

**IN THE COURT OF I ADDITIONAL SENIOR CIVIL JUDGE
AND JUDICIAL MAGISTRATE OF FIRST CLASS, SAGARA**

PRESENT

SMT. DEEPA.K.R, B.A.L, LL.B,
I ADDITIONAL SENIOR CIVIL JUDGE AND JUDICIAL
MAGISTRATE OF FIRST CLASS, SAGARA.

DATED THIS THE 26th DAY OF MARCH, 2026

ORIGINAL SUIT NO.32/2025

Plaintiff :

1. **Sri. Sreekantha S.M**
S/o. Sri. Hosad Mahabaleshwara
Aged about 62 years,
R/at. Near DySP office
New B.H. Road, Sagara City,
Sagara Taluk,
Shivamogga District.

(By Sri. K.S.A.R, Advocate)

-V/s.-

Defendant :

1. **Sri. Gajanana Mahabaleshwara**
S/o. Sri. Hosad Mahabaleshwara
Aged about 66 years,
R/at. No.44, 8th Cross, 1st Main, 1
phase, Near H.P. Gas Godown,
Vasanthavallabha Nagar,
Vasanapura, Bengaluru City
PIN : 560061.

By Sri. T.S.R., Advocate,)

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PARTIES TO I.A.NO.I

**Applicant-
Plaintiff:**

1. **Sri. Sreekantha S.M**
S/o. Sri. Hosad Mahabaleshwara

-V/s.-

**Opponent-
Defendants:**

1. **Sri. Gajanana Mahabaleshwara**
S/o. Sri. Hosad Mahabaleshwara

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ORDERS ON I.A.NO.I

1. The plaintiff has filed I.A.No.I under Order XXXIX, Rule 1 and 2 of the Code of Civil Procedure, 1908 (it is hereinafter will be referred to as “the C.P.C”), seeking for an order of temporary injunction by restraining the defendants from encumbering or selling the I.A schedule properties in any manner, till the disposal of the suit.

2. The facts of the I.A filed by the plaintiff, are as under:-

He and the defendant and one Shreemathi are the brothers and sister. His father by name Sri. Hosad Mahabaleswara was 'kartha' of the family. The suit A schedule item No.1 property was originally belonging to his father and defendant. The suit A schedule Item No.2 property was belonging to his mother and defendant. During his lifetime of his father he was looking after the family and joint family properties. After the death of his father and mother, his brother i.e., the defendant and his sister Shreemathi are looking after the joint family and joint family properties and his sister have executed relinquishment deed on 09.12.2014, relinquishing her right over the suit schedule properties in her favour. It is further averred that, the plaintiff have a share in the suit schedule properties. The deceased father and mother of the plaintiff have not left behind

them any Will or other testamentary deeds bequeathing their interest in the suit schedule properties to any body. It is further averred that, he and defendant are in joint possession of suit schedule properties and no partition has taken place between them. Therefore the plaintiff demanded to the defendant to give his share in the suit schedule properties but the defendant did allot the share of the plaintiff.

- 3.** It is further averred that, the defendant is trying to sell the suit schedule properties with an intention to curtail his right over the I.A suit schedule properties, is intending to sell the same. In the event, the defendant succeeds in his mission he will be put to a loss and injury and further there will be a multiplicity of proceedings. Prima-faice he has all chances of success in the suit. The balance of convenience is in his favour. If the injunction is not granted an irreparable loss will cost to him, which cannot be estimated in terms of money.

- 4.** The learned advocate for the defendant Sri. T.S.R filed memo to treat written statement considered as objection to the present I.A.
- 5.** Defendant in his objections has admitted the relationship between the parties. It is specifically contended that, the item no.1 of 'A' Schedule had belonged o the father of the defendant and Item No.2 of 'A' Schedule had belonged to the mother of the defendant. The father and mother of the defendant died intestate and sister of the plaintiff by name Srimathi has relinquished her right over the suit properties by executing a registered relinquishment deed on 09.12.2014 and also defendant has a share and in joint possession of the suit properties.
- 6.** Further submitted that the front portion of the suit properties were acquired by the national highway authorities for widening the B.H road and a compensation amount of Rs.18,85,23/- was received by the defendant. The plaintiff has received an

amount of Rs.21,83,954/- as compensation from the national highway authorities. Out of the difference amount of compensation received by the plaintiff and the defendant the plaintiff is liable to pay a sum of Rs.1,49,366/- to the defendant.

- 7.** Further he submitted that as per the oral understanding between the plaintiff and the defendant , the middle two portions of the house property at item No.1 of A schedule was in occupation of this defendant. The defendant had furnished the two portions which was in his occupation. But in the year 2008 defendant moved to Bengaluru for a jot along with his mother for her medical treatment. Thereafter the plaintiff without informing the defendant, used the two portions which are in possessing of the defendant and thereby caused a monetary loss of Rs.26,00,000/- and compensate the same to the defendant.

