



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

Dated this the 6th day of August 2026

:: PRESENT::

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

OS No.749/2025

Plaintiff :- Smt. Asha K.P. & another

-V/s-

Defendants :- Sri. K.P. Jajaman Parappa & others

CAUSE TITLE ON I.A. No.I

Applicant: - Smt. Asha K.P. & another

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

-V/s-

Respondents: Sri. K.P. Jajaman Parappa & Others

(D.1 by Sri. M.V., Advocate)

(D.2 Ex-parte)

(D.1 by Sri. T.V.C., Advocate)

**ORDER ON IA No.I FILED BY THE PLAINTIFFS UNDER ORDER
39 RULE 1 AND 2 of CPC:**

The plaintiff has filed IA No.1 U/O 39 Rule 1 and 2 of CPC, seeking temporary injunction, restraining the defendants, their agents, servants or anybody acting on their behalf from alienating or creating encumbrance



over the suit schedule properties in any manner till disposal of suit.

02. In the accompanying affidavit, it is stated that, the plaintiff has filed the suit against the defendants for relief sought in the plaint. Plaintiffs and defendant No.1 and 2 are the members of Hindu Undivided Joint Family, The suit schedule properties are all ancestral and joint family properties of the plaintiffs and defendants No.1 and 2. They are in joint possession and enjoyment of suit schedule properties having joint status. We have not yet divided the joint family properties. Plaintiff further submitted that, the suit schedule properties revenue documents stands in the name of Puttashamaiah, who was father of defendants No.1 and 2. During his life time Puttashamaiah was in possession and enjoyment of the suit schedule properties. After the death of Puttashamaiah his children i.e., defendants No.1 and 2 are in peaceful possession and enjoyment of the suit schedule properties jointly. The defendant No.2 was the kartha of the joint family member and its joint family properties, he has colluded and created the revenue documents with the collusion of revenue authority, he had got created the revenue entries in his favour and his mother name through pavathi varasu without knowledge and consent of the defendant No.1.



the suit schedule item No.1 and 2 are stands in his name and suit schedule item No.3 was stands in his mother name. The defendant No.2 has sold some portion of the suit schedule item No.1 and sold the suit item No.3 in favour of the wife of defendant No.3 by name K.S. Geetha, after sale deeds the revenue records are stands in the name of K.S. Geetha, after her death the said properties are stands in the name of defendant No.3 through pavathi varasu. The defendant No.2 have no exclusive right, title and possession over the suit schedule properties, further he was excluded from the management of the family and its properties. It is further submitted that the defendant No.2 have no exclusive right to execute any documents in favour of any body including our share and even if he has executed any such documents, those documents will not gives raise any valid right to defendant No.3 and also those documents will not take away our right and the said documents are not binds on their share. The mother of the defendant No.1 and 2 by name Sarojamma was died since long ago. The defendant No.1 and 2 have no exclusive manner of right, title, and possession. Further they have made a demand to the defendant No.1 and 2 to make a partition, they have refused to effect the partition and the revenue entries stands in the name of defendant No.2 with collusion with the defendant No.1,



they are making hectic effort to alienate the suit schedule properties to some one including their share with intend to defraud their right and to gain an unfair advantages from it. Where the defendants are not entitled to do so. If this application is allowed as prayed for no harm and injury caused to other side. On the other hand if this application is not allowed the plaintiffs will be put into great hardship and injury which cannot be compensated by any other means. On these grounds she prays to allow the application.

03. This application is resisted by the defendant No. 3 by filing memo to adopt his written statement as objections to I.A. No.1. It is the contention of the defendant No.3 that the very suit of the plaintiffs for the alleged reliefs of partition and separate possession against defendant in respect of non-existing suit schedule property with an intention to gain wrongfully is baseless on false, frivolous, and vexatious allegations, and the suit is not at all maintainable either in law or on facts. Hence, the suit has to be rejected at the threshold itself. The plaintiffs have filed a highly frivolous, vexatious, and false suit with the intention of gaining wrongfully from these defendants. Hence, the plaintiffs are guilty of misuse and abuse of due process of law. Therefore, there is no bonafide interest on the part of



the plaintiffs in approaching this Hon'ble Court. At the outset, the present suit is wholly false, frivolous, and vexatious; the present suit is not maintainable either in law or on facts. The plaintiffs have suppressed various material facts and circumstances pertaining to the present case and have filed this suit in order to mislead this Hon'ble Court and to make wrongful gain at the cost and expenses of the defendants, including Defendant. The suit lacks bonafide and has evidently been filed with oblique motives. Hence, on this ground alone, the suit is liable to be dismissed. The Defendant No.3 further submits that the suit filed by the plaintiffs is false, frivolous, vexatious, speculative and devoid of merits. The suit is instituted with an ulterior motive to harass this defendant and to unlawfully interfere with his peaceful possession and enjoyment of the properties lawfully purchased by him under registered sale deeds. Hence, the suit is liable to be dismissed with exemplary costs. Save and except the admissions specifically made herein, each and every allegation, averment, contention and claim made in the plaint is denied as false. The relationship between the parties as stated in the plaint is a matter of record. However, the plaintiffs have deliberately concealed and suppressed the most material fact namely that a family partition had already taken place among the members of the family on



