

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
JMFC., AT SORABA**

Present: Sri.Raju K Shedbalkar,
(B.Com.,LL.B.),
C/C Addl. Civil Judge & JMFC., Soraba.

Dated this the 13th day of June, 2025

O.S.No.58/2020

Plaintiff : Drakshayani @ Sumitramma W/o
Sureshappa Somanahalli,
Aged about 50 years,
R/o Yattinahalli (M.K) village & Post,
Hirekeruru Taluk, Haveri District.

(By Sri. M.D- Adv.)

V/s.

Defendants : 1. Suvarnamma W/o Shivanagowda,
Aged about 80 years,
2. Ganesha S/o Shivanagowda,
Aged about 35 years,
3. Geeta D/o Shivanagowda,
W/o Jagadeeshappa,
Aged about 32 years,
R/o Dwarahalli village,
Anavatti Hobli, Soraba Taluk.
4. Basamma W/o Somanagowda,
Aged about 56 years,
5. Basavanagowda @ Basavaraja S/o
Shivanagowda,
Aged about 54 years,
1 to 5 are R/o Chikjamburu village,
Kuppagadde Hobli, Soraba Taluk.
6. Kusuma W/o Jayappa Havalal,
Aged about 56 years,

R/o Mallenahalli village,
Shikaripura Taluk.

7. Girijamma W/o Basanagowda,
Aged about 52 years,
R/o Chikjamburu village,
Kuppagadde Hobli, Soraba Taluk.

(D1 to 3 by Sri. O.S- Adv.)
(D5 by Sri. HBI- Adv.)
(D4, 6, 7 Ex-parte)

ORDER ON I.A.No. VI

Opponents : Drakshayani @ Sumitramma W/o
Sureshappa Somanahalli,
Aged about 50 years,
R/o Yattinahalli (M.K) village & Post,
Hirekeruru Taluk, Haveri District.

(By Sri. M.D- Adv.)

V/s.

Applicants : 1. Ganesha S/o Shivanagowda,
Aged about 39 years,
Occ: Agriculturist.

2. Basamma W/o Somanagowda,
Aged about 60 years,
Occ: Agriculturist.

3. Basavanagowda @ Basavaraja S/o
Shivanagowda,
Aged about 58 years,

All are R/o Chikjamburu village,
Kuppagadde Hobli, Soraba Taluk.

(D1 to 3 by Sri. O.S- Adv.)
(D5 by Sri. HBI- Adv.)
(D4, 6, 7 Ex-parte)

ORDER ON I.A.No.VI FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 OF Code Of Civil
Procedure.

The present application filed by the plaintiff U/o XXXIX Rule 1 and 2 of Code Of Civil Procedure for seeking the relief of order of temporary injunction in favour of plaintiff and thereby temporarily restraining the defendant No.2, 4 and 5, their family members, agents, servants and others acting on behalf of them from alienating, exchange or encumbering the suit schedule properties till disposal of the suit.

2. The plaintiff sworn to an affidavit in support of the application wherein she has stated that she has filed the present suit for the relief of partition and separate possession against the defendants the present suit for the relief of partition and separate possession against the defendants in respect of suit schedule properties. Further it is stated that the present suit is set down for cross of PW.1. Further the father of the plaintiff and defendants by name Shivanagowda was died on 18.08.2010 the suit schedule properties is belongs to him. Further after the death of the father by name Shivanagowda. The defendants No.2, 4 and 5 colluding with the Revenue officers enter their name in the Revenue records and based on the said revenue documents they are trying to alienate, exchange or encumbering the suit schedule property. Further in the present case, the defendant No.2, 4 and 5 appeared but not filed Written Statement on their behalf. If the defendants succeeded to alienate the suit schedule property then the plaintiff will be put hardship. It is also stated that the plaintiff

has made out prima-facie case, balance of convenience leans in her favour and if the equitable relief of temporary injunction is not granted in favour of the plaintiff then she will be put to irreparable loss and hardship. With these averments, the plaintiff has sought for allowing I.A.No.VI.

