

KASM610008802016



***IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND
J.M.F.C., SAGAR.***

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Prl. Senior Civil Judge & J.M.F.C.,
Sagar.

Dated, this the 31st day of January, 2026.

O.S.No. 57/2016.

Plaintiff/s :

1. Dr. Shivananda
S/o Ganapathi Bhatta,
Dead by Lrs.,

1a) Malathi Shivananda
W/o Shivananda,
a/a 63 years,

1b) Rashmi d/o Shivananda,
Major,

1c) Roopa d/o Shivananda,
Major,

*All are residents of
Manipal,
Udupi district.*

**(By Sh. Santosh Kumar S.,
Advocate)**

-V/s-

Defendant/s :

*1. Ramabhatta
Dead by Lrs.,*

*a) Umesh Bhat s/o Rambhat, a/a 50
years,*

*b) Smt. Seethamma w/o Rambhat,
Major,*

c) Sulochana d/o Rambhat, Major,

d) Premakala d/o Rambhat, Major,

e) Gopalakrishna s/o Rambhat,

*f) Bharathi d/o Rambhat,
Major,*

*1(a) to 1(f) are residents of
Padavagodu village,
Sagar taluk.*

2. P.G. Suryanarayana Bhat

*S/o P. Ganapathi Bhat, Major,
Resident of No. ALF.-3/3,
SFHS, Pathway road,
Nandini Layout,
Bengaluru-66.*

*3. Smt. Suvarna
W/o Vishnu Hegade, Major,
Resident of Kalmakki,
Sasaravalli post, Sagar taluk.*

*4. Smt. Sunanda
W/o Jagadisha N. Major,
Resident of Karnataka Rice Mill,
Market Road, Sagar town.*

*(D1(a) to (f)), by **Sh. K.H.Sudarshana**,
Advocate,
D2 by **Sh. M.S.Gowdar**, Advocate,
D3 by **Sh. B.Puttaraja Gowda**, Advocate,
D4 by **Sh. T.S.Ramana**, Advocate,)*

PARTIES TO I.A. XIV

*Applicant/
Defendant no.1(a) : Umesha Bhatta.*

-V/s-

*Opponents/
Defendant no.2 : P.G.Suryanarayana Bhatta.*

ORDERS

The present suit is one for partition and separate possession, wherein the plaintiff claims that the suit schedule properties are joint family properties and seeks allotment of his share by metes and bounds. During the pendency of the suit, Defendant No.1, who is one of the co-defendants, has filed the present interlocutory application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking to restrain Defendant No.2, from interfering with agricultural operations and removal of arecanut crops in respect of certain agricultural lands described in the application schedule.

The interlocutory dispute, therefore, is not between the plaintiff and the defendants, but inter-se between co-defendants, and is founded primarily on the plea of an alleged oral partition (jubani hissa) said to have taken place on 07-07-2007.

B. Pleadings in the plaint:

2. In the plaint, the plaintiff has categorically pleaded that, the suit schedule properties are joint family

properties belonging to the family of late Ganapathi Bhatta and his brother Rama Bhatta. It is specifically asserted that there has been no partition by metes and bounds among the members of the joint family till the filing of the suit. The plaintiff has pleaded joint possession and enjoyment of the agricultural lands and has instituted the suit seeking partition and separate possession.

2.1 The plaintiff has made a limited reference to an earlier oral understanding of the year 1985, stated to have been between Ganapathi Bhatta and Rama Bhatta, but it is clearly pleaded that the said understanding was not acted upon and did not culminate in a final partition binding on the successors. Significantly, the plaint does not plead any oral partition of the year 2007, nor does it support the case set up by Defendant No.1 regarding a zubani hissa dated 07-07-2007.

C. Pleadings of Defendant No.1:

3. Defendant No.1, in his written statement, has set up a

case that a family arrangement / oral partition took place on 07-07-2007 in the presence of elders and panchas, under which the joint family properties were divided into equal portions and specific agricultural lands fell to his share. It is his assertion that since the said date, he has been in exclusive possession and enjoyment of those lands and has been carrying out agricultural activities independently.

3.1 On the strength of this plea, Defendant No.1 claims a right to protect his alleged exclusive possession through the present application for temporary injunction.