07.01.1993, whereby all the family properties were partitioned and allotted to the respective sharers and each sharer was put in separate possession and enjoyment of the properties allotted to his share. The plaintiffs have intentionally not disclosed the existence of the partition deed dated:07.01.1993. The suit itself is liable to be dismissed on the ground of suppression of material facts. A party approaching the Court must come with clean hands. The plaintiffs, having concealed the partition and subsequent transactions, are not entitled to any equitable relief. Late Puttashamaiah was the original owner of the ancestral properties. After his death, his legal heirs entered into a family partition on 07.01.1993. Under the said partition, the properties were divided into A Schedule, B Schedule and C Schedule properties. The partition was acted upon and implemented immediately. Since then, the respective sharers have been independently enjoying their allotted properties as absolute owners. It is specifically submitted that Defendant No.1, namely Sri. K.P. Yajaman Parappa, had relinquished and surrendered all his rights in respect of the properties allotted under the partition. Under the terms of the partition, Defendant No.1 received a sum of Rs.98,000/- from Defendant No.2 for settlement of his share and for meeting the marriage expenses of his daughter. After accepting the



said amount, Defendant No.1 ceased to have any right, title, interest or claim over the properties allotted to Defendant No.2. Having accepted the family arrangement and monetary settlement, Defendant No.1 is estopped from disputing the partition. Consequently, the plaintiffs, who claim through Defendant No.1, are equally estopped from questioning the partition or claiming any share in the properties allotted to Defendant No.2. The plaintiffs cannot claim a better title than that of Defendant No.1. When Defendant No.1 himself had no subsisting right after the family partition, the plaintiffs cannot seek partition in respect of the properties which exclusively fell to the share of Defendant No.2 more than three decades ago. It is submitted that under the family partition dated: 07.01.1993, the following properties were allotted to the exclusive share of Defendant No.2; Sy.No.245/1A1 measuring 1 Acre 20 Guntas; Sy.No.244/1A1 measuring 0 Acre 05 Guntas; situated at Kallur Village, Kasaba Hobli, Gubbi Taluk. Thereafter Defendant No.2 became the absolute owner in possession and enjoyment of the said properties. From the date of partition, revenue records were mutated in accordance with the partition and Defendant No.2 continued to cultivate, possess and enjoy the said lands openly, peacefully and to the knowledge of all concerned. Neither Defendant No.1 nor



the plaintiffs objected to the same for more than three decades. The long silence maintained by Defendant No.1 and the plaintiffs clearly establishes that they had accepted the partition and the exclusive ownership of Defendant No.2. The present suit is an afterthought and has been filed only after the value of the properties has substantially increased. The Defendant No.3 purchased the property bearing Sy. No.245/1A1, measuring 1 acre 20 Guntas, under a registered Sale Deed bearing No.4832/2012-13 dated:12.12.2012, registered in Book No.1 and stored in CD No.GBBD-158. Defendant No.3 further purchased property bearing Sy. No.244/1A1 under registered Sale Deed bearing No.802/2012-13 dated:24.05.2012, registered in Book No.1 and stored in CD No.GBBD-145. The purchases made by Defendant No.3 are valid, legal, genuine and supported by valuable sale consideration. Before purchasing the properties, Defendant No.3 thoroughly verified the title deeds, mutation records, RTC extracts and possession of the vendor. Only after being fully satisfied regarding the title of Defendant No.2, Defendant No.3 purchased the properties. Therefore, Defendant No.3 is a bona fide purchaser for valuable consideration without notice of any alleged claim of the plaintiffs. The rights acquired by Defendant No.3 under the registered sale deeds are fully protected under law. The allegation that Defendant



