



**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC
AT GUBBI**

Dated this the 12th day of September 2025

:: PRESENT::

**KIRAN S.P., B.B.M., LL.B.,
Prl. Civil Judge and JMFC, Gubbi**

OS No. 39/2025

Plaintiff : - Sharath kumar H.S.

-V/s-

Defendant :- Padmamma & Others

CAUSE TITLE ON IA No. I

Applicant : - Sharath kumar H.S. (plaintiff)

(By Sri. G.R.B., Advocate)

-V/s-

Respondent :- Padmamma & Others

(Def. No.1, 4 & 5 By Sri. H.M.H., Advocate)
(Def. No.2 & 3 Exparte)

ORDERS ON I.A. No. I

The plaintiff has filed I.A. No. 1 under order 39 rule 1 and 2 of CPC, seeking temporary injunction restraining the defendants, their men, heir, agents, successor and henchmen from alienating or creating third party rights over the suit schedule properties in any manner during the pendency of the suit.



2. In the accompanying affidavit, it is stated that, the plaintiff has filed the suit against the defendants for the relief of Partition and Separate Possession. It is further submitted that the defendants are colluded each other and already sold and gifted some portion of the suit schedule properties. To deprive the share of the plaintiff, defendants trying to disperse the suit schedule properties and trying to create third party rights over the suit schedule properties. After the death of the husband of the defendant No.1, the plaintiff requested his share in the suit schedule properties but the defendants denied his request and his legitimate rights over the suit schedule properties. The plaintiff further submitted that it was astonished to the plaintiff on verification of the present Record of rights (RTC) of the aforesaid Joint Family Properties or Suit Schedule Properties that the name of the Defendants entered without the knowledge, information and without obtaining any permission from the plaintiff. The plaintiff further submits that the Defendants are now trying to sell remaining aforesaid joint Family properties or suit schedule properties by manipulating and forging some false documents illegally, dishonestly fraudulently and in gross violation of law of land. Further the defendants have not right to deal in any manner with the shares of the plaintiff and before partition of the aforesaid Joint family properties or Suit Schedule properties, if application is not allowed it may leads to multiplicity of proceedings and the plaintiff would be put irreparable loss and hardship and no prejudice would be caused to the defendants if the



application is allowed. On these grounds he prays to allow the application.

3. This application is resisted by the defendant No.1, 4 and 5 by filing memo to adopt their written statement as objection to IA. No.1. It is the contention of the defendants No.1, 4 and 5 that, the item No.1 of the suit schedule properties land bearing its Sy. No.108/2 of Nittur Village, Nittur Hobli, Gubbi taluk totally measuring 1 acre 10 guntas. The said schedule properties which was allotted to the defendants No.1 and 2 to an extent of 0-15 guntas, the same was purchased by the husband of 1st defendant i.e. Chandraiah under the registered sale deed Dated.13-12-1995. In this regard the suit item No.1 to an extent of 0-15 guntas not for 0-07.04 guntas with respect to the revenue entries is concern which was made out in the name of Padmamma i.e. the defendant No.1 under the MR.No.H48/2013-14. In this regard the 1st defendant will become the absolute owner by having its absolute right, title over the same as her absolute properties. That the above cited properties which was allotted through the O.S.No.193/2022 on the file of the this court. The defendant further contented that the item No.2 of the suit schedule properties i.e. Land bearing Sy. No. 108/4 which is the absolute property of the defendant No.1 and also the revenue documents is concern is made out in the name of the defendant No.1. Under the facts and circumstances the 1st defendant will become the absolute owner thereon the suit item No.2 of the suit schedule properties.



4. The defendant No.1, 4 and 5 further contended that, the suit item No.1 i.e. the land bearing its Sy.No. 108/2 totally measuring 0-15 guntas. Out of the said extent to an extent of 0-7.04 guntas allotted to defendant No.2 i.e. Siddaraju father of plaintiff and as well as the defendant No.3 under the registered partition deed Dated.19-01-2024 to an extent of 0-7.04 guntas in Sy.No.108/2 i.e. item No. 1 of the suit schedule property. It is further submitted that, the suit item No.3 i.e. Land bearing Sy. No.108/2 the same is subsequently phoded as Sy. No. 108/5 i.e. item No.3 of the suit schedule property apart with suit item No.2 which was allotted to defendant No.4 i.e. Kokela under the registered gift deed Dated. 18-12-2023 who is the then Grand daughter of 1st defendant and as well as the daughter of one Smt. Keerthamma who was the then daughter of the 1st defendant and now she is no more. In view of the registered gift deed the 4th defendant will become the absolute owner is in physical possession and enjoyment over the suit item No.1 and 2 by accepting the revenue entries there on the suit item No.1 and 2 of the schedule properties. It is further submitted that, the 1st defendant who is suffering from cardiac patient since from several years and the defendant No.2 and 3 and as well as the plaintiff who are not turn to look after her welfare even today and totally neglected the 1st defendant without providing the basic amenities like food and shelter. In this regard the 4th defendant who is the grand daughter of 1st defendant is taking care of defendant No.1. Under the said facts and circumstances the 1st defendant executed the registered gift deed in favour of defendant No. 4 with



respect to suit item No.2 and 3 of the schedule properties. It is further contended that, the suit item No.4 of the suit schedule properties i.e. the land bearing its Sy. No.109/5 towards an extent of 0.07.04 guntas which was sold in favour of defendant No.5 by the defendants No.1 to 3 along with elder daughter of 1st defendant i.e. Parvathamma in favour of defendant No.5 for the realize of the debts borrowed by the defendants No.1 to 3 and as well as the plaintiff for the legal necessities under the registered sale deed dated.19.01.2024. It is submitted that, the plaintiff is not in joint possession and enjoyment over the suit schedule properties at any point of time and more over there is no existence of the joint family to survival of this alleged suit against the defendants. That the suit is hit by the non-Joinder of necessary parties i.e. one Smt Parvathamma who is the elder daughter of this 1st defendant and also another one grand son i.e. Mahesh who is the son of Smt. Keerthanamma. On these grounds they pray to dismiss the above application.