D. Pleadings of Defendant No.2:

4. Defendant No.2 has taken a consistent and categorical stand that, there was no such oral partition of 07-07-2007 as alleged by Defendant No.1. It is pleaded that the suit schedule properties continue to be joint and undivided and that no partition by metes and bounds has taken place. Defendant No.2 has specifically denied that the alleged oral partition was acted upon or that it resulted in exclusive possession of any defined portion in

favour of Defendant No.1.

4.1 Thus, the very existence, genuineness and effect of the alleged jubani hissa of 2007 is a seriously contested issue.

E. Pleadings in the interlocutory application.

5. In the interlocutory application, Defendant No.1 reiterates his plea that, under the jubani Hissa dated 07-07-2007, the application schedule lands fell to his share and that Defendant No.2 is illegally interfering with cultivation and removal of arecanut crops. It is further contended that Defendant No.2 has himself admitted the fact of partition in another suit, namely O.S. No.259/2025 on the file of the Principal Civil Judge and JMFC, Sagar, filed for permanent injunction, and therefore Defendant No.2 cannot now resile from the said admission.

F. Objections and rival submissions.

6. Defendant No.2, opposing the application, has submitted that, the alleged oral partition of 2007 is a

complete fabrication and that the so-called partition document relied upon by Defendant No.1 has been written on a white paper and not registered and thus legally inadmissible piece of evidence. It is contended that such material is inadmissible in evidence and cannot be looked into even prima-facie at the interlocutory stage.

6.1 It is further contended that, the alleged admission in O.S. No.259/2025 does not relate to any partition of 2007 and, in any event, cannot be construed as an admission conferring exclusive rights on Defendant No.1 in the present suit.

G. Arguments of the Ld.Counsel for Defendant No.1 (Applicant)

7. The Ld. Counsel for Defendant No.1 submits that, the agricultural lands described in the application schedule fell to the exclusive share of Defendant No.1 under a family arrangement / oral partition (jubani hissa) dated 07-07-2007, arrived at in the presence of elders and

panchas. It is contended that pursuant to the said partition, Defendant No.1 has been in exclusive possession and enjoyment of the said lands and has been carrying out agricultural operations, including cultivation of arecanut crops, for several years.

7.1 It is argued that the said partition has been acted upon, and revenue entries and long-standing possession demonstrate that the family arrangement was given effect to. The Ld. Counsel submits that a family arrangement does not require registration, and even an oral partition, if acted upon, is valid and binding.

7.2 The Ld. Counsel further contends that, Defendant No.2 has admitted the fact of partition in O.S.No.259/2025 filed before the Principal Civil Judge and JMFC, Sagar, and therefore Defendant No.2 is estopped from denying the partition in the present proceedings. It is argued that admissions made in judicial proceedings are substantive evidence and can be relied upon even at the interlocutory stage.

7.3 It is further submitted that arecanut is a seasonal crop, and interference at the time of harvesting would cause irreparable loss which cannot be compensated in terms of money. Hence, the balance of convenience lies in favour of Defendant No.1.

*7.4 In support of these submissions, reliance is placed on the principle laid down in **Kale and Others v. Deputy Director of Consolidation, AIR 1976 SC 807**, to contend that, family arrangements are to be given effect to and should be upheld to maintain peace in the family. Reliance is also placed on **Rame Gowda v. M. Varadappa Naidu, (2004) 1 SCC 769**, to submit that settled possession, even if disputed, deserves protection.*

7.5 Accordingly, it is prayed that Defendant No.2 be restrained from interfering with agricultural operations and removal of arecanut crops pending disposal of the suit.

H. Arguments of the Ld. Counsel for Defendant No.2
(Respondent)

8. Per contra, the Ld. Counsel for Defendant No.2 submits that, the entire application is founded on a seriously disputed and unproved plea of an oral partition of the year 2007, which is categorically denied. It is argued that neither the plaintiff nor Defendant No.2 has admitted any such jubani hissa of 2007, and therefore the very foundation of the application is shaky.

8.1 It is submitted that, the plaintiff has pleaded only an oral understanding of the year 1985 between Ganapathi Bhatta and Rama Bhatta and has specifically stated that the same was not acted upon. The plaint nowhere supports the case of Defendant No.1 regarding a partition of 2007. Hence, Defendant No.1 cannot rely upon selective pleadings or alleged admissions of Defendant No.2 to claim exclusive possession.

