



**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: 28th Day of April 2025

ORIGINAL SUIT NO.350/2019

Plaintiffs

- : 1. Mrs. Annapurna,
W/o. H. M. Nagarajaiah,
D/o. Late. C. Veerbhadraiah,
Aged about 73 years,
R/at: No.208, 2nd Block,
3rd Stage, 3rd 'D' Cross,
Basaveshwaranagar,
Near Shanbhogh Nursing
Home, Bangalore - 560 079.
2. Mrs. Vimala Basavaraju,
W/o. Dr. Basavaraju,
D/o. Late. C. Veerabhadraiah,
Aged about 69 years,
R/at: No. 24, HIG, KHB
Colony, 2nd Stage,
Basaveshwaranagara,
Bangalore - 560 079.
3. Mrs. Vishala Chandrashekar,
W/o. Dr. Chandrashekar,
D/o. Late. C. Veerabhadraiah,
R/at: No.30/41, 15th Main,
13th Cross,
Padmanabhanagar,



Bangalore.

4. Mrs. Renu Lokesh,
W/o. B. S. Lokeshaiah,
D/o. Late. C. Veerabhadraiah,
R/at: No.271, 1st Main,
9th Cross, 9th Block,
Nagarabhavi,
Bangalore - 560 072.
5. Mrs. Shantha Sudhir,
W/o. Sudhir B. S.,
D/o. Late. C. Veerabhadraiah,
Aged about 58 years,
R/at: Kumbarahalli Estate &
Post, Via Yeslur, Sakeshpur,
Hassan District - 573 134.
6. Mrs. Chandini R. Uday,
D/o. Late. C. Veerabhadraiah,
W/o. Raja Udayshankar,
Aged about 54 years,
R/at: 457, 9th Cross,
1st Block, Jayanagar,
Bangalore.
7. Ms. Esha Vishwanath,
D/o. Late. C. V. Vishwanath,
G/D/O. Late.
C. Veerabhadraiah,
Aged about 28 years,
R/at: Nesara Blue Building,
Opp. Government High
School Ground, Immadihalli,
Whitefield Post,



Bangalore - 560 066.

(By **Sri. S.A.D.** Advocate)

--V/s--

Defendant : Mr. Shivaprakash @
Manjunath,
S/o. Late. C. Veerabhadraiah,
Aged about 56 years,
R/at: Renuka Roller Flour
Mills, B.H. Road, Tumkur.

(By **Sri. H.S.B.R.** Advocate)

PARTIES TO I.A.NO.1

Applicants: Mrs. Annapurana & Ors.,

Vs.

Opponent : Mr. Shivaprakash @ Manjunath

ORDER ON I.A.NO.1

The applicants/plaintiffs have 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 or his agents, workers, henchmen, officials or



anybody acting on his behalf from creating any third party interest/s as regards the suit schedule premises in any manner till disposal of this suit.

2. In the accompanying affidavit to the I.A. No.1, the plaintiffs state that, all parties to the present suit are equally entitled for shares in the suit schedule properties, having succeeded common and joint interests over the same from their ancestors, including their late father. During their father's lifetime, it was he who had prevented the partitioning of the suit schedule properties for reasons known to him alone, this had resulted in two of the siblings of the plaintiffs approaching the Courts for a decree of partition.

3. It is further stated that, intervention of their relatives and friends of late father of the plaintiff No.1 had forced his siblings to abandon their legal pursuit, based on assurances that the joint family properties would be duly partitioned within a year's time from thereon. Although the father of the



plaintiff No.1 had assured all of them of a partition, destiny did not permit him to live by his words. After his demise, the plaintiffs siblings had gathered for his final ceremonies and it was during this course that he had a discussion as to the way ahead with the properties.

4. It is further stated that, while their sisters and their niece were unanimous in their opinion that the properties had to be partitioned, their only brother was adamant in his stand that the partition had to wait. Although he could not cite any plausible reason for such a stand, they all have good reasons to believe that he intends to deprive them of our legitimate shares.

5. It is further stated that, they have been given to understand by reliable sources that their brother is already negotiating with third parties to induct them either as tenants or as benefactors of a sale. That, if the defendant was to be allowed to proceed with such nefarious plans, the same would



be of extreme prejudice to our legitimate interests and would also result in multiplicity of proceedings and intervention of third parties. Hence, this application.

6. After service of suit summons, the defendant has appeared through his counsel and filed detailed statement of objection to I.A.No.1 and resisted the I.A., filed by the plaintiffs and denied the plaintiffs' case and interalia contended that, he has partly admitted to an extent that the parties are entitled for equal shares in suit schedule properties except Schedule - G property. It is further contended that, the Schedule G property was the absolute property of the propositus Late C Veerabhadraiah and that the answering Defendant and his late father had established a partnership firm in the name and style M/s. Renuka Roller Flour Mill. It is further contended that, the father of this Defendant had left a Will dated 09.11.2016, wherein the entire business including the Schedule 'G' Property consisting



of the machineries, residential house was bequeathed in favour of the Defendant. It is further contended that, the said Will was lately found by the Defendant after filing of the written statement. Thereafter, the defendant filed an application dated 07.12.2022, seeking leave to amend the written statement and bring the Will on record. It is also contended that, this Court vide order dated 21.09.2024 was pleased to allow the said application.

