



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

Dated this the 17th Day of April 2026

PRESENT :

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

OS No. 535/2023

Plaintiff :- Smt. Thimmammathayi

-V/s-

Defendants :- Smt. Puttathayamma & others

CAUSE TITLE ON IA No.1

Applicant :- Smt. Thimmammathayi

(By Sri. S.R., Advocate)

-V/s-

Respondents :- Smt. Puttathayamma & others

(D.2 by Sri. S.R. Advocate)

**: ORDER ON IA No.1 FILED BY THE PLAINTIFF 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 claiming under them from alienating 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 the relief of partition and separate possession of her half share in all the suit schedule properties. The suit schedule properties are the ancestral and joint family properties of plaintiff and defendants. They are all in joint possession and enjoyment over the suit schedule properties, as members of undivided joint family. The defendants have no exclusive right, title, muchless possession over the suit properties. Now, taking advantage of that revenue documents are standing in the name of defendant No.1, all the defendants under hurry to alienate the suit schedule properties to third person, with an intention to defeat and defraud her share in the suit properties with deliberate intention to knock off her share of mes properties. If the present application is not allowed, the properties will be disposed and the plaintiff will be put to great hardship, loss, injustice and leads to multiplicities of proceedings, which cannot be compensated by any means. On these grounds she prays to allow the application.

03. This application is resisted by the defendant No.2. It is the contention of the defendant No.2 that the defendant No.2's father Nagarajaiah and his elder uncles enter into registered partition deed, dated 09.02.2001 vide register No.3445/2001-02 registered



before the Sub-Registrar, Gubbi, in the said partition deed, the "A" schedule property fallen to the share of Nagarajaiah. Accordingly, based on the said registered partition documents of the suit schedule property was recorded in his name and he was in exclusive possession acquired the same under the said partition deed. The copy of the partition deed is herewith produced as defendant document. Said Nagarajaiah died left the defendants as his class-I legal heirs. Therefore, after his death, the revenue documents of the suit schedule properties got changed in the name of defendant No.1 as representative of the Nagarajaiah's family and defendants 2 and 3 as class-I legal heirs are in exclusive possession over the suit schedule properties as exclusive property of Nagarajaiah. However, the plaintiff does not have any right, title, share over the suit schedule property as it was registered partition way back 2001 itself. However, the plaintiff does not have any legal right to file this present suit over the suit schedule properties against to the said partition deed. As admitted by the plaintiff the partition was taken place between the family members in the year 2001 itself that to the registered partition deed. The said partition deed is not open to question/challenge under the amended provision sub sec.5 of sec.6 of Hindu succession Act. However, the



suit itself is not maintainable, same is liable to be dismissed in limine. The plaintiff and defendants are not at all joint family members. However, she is not in the joint possession over the suit schedule. property. The plaintiff married long back and away of the joint family prior to partition deed 2001. However, she has not having legal right challenge and question the partion deed which had affected among the family members prior to amendment. On the said ground, the suit of the plaintiff is liable to be dismissed. The suit of the plaintiff is suffer from non joinder of necessary parties of the suit. Hence, the suit of the plaintiff is liable to be dismissed. It is further submitted that, the plaintiff has not been challenged the partition deed since 2001. The suit is barred by law of limitation, same is liable to be dismissed. On these grounds she prays to reject 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 Plaintiff has 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 Plaintiff?*

Point No.3: *Whether the Plaintiff 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:** The plaintiff has filed the present suit against the defendants for the relief of partition and separate possession over the suit schedule properties. It is admitted fact that one Chikkagiriyappa had three sons by name Chikkarangaiah, Puttarangaiah and Rangadhamaiah. The 1st son Chikkarangaiah died leaving behind his son Nagarajaiah and



Thimmammathayi as his class-1 legal heirs. The 2nd son Puttarangaiah, 3rd son Rangadhamaiah and Chikkarangaiah's son Nagarajaiah entered in to family partition and effected the partition of the joint family properties, which was registered before the sub-registrar Gubbi vide reg No. 3545/2000-01. But the defendant No. 2 contended that he does not represent the family of Chikkarangaiah and the plaintiff is not at all the member of joint family.

08. It is noticed that the suit schedule properties are not the self-acquired properties of Nagarajaiah and they were fallen to the share of Nagarajaiah through the family partition. It is further noticed that though the plaintiff is also one of the coparcener she was not made as party to the partition deed. Whether said partition deed is open for challenge or not under section 6 of Hindu Succession Act are needs to be adjudicated.

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 property should also be protected and preserved so that



if 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. 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 property is now standing in the name of defendants. It is necessary to adjudicate after full pledged trial that whether the plaintiff is entitled for relief as claimed for or not? At this stage, what is required to consider whether the plaintiff has made out prima facie case to proceed with the case. By considering the facts and circumstances of the case, the plaintiff has 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 plaintiff has established prima facie case to proceed with the case. It is the apprehension of the plaintiff that the defendants are making attempts to alienate the suit schedule property in favour of others. It is necessary to consider whether



the plaintiff has got the relief as sought for. In such circumstances, if the suit schedule property is disposed of, much inconvenience will be caused to the plaintiff in this case. Since the property is standing in the name of defendants, they may dispose of the suit schedule properties to others. In such circumstances, the plaintiff 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 plaintiff has established that balance of convenience lies in her favour and she will be put to much 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

IA No.1 filed by the plaintiff
U/O 39 Rule 1 and 2 of CPC is
hereby by allowed.

The defendants, their agents,
servants or anybody claiming under
them are hereby restrained from
alienating the suit schedule



properties in any manner 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 17th day of April 2026)

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