8.2 The Ld. Counsel further argues that, the alleged document relied upon by Defendant No.1 showing a jubani hissa has been uploaded on a website and is

neither an original document nor secondary evidence admissible under the Indian Evidence Act. Such material is inadmissible in evidence and cannot be looked into even prima-facie while deciding an application under Order XXXIX Rules 1 and 2 CPC.

8.3 It is further contended that the so-called admission in O.S. No.259/2025 does not amount to an unequivocal admission of a binding oral partition of 2007. An admission, to bind a party, must be clear, specific and unambiguous. At best, the alleged statements relate to possession disputes and cannot confer exclusive rights in a partition suit.

8.4 The Ld. Counsel submits that in a suit for partition, where the very question of partition is in dispute, no co-sharer can seek injunction against another co-sharer by asserting exclusive possession. Granting injunction would amount to prejudging the main issue and recognising exclusive rights without trial.

*8.5 Reliance is placed on **Anathula Sudhakar v. P.***

Buchi Reddy, (2008) 4 SCC 594, to submit that where title or partition is in serious dispute, injunction cannot be granted without adjudication. Reliance is also placed on ***Premji Ratansey Shah v. Union of India, (1994) 5 SCC 547***, to contend that injunction is an equitable relief and cannot be granted where the right itself is doubtful.

8.6 It is further argued that any alleged agricultural loss is compensable and equities can be adjusted at the stage of final decree. Therefore, no irreparable injury is made out.

8.7 Accordingly, the Ld. Counsel prays for dismissal of the application.

I. Points for consideration

9. The questions that arise for consideration are whether Defendant No.1 has established a prima-facie case for grant of injunction, whether the balance of convenience lies in his favour, and whether irreparable injury would be caused if injunction is refused.

J. DISCUSSION AND FINDINGS

10. *At the outset, it is to be noted that the present interlocutory application is filed by one co-defendant against another co-defendant, and therefore this Court is required to be circumspect and examine whether the grant of interim relief would indirectly adjudicate disputed inter se rights which are otherwise required to be decided only at the stage of trial.*

11. *The application filed by Defendant No.1 seeks an order of temporary injunction on the premise that an oral partition (jubani hissa) dated 07-07-2007 had taken place and that the agricultural lands described in the application schedule exclusively fell to his share. The Ld. Counsel for Defendant No.1 has placed strong reliance on the concept of family arrangement and has contended that such arrangements do not require registration and, once acted upon, deserve protection. Reliance has been placed on the decision of the Hon'ble Supreme Court in **Kale and Others v. Deputy Director of Consolidation, AIR 1976 SC 807.***

12. There can be no quarrel with the settled proposition of law that a bona-fide family arrangement, even if oral, may be recognised by courts if it is voluntary, intended to resolve family disputes and has been acted upon. However, the same decision also makes it clear that the existence of such a family arrangement and the factum of it having been acted upon must be clearly established. In the present case, the very existence of the alleged oral partition of 07-07-2007 is seriously disputed. The plaintiff, who is the dominus litis, has not pleaded any such partition of the year 2007. On the contrary, the plaint refers only to an oral understanding of the year 1985 between Ganapathi Bhatta and Rama Bhatta and specifically states that the said understanding was not acted upon. Therefore, the pleadings of the plaintiff do not support the case set up by Defendant No.1 regarding a jubani hissa of 2007.

13. The Ld. Counsel for Defendant No.1 has further contended that, Defendant No.2 has himself admitted the fact of partition in O.S.No.259/2025 filed for permanent

*injunction and that such admission binds him. This argument, though attractive at first blush, does not withstand closer scrutiny. An admission, to be binding and conclusive, must be clear, unequivocal and directly referable to the fact in issue. The alleged admission relied upon is from a different proceeding arising out of a different cause of action and pertains to possession-related disputes. It does not constitute a clear or unambiguous admission of a binding oral partition of the year 2007 as alleged by Defendant No.1. As held by the Hon'ble Supreme Court in **Nagubai Ammal v. B. Shama Rao, AIR 1956 SC 593**, admissions must be read as a whole and cannot be torn out of context to suit the convenience of a party. Hence, the alleged admission of Defendant No.2 is of no assistance to Defendant No.1 at this interlocutory stage.*

14. Another important aspect highlighted by the Ld. Counsel for Defendant No.2 relates to the nature of the so-called jubani hissa relied upon by Defendant No.1. It is admitted that the alleged jubani hissa has been reduced

into writing on plain (white) paper and is not a registered document. Once an alleged oral partition is reduced into writing and the document itself purports to evidence partition of immovable properties, such document attracts compulsory registration under Section 17(1)(b) of the Registration Act, 1908. In view of Section 49 of the Registration Act, an unregistered document required to be registered is inadmissible in evidence for the purpose of proving partition, title or exclusive possession.