No.2 colluded with revenue authorities and created false entries is wholly false and denied. The plaintiffs have not produced a single document to establish such allegations. Mere allegations without proof are insufficient to invalidate decades-old revenue entries and registered transactions. The plaintiffs have deliberately avoided seeking cancellation of the registered sale deeds executed in favour of Defendant No.3. Without seeking cancellation of the registered sale deeds and without payment of proper court fee thereon, the suit is not maintainable. The plaintiffs seek a declaration that the sale deeds are not binding on them. Such a relief is legally untenable without challenging the sale deeds in accordance with law. On this ground alone, the suit deserves dismissal. The plaintiffs have not included all the properties covered under the family partition. The suit is therefore bad for partial partition and liable to be dismissed. The suit is also bad for non-joinder of necessary and proper parties. All persons claiming through the partition and subsequent transactions have not been made parties to the proceedings. The cause of action pleaded in the plaint is imaginary, invented and created solely for filing the present suit. No cause of action has ever arisen against Defendant No.3. The suit is hopelessly barred by limitation. The partition admittedly took place in the year



1993. The sale deeds in favour of Defendant No.3 were executed during the year 2012. The plaintiffs have remained silent for several decades and have approached this Hon'ble Court after an inordinate and unexplained delay. The plaintiffs are guilty of acquiescence, waiver and estoppel. Having allowed Defendant No.2 and thereafter Defendant No.3 to enjoy the properties openly and continuously for several years, they cannot now question the title and possession of Defendant No.3. Defendant No.3 has been in peaceful possession and enjoyment of the properties ever since the date of purchase and has been paying land revenue and other charges. The plaintiffs have never been in possession of the suit properties. The suit is a clear abuse of the process of Court and has been filed with an intention to extract money from Defendant No.3 by creating a false dispute over properties which were lawfully purchased under valid registered documents. The plaintiffs have no right, title, interest or possession over the properties purchased by Defendant No.3. Hence, they are not entitled to the relief of partition, declaration or any other consequential relief. On these grounds he prays to dismiss the application.

04. Heard both sides.



05. Points that would arise for final determination of this application are as follows:

Point No.1: *Whether the Plaintiffs have made out prima-facie case for grant of temporary Injunction as sought in IA No.1?*

Point No.2: *Whether the balance of convenience lies in favour of the Plaintiffs?*

Point No.3: *Whether the Plaintiffs will be put to irreparable loss and hardship, if IA No.1 is not allowed?*

Point No.4 : *What Order?*

06. The findings on 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:

R E A S O N S

07. **Point No.1:** It is the specific case of the plaintiffs that the suit schedule properties are ancestral and joint



family properties and in joint possession of plaintiff and defendant No. 1 and 2. The defendant No. 3 has denied the said fact and contending that his father is the bonafied purchaser for valuable consideration.

08. The main object of the provision of order 39 rules 1 and 2 is to preserve the property as it is till the rights 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 be considered and the suit schedule properties should also be protected and preserved so that if ultimately, the plaintiff who is the initiator of the suit; succeeds in the suit, he would not be put to irreparable and uncompensated loss. At this stage what the court is required to consider is whether the plaintiffs have made out prima facie case to proceed with suit or not. The object is to keep the property in status quo that it would be available to the plaintiff if he ultimately succeeds in the suit. There is no dispute that the katha of suit schedule properties are now standing in the name of defendant No. 2 and 3. It is necessary to adjudicate after full pledged trial that whether the plaintiffs are entitled for share as claimed for or not? At this stage, what is required to consider whether the plaintiffs have made out prima facie case to proceed



with the case. By considering the facts and circumstances of the case, the plaintiffs have made out prima facie case. Accordingly point No. 1 is answered in the **Affirmative**.

09. **Point No.2 & 3:** These two points are interlinked each other. Hence they are taken together for common discussion in order to avoid repetition of facts and circumstances. The plaintiffs have established prima facie case to proceed with the case. It is the apprehension of the plaintiff that the defendants are making attempts to alienate or encumbering the suit schedule properties in favour of others. It is necessary to consider whether the plaintiffs have got the relief as sought for. In such circumstances, if the suit schedule properties are disposed of, much inconvenience will be caused to the plaintiffs in this case. Since the properties are standing in the name of defendants, they may dispose of the suit schedule properties to others. In such circumstances, the plaintiffs will be put to heavy and irreparable loss. So, also it may leads to multiplicity of proceedings and inconvenience to subsequent purchaser also. By considering the facts and circumstances of the case, the plaintiffs have established that balance of convenience lies in their favour and they will be put to more hardship and loss, if



the temporary injunction is not granted. Accordingly point No.2 and 3 are answered in the **Affirmative**.

10. **Point No.4:** For the foregoing reasons, this court proceeds to pass the following:

ORDER

I.A. No.1 filed by the plaintiffs
U/O 39 Rule 1 and 2 of CPC is
hereby by allowed.

The defendants, their agents,
servants or anybody acting on their
behalf are hereby restrained from
alienating or creating encumbrance
over the suit schedule properties in
any way to anybody till disposal of
suit.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced
in the open Court on this the 6th day of August 2026)

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