



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C., KUNIGAL.**

PRESENT:

Smt.Gangavva Ayatti., B.A., LL.B.(Hon's)
Addl. Senior Civil Judge & J.M.F.C.,
Kunigal

DATED THIS THE 04TH DAY OF JANUARY 2025

OS.No.192/2021

Plaintiff : Sri.Ramesh.R.G.,
and two others
(By Sri.Y.D.S., Advocate)

-V/s-

Defendant : Smt.Sujatha.S.R,
and 4 others

(D1 by Sri.C.G., Adv,P/D6, 8,9 by Sri.K.G.C. Adv,
D2 to 5-Exparte)

-: IA No.I :-

Applicant/Plaintiff : Ramesh and others,

V/s

Opponents/defendants: Sujatha.S.R. and others,

1.Provisions under which the application is filed	U/o 39 rule 1 and 2 R/w section 151 of CPC
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2.Relief Sought for :	Temporary injunction.
3.The date on which the application is filed	29.11.2019.
4. Number of the application :	I.A.No.I.
5.The date on which the objections are filed by different Opponents:	09.01.2024.
6.The date on which the orders were passed on the said application :	04.01.2025.

: ORDERS ON IA No.I:

The present I.A.No.I is filed by the plaintiffs for grant of ad-interim order of temporary injunction restraining the defendants, their agents, servants or anybody claiming on their behalf from alienating, encumbering or creating charge over the suit property in favour of third parties, till disposal of the suit.

2. The brief facts of the affidavit annexed to application is that, the present suit is filed against the defendants for the relief of partition and separate possession of suit schedule properties. One Mariyanna Gowda was the propositus of the plaintiff and defendants family he had four sons namely Ganagannagowda, Boregowda, Siddappa and Andanaiah. During the lifetime of Mariyanna Gowda he had many



properties through inheritance. After the death of Mariyanna Gowda his sons entered into partition. The plaintiffs are the children of Gangannagowda the defendant No.1 is the daughter of Gangannagowda and defendant No.2 to 5 are the siblings. The said Gangannagowda died on 27.01.1999 leaving behind his wife Sarojamma and daughters namely Lakshamma and Indramma and sons namely Gangadharaiah and Ramesh. The said Gangadharaiah died on 03.06.2018 and Sarojamma died on 19.08.2014. The defendant No.1 is wife of Gangadharaiah. The Land bearing Sy.No.2/14 measuring 0.01.04 guntas, Sy.No.4 measuring 0.15.08 guntas, Sy.No.28/20 measuring 0.26 guntas, Sy.No.33/1 measuring 1.00 acre 0.02 guntas, Sy.No.35 measuring 2.00 acre 0.33 guntas and 0.27 guntas, totally measuring 3.00 acres 0.20 guntas, Sy.No.39/3 measuring 4.00 acre 0.10.12 guntas, Sy.No.39/4A measuring 0.10 guntas, Sy.No.59/2 measuring 0.14 guntas and Sy.No.60/2 measuring 0.15 guntas situated at Rajagere Village and the land bearing Sy.No.186/2 measuring 0.34 guntas, Sy.No.186/3 measuring 0.08 guntas, Sy.No.235/2 measuring 0.38 guntas of Nittur Village and land bearing Sy.No.87 measuring 0.11 guntas, Sy.No.95/1 measuring 0.15 guntas, Sy.No.95/2 measuring 0.15 guntas, Sy.No.95/3 measuring 0.06 guntas, Sy.No.95/4 measuring 0.12 guntas,



Sy.No.96/3 measuring 0.24 guntas, Sy.No.96/4 measuring 0.12 guntas, Sy.No.96/5 measuring 0.12 guntas, Sy.No.96/6 measuring 0.06 guntas and Sy.No.178/1 measuring 1.00 acre 0.12 guntas, situated at Sondalagere Village, Huthridurga Hobli, Kunigal Taluk and the site bearing No.166, E-katha No.152500404100100179 measuring East to West -8 yards and North to South 13 Yards situated at Kempanahalli Village, Huthridurga Hobli, Kunigal Taluk, are the ancestral and joint family properties of Gangannagowda. Late Gangadharaiah purchased site bearing katha No.5190/345/16 measuring East west 30 feet, north south 40 feet situated at IDSMT Layout Thirumali Magadi Taluk in an auction held on 24.12.1999 in faovur of his father in law Rangaswamaiah and there after the said Rangaswamaiah executed gift deed in favour of his elder daughter. The said Gangannagowda obtained landed properties in a family partition and during his life time he purchased the above site. The plaintiffs and defendant No.1 are the coparceners and they constitute as Hindu Undivided Joint family. During the life time of said Gangannagowda he obtained the schedule properties through partition. The suit schedule properties are in joint cultivation and possession of plaintiffs and defendants.

