

KASM300000422026



**IN THE COURT OF PRL. SENIOR CIVIL JUDGE & JMFC,  
BHADRAVATHI**

Dated on this the 2<sup>nd</sup> day of May, 2026

**PRESENT:**                    **Sri. Raghavendra. D, B.Com., LL.B.,  
Prl. Sr. Civil Judge & JMFC,  
Bhadravathi.**

**O.S.No.3/2026**

**Plaintiffs**                    :    Sri.Noor Jahan & Smt.Mumtaj

**Vs.**

**Defendants**                    :    Sri.Fathima Bi and others

**PARTIES TO I.A.No.I**

**Applicant in IA/plaintiff**                    : Sri.Noor Jahan & Smt.Mumtaj

(By Adv., Sri.Shahraj Mujahid Siddiqi)

**Vs.**

**Opponents in IA/defendants** : Sri.Fathima Bi and others

(D.1: By Adv., Sri.R.V.Mohamed Ilyas)

(D.3 & 4: By Adv., Sri.T.Murthuza Ali)

(D.5: By Adv., Sri.M.Shiva Kumar)

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**ORDERS ON I.A.No.I**

The applicants/plaintiffs have filed an I.A.No.I under Order  
XXXIX Rule 1 & 2 r/w Section 151 of CPC praying to grant

permanent injunction restraining the defendants, their agents, servants or anyone claiming under them from interfering with their peaceful possession and enjoyment of their allotted portions, including harassing tenants or causing disturbance in any manner.

2. The application is accompanied by an affidavit sworn by plaintiff No.1 – Smt.Noor Jahan. The plaintiffs and defendant No.2 to 5 are children of defendant No.1 and Late Sri.M.U.Abdul Khadar. They are governed by Muslim Personal Law and they are entitled for  $7/80^{\text{th}}$  each share and defendant No.1 has  $1/8^{\text{th}}$  share and defendant No.2 to 5 are having  $7/40^{\text{th}}$  share each. Late Sri.M.U.Abdul Khadar during his life time purchased suit schedule property in the name of defendant No.1 under registered sale deed dated: 6.10.1971. Defendant No.1 is house wife, she is not having any source of income to purchase the property. There was a registered partition on 25.07.1998 between defendant No.1 and Late Sri.M.U.Abdul Khadar. Later, defendant No.1 and her husband – Sri.M.U.Abdul Khadar jointly executed a Will dated: 28.04.2011 by bequeathing suit property to their children. In the Will, suit B & C schedule property was allotted to plaintiff No.1 and suit D & E schedule property was allotted to plaintiff No.2 and they are peaceful possession in allotted property. They have also let out shop premises for rent. The defendants are trying to interfere into

their peaceful possession and enjoyment of suit property and also troubling the tenants. Hence, prays to allow the application.

3. The defendant No.1 filed objection by denying the affidavit averments. Further, it is stated that the suit schedule properties are her self-acquired property. The plaintiffs are not in physical possession or occupation of allotted property which was alleged to have been allotted to them as per registered Will dated: 28.04.2011. Defendant No.1 being the owner of suit schedule property, she is in possession, occupation and enjoyment of suit schedule properties from the date of purchase till the date of execution of gift deed dated: 27.01.2026 in respect of suit schedule properties in favour of defendant No.3 to 5. After execution of gift deed, khatha was also mutated in the name of defendant No.3, 4 and 5. Now, defendant No.3 to 5 are absolute owners of gift deed properties. The alleged partition deed dated: 25.07.1998 and alleged Will dated: 28.04.2011 are created by the plaintiffs. The plaintiffs are not in possession of the suit property, as such granting of injunction does not arise. Hence, prays to dismiss the application.