5. Heard both side and perused the materials available on record.

6. The points that would arise for final determination of this application are as follows:-

1. Whether the plaintiff has made out prima-facie case for grant of temporary injunction as sought in I.A No.1 ?

2. Whether the balance of convenience lies in favour of the plaintiff?



3. Whether the plaintiff will be put to irreparable loss or hardship, if I.A. No.1 is not allowed ?

4. What order?

7. The findings on the above points are as follows:-

<i>Point No.1</i>	<i>:</i>	<i>In the Affirmative</i>
<i>Point No.2</i>	<i>:</i>	<i>In the Affirmative</i>
<i>Point No.3</i>	<i>:</i>	<i>In the Affirmative</i>
<i>Point No.4</i>	<i>:</i>	<i>As per final order, for the following :</i>

REASONS

8. POINT No. 1:- These three points are interlinked each other. Hence they are taken together for common discussion in order to avoid repetition of fact and circumstances. It is not in dispute that grandfather of plaintiff and Defendant No.3 and husband of defendant No.1 and father of defendant No.2 by name Chandraiah S/o Siddegowda has purchased the suit schedule properties from one Srinivasa shetty for valuable consideration. It is noticed that Defendant No.1 has sold item No.4 infavour of defendant No.5 and the defendant No.1 has executed gift deed infavour of defendant No.4 with respect to item No.3 schedule property.

9. According to plaintiff the suit schedule properties are ancestral properties of plaintiff and defendants No.1 to 3. After demise of Chandraiah, 1st defendant taking advantage of situation, got the suit schedule properties mutated in her name without the knowledge of plaintiff and other legal heir and the defendant No.1 created, concocted, fabricated sham revenue documents in her



name for the purpose of laying false claim over the suit schedule properties and sold portion of land infavour of defendant No.5 and gifted some portion of land to defendant No.4. Hence, sale deed and gift deed executed by defendant No.1 infavour of defendant No.4 and 5 are not binding on the share of plaintiff.

10. In order to counter to the above said contention the defence set up by the defendant No.1, 4 and 5 is that item No.1 totally measures 1 acre 10 guntas and said properties was allotted to defendant No.1 and 2 to an extent of 15 guntas. In this regard defendant No.1 become absolute owner by having its absolute right title over the same and said properties was allotted through O.S. No.193/2022 on the file of this court. Item No.2 is also absolute properties of defendant No.1. Out of item No.1 to an extent of 0.04 guntas allotted to defendant No.2 i.e. the father of plaintiff and as well as the defendant No.3 under the Partition deed dated.19.01.2024. The defendant No.1 is suffering from Cardiac patient and defendant No.2 and 3 and plaintiff have not look after her welfare and the 4th defendant who is her grand daughter was take care of her, hence she has executed registered gift deed infavour of defendant No.4 with respect to item No.2 and 3 schedule properties and the defendant No.1 has executed sale deed with respect to item No.4 infavour of defendant No.5 for legal necessity.

11. This is a suit for partition, the plaintiff has to prove that the sale deed and gift deed executed by the defendant No.1 infavour of



defendant No.4 and 5 are not binding on the share of plaintiff. Without holding full pledged trail it is not possible to come to the conclusion that whether suit schedule properties are ancestral properties of plaintiff or not.

12. The main object of the provision of order 39 rule 1 and 2 of CPC is to preserve the properties as it is till the right of all the parties to the suit are adjudicated in the final trial. While considering an application for grant of temporary injunction, the right and need of respective parties should also be protected and preserved so that it ultimately the plaintiff who is the initiator of the suit succeeds in the suit, she would not be put to irreparable and uncompensated loss. At this stage, what the court is required to consider is whether the plaintiff has made out prima facie case to proceed with suit or not. It is required to be adjudicated that whether the suit schedule properties are ancestral properties of plaintiff or not. There is likely to alienate the suit schedule properties by taking advantage of RTC standing in the name of defendants. In such circumstances if the defendants alienate the suit schedule properties, much inconvenience will be caused to the plaintiff. So also it may leads to multiplicity of proceedings and inconvenience to subsequent purchasers also. By considering overall facts and circumstances of the case, the plaintiff has made out prima facie case, the balance of convenience lies in his favour and he will be put to much hardship and loss, if the temporary injunction is not granted. Accordingly, **point No.1 to 3 are answered in the affirmative.**



13. POINT No. 4:- For the foregoing reasons, this court proceeds to pass the following:

ORDER

I.A No.1 filed by the plaintiff under order 39 rule 1 and 2 r/w 151 of CPC is hereby allowed.

The defendants, their men, heir, agents, successor and henchmen are hereby restrained from alienating or creating third party rights over the suit schedule properties in any manner till disposal of the suit.

No order as to costs.

(Dictated to the stenographer on-line computer, computerized by her, revised, corrected and then pronounced by me in open court on this 12th day of September 2025)

Sd/-
(KIRAN S.P)
Prl. Civil Judge & JMFC,
Gubbi.