



**IN THE COURT OF THE II ADDL.CIVIL JUDGE & JMFC,
AT MAGADI
PRESENT**

Smt.Ranjitha G.B B.B.A, LL.B. (Hons)

**II Addl.Civil Judge & JMFC,
Magadi**

Dated this 9th day of July, 2025

OS No.92/2018

PLAINTIFF : Smt.Parvathamma
S/o Late.Channaveeraiah,
Aged about 60 years,
R/at Gundigere,
Kudur Hobli,
Magadi Taluk,
Ramanagara District.

-V/s-

DEFENDANTS : 1. Smt.Rathnamma
W/o Lae.Shivagangaiah,
Aged about 60 years,
R/at Kannasandra Village,
Solur Hobli,
Magadi Taluk,
Ramanagara District.

2. Sri.Rajanna
S/o Late.Shivagangaiah,
Aged about 40 years,
R/at Hirehalli Chowdeshwari
Temple Road,
Urdigere Hobli,
Tumkur Taluk,
Tumkur District.



3. Sri.Rudresh
S/o Late.Shivagangaiah,
Aged about 38 years,
R/at Gudemaranahalli Hand Post,
Solur Hobli,
Magadi Taluk,
Ramanagara District.
4. Smt.Kamalamma
S/o Late.Shivagangaiah,
Aged about 36 years,
R/at Areyuru,
Hebburu Hobli,
Tumkur Taluk,
Tumkur District.
5. Smt.Shobha
S/o Late.Shivagangaiah
Aged about 34 years,
R/at Ennegere, Solur Hobli,
Magadi Taluk,
Ramangara District.
6. Smt.Mahadevamma
W/o Late.Siddalingappa,
R/at Kannasandra,
Solur Hobli,
Magadi Taluk,
Ramanagara District.
7. Sri.Siddagangaiah
S/o Late.Shivamma
Aged about 45 years,
R/at Chikkaveeraiahnapalya,



Tavarekere Hobli,
Bengaluru South Taluk.

IA No.IV

**APPLICANT/
PLAINTIFF**

: Smt.Parvathamma

-V/s-

**OPPONENTS/
DEFENDANTS**

: Smt.Rathnamma & Others

i	<i>Provision under which the application is filed</i>	<i>Order XXXIX Rule 1 and 2 read with 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>15.03.2018</i>
iv	<i>Number of the application</i>	<i>IA No.IV</i>
v	<i>The date on which the objections are filed by different opponents</i>	<i>10.03.2025</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>09.07.2025</i>

**II Addl.Civil Judge & JMFC,
Magadi**



ORDER ON IA No.IV FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 READ WITH
SEC.151 OF CPC

This application filed when the matter is posted for filing of amended plaint. The Plaintiff has filed this application under Order XXXIX, Rule 1 and 2 read with Sec.151 of CPC, seeking for the relief of temporary injunction by restraining the Defendants from alienating the suit schedule properties.

2. The Plaintiff has filed the present suit as against the Defendants for the relief of Partition & Separate Possession. The Plaintiff has filed this application along with accompanying affidavit and sworn that, the Plaintiff and Defendants are the joint family members and the suit schedule properties are their ancestral properties. Originally, the suit schedule properties belonged to the father of the Plaintiff by name Sri.Channaveeraiah and after his demise, the Plaintiff and Defendants are in joint possession of the same. There is no earlier partition in the family. The Plaintiff had approached the Defendants to effect partition, but, they have postponed to effect the partition by giving one or the other reasons. In the meantime, the Defendants are trying to alienate the suit schedule

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properties to the third persons with an intention to deprive the right of the Plaintiff over the suit schedule properties. The Defendants are having no manner of right, title or interest to alienate the suit schedule properties. With no other alternatives, the Plaintiff has filed this application seeking for temporary injunction by restraining the Defendants from alienating the suit schedule properties. If this application is not allowed, the Plaintiff will be put to great hardship and on the other hand, no hardship will be caused to the Defendants, as they can always contest the matter on merits. Hence, prayed to allow the application.

3. The Defendant No.6 has filed objection and admitted the plaint averments and also stated that, the Plaintiff is having her legitimate share over the suit schedule properties.