4. The defendant No.3 adopted objection filed by the defendant No.4 by filing memo. The defendant no.3 & 4 in their objection they have stated that the application filed by the plaintiffs are not maintainable. The suit schedule properties are self-acquired

properties of defendant No.1. Defendant No.1 being the absolute owner of suit schedule properties she has executed gift deed dated: 27.01.2026 in favour of defendant No.3 to 5. After execution of gift deed, khatha has been mutated in their favour. Suit schedule properties are self-acquired properties of defendant No.1, as such defendant No.1 executed gift deed in favour of defendant No.3, 4 & 5. The alleged partition deed dated: 25.07.1998 and alleged Will dated: 28.04.2011 are all created by the plaintiffs and also they are not in existence. The defendant No.1 is residing with defendant No.3 to 5 and they are looking after her with love and affection and she has executed gift deed in their favour. The plaintiffs and defendant No.2 are not in peaceful possession and enjoyment of I.A. schedule properties. The plaintiffs have not made out prima facie of the case and balance of convenience also not lies in favour of plaintiffs. Hence, prays to dismiss the application.

5. The defendant No.5 filed a memo praying to treat his written statement as objection to I.A.No.1. The defendant No.5 in his written statement he has contended that defendant No.1 gifted the suit schedule properties in favour of defendant No.3 to 5 under registered gift deed dated: 27.01.2026 and khatha was also changed in their names, now they are absolute owners of suit properties. The suit properties are self-acquired properties of defendant No.1, no

one has any right over the said properties and she has gifted the suit properties in favour of defendant No.3 to 5. The plaintiffs have created a fraudulent Will and partition deed and other documents. The plaintiffs are daughters of defendant No.1 and they are residing separately and they have totally neglected to look after the defendant No.1. The plaintiffs due to jealousy and grudge filed a false suit against defendant No.1, 3 to 5 colluding with defendant No.2. He is running shop styled as F.A.Garments in the donated property by investing his hard earned money. The plaintiffs are not at all having any right over the suit schedule properties. Hence, prays to dismiss the application.

6. I have heard arguments on both sides and perused the materials available on record.

7. Now the points that would arise for my consideration are:

- 1) Whether plaintiffs have made out a prima facie case to grant an ad-interim order of temporary injunction pending disposal of suit on merits?**
- 2) Where does the balance of convenience lies?**
- 3) Whether plaintiffs will be put to irreparable loss and injury if an order of temporary injunction as prayed for is not granted?**

**4) What order?**

8. My findings to the above points are as under:

**Point No.1 to 3: In the negative,**

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

for the following:

**REASONS**

9. **Point No.1 to 3:** - All these points are taken up together for discussion as they are interlinked each other in order to avoid repetition of facts and discussion.

The plaintiffs in their plaint and also in their affidavit they have stated that plaintiffs and defendant No.2 to 5 are children of defendant No.1 and Late Sri.M.U.Abdul Khadar and they are governed by Muslim Personal Law. The plaintiffs are entitled for  $7/80^{\text{th}}$  each share and defendant No.1 entitled for  $1/8^{\text{th}}$  share and defendant No.2 to 5 are entitled for  $7/40^{\text{th}}$  each share in the suit schedule properties. Further, it is stated that the suit schedule properties purchased in the name of defendant No.1 under registered sale deed dated: 6.10.1971 by Late Sri.M.U.Abdul Khadar and there was a partition between Late Sri.M.U.Abdul Khadar and 1<sup>st</sup> defendant under registered partition deed dated: 25.07.1998. Further, both defendant No.1 and Late Sri.Abdul Khadar jointly executed registered Will and under the registered Will suit B to E

schedule properties allotted to the plaintiffs and they have been in possession and enjoyment of properties allotted to them and they have been in possession and enjoyment of properties which allotted to them.

10. Per contra, the defendants have contended that the suit schedule properties are self-acquired properties of defendant No.1, she is having absolute right to dispossess her properties. Accordingly, she has executed gift deed in favour of defendant No.3 to 5, khatha has been also mutated in their names. Plaintiffs are not in possession and enjoyment of suit properties. The plaintiffs by creating alleged registered partition deed and registered Will, they have falsely claim their right over the suit properties.

11, On perusal of plaint and affidavit averments the plaintiffs are claiming their possession and enjoyment on the basis of alleged registered Will dated: 28.04.2011. The plaintiffs in order to prove prima facie of the case, they have produced form No.3 i.e., E-swathu issued by the City Municipality, Bhadravathi, property bearing No.13-3-4-38A. As per E-swathu suit property is standing in the name of 1<sup>st</sup> defendant – Smt.Fathima Bi. The plaintiffs have also produced certified copy of sale deed dated: 6.10.1971 to show that defendant No.1 purchased the suit properties from one Smt.Hucchamma and Sri.Hucchappa.

