

KABK200018112023



**IN THE COURT OF ADDL SENIOR CIVIL JUDGE & JMFC
At: MUDHOL.**

PRESENT

Sri. Vivek Gramopadhye, B.S.L.,L.L.B.
Addl.Senior Civil Judge & JMFC.,
Mudhol.

ORIGINAL SUIT NO:348/2023

DATED: THIS THE 22nd DAY OF JANUARY 2026

PLAINTIFF/S:

1. **Smt.Shantawwa W/o Goudappa Immannavar**
Age: 65 years, Occ: Agriculture & Household work,
R/o: Ingalagi,Tq : Mudhol, Dist: Bagalkot.

(Rep. by Shri.S.C.U.Advocate)

- V/s -

DEFENDANT/S:

1. **Smt.Renuka W/o Shrishail Kori**
Age: 43 years, Occ: Household work,
R/o: Ingalagi, Tq : Mudhol,
Dist: Bagalkot and others

(Deft.1 to 4, 12 to 14, By Shri.P.M.V.Advocate,
Deft.8 to 11 By Shri.S.F.B.Advocate,
Deft. 5, 7, 6, 15, 16 are placed Ex-parte)

ORDERS ON IA NO.II

**APPLICANT/S : SMT.SHANTAWWA W/O GOUDAPPA
IMMANNAVAR**

V/S.

**OPPONENT/S : SMT.RENUKA W/O SHRISHAIL KORI
AND OTHERS**

ORDERS ON IA NO.II

Learned advocate for the plaintiff has filed IA No.II under Order XXXIX Rule 1 and 2 of C.P.C seeking to restrain the defendants from alienating or creating third party rights over the suit properties as detailed in the application.

2. In the affidavit accompanying the application, it is stated that the suit is filed seeking for the relief of partition and separate possession. The suit properties are the joint family ancestral properties of the plaintiffs and the defendant No.1 to 7, except defendant No.5. Some of the suit properties are purchased out of the joint family nucleus in the name of different persons. Though the suit properties are acquired in the name of different persons, the plaintiff and the defendant

No.1 to 7, except defendant No.5, are in joint possession and enjoyment of the suit properties.

3. Subsequently, the brothers of the plaintiff, who are managing the joint family affairs, to deprive the plaintiff from her legitimate share in the suit properties and to make wrongful gain have transferred some of the suit properties in the name of defendant No.8 to 16. The defendant No.8 to 16 and their ancestors were knowing fully well with respect to the share to which the plaintiff is entitled to, but have illegally got transferred some of the suit properties in their name.

4. The plaintiff is having her legitimate share in the suit properties, however, by taking disadvantage of their names appearing in the revenue records, the defendants are trying to alienate and create third party rights in the suit properties with an intention to deprive the plaintiff from her legitimate share in the suit properties. Hence, the plaintiff sought for her legitimate share in the suit property but the defendants have denied the plaintiff her legitimate share and therefore, the plaintiff has filed this suit seeking for the relief of partition and separate possession and as the defendants are trying to alienate and create third party rights over the suit properties has filed this interim application seeking to restrain the

defendants from alienating and creating third party rights over the suit properties.

5. On issuance of suit summons and notice on IA No.I, the defendants have appeared and the defendant No.8 to 11 have filed memo on 19.12.2023 adopting their written statement as objections to IA No.I and the defendants No.1 to 4 and 12 to 14 have filed memo on 23.07.2025, adopting their written statement as objections to IA No.I.

In the written statement of defendant No.8 to 11, the plaint averments are denied paragraph wise and further contention is taken that Hanamappa, Shreeshail and Ashok have partitioned the properties in the bearing No.104/2, 105/2, 105/3, 105/4, vide partition deed dated 10.02.2004 and as per the partition the parties were in the possession and enjoyment of the suit properties and the share which is allotted to Shrishail in Survey No.105/2 is sold by him to Ashok Mallappa Kempannavar, who is the husband of defendant No.8 and father of defendant No.9 to 11 for ₹2,30,000/- and vide registered sale deed dated 28.04.2004 and he was in possession and enjoyment of the suit properties and after the purchase the properties are partitioned and the said Ashok and his legal heirs have spent huge amount in development of the said property and have also partitioned the property

amongst themselves and in-spite of knowing all these facts and the fact that the plaintiff does not have any manner of right title and interest in the suit properties she has filed the present suit and hence, seeks for dismissal of the application.

