



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,
GUBBI.**

Dated on this the 21st day of August, 2025

**PRESENT: SMT. POORNIMA .K. YADAV,
B.A.LL.B., LL.M.,**

**Addl. Sr. Civil Judge & JMFC,
Gubbi.**

ORIGINAL SUIT NO. 78/2025

Plaintiff/s : Doddaiah S.C.
S/o Chikkanarasaiah,
Aged about 65 years,
R/at Senabanahalli,
Chelur Hobli,
Gubbi Taluk.

(By Sri. K.R.P., Adv.)

Vs.

- Defendant/s:**
- 1.** Jayamma
W/o Late doddathimmaiah,
Aged about 65 years,
 - 2.** Nagaraju S.D.
S/o Late Doddathimmaiah,
Aged about 40 years,
 - 3.** Dhanalakshmi
D/o Late Doddathimmaiah,
Aged about 35 years,
R/at bramhasandra,
Kallambella Hobli,
Sira Taluk.
 - 4.** Bhojaraju
S/o Late Doddathimmaiah,
Aged about 33 years,



5. Narashimahurthy
S/o Late Chikkanarasaiah,
Aged about 68 years,

6. Kempamma
D/o Late Chikkanarasaiah,
W/o Venkatappa,
Aged about 63 years,
R/at Melayyanapalya,
Kotrthanahalli Mazare,
Garden House,
Bellavi Hobli,
Gubbi Taluk.

Defendant No. 1, 2, 4 and 5 are
R/at Sanabanahalli,
Chelur Hobli,
Gubbi Taluk.

(D1 to D4 By Sri D.J., Adv.)
(D5 by Sri. K.S.M. Adv.,)
(D6 Exparte)

PARTIES TO I.A.NO.I

Applicant / Plaintiffs : Doddaiah S.C.

Vs.

Opponent/Defendant No.5 : Narasimhamurthy

Provision under the Application	Under Order 39 Rule 1 and 2 of CPC
Application Relief sought for	Temporary injunction restraining the defendant from alienating the suit schedule property.
The date of the application is filed	14.02.2025



Interlocutory Application Number	I
Date of Memo filed by the defendants	10.07.2025
Date of order passed	21.08.2025

Sd/-
(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.

ORDERS ON IA NO. I

The Plaintiff through his counsel filed this application U/O 39 Rule 1 and 2 of CPC restraining the defendant No.5 from alienating Item No.2 of the suit schedule property i.e.,

Sy.No. 152 measuring 4-15 acres, situated
at Madenahalli, Chelur Hobli, Gubbi Taluk.

2. The application is accompanied with the affidavit of the the plaintiff, wherein it is stated that, the present suit is filed seeking relief of partition and separate possession of his 1/4th share in the suit schedule properties and the said properties are the ancestral and joint family properties. The defendant No.5 obtained katha and pahani in his name and he is trying to alienate Item No.2 of the suit



schedule property to defraud the rights of the plaintiff in the said property. Hence, sought to allow the application.

- 3.** On the other hand, the counsel for the defendant No.5 filed memo to treat the written statement as objection to IA No.1. The defendant No.5 in the written statement contended that he had filed application before the Thasildhar, Gubbi for grant of Item No.2 of the suit schedule property and on the said application, the said property in land bearing Sy. No. 152 measuring 4 acres 15 guntas situated at Madenahalli Village, Chelur Hobli, Gubbi Taluk was granted to him. The defendant No.5 and his son have obtained loan from Karnataka Grameen Bank, Hoskere on 07.01.2023 for Rs. 10,00,000/- by executing simple Mortgage deed in respect of Item No.2 of the suit schedule property. The defendant No.5 has taken Electricity supply connection Item No. 2 of the suit schedule property. The plaintiff and his family members have destroyed the flowers and drip pipes in Item No. 2 of the suit schedule property as such, the defendant give complaint and FIR is register against the plaintiff and the family members



on 10.06.2025. The temporary injunction application is filed by the plaintiff only in respect of Item No.2 of the suit schedule property even though the present suit is filed in respect of Item No. 1 to 6 properties.

4. Heard both the counsel.
5. Upon hearing both the counsel and on perusal of the materials available on record, the points that arise for my consideration are;

1. ***Whether the Plaintiff has made out a prima facie case in his favour ?***
2. ***Whether the plaintiff will be put to irreparable loss ?***
3. ***Whether the balance of convenience lies in favour of the Plaintiff?***
4. ***What order?***

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

Point No.1: In the Affirmative

Point No.2: In the Negative

Point No.3: In the Negative



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

REASONS

7. **POINT NO.1 :** This suit is filed seeking relief of partition and separate possession of plaintiff's 1/4th share in Item No. 1 to 6 of the suit schedule properties.
8. It is the case of the plaintiff that, the suit schedule properties are the ancestral and joint family properties of the plaintiff and the defendants. It is stated that Item No.1 of the suit schedule property is granted to the plaintiff's father. Item No. 2 of the suit schedule property is granted in the name of the defendant No.2 on behalf of joint family. Item No.3 of the suit schedule property was granted to the husband of defendant No.1 by name Doddathimmaiah on behalf of the joint family. Item No. 4 to 6 are the ancestral properties. It is stated that the revenue documents of Item No.1 of the suit schedule property is standing in the name of plaintiff's father, Item No.2 of the suit schedule property is standing in the name of defendant No.5 and Item No. 3 of the suit schedule property



is standing jointly in the name of defendant No.1 to 4. It is stated that Item No. 4 to 6 of the suit schedule properties are standing in the name of the father of plaintiff and after the death of the parents of the plaintiff, the plaintiff and the defendants have succeeded to the said properties.