4. The Defendants No.4 & 5 have filed objection and contended that, after the death of the husband of the Defendant No.1, as per MR No.H2/2017-18, the Defendants No.1 to 5 have changed the Item No.1 of the suit schedule properties in their names. Thereafter, on 15.12.2017, there was a partition between the Defendants No.1 to 5. Accordingly, the revenue records pertaining to the Item No.1



was mutated in the name of Defendants No.1 to 3. Item No.2 & 3 of the suit schedule properties are the self acquired properties of the husband of the Defendant No.1. The Defendant No.6 and her mother have executed the Right Relinquishment Deed in favour of husband of the Defendant No.1 in respect of aforesaid property. On 19.10.2011, the husband of the Defendant No.1 had executed the Gift Deed in favour of his son Sri.Manjesh. Thereafter, Sri.Manjesh was expired.

5. On 03.02.2017, the husband of the Defendant No.1 had executed the Gift Deed in favour of Defendant No.4 in respect of Item No.3 of the suit schedule properties. Based on the said Gift Deed, the revenue records pertaining to the Item No.3 was mutated in the name of Defendant No.4 and accordingly, the Defendant No.4 is in possession of the said property as an absolute owner. On 05.10.2016, the husband of the Defendant No.1 had executed the Gift Deed in favour of Defendant No.5 in respect of Item No.2 of the suit schedule properties. Based on the said Gift Deed, the revenue records pertaining to the Item No.2 was mutated in the name of Defendant No.5 and accordingly, the Defendant No.5 is in possession of the said property.



6. The Defendants No.6 & 7 are having no manner of right, title or interest over the suit schedule properties. The Plaintiff had colluded with Defendants No.6 & 7 and filed this false suit. The only intention of the Plaintiff is to harass the Defendants No.1 to 5. If this application is allowed, the Defendants No.4 & 5 will be put to hardship and the same cannot be compensated in terms of money. Hence, prayed to reject the application.

7. Heard both sides. Perused the material on record. In order to prove the case of the Plaintiff, she has relied on the decision in ***Colgate Palmolive V/s Hindustan Lever Ltd., reported in AIR 1999 SC 3105.***

8. Ongoing through the averments stated in the Application accompanying the affidavit, this Court arises the following Points for consideration:

POINTS

1. Whether the Plaintiff has made out prima-facie case?
2. Whether the balance of convenience lies in favor of the Plaintiff?



3. Whether irreparable loss and injury would be caused to the Plaintiff, if an order of temporary injunction is not granted?
4. What order?
9. The findings to the above 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:

REASONS

10. **POINT NO.1:** The Plaintiff has filed the present suit seeking for Partition & Separate Possession as against the Defendants, along with an application under Order XXXIX Rule 1 & 2 read with Section.151 of CPC, to restrain the Defendants from alienating the suit schedule properties.

11. The case of the Plaintiff is that, the Plaintiff and Defendants are the joint family members and the suit schedule properties are their ancestral properties. Originally, the suit schedule properties belonged to the father of the Plaintiff and after his demise, the Plaintiff and Defendants are in joint possession of the same. There is no



earlier partition in the family. The Plaintiff had approached the Defendants to effect partition, but, they have postponed to effect the partition by giving one or the other reasons. In the meantime, the Defendants are trying to alienate the suit schedule properties to the third persons with an intention to deprive the right of the Plaintiff over the suit schedule properties. In order to prove the case of the Plaintiff, the Plaintiff has produced the documents such as genealogical tree, affidavit, Partition Deed dated 15.12.2017, Gift Deeds dated 19.10.2011, 05.10.2016 & 03.02.2017, RTC Extracts, mutation registers, notice dated 16.12.2024 issued by the surveyor, sketch, photographs and CD.

12. Per contra, the Defendants No.4 & 5 have contended that, after the death of the husband of the Defendant No.1, the Defendants No.1 to 5 have changed the Item No.1 of the suit schedule properties in their names. Thereafter, on 15.12.2017, there was a partition between the Defendants No.1 to 5. Item No.2 & 3 of the suit schedule properties are the self acquired properties of the husband of the Defendant No.1. On 03.02.2017, the husband of the Defendant No.1 had executed the Gift Deed in favour of Defendant No.4 in respect of Item No.3 of the suit schedule



properties. Accordingly, the Defendant No.4 is in possession of the said property as an absolute owner.

13. On 05.10.2016, the husband of the Defendant No.1 had executed the Gift Deed in favour of Defendant No.5 in respect of Item No.2 of the suit schedule properties. Accordingly, the Defendant No.5 is in possession of the said property. The Plaintiff had colluded with Defendants No.6 & 7 and filed this false suit. The only intention of the Plaintiff is to harass the Defendants No.1 to 5. To prove the contentions of the Defendants No.4 & 5, they have produced the documents such as Right Relinquishment Deed dated 09.10.1976, RTC extracts, Partition Deed dated 15.12.2017, mutation register, Gift Deed dated 05.10.2016, 03.02.2017 & 19.10.2011 & death certificate.