- 8.** Further he submitted that the earlier extreme left portion of the house property at item No.1 of A schedule was let out for rent since 2008 and the plaintiff has received the rent which is not accounted for till today. Thus the rent received by the plaintiff may be around Rs.7,00,000/- out of which the defendant is entitled for $\frac{1}{2}$ of it. Till today the plaintiff has not paid the said amount to the defendant and the plaintiff is liable to pay of Rs.3,50,000/- to the defendant out of the amount of rent received by him.
- 9.** Further he submitted that the defendant has maintained protected and taken care of the parents till their last breath and the defendant had incurred all the medical expenses of the parents. The plaintiff has not taken care of the parents during their life time. The defendant has spent about Rs.17,00,000/- for the treatment of the parents and the plaintiffs is liable to pay around Rs.8,50,000/- to the defendant. Thus the plaintiff without discharging the moral and legal responsibilities has filed this unrighteous suit

without disclosing the material facts. Hence, prays to dismiss the present I.A.

10. I have heard arguments on both sides and perused the materials placed on record.

11. The point that would arise for my consideration are as under:-

- (1) Whether the applicant-plaintiff has made out a prima-facie case for grant of temporary injunction?
- (2) Whether the applicant-plaintiff proves that, the balance of convenience lies in his favour?
- (3) Whether the applicant-plaintiff proves that, irreparable loss and injury will be caused to him, if an order of temporary injunction is not granted?
- (4) What Order?

12. My 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 final Order, for the following;

REASONS**13. POINT NO.1 TO 3:-**

As these points are interconnected with each other, hence, in order to avoid repetition of facts, these points are taken for common discussion.

14. At the stage of deciding an application under Order XXXIX, Rule 1 and 2 of the C.P.C, the Court cannot embark upon a trial as to the veracity or otherwise of the allegations and counter allegations made. Therefore, firstly the Court have to see, whether the applicant has made out a prima-facie case, whether the balance of convenience lies in his favour and whether any irreparable loss and injury would be caused in the event of an injunction not being granted.

15. The plaintiff at this stage has produced 2 computerized copies of From No.3 and photo Copy of relinquishment deed dated 09.12.2014.

- 16.** The defendant at this stage has not produced any documents on their behalf.
- 17.** The first principle as regards deciding an application for temporary injunction is that, the Court cannot hold a roving enquiry into the various allegations and counter allegations and documents produced by both the parties. It is the contention of the plaintiff that, the I.A schedule properties are the joint family property of plaintiff and defendant and as such he is having share in the suit schedule properties. Per contra, it is the contention of the defendant that, the plaintiff is not entitled to any share in the I.A. Schedule properties. Hence, at this stage it can be held that, once the plaintiff raises triable issue he is entitled to grant of temporary injunction. In this regard, I am supported by the judgment of our **Hon'ble High Court of Karnataka**, in a case of **L.Shivalingaiah -V/s.- Panchajanya Vidhya Peeta**, reported in **2005(5) KLJ 625**, wherein the Lordship's have held as under:-

“It is a well-settled proposition of law that grant of an injunction is a matter of judicial discretion and the party seeking such relief will have to establish (a) a prima facie case; (b) balance of convenience in his favour; and (c) he would suffer an irreparable injury, if his prayer for Temporary Injunction is disallowed. This is a sine qua non. Even if a case is made out to bring the case within the ambit of a “triable case”, the relief of injunction has to be granted. Therefore, we will have to see as to whether the Appellant has made out a “Triable case”.

Therefore, I answer **Point No.1 in the Affirmative.**

18. POINT NO.2 AND 3:-

As these points are interconnected with each other, hence in order to avoid repetition of facts, these points are taken for common discussion.

- 19.** So far as Point No.1 is concerned, Court has to take into note that, in whose favour balance of convenience lies. So far as Point No.3 is concerned, it pertains to the plaintiff proving that, he would suffer irreparable loss or injury, if injunction were not to be granted. Further, the plaintiff is seeking the relief of

restrain from alienation of I.A schedule properties and as such Court feels defendant will not suffer any hardship, if the injunction is granted. On the other hand, it is the plaintiff who will be put to irreparable loss. Hence, the balance of convenience lies in favour of plaintiff. As the suit is filed for the relief of partition, if injunction is not granted, it may lead to multiplicity of proceeding.

20. In view of the above discussion, as at this juncture the balance of convenience is in favour of plaintiff and as the plaintiff will be put to irreparable loss, if injunction is not granted. Hence, I answer **Point No.2 and 3 in the Affirmative.**

21. POINT NO.4:-

In view of my findings to the above Point no.1 to 3, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX, Rule 1 and 2 of the Code of Civil

Procedure, 1908, is hereby allowed.

The defendant, hereby restrained from alienating the I.A schedule properties in any way till the disposal of the suit.

No order as to costs.

(Dictated to the Stenographer Grade-III through computer, corrected, signed and then pronounced by me in the Open Court on this the 26th day of March, 2026)

(Smt. Deepa.K.R)
I Additional Senior Civil Judge and
Judicial Magistrate of First Class,
Sagara.

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