



**IN THE COURT OF VI ADDL.DISTRICT AND
SESSIONS JUDGE, TUMAKURU.**

DATED THIS THE 17th DAY OF JUNE, 2026

PRESENT: SMT.SHILPA K.S, B.AL, LL.M.,
VI Addl. District & Sessions Judge,
Tumakuru.

MISCELLANEOUS APPEAL No.26/2025

- APPELLANTS :** 1. Kumara, S/o Late Venkataiah,
A/a 43 years, R/at Doddakoppalu
Village, Huliurdurga Hobli,
Kunigal Taluk, Tumakuru Dist.
2. B.N. Ramesh, S/o Late Narasaiah,
A/a 50 years, R/at Bandihalli,
Huliurdurga Hobli, Kunigal Taluk,
Tumakuru District.

(By Sri. K.H.S., Advocate)

Vs.

RESPONDENTS : Vinodha, W/o. Ravi,
D/o Late Venkataiah, A/a 40 years,
R/at Doddakoppalu Village,
Huliurdurga Hobli, Kunigal Taluk,
Tumakuru District.

(By Sri. K.L.V., Advocate)

Date and nature of the Order: Order dated 28.03.2025
on I.A.No.I in O.S.No.161/24
passed by the Senior Civil
Judge & JMFC, Kunigal.



M.A.No.26/2025

Date of institution of the Appeal : 09.07.2025

Date of Judgment : 17.06.2026

Duration of the appeal : Year/s Month/s Day/s
00 11 08

(SHILPA. K.S)
VI Additional District &
Sessions Judge, Tumakuru.

-JUDGMENT-

This is an appeal directed against the order passed in O.S.No.161/2024 on I.A.No.I dated 28.03.2025 by the Senior Civil Judge & JMFC, Kunigal.

2. The parties are referred to their original ranking for the convenience sake.

3. That being highly aggrieved by the Order dated 28.03.2025 passed by the Senior Civil Judge & JMFC, Kunigal, in O.S.No.161/2024 on I.A.No.I the appellants/defendants have preferred this appeal on the following grounds:-

a. That the impugned order passed by the trial court is arbitrary, against to law and probabilities of the



case and unsustainable in the eye of law and hence the same is liable to be set-aside by the hands of this Hon'ble court.

b. The order passed by the trial court is opposed to principles of natural justice.

c. The trial court has erred in holding that the plaintiff has made out prima facie case if T.I is not granted by holding that the suit properties are the ancestral properties of the plaintiff and the defendant No.1. Infact the suit properties are not the ancestral properties. That the father of the plaintiff namely Venkataiah had acquired the suit properties as per gift deed dt.05.05.1964 executed by one Lingamma who had no male issues as she had adopted the said Venkataiah as son. Even the khata aznd phani was standing in the name of said Venkataiah. The said Venkataiah during his life time had bequeathed the suit properties in favour of defendant no.1 on 16.06.1998. The said Venkataiah died on 24.06.1998. After his death the



defendant No.1 has become owner and in possession of the suit properties. Hence it has become the self acquired properties of the defendant No.1. The defendant No.1 for his legal necessity had sold the suit properties in favour of the defendant No.2 as per sale deed dt.24.08.2017 and then he has got khata and phani.

d. The plaintiff knowing that she has no share at the instigation of others and misunderstanding has filed this suit. The trial court has allowed the application of the plaintiff without perusing the documents produced by the defendants.

e. The trial court has erred in holding that the suit properties originally belongs to the father of the plaintiff which was got bequeated in the name of the defendant No.1. But the trial court erred in holding that the plaintiff is entitled for share on par with the defendant No.1.



f. The trial court erred in holding that untill and unless the will is proved no benefit can be given on the revenue documents. This findings of the trial court is not justifiable under law.

g. The trial court erred in holding the grievance of the plaintiff that the defendants are attempting to alienate the suit properties when she has no right over it. The finding of the trial court that the plaintiff has got prima facie case and to avoid multiplicity of proceedings granted injunction is not sustaianble under law.

h. So viewed from any angle the impugned order is unjust, illegal and unsustainable and the same is liable to be set aside

4. After service of notice the respondent has appeared before this court through her counsel and filed counter.

5. The averments of the objections of the respondent is as under :-



The appeal is not maintainable one. The grounds urged in the appeal memo is false and not sustaianble. The trial court has rightly allowed the application by giving cogent and proper reasons. The trial court has passed the order in accordance with law. There is no error or irregularity in order pased by the trial court and prays to dismiss the appeal.

6. Heard both sides. The respondent has filed written arguments.

7. The following Points that would arise for my consideration are :-

- 1) Whether the plaintiff made out prima facie case to grant for an injunction order ?
- 2) Whether the appellants/defendants prove that the impugned Order passed by the learned Senior Civil Judge & JMFC, Kunigal on I.A.No.I dt.28.03.2025 is illegal, capricious and opposed to law. Therefore, the interference of this court is necessarily required for setting aside the said Order?
- 3) What Order?



8. My findings on the above said points are as under:-

Point No.1 :- In affirmative

Point No.2 :- In negative

Point No.3 :- As per final order for the following

-REASONS-

9. **Point No.1:-** Before going to the merit of the appeal it is necessary to go through the contention of the respective parties to the case.