14. As per genealogical tree, the Plaintiff and Defendants are the joint family members. On perusal of Right Relinquishment Deed dated 09.01.1976, it reveals that, the Defendant No.6 and her mother have relinquished their right over the property bearing Sy.No.41, measuring to an extent of 6 acres 21 guntas in favour of husband of the Defendant No.1. The said transaction is also reflected in encumbrance certificate. The RTC extracts from the year



1976 to 1993 reflects that, the aforesaid property is standing in the name of Sri.Veerabhadraiah and pada. As per MR No.3/2003-04, the said property was mutated in the name of husband of the Defendant No.1. Accordingly, the RTC extract for the year 2011-12 demonstrates that, the said property is standing in the name of husband of the Defendant No.1.

15. On perusal of Partition Deed dated 15.12.2017, it reveals that, there was a partition between the Defendants No.1 to 5 in respect of Item No.1 of the suit schedule properties and accordingly, their respective shares were allotted. Based on the said partition, as per MR No.H4/2017-18, the RTC extracts for the year 2017-18 and 2024-25 reflects that, Item No.1 of the suit schedule properties are standing in the name of Defendants No.1 to 3. On perusal of Gift Deed dated 05.10.2016, it reflects that, the husband of the Defendant No.1 had gifted Item No.2 of the suit schedule properties in favour of Defendant No.5. Based on the said Gift Deed, as per MR No.H10/2016-17, the RTC extract for the year 2017-18 and 2024-25 reflects that, Item No.2 of the suit schedule properties is standing in the name of Defendant No.5.



16. With respect to Item No.3 of the suit schedule properties is concerned, the RTC extract from the year 1975 to 1990 reflects that, the said property is standing in the name of father of the Plaintiff and RTC extract from the year 1991 to 2002 reflects that, the said property is standing in the name of husband of the Defendant No.1. Further, on perusal of Gift Deed dated 03.02.2017, it reveals that, the husband of the Defendant No.1 had gifted the said property in favour of Defendant No.4. Based on the said Gift Deed, as per MR No.H3/2016-17, the said property was mutated in the name of Defendant No.4 and accordingly, the RTC extract for the year 2024-25 reflects that, the said property is standing in her name. As per death certificate, the husband of the Defendant No.1 died on 28.03.2017.

17. As discussed above, no doubt all the documents produced herewith are standing in the name of Defendants. But, the Plaintiff has contended that, the said documents are created by the Defendants. The said issue is a matter of trial and the same cannot be adjudicated at this stage. Therefore, by considering the nature of suit and also the relief sought in the application, this Court is of the opinion that, the very purpose of granting temporary injunction is to preserve the properties intact till the disposal of the suit. If



this application is not allowed, then it will lead to multifarious suit. Hence, in the interest of justice and equity and by considering the above reasons, this Court proceeds to answer Point No.1 in the “**Affirmative**”.

18. **POINT No.2 & 3:** In respect of balance of convenience and irreparable loss is concerned, if the Defendants are try to alienate the suit schedule properties, it will cause hardship and injustice to the Plaintiff and the same cannot be compensated in terms of money. If the Defendants are not restrained from alienating the suit schedule properties, the right of the Plaintiff over the suit schedule properties will be curtailed. With due respect, the decision relied by the Plaintiff is not applicable to the present case on hand, as the facts and circumstances are different. By considering all these reasons, the balance of convenience is in favor of the Plaintiff and if the Defendants alienate the suit schedule properties, irreparable loss will be caused to the Plaintiff. Hence, this Court proceeds to answer Point No.2 and 3 in the “**Affirmative**”.

19. **POINT No.4:** In view of the aforesaid reasons, this Court proceeds to pass the following:



O R D E R

IA No.I filed by the Plaintiff under Order XXXIX Rule 1 and 2 read with Sec.151 of C.P.C, restraining the Defendants their agents, servants, follower, henchmen, supporters or anybody acting on their behalf from alienating the suit schedule properties, is hereby allowed till the disposal of the suit.

No order as to cost.

(Dictated to the stenographer directly on computer, corrected, signed and then pronounced by me in Open Court on this 9th day of July, 2025)

**(Smt. Ranjitha G.B)
II Addl.Civil Judge & JMFC,
Magadi**

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