6. Learned Advocate for defendant No.1 to 4, 12 to 14 has filed their written statement and in the written statement, the relationship between the parties is admitted but the devolution of property and the rest of the plaint averments are denied paragraph wise and further contention is taken that R.S No.105/1 and 105/2 are the self-acquired properties of Hanamanppa S/o Bhimappa Kori and he has partitioned the property amongst himself and his sons and the defendant No.12 to 14 are the bona-fide purchasers of property for value and only to extract money from them the plaintiff and defendant No.15 have filed the present suit. It is further stated that after marriage plaintiff is ousted from the joint family and there are no properties standing in the name of the plaintiff and the plaintiff has no manner of right, title and interest in the suit properties and hence, seeks for dismissal of the application.

7. Heard Learned advocate for the plaintiff and Learned advocate for the defendants on IA No.II.

8. The following points that arise for my consideration:-

1. Whether the plaintiff proves that she has prima-facie case in her favour ?
2. Whether the plaintiff proves that the balance of convenience leans in her favour?
3. Whether the plaintiff proves that she will suffer irreparable loss and injury if T.I as sought is not granted?
4. What order?

9. My answer to the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : In the Affirmative

Point No.3 : In the Affirmative

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

REASONS

10. **Point No.1 :-** Learned advocate for the plaintiff submits that the relationship between the parties is not in dispute and the devolution of properties is clear on perusal of M.E No.2035, 2036, 2037, 2246, 2371, 2393 and the alleged partition has taken place behind the back of the plaintiff without having any exclusive manner of right, title and interest only to dupe the interest of the plaintiff and as the devolution

of property and the relationship between the parties is substantiated by the plaintiff and as the plaintiff is prima-facie able to substantiate her case, seeks for allowing of IA No.I.

11. On the other hand, Learned advocate for defendants submit that the self-acquired properties were partitioned by Hanamappa during his lifetime and the plaintiff is ousted from the joint family and therefore, the plaintiff is not having any manner of right, title and interest in the suit properties doesn't arise and therefore, seeks for dismissal of interim application.

12. In support of his contention, Learned Advocate for the defendant No.8 to 11 draws my attention to the record of rights of R.S No.105/2, the sale deed executed with respect to R.S No.105/2 dated 28.04.2004, M.E No.3253 and other mutation entries and prays for dismissal of the application.

13. It is relevant to note that the suit is filed seeking for the relief of partition by the daughter of Hanamappa. The relationship though is disputed by defendant No.8 to 11, it is admitted by defendant No.1 to 4. Further, the devolution of properties is also prima-facie substantiated by the plaintiff as per mutation entry No.2035, the properties bearing R.S No.105/1/2 and 105/2/1 are purchased in the name of Shreeshail through his legal guardian Mahadevi Hanamappa

Kori i.e mother and some of the properties are purchased in the name of Hanamappa Kori. Though the alleged partition has taken place, nothing is produced on record to show that the said partition is through a registered document and therefore, the partition as stated by them has to be substantiated during the course of trial by the defendants.

14. Further, the defendant No. 8 to 11 though claim to be the bona-fide purchasers of the properties, the said aspect has to be substantiated by them during the course of trial and at this stage, as the relationship between the parties and devolution of properties is prima-facie substantiated by the plaintiff, this court is of the opinion that the plaintiff is able to substantiate prima-facie case and hence, I answer **Point No.1 in the affirmative** in favour of the plaintiff.

15. **Point No.2:-** As far as balance of convenience is concerned, it is relevant to note that the plaintiff is able to substantiate prima-facie case and if the defendants by taking advantage of their names appearing in the record of rights further, alienate or create third party rights over the suit properties, it is the plaintiff who will be put to great loss and hence, this court is of the opinion that the balance of convenience leans in favour of the plaintiff and hence, I answer **Point No.2 in the affirmative** in favour of the plaintiff.

16. **Point No.3:-** The plaintiff is able to substantiate prima-facie case and if the defendants alienate or create third party rights over those properties it will lead to unnecessary multiplicity of proceedings and hence, this court is of the opinion that the plaintiff is able to substantiate that it is she who will suffer irreparable incurable loss and injury if T.I as sought for is not granted and hence, I answer **Point No.3 in the affirmative** in favour of the plaintiff.

17. **Point No.4:-** Therefore, I proceed to pass following,

ORDERS

IA No.II filed under Order XXXIX
Rule 1 and 2 of C.P.C by Learned Advocate
for the plaintiff is hereby allowed.

The defendants are hereby
temporarily restrained from alienating or
creating third party rights over the suit
properties till disposal of the suit.

No orders as to costs.

(Dictated to the Stenographer, transcribed by her, transcript revised by me, corrected, signed & then pronounced in the Open court on this the **22nd day of January 2026**)

(VIVEK GRAMOPADHYE)
Addl. Senior Civil Judge & JMFC,
Mudhol.