7. It is further contended that, the Plaintiffs despite knowledge of the Will since 07.12.2022, have never bothered to dispute the same and hence the same has attained finality as acknowledgement of the Will. Thus, the defendant is now the absolute owner of the business including the structures, residential house and the land beneath in Schedule 'G' Property Re-Part-11. Insofar as, the averments in para-3 is concerned, it is contended that the suit schedule properties are the absolute properties of their father and he had



absolute rights to deal with the same in the manner he desired. The Plaintiffs nor any siblings, muchless, could have forced the propositus to effect partition during his life time. On the other hand, it is the Plaintiff Nos. 3 & 4, who filed suits in O.S.No.312/2017 on the file of the Principal Civil Judge (Sr. Dvn.) Tumkur and Plaintiff Nos .5 & 7 , who had filed suit in O.S. No. 251/2016 on the file of this Court . It is these cases, wherein the Defendant's father was embroiled in frivolous litigation causing him severe mental agony and frustration at the old age leading to his untimely death.

8. It is further contended that, the instant suit is not maintainable for the fact that the same is barred by principles of Res-Judicata. For all these grounds, the defendant has prays to reject the above application.

9. Heard the arguments of both sides. The learned counsel for the defendant to support his arguments, he has relied upon the decision cited in **2019(2) KCCR 1437**



between **V. Krishna Char and Ors., V/s. Sundara Murthy & Anr.**

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

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

Point No.1 : In the Negative,
Point No.2 : In the Negative,
Point No.3 : In the Negative,
Point No.4 : As per the Order,



for the following:

REASONS

12. **POINT NO.1 TO 3:** As these points are interconnected and interlinked with each other, these points are taken up together for common discussion to avoid repetition of facts. It is the urge of the plaintiffs that, all the parties of the present suit are equally entitled for shares in the suit schedule properties having succeeded common and joint interest over the same from their ancestors. When such being the case, the defendant alone has no right over the suit schedule properties. He is trying to create the third party interest over the suit schedule properties in order to deprive the legitimate shares of the plaintiffs over the suit schedule properties.

13. In order to substantiate the case of the plaintiffs, at this stage they have produced the documents i.e., notarized copy of the Genealogical Tree, RTC Extracts,



Encumbrance Certificate, the copy of the Sale Deed dated: 15.09.2014.

14. On the other hand, the defendant has partly admitted to an extent that, the parties are entitled for equal share in the suit schedule properties except 'G' schedule property. The 'G' schedule property was the absolute property of the Late. Sri. Veerabhadraiah. The said Veerabhadraiah had left the Will dated: 09.11.2016, wherein, the entire business including the schedule 'G' property consisting of the machinaries residential house was bequeathed in favour of this defendant. Hence, the plaintiff have no right over the same. Hence, they are not entitled for any relief sought in the I.A. At this stage the defendant has not produced any iota of documents to substantiate the case of the defendant.

15. 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. According to plaintiffs, all the parties of the present suit are entitled for equal share in the suit schedule properties, but in order to deprive the rights of the parties over the suit schedule properties, the defendant alone creating third party interest over the suit schedule properties. This Court has perused the pleadings of both the parties and also documents produced by the plaintiffs. In order to show the prima-facie case, the plaintiffs have produced the RTC Extracts pertaining 'B' schedule to 'F' schedule properties. On perusal of the same, at this stage it disclose that, the khata of the said properties is stands in the name of Veerabhadraiah S/o. Channaveerappa. It is very relevant to note that, at this stage except these documents the plaintiffs have not produced any iota of documents to show that, schedule 'A' and 'G' & 'H' of the schedule property and schedule 'I' of the suit schedule property either in the



plaintiffs nor defendant name or their ancestors. In the absence of same, the claim put forth by the plaintiffs at this stage it holds no water in the eye of Law. At this stage, the rights of the parties cannot be adjudicated, it needs full fledged trial.

16. Looking into the pleadings and documents produced by the plaintiffs, at this stage the plaintiffs have not made out a prima-facie case and also balance of convenience is not lies in favour of the plaintiffs. If this application is allowed, the defendant will be put to great hardship and injury. On the other hand, if this application is not allowed, no hardship will be caused to the plaintiffs. For considering all these reasons, I answer Point No.1 to 3 in the Negative.

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



ORDER

I.A.No.1 filed by the plaintiffs/applicants
under Order XXXIX Rule 1 and 2 r/w Section
151 of CPC is hereby rejected.

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 **28th day of April 2025.**)

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