12. According to defendants, as per sale deed dated: 6.10.1971 suit properties are self-acquired properties of defendant No.1. According to plaintiffs, defendant No.1 is parada nashi woman, she has no independent source of income to purchase the properties, her husband Sri.M.U.Abdul Khadar purchased in the name of defendant No.1, as such it is not her absolute properties. At this stage this Court cannot give any finding on right and title of defendant No.1 on suit property and to arrive right conclusion it requires full pledged trial . As per sale deed dated: 6.10.1971 suit property was purchased by the 1<sup>st</sup> defendant.

13. Further, the plaintiffs have produced registered Will dated: 28.04.2011 said to be executed by Sri.M.U.Abdul Khadar and his wife – Smt.Fathima Bi i.e., 1<sup>st</sup> defendant. Now, on the basis of said Will the plaintiffs are claiming their right and possession over the property which was alleged to be allotted to them. The defendant No.1 is still alive. Under such circumstances, how can the plaintiffs claim their right on the basis of registered Will dated: 28.04.2011 during life time of defendant No.1.

14. The plaintiffs also produced death certificate of Sri.M.U.Abdul Khadar and Genealogy tree, there is no dispute regarding relationship of the parties. Further, the plaintiffs also produced license issued by the Municipality in the name of Sri.Ismail

to run shop in the suit premises and also they have produced rent agreement executed in favour of Sri.Ismail by one Sri.Nagabhushana and also produced photographs to show existence of the suit property. The plaintiffs also produced copy of partition deed dated: 27.05.1998 to show that their father and mother partitioned the properties.

15. The defendants have produced copy of gift deed dated: 27.01.2026 executed by defendant No.1 in favour of defendant No.3 to 5 and also they have produced E-swathu to show that suit properties are standing in the name of defendant No.3 to 5. In addition to these documents they have also produced copy of rent agreement to show that the defendant No.1 let out the suit premises for rent.

16. The plaintiffs filed an application under Order XXXIX Rule 1 & 2 of CPC praying to grant injunction by restraining the defendants from interfering with her peaceful possession and enjoyment of their allotted portion including harassing tenants or causing disturbance in any manner. As per I.A., she is seeking injunction with respect of property, which was alleged to be allotted to them under Will, but in the I.A., they have shown entire schedule property and seeking injunction with respect of entire building. So, on perusal of I.A. averments in one breath the plaintiff seeking

injunction with respect of alleged property allotted to them through registered Will and another breath seeking injunction to the entire property which is in the name of 1<sup>st</sup> defendant. As per documents placed by plaintiffs and defendants, suit property was in the name of 1<sup>st</sup> defendant and she has executed gift deed in favour of defendant No.2 to 5 during pendency of the suit. The plaintiffs claimed their possession on the basis of alleged registered Will. Said alleged registered Will not come in to force as defendant No.1 is still alive. Moreover the plaintiffs filed suit for partition. In a suit for partition, both plaintiffs and defendants are common in tenants.

17. So, the plaintiffs have not made out prima facie of the case. Further, on perusal of entire record placed by the plaintiffs before Court, there is no balance of convenience in favour of plaintiff. The plaintiffs before determining their rights over the suit property, they are claiming injunction against entire suit property against their own siblings and mother. If this Court granted injunction in favour of plaintiffs as prayed, great hardship, inconvenience and irreparable loss will cause to the defendants then compared to the plaintiffs. Hence, **I answered point No.1 to 3 in the negative.**

18. **Point No.4:** - In view of the reasons assigned above, I proceed to pass the following:

**ORDER**

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

**No order as to costs.**

(Dictated to the Stenographer, typed by her, corrected and then pronounced by me in the open court on this the **2<sup>nd</sup> day of May, 2026**)

**(Raghavendara.D)  
Prl. Sr. Civil Judge & JMFC,  
Bhadravathi.**