3. The defendant No.2, 4 and 5 appeared but not filed objection to this application.

4. Heard the arguments of the learned counsels appearing for parties on perused the materials available on record.

5. The following points arise for the consideration of the court:-

POINTS

1. Whether the Plaintiff has made out a prima-facie case for grant of temporary injunction as sought for?
 2. Whether balance of convenience lies in favour of the Plaintiff?
 3. Whether the plaintiff will be put irreparable loss and hardship if I.A.No.VI is not allowed?
 4. What order?
6. The findings on the above points are as hereunder:
- | | |
|--------------|---|
| 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

7. **Point No.1:-** At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

8. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

9. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

10. The first rule is that the applicant must make out a prima-facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

11. It is a case of the plaintiff that the suit schedule properties are the ancestral and joint family properties and the suit schedule properties originally belongs to the father of the plaintiff by name Shivanagowda. During the pendency of the suit the defendant No.2, 4 and 5 colluding with the Revenue officers got managed to enter their names in the revenue records and trying to alienate the suit schedule property. Hence, the plaintiff file the present application to restrain the defendant No.2, 4 and 5 for alienation, exchange or encumbering the suit schedule property till disposal of the suit.

12. Per contra, the defendant No.2 filed written statement and contended that the plaintiff, defendant No.4 to 7 are the

children of 1st wife of Shivanagowda and defendant No.2 and 3 are the children of 2nd wife of Shivanagowda. Further it is contended that the suit schedule properties are granted land and self acquired property of Shivanagowda. Hence, the plaintiff is not entitled any share in the suit schedule properties.

13. This court has carefully perused the materials available on record in order to ascertain whether plaintiff has made out prima-facie case for grant of temporary injunction as sought for. Admittedly, the plaintiff got examined as PW.1 and marked Ex.P.1 to Ex.P.10 the documents produced by the plaintiff the RTC extract in respect of suit schedule property and house property and mutation entrees where it appears that earlier the properties stands in the name of Shivanagowda. Thereafter, it is changed the name of the some of the defendants.

14. This court has considered the nature of the suit and the relief sought under on IA No.VI. Under IA.No.VI, the plaintiff has sought for the relief of temporary injunction defendant No.2, 4 and 5 alienating the properties till disposal of the suit. The plaintiff prim-faciely establishes that and admission in Written Statement the suit schedule properties originally belongs to the Shivanagowda as per Land Tribunal order. Whether these properties are self-acquired properties of the said deceased Shivanagowda will be determined at the later stage. After considering the materials on record, this court is of the opinion that the plaintiff has made out

prima-facie case for grant of temporary injunction as sought for. With these observations, this court has answered **Point No.1** in the **Affirmative**.

15. **POINT No's.2 and 3:-** The plaintiff has sought for the relief of temporary injunction and thereby temporarily restrained the defendant No.2, 4 and 5 from alienating the suit schedule property till disposal of the suit. The important aspect to be noted is that if the temporary injunction is not granted in favour of the plaintiff and thereby temporarily restrained the defendant No.2, 4 and 5 from alienating, exchange or encumbering the suit schedule properties in favour of the third persons during the pendency of the suit and if the defendant No.2, 4 and 5 alienate the suit schedule property in favour of third person, then it will lead to multiplicity of proceedings and in turn it will be difficult for this court to adjudicate the dispute between the parties. Hence in order to protect the interest of parties and also the properties, it is just and necessary to temporarily restrain the defendant No.2, 4 and 5 from alienating the suit schedule properties till the disposal of the suit. After considering all these aspects this court is of the opinion that balance of convenience lies in favour of plaintiff and if the temporary injunction is not granted in her favour, then she will be put to irreparable loss and hardship. With these observations, this court has answered **Point No.2 and 3** in the **Affirmative**.

16. **Point No.4**: In view of the discussion made under the point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.VI filed by the learned counsel for the plaintiff U/O XXXIX Rule 1 and 2 of Code Of Civil Procedure is hereby allowed.

By way of granting temporary injunction in favour of plaintiff, defendant No.2, 4 and 5, their family members, agents, servants and others acting on behalf of defendant No. 2, 4 and 5 are hereby temporarily restrained from alienating, exchange or encumbering the suit schedule properties till disposal of the suit.

No Order as to cost.

(Dictated to the Stenographer, typed and print out taken by her, corrected and pronounced by me in the open court on this the 13th day of June, 2025)

(RAJU K SHEDBALKAR)
C/C Addl. Civil Judge & JMFC.,
Soraba.

(Order pronounced open Court vide
separate order)

ORDER

I.A.No.VI filed by the learned
counsel for the plaintiff U/O XXXIX
Rule 1 and 2 of Code Of Civil
Procedure is hereby allowed.

By way of granting temporary
injunction in favour of plaintiff,
defendant No.2, 4 and 5, their family
members, agents, servants and
others acting on behalf of defendant
No. 2, 4 and 5 are hereby temporarily
restrained from alienating, exchange
or encumbering the suit schedule
properties till disposal of the suit.

No Order as to cost.

For cross of PW.1

Call on 24.07.2025.

**C/C Addl. Civil Judge & JMFC.,
Soraba.**