthanak,
R/at: No.463, Penfield Garden Telecom
Layout, Jakkur, Bangalore - 560064.

(D1 by **Sri. R.R.** Advocate)
(D2 by **Sri. L.N.** Advocate)
(D3 to 6, 12 **Exparte**)



(D7 to 10 by **Sri. S.G.R.** Advocate)
(D11 by **Sri. N.S.S.** Advocate)

PARTIES TO I.A.NO.3

Applicants : Smt. Parvathamma

Vs.

Opponents : Smt. Virupakshamma & 2 Ors.,

ORDERS ON I.A.NO.3

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC for the relief of temporary injunction restraining the defendant No.7 to 10, their agents, workers, henchmen, officials or anybody acting on their behalf from alienating the suit schedule properties in any manner pending disposal of this suit.

2. In the accompanying affidavit to the I.A.No.3, the plaintiff states that, he has filed the suit against defendants for the relief of partition and separate possession in respect of Suit schedule properties. The Suit schedule properties are



fallen to the share of father of the plaintiff by name Channabasavaiah through the registered partition deed dated 12-09-1946, the same was registered in the Sub-Registrar office on 12-09-1946, from the date of partition, Channabasavaiah was in Possession and enjoyment of the properties as per partition allotted to him along with his family members, the said Channabasavaiah had 4 daughters by name 1) Siddagangamma, who is the grand-mother of the Defendant No.3 to 6 (3) Kempeeramma who is the mother of the defendant No.7 to 10 (4) Parvathamma (plaintiff) during the life time of the Channabasavaiah there is no partition effected between his daughters in respect of Suit schedule properties. After the death of father of the plaintiff also there is no partition effected between the plaintiff and his Elder sisters, the plaintiff and his elder sisters all are continued in Possession and enjoyment of the Suit schedule properties as Co-sharers. The plaintiff further stated that, thereafter the elder sister of plaintiff by name Siddagangamma was died



leaving behind her L.Rs., only son Basavarajaiah. The said Basavarajaiah also died. The Defendant No.1 and 2 are the legal heirs of the deceased Basavarajaiah. Thereafter my second elder sister by name Siddalingamma also died leaving behind her L.Rs., the defendant No.3 to 6 are the L.Rs. of the deceased Siddalingamma.

3. The plaintiff further stated that, thereafter the another elder sister by name Kempeeramma also died by leaving behind her L.Rs., the defendant No.7 to 10 are the legal representatives of the deceased Kempeeramma. After the death of the elder sister of plaintiff, the plaintiff and defendant No.1 to 6 are continued in Possession and enjoyment of the Suit schedule properties till today as joint family properties.

4. Further, the plaintiff has stated that, without partition effected between the plaintiff and the elder sister of the plaintiff by name Kempeeramma suppressed true fact,



she was created revenue documents in respect of Suit schedule properties. In her name with collusion of revenue officials without the consent of the plaintiff and other two elder sisters in M.R.No.27/83-84 now the said Kempeeramma is no more, after the death of Kempeeramma on the basis of created revenue documents stands in the name of Kempeeramma her L.Rs., the defendant No.7 to 10 are taking undue advantage the Katha of the suit schedule properties stands in their name in M.R.T 24/2020-21 and M.R.H 19/2013-14 without the consent of plaintiff and defendant No.1 to 10 are continued in Possession and enjoyment over the Suit schedule properties as Co-sharers till today, thereafter the plaintiff came to know the knowledge the properties stands in the name of defendant No.7 to 10 and demanded and requested to effect the partition and allot the 1/4th share in favour of the plaintiff on 5-9-2021 and the same is refused by defendant No.7 to 10 without alternative the plaintiff has filed the above suit for the relief of partition



and separate possession. Further the plaintiff has stated that, during the pendency of the case, the defendant No.7 to 10 taking undue advantage of the Katha of the properties stands in their names and for the purpose to deprive the right of plaintiff's share, they are trying to alienate the Suit schedule properties in favour of third party. Hence this application.

5. The I.A., copy served to the other side. The counsel for the defendant No.7 to 10 have filed the detailed statement of objections and resisted the I.A., filed by the plaintiffs. The defendant No.7 to 10 in their statement of objection, they have totally denied averments made out in the supportive affidavit of the annexed I.A., and interalia contended that, the plaintiff and defendant No.1 to 10 are not the joint family members, there is no joint family status between the plaintiff and defendants. The plaintiff is not in joint possession of the suit schedule properties. This defendant categorically denied



that, the ½ portion of the suit schedule properties have not fallen to the share of the father of the plaintiff namely Channabasavaiah as per registered partition deed dated: 01.08.1946. The plaintiffs have filed this false suit against these defendants only to make unlawful gains from the hands of this Court. For all these grounds, the defendant No.7 to 10 have prayed to reject the above application.

6. Heard the arguments of both sides.

7. The counsel for the defendant No.7 to 10 have relied upon the following decision;

- i) 2011(3) Supreme 698, Supreme Court of India, between Purshottam Vishandas Raheja and another V/s. Shrichand Vishandas Raheja (D) through L.Rs., and others.
- ii) 2018(4) KCCR 3269, Karnataka High Court between S. C. Gangadharaiah V/s. REMCO (BHEL) House Building Co-operative.



8. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the plaintiff/applicant has made out a prima-facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff/applicant?
- 3) Whether the plaintiff/applicant will be put to irreparable loss and injury, if the temporary injunction is not granted as prayed in the I.A.?
- 4) What order?

9. My answer to the above points are as under :

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : In the Affirmative,

Point No.4 : As per the Order,

for the following:

REASONS

10. **POINT NO.1 TO 3:** These points are inter related with each other. Hence, these points are taken up together for common discussion in order to avoid repetition of facts and



findings. It is the urge of the plaintiff that, plaintiff and defendant No.1 to 10 having right or share over the suit schedule properties. When such being the case, the defendant No.7 to 10 are trying to alienate the suit schedule properties to the third parties without the consent and knowledge of the plaintiffs. To deprive the rights of the plaintiffs over the suit schedule properties.

11. In order to substantiate the case of the plaintiff at this stage the plaintiff has produced the copy genealogical tree, certified copy of the Sale Deed dated: 16.04.1909, certified copy of the Sale Deed dated: 23.10.1929, certified copy of the Partition Deed dated: 01.08.1946, six manual RTC extracts in respect of Sy.No.127/20, seven manual RTC extracts in respect of Sy.No.128/5, five manual RTC Extracts in respect of Sy.No.126/7, certified copy of the Sale Deed dated: 26.12.2015, computerized RTC in respect of Sy.No.128/3, computerized RTC in respect of Sy.No.127/20,



computerized RTC extracts in respect of Sy.No.128/5 and computerized RTC Extracts in respect of Sy.No.126/7.

12. On the other hand, the defendant No.7 to 10 contended that, the plaintiff and defendant No.1 to 10 are not the joint family members and suit schedule properties are also not their ancestral and joint family properties and they are not in joint possession of the same and further contended that, the suit schedule properties have acquired by the parents of the defendant No.7 to 10 by way of tenancy. Hence, the plaintiffs are not entitled for any relief sought in the plaint.

13. To substantiate the contents of the defendant No.7 to 10, they have produced the copy of the Registered Sale Deed dated: 23.10.1929, Bhag Patti on 1239, xerox copy of the order in LRF No.686/7675, xerox copy of the Land Tribunal, copy of the Gani Hakku, xerox copy of the order of



the A.C. in R.A.(S): 306/2021-13, computerized RTC Extracts of Sy.No.128/3, Sy.No.128/5 and 128/7.

14. At this stage, without going through the merits of the case and conducting mini trial, the court is considering the aspect of prima-facie. At this stage, this court makes very clear that this court is looking towards prima-facie case and not for the prima-facie title. I have gone through the pleadings and documents produced by the both parties. In order to show the prima-facie case, the plaintiffs have produced the RTC Extracts in respect of suit schedule properties. On perusal of the same, at this stage the khata of the suit schedule properties stands in the name of defendant No.7 to 10. As per the plaint pleadings and I.A., it is the case of the plaintiff that, the plaintiff and defendant No.1 to 10 are jointly cultivating the suit schedule properties. Hence, the plaintiff is also entitled for share over the suit schedule properties. On the other hand, the defendant No.7 to 10



denied the case of the plaintiff and contended that, the suit schedule properties have acquired by the parents of the defendant No.7 to 10 by way of tenancy which was granted by the Land Tribunal. It is very pertinent to note that, the evidenciary value of the documents produced by the defendants cannot be considered at the time of deciding the interlocutory application. The same may be considered at the time of final adjudication of the matter.

15. Admittedly, it is a suit for partition and separate possession against the defendants in respect of suit schedule property. At this stage the rights of the parties cannot be adjudicated, it needs full fledged trial. In order to avoid multiplicity of proceedings and also to keep suit schedule properties intact till disposal of the suit. Hence, it is just and necessary to pass an order of temporary injunction restraining the defendant No.7 to 10 from alienating the suit schedule property to any body in any manner till disposal of



this suit. Looking into the pleadings and documents adduced by both the parties, at this stage it appears that, the plaintiff has made out the prima-facie case and balance of convenience is also lies in favour of the plaintiff. If this I.A., is not allowed, the plaintiff will be put to great hardship and injury. On the other hand, if this I.A., is allowed, there is no harm caused to the other side. With great respect on perusal of the citation relied by the defendant No.7 to 10 counsel is not applicable to the present case on hand, because the facts and circumstances of those cases and the present case are quite different. For considering all these reasons the Point No.1 to 3 in the Affirmative.

16. **POINT NO.4:** In the light of the above discussion on Point No.1 to 3, I proceed the following :

ORDER

I.A.No.3 filed by the plaintiff/applicant under Order XXXIX Rule 1 and 2 r/w. Sec.151 of CPC is hereby allowed.

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O.S.No.444/2021(Or.)

Consequently, the defendant No.7 to 10 are hereby temporarily restrained from alienating the suit schedule properties to anybody in any manner till disposal of this suit.

No order as to cost.

(Dictated to the Typist directly on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of **3rd day of May, 2025.**)

**(SHIVAKUMAR R.)
ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., MAGADI.**