3. After the death of Gangannagowda his elder son R.G.Gangadharaiah was managing the joint family



properties as a kartha and obtained katha in respect of suit properties in his name on the basis of pavathi varasu. The site bearing No.166 was purchased out of the joint family income and the same was registered in the name of Gangadharaiah through sale deed dated 16.10.1991. In the said building there was a commercial provision and fertilizer shop run by plaintiff No.1 and defendant No.1, in the mean while the defendant No.1 behind the back of the plaintiff applied for katha on the basis of pavathi varasu, when the revenue inspector called for objections from the interested persons then only the plaintiffs came to know about the act of defendant No.1 and they filed objections the matter was recommended as dispute case in RRT(DIS) CR 120/2020-21. After receipt of the notice the plaintiff filed necessary documents. The defendant No.1 colluding with PDO Kempanahalli obtained E-katha with respect to site bearing No.166 in her favour. When the defendant No.1 trying to get katha behind the back of plaintiffs they have demanded for allotting share to them which was postponed by the defendant No.1 on one or other reasons. Hence prayed to allow IA No.I.

4. In pursuance of the summons the defendant No.1, 6, 8 and 9 have appeared and filed written statement and memo to adopt written statement as objections to IA No.I. The defendant No.2 to 5 are placed exparte.



5. It is the contention of defendant No.1, 6, 8 and 9 one Gangannagowda is the propositus of the family of plaintiff and defendant No.1 and he acquired suit item No.1 to 24 in the partition between himself and his brothers. After the marriage of defendant No.1 with Gangadharaiah their took place misunderstanding between defendant No.1 and her mother in law Sarojamma hence they left the joint family and started residing at Kempanahalli in a rented house. The plaintiff No.1, his father and mother jointly resided together at Rajagere Village and the plaintiff No.1 was looking after the agricultural property. The plaintiff No.1 and his father are jointly cultivating the suit item No.1 to 34 and grown 250 coconut and 2500 areca nut trees and there was no partition in the family in respect of the suit properties. After the death of Gangadharaiah the defendant NO.1 and her children jointly acquired estate of Gangadharaiah the suit item No.25 and 26 are the the joint family properties of plaintiffs and defendants. The said properties do not belongs to family of the plaintiffs and defendants. The husband of defendant No.1 managed the fertilizer shop at Kempanahalli and started new shop namely Byraveshwer Traders and also started provision stores and out of the said income he obtained loan from Jayaramaiah and purchased suit schedule item No.25 property as such it is his self acquired property. The suit item No.26 property is vested



with father of defendant No.1 namely S.P.Rangaswamaiah and he executed gift deed in favour of defendant No.1 dated 27.03.2008 and thereby conveyed absolute right, title and possession in her favour. On the same day possession was also handed over and the gift is accepted by the donee as required under the law therefore the said property is the self acquired property of defendant No.1. Hence the plaintiffs are not having share in those properties and prayed to dismiss the IA No.I with respect to item No.25 and 26.

6. I have heard the counsel for the parties and perused the materials on record.

7. The following points arise for my consideration.

1. Whether the plaintiff has made out prima facie case for grant of interim injunction order as sought in IA No.1?
2. Whether balance of convenience lies in favour of plaintiff?
3. Whether irreparable loss and hardship will be caused to the plaintiff, if injunction is not granted?
4. What order?

8. My finding on 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 final order
for the following;

R E A S O N S

9. **POINT NO.1 TO 3:-** Since these points are connected with each other in order to avoid repetition of facts they are together for common discussion.