That the respondent being the plaintiff in the suit before trial court had stated that she and the defendant No.1 are the members of the Hindu undivided joint family and the suit properties is the ancestral property. That one Lingamma who had no children had adopted the father of the plaintiff and out of love and affection the said Lingamma had executed the gift deed dt.05.05.1964 in favour of father of plaintiff. Hence the father of the plaintiff was in possession and enjoyment of the suit property till his death. After his death the plaintiff and the defendant No.1 were in possession and enjoyment of the suit property. That the defendant No.1



without the knowledge of the plaintiff got mutated in his name and then sold the same in favour of the defendant No.2 on 24.08.2017. Hence the said sale deed is not binding upon the plaintiff. Further it is learnt that now the defendant No.2 is trying to alienate the suit property in favour of third persons in which the plaintiff will be put into hardship. Hence the plaintiff has made out prima facie case and hence she had filed the application seeking injunction order.

10. On the other hand, the defendant No.1 filed counter and admitted the relationship in between himself and the plaintiff. The plaintiff was married with one Ravi in the year 2003 and at that time she was given with gold ornaments. The suit properties are the self acquired properties of his father who out of love and affection had executed the will in his favour on 16.06.1998 by bequeating the suit property in his name. The defendant No.1 was in peaceful possession and enjoyment of the said property and he for his legal



necessity had sold the suit property in favour of the defendant No.2 and repaid loans. The plaintiff was aware of the said transaction and only to harass him has filed this suit and prays to dismiss the application.

11. The defendant No.2 has filed objections stating that the suit properties are the self acquired properties of late Venkataiah who out of love and affection had executed the will in favour of defendant No.1 on 16.06.1998 by bequeating the suit property in his name. The defendant No.1 was in peaceful possession and enjoyment of the said property and he for his legal necessity had sold the suit property in his favour. The plaintiff was aware of the said transaction and only to harass him has filed this suit. Even the defendant No.2 had got mutated the suit property in his name and in possession and enjoyment of the suit property. The plaintiff has got no right over the suit property and prays to dismiss the application.



12. After hearing both sides and on perusal of the available records it is true that the defendant No.1 and the plaintiff are blood relatives. It is even not under dispute that the suit property belongs to the father of the plaintiff and the defendant No.1. It is also true that still the said execution of the will in favour of the defendant No.1 by late Venkataiah is not proved before any court of law. It is also true that the defendant No.2 is in possession and enjoyment of the suit property as on the date of filing this suit. The fact of mutating the name of the defendant No.2 through valid sale deed and in the revenue records has to be proved after full fledged trial.

13. Hence it is clear from the available documents that the defendant No.2 is in possession and enjoyment of the suit property after purchase. That as per the apprehension of the defendant No.2 if he alienates the suit property in favour of third party then it will lead to multiplicity of proceedings.



14. The plaintiff is claiming the share in the suit schedule property. So if the suit property remains as it is without any further alienation then if the plaintiff is succeeded in the suit she can enjoy the fruits of decree or otherwise if it alienated then the plaintiff will be put into hardship.

15. The trial court had rightly observed the prima facie case of the plaintiff and granted injunction order. Even as rightly observed by the trial court the matter of partition and separate possession cannot be decided at this stage and it is matter of trial. The said aspect cannot be ascertained at this stage. It requires full fledged trial of the suit.

16. Hence under these circumstances the only question lies whether the plaintiff has made out prima facie case or not. Hence from the above finding the plaintiff has the prima facie case. So when the plaintiff has proved prima facie case then if it is alienated then she will be put into any hardship if the injunction is not



granted. Per contra the defendant No.2 who is in possession and enjoyment of the suit property and if the injunction order as claimed by the plaintiff is granted no hardship would be caused to him.

17. Hence the plaintiff is successful in establishing her prima facie case of obtaining the injunction order as claimed. In the instant case the balance of convenience and irreparable injury is more favourable to plaintiff rather than the defendants. Hence I answered the point No.1 in affirmative.

18. **Points No.2 and 3 :** These points will be taken at one stretch for my consideration in order to avoid repetition of facts.

The appellants have filed I.A.No.I to condone the delay of 23 days in filing the appeal. The respondent has not filed objections. Hence looking into the circumstances of the case if the delay of 23 days is condoned no hardship would be caused to the other side. Hence the I.A.No.I is allowed on costs of Rs.500/-.



19. Further the appellants have filed I.A.NO.II U/O.41 R.5 of CPC. The respondent has not filed objections. But when the main appeal is itself disposed off then the question of considering the interim application for stay does not arise at all. Hence the I.A.No.II is dismissed on without costs.

20. According to the appellants the trial court has passed the impugned Order on I.A.No.I on 28.03.2025 which has to be set aside. It is true that the plaintiff has proved existence of prima facie case to order for an injunction. The trial court had considered the aforesaid basic aspects.

21. The appellants have not made out ground that the trial court had passed the impugned order which needs interference by this court. Hence I found no ground to set aside the order of the trial court. The appellants have not established their case. Thereby I answered the point No.2 in negative and I proceed to pass the following:-



-ORDER-

Appeal is dismissed.

The impugned order passed by the Senior Civil Judge & JMFC, Kunigal, in O.S.No.161/2024 on I.A.No.I dated 28.03.2025 is hereby confirmed.

Thereby the I.A.No.I filed u/s 5 of Limitation Act is hereby allowed on costs of Rs.500/-.

The I.A.No.II filed U/O.41 R.5 of CPC is hereby dismissed on without costs.

Both parties are directed to bear their own costs.

Send the copy of this judgment to the trial court.

(Dictated to the Stenographer Grade-1 directly on computer, typed by her, corrected by me and pronounced in the open court, on this the 17th day of June, 2026).

(SHILPA. K.S.)
VI Additional District &
Sessions Judge, Tumakuru.