9. The materials on record discloses that only the defendant No.5 has filed written statement and contested the present application.
10. The defendant No.5 contended that he had filed an application before the Thasildhar, Gubbi for grant of land in respect of Item No.2 of the suit schedule property, as such, the said land is granted to the defendant No. 5. He pleaded about raising of loan of Rs. 10,00,000/- over the said property on 07.01.2023 at Karnataka Grameena Bank, Hoskere, Chelur Hobli, Gubbi Taluk. He alleged that the plaintiff and his family members have destroyed the crops and drip pipes in Item No. 2 of the suit schedule property as such, FIR is registered against the plaintiff and his family



members on 10.06.2025.

- 11.** At this juncture, I would like to place reliance on the ratio of the Hon'ble High Court of Rajasthan in **AIR 2003 RAJ 21 between Sukka Singh Vs. Mahal Singh**, wherein it is held that,

“ While considering the question of prima facie case, it is not to be confused with prima facie title. What is required is that the plaintiff has to show that he has bonafide raised a substantial question, which needs to be adjudicated at the trial of the suit.”

- 12.** Hence, it is clear that prima facie case means showing that there is dispute between the parties which has to be decided in a full fledged trial. The said pleadings of the parties shows that the plaintiff is claiming his share in the suit schedule properties stating that the said properties are the ancestral



and joint family properties of the plaintiff and the defendants. It is the case of the plaintiff that Item No. 2 of the suit schedule property is granted in the name the defendant No.5 on behalf of the joint family. On the other hand, the defendant No.5 specifically pleaded that the said property is granted to him on the basis of the application filed before the Thasildhar, Gubbi seeking for grant of Item No. 2 of the suit schedule property.

- 13.** The said pleadings on record discloses that the plaintiff is claiming rights over Item No. 2 of the suit schedule property stating that it is the joint family property whereas the defendant No.5 has contended that it is his property on the basis of grant in his name.
- 14.** The said pleadings of the parties shows that there is dispute between them regarding Item No. 2 of the suit schedule property to adjudicate if the said property is the joint family property of the plaintiff and the defendants or if it is the absolute property of the defendant No.5. The said dispute



requires adjudication by way of trial which shows existence of a prima facia case for trial. Accordingly, Point No.1 is answered **in the Affirmative.**

- 15. POINT NO.2 & 3:** These points are taken up for discussion together as they are inter related to each other.
- 16.** Mere existence of prima facia case is not the ground for grant of temporary injunction and existence of balance of convenience as well as irreparable injury in favour of the plaintiff is mandatory to grant such an order. Hence, it is necessary to examine if in this case there is balance convenience and irreparable injury in favour of the plaintiff.
- 17.** The plaintiff through this application sought for an order of Temporary injunction restraining the defendant No.5 from alienating Item No. 2 of the the suit schedule property.
- 18.** Order 39 Rule 1 of CPC, provides for grant of Temporary Injunction till disposal of the suit, when the subject matter of the suit is in the danger of being alienated, damaged or wasted by the defendant or when the defendant threatens or



intends to remove or dispossess his property to defraud his creditors or the defendant threatens to dispossess the plaintiffs or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, for the purpose of staying and preventing such alienation, damage or wastage, sale, removal or disposition of the property or dispossession of the plaintiff or causing injury to he plaintiff in relation to any property in dispute in the suit.

- 19.** The materials on record discloses that Land bearing Sy. No. 152 measuring 4 acre 15 guntas situated at Madenahalli, Chelur Hobli, Gubbi Taluk is Item No.2 of the suit schedule property. The documents produced by the plaintiff discloses that as on 2024-25, Item No.2 of the suit schedule property is standing in the name of defendant No.5 on the basis of MR No. H30/2018-19 dated 30.01.2019.
- 20.** The defendant No.5 produced the particulars regarding grant of land by the Bagar Hukum Committee at document No.4 and Saguvali Chit at document No.5 which is dated



06.01.2018 as per which Item No.2 of the suit schedule property was granted in the name of the defendant No.5. Document No.6 shows that in Sy. No. 152 Block No.2 as per the sketch was allotted to the defendant No.5. The revenue documents shows that on the basis of the grant, Item No. 2 of the suit schedule property came to mutated in the name of the defendant No.5. Thereafter, the revenue documents of Item No. 2 of the suit schedule property are transferred in the name of the defendant No.5.

21. The documents produced by the plaintiff clearly discloses that Item No. 2 of the suit schedule property is mutated in the name of the defendant No.5 on 30.01.20196 pertaining to the Saguvali Chit dated 06.01.2018 as produced by the defendant No.5. The present suit is filed on 15.02.2025. This shows that it is been 7 years since the date of grant and the defendant No.5 has kept the said property intact till date and there is no sale of the said property.

22. It is the apprehension of the plaintiff that the defendant No. 5



may alienate Item No.2 of the suit schedule property to defraud the rights of the plaintiff over the said property. It is specific to mention that as per section 52 of the Transfer of Property Act, there is bar with regard to transfer of immovable property during the pendency of the suit and such transfer does not give any right to the purchaser. In the said circumstance, the apprehension of the plaintiff is protected under the said provision .

23. In the given situation, if the temporary injunction is granted to the plaintiff, it will cause irreparable injury to the defendant No. 5 which cannot be compensated in terms of money as such, the balance of convenience tilts more in favour of the defendant No. 5 than the plaintiff. Accordingly, Point No. 2 and 3 are answered in the **Negative**.

24. POINT NO.4: In view of the reasons assigned above, I proceed to pass the following;

ORDER

***The IA No. I filed by the
plaintiff under Order 39 Rule 1 and***



2 of CPC is hereby rejected.

Parties to bear their own costs.

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the **21st day of August, 2025**)

Sd/-

(POORNIMA. K. YADAV)

**Addl. Sr. Civil Judge & JMFC,
Gubbi.**