10. The contention of the plaintiff is that, the present suit is filed for the relief of partition and such other reliefs it is the specific contention of the plaintiffs that the suit schedule properties are the ancestral and joint family properties and the plaintiff is also having share in the same properties. The husband of the defendant No.1 purchased site with constructed house at katha No.166 out of the joint family income in the name of his father in law and subsequently he executed gift deed in favour of defendant No.1. Whereas it is the contention of defendant No.1, 6, 7 and 8 that the suit item No.1 to 24 are the ancestral properties. Suit item No.25 and 26 are the self acquired properties of her husband and herself in which the plaintiffs are not having any share.

11. In support of the contention of the defendants they have produced and relied upon the documents Xerox copy of sale deed dated 16.10.1991, Xerox copy of Judgment and decree in



OS.No.508/2021, Xerox copy of MR No.12/93-94, Xerox copy of Tax paid receipt, Xerox Copy of Tax demand Register, Xerox copy of E-katha dated 26.07.2018, Xerox Copy of Electrical Bills dated 03.11.2023, Xerox copy of Electrical bill dated 08.11.2023, Xerox copy of license dated 20.06.2015, Xerox copy of tax paid receipt dated 16.10.2005, Xerox copy of Tax demand register year 2005-06, Xerox copy of Tax paid receipt dated 10.07.2006, Xerox copy of tax demand register year 2006-07, Xerox copy of tax paid receipt dated 26.08.2013, Xerox copy of tax paid receipt dated 11.09.2015, Xerox copy of tax paid receipt dated 21.05.2020, Xerox copy of tax paid receipt dated 29.07.2021, Xerox copy of Tax paid receipt dated 11.09.2018, Xerox copy of Tax paid receipt dated 21.10.2000, Xerox copy of tax paid receipt dated 13.05.2007, Xerox copy of E-katha dated 26.10.2021, Xerox copy of sale deed dated 27.03.2008, Xerox copy of Assessment list of Buildings and Lands Liable to Taxation for the year 2001-02, Xerox copy of Tax paid receipt, Xerox copy of assessment list of building and lands liable to taxation for the year 2001-02, Xerox copy of EC dated 23.08.2016, Xerox copy of tax paid receipt dated 27.08.2016, Xerox copy of Notice dated 12.01.2005, Xerox copy of notice dated 12.01.2001, Xerox copy of acknowledgment dated 26.09.2007, Xerox copy of tax paid receipt dated 20.08.2016, Xerox copy of tax paid receipt for the year 2012-13, Xerox copy of tax paid receipt year 2013-14,



Xerox copy of tax paid receipt year 2014-15, Xerox copy of tax paid receipt year 2015-16, Xerox copy of tax paid receipt year 2016-17.

12. Perusal of the materials available on record it appears that, the present suit is one for partition and separate possession and it is the contention of the plaintiff that, the suit schedule properties are ancestral properties as such in the event of alienation of any of the property third party rights will be created as such in order to protect the property it is necessary to grant injunction as prayed in the plaint. Eventhough the defendants have taken up contention that, suit item No.25 and 26 are the self acquired properties and it is a matter of trial and the court while deciding the application of present nature should not hold enquiry as such the plaintiff has made out prima facie case for grant of injunction. It s the specific case of the plaintiffs that the suit Item No.1 to 24 are ancestral properties and the same is admitted by the defendant No.1, 2, 6 and 8. There is dispute with regard to item No.25 and 26 and there is no dispute as to relationship a such in the event of the alienation of suit properties based on revenue entries third party rights will be created hence, grounds made out to allow I.A.No.1 for grant of injuction. In the event of non granting of injunction it is the plaintiffs who will be put to hardship. Hence I answer point No.1 to 3 in the Affirmative.



13. **POINT NO.4:** in view of by above reasons I proceed to pass the following:

O R D E R

I.A. No.I filed by the plaintiff U/o 39 rule 1 and 2 of Code of Civil Procedure is here by allowed.

The defendants are hereby restrained from alienating or creating charge over the suit schedule properties till disposal of the suit.

No order as to costs.

(Dictated to the stenographer transcribed corrected and then pronounced by me in the open court on this **the 04th day of January 2025**)

sd/-

Addl. Senior Civil Judge and
JMFC, Kunigal.