*15. The Hon'ble Supreme Court in **Roshan Singh v. Zile Singh, AIR 1988 SC 881**, has categorically held that where the terms of partition are reduced into writing and the document itself is intended to be the evidence of partition, registration is mandatory and, in the absence of registration, such document cannot be relied upon. In **S.Kaladevi v. V.R. Somasundaram, (2010) 5 SCC 401**, the Hon'ble Supreme Court has reiterated that an unregistered document which is compulsorily registrable cannot be relied upon to prove title or partition. In the*

present case, the alleged jubani hissa, being an unregistered writing on plain paper, does not have any evidentiary value and cannot be looked into even for a prima facie assessment. Granting a temporary injunction on the basis of such an inadmissible and unenforceable document would amount to legal impropriety and premature recognition of disputed rights, which is impermissible at the interlocutory stage.

*16. The Ld. Counsel for Defendant No.1 has further relied upon the principle that settled possession deserves protection, placing reliance on **Rame Gowda v. M. Varadappa Naidu, (2004) 1 SCC 769**. However, the said decision also clarifies that protection of possession is available where possession is peaceful, lawful and not seriously disputed. In the present case, the possession claimed by Defendant No.1 flows directly from the alleged oral partition of 2007, which itself is under serious challenge. Therefore, the doctrine of settled possession cannot be invoked to bypass the requirement of proving partition.*

17. On the other hand, the Ld. Counsel for Defendant No.2 has rightly relied upon the decision of the Hon'ble Supreme Court in **Anathula Sudhakar v. P. Buchi Reddy, (2008) 4 SCC 594**, wherein it has been held that where the title or right itself is in serious dispute and requires adjudication, the court should not grant injunction without deciding such rights. The present suit being one for partition, the core issue is whether and when partition took place. Granting injunction on the assumption that partition has already occurred would amount to pre-judging the main issue in the suit.

18. Further, as held in **Premji Ratansey Shah v. Union of India, (1994) 5 SCC 547**, injunction is an equitable relief and cannot be granted when the right asserted is doubtful or disputed. Equity follows the law and cannot be invoked to confer exclusive rights on one co-sharer to the detriment of another in the absence of proof.

19. It is also well settled that in a suit for partition, until partition by metes and bounds is proved, every co-sharer has a right in every inch of the joint property. An

injunction restraining one co-sharer at the instance of another can be granted only when exclusive possession pursuant to a proved partition is established. In the present case, such exclusive possession is claimed solely on the basis of a disputed and unproved oral partition of the year 2007. The alleged oral partition of the year 2007, the plea of it having been acted upon, and the nature of possession are mixed questions of fact and law. Such issues cannot be decided on affidavits and require oral and documentary evidence to be tested in cross-examination.

20. As regards the plea of irreparable injury due to alleged interference in agricultural operations, this Court is of the considered view that such loss, if any, is compensable and equities can always be worked out at the stage of final decree proceedings. On the contrary, granting injunction at this stage would cause greater prejudice by prematurely recognising exclusive rights.

21. Accordingly, this Court holds that the applicant has failed to satisfy the three essential ingredients required

for grant of temporary injunction, namely prima-facie case, balance of convenience and irreparable injury. Consequently, the discretionary equitable relief under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure cannot be granted.

22. As a sequel of the above discussions, I proceed to pass the following;-

ORDER

The Interlocutory Application No.14 filed by Defendant No.1 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking an order of temporary injunction against Defendant No.2, is hereby DISMISSED.

It is clarified that the observations made in this order are confined only to the disposal of the interlocutory application and shall not influence the final adjudication of the suit on merits.

The parties shall establish their respective rights, including the plea of partition (Jubani Hissa), if any, only by leading oral and documentary evidence during the course of trial.

No order as to cost in view of the relationship between the parties.

Put up for Defendants evidence on 09.02.2026.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 31st day of January, 2026.)

*(NATARAJ YADAV.S)
Prl. Senior Civil Judge & J.M.F.C
Sagar.*