

KATK510083542022



IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,
KUNIGAL.

-.PRESENT:-

Smt. Sujatha A.B. B.A.L, LL.B.

Prl Civil Judge & JMFC., Kunigal.

Dated this the 1st day of APRIL 2025

O.S. No.481/2022

BETWEEN:

Plaintiff-

Channegowda @ Kariyappa

(By Sri.BRR., Advocate)

AND:

Defendants-

Ramanna and others

(D-4 by Sri. YRH., Advocate

D-9 by Sri CG., advocate)

I.	Provision under which the application is filed	Under Order XXXIX Rule 1 and 2 of CPC
II.	Relief sought for	To grant temporary injunction order against

		defendants
III.	The date on which the application is filed	26.07.2021
IV.	Number of the application	I
V.	The date on which the objections are filed by	25.07.2024
VI.	The date on which the order were passed on the said application	01.04.2025

RANKS OF THE PARTIES IN IA No.I

Applicant/Plaintiff-

Channegowda @ Kariyappa

Vs.

Opponents/Defendants-

Ramanna and others

ORDERS ON I.A.No.I

I.A.No.I is filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of CPC, seeking an order of Temporary Injunction to restraining the defendant No.4 & 5 or their agents, servants, attorneys or anybody acting on behalf of them from alienating or creating any encumbrances over the

suit schedule property till disposal of the suit.

2. It is the case of the plaintiff that defendant No.1 & 2 are brothers and they are the children of Late Chikkaiah S/o Late Chikka Marigowda. The defendant NO.3 is the mother of defendant No.4 the defendant No.5 is the son of defendant No.4, defendant NO.6 to 8 are the brothers and sisters and they are the children of late Nanjaiah. The plaintiff contended that original propositor of plaintiff family and the plaintiff and defendants by name Chanarayagowda and his wife Channamma had three sons by name Chikkaiah who is father of plaintiffs and defendant No.1 and 2) Channiganna @ Mallaiah who is deceased husband of defendant No.3 and father of defendant No.4. 3) Nanjundaiah who is deceased father of defendant NO.6 to 8. According to plaintiff, said Chikkaiah who is father of plaintiff and defendant No.1 and 2 died very long back and his wife Kempamma also died longback

and after death of her husband, husband of defendant No.3 by name Channiganna @ Mallaiah was also died long back and father and mother of defendant No.6 to 8 are also died long back.

3. According to plaintiff, after the death of Channarayagowda, his 3 children have partitioned their family properties very long back by orally and suit schedule property was excluded in said oral partition because for the reason that all the family members have reserved the said property as grass land to all share holders. Accordingly, upto the year 2020 the plaintiff and defendants family jointly enjoying the suit schedule property as grass land and khata and RTCs of suit schedule property did not changed anyone since it was not partitioned between them. So as a result the khata and RTC is stands in the name of father of plaintiff Chikkaiah and defendant No.4 jointly. Plaintiff has contended that he and defendants No.1 to 4 and 6 to 8 are having equal share over the

suit schedule property. Such being during the lifetime of father of plaintiff , husband of defendant No.3, and father of defendant No.6 to 8 the suit schedule property was not been divided by any metes and bounds between them.

4. Plaintiff alleged that recently he has got a news from the villagers that defendant No.4 and 5 have canvassed in their village that they already executed an agreement of sale in favour of defendant No.9 in respect of suit schedule property in order to sell the same, behind the back of the plaintiff and other defendants. Then plaintiff immediately has verified the documents before the Sub- Registrar office, Kunigal and confirmed that on 08.07.2022 the defendant No.4 and 5 who are the father and son have executed sale agreement in favour of defendant No.9 in respect of suit schedule property in order to defraud the legitimate share of the plaintiff and other defendants. Accordingly plaintiff approached the defendant No.4

and 5 and questioned the alleged agreement of sale dated 08.07.2022 and requested them to allot his legitimate share but they willfully refused to allot the same and after refusal they are making hectic efforts to delete the name of the father of the plaintiff illegally in collusion with the revenue authorities and hence plaintiff without any alternative has constrained to file this suit and prayed to allow the application.

5. In pursuance to the suit summons the defendant No.2, 3, 5 to 8 have remained absent and they are placed exparte. The defendant No.4 & 9 have appeared through their counsel by filing written statement. Wherein the defendant No.4 has denied the claim of the plaintiff and he stated that 2nd son of propositus channarayigowda i.e. Channiganna had a wife by name Lakshamma who is defendant No.3 and they have 4 sons by name Channaiah who is defendant No.4 2nd Ramaiah 3rd Nanjundaiah, 4th Gangaiah and the plaintiff has not impleaded them as parties to the

suit and suit of the plaintiff is not maintainable. Again defendant No.4 contended that 3rd son of channarayigowda i.e. Nanjundaiah had a wife by name Kamma and defendant No.6 to 8 are the family members of the propositor Channarayigowda i.e., defendant No.4 having 4 children who are of defendant No.5. But they have not impleaded daughter of defendant No.4 by name Vansantamma, Shanthamma and Soubhagya has parties to the suit.

6. According to defendant No.4 the propositor of Channarayigowda had 3 sons Chikkaiah, Chaniganna @ Mallaiah and Nanjundaiah after the death of father on 02.06.1958 got register partition deed. As per the same A schedule property to the elder son Chikkaiah, B schedule property allotted to the Channiganna @ Mallaiah and C schedule property allotted to the Nanjundaiah. Defendants further contending that suit property of the Sy.No.179/1 measuring 2 acre 6 guntas in the same 6 guntas Kharab and 30 guntas

towards western side have fallen to the share of the Channiganna @ Mallaiah in the partition deed. Again in the said survey number excluding 6 guntas Kharab land 1 acre 10 guntas towards eastern side fallen to the share of Chikkaiah and katha also standing in his name.

7. According to defendant No.4 the property allotted to Chikkaiah was partitioned between his sons. Again land allotted as per Partition deed i.e. 1 acre 10 guntas in Sy.No. 173/1 was allotted to Ramanna and his name came to be mutated in revenue documents and said Ramanna has sold 1 acre 10 guntas which was fallen to his share in favour of one Nagaiah on 22.01.2016 and in the same said Nagaiah is in possession by farming chick forms. Again contended that 2nd son Channiganna acquired several properties and his sons by name Chandraiah Rammaiah and Nanjaiah have partitioned the said properties on 10.03.1987 and 30 guntas out of 2 acre

06 guntas in Sy.No. 173/1 was allotted to his son by name chandraiah and his name came to be mutated as per MR.No.18/1998-99 he was in possession of the same. According to defendant No.4 property fallen to his share has been mutated in his name and accordingly he has grown seasonal crops in it and in order to settle his debt he has execute register sale agreement on 08.07.2022 in favour of defendant no.9 and agreed to execute registered sale deed in one year. Among these ground he prayed to reject the application.

8. On the other hand, defendant No.9 has filed separate objection by denying claim of the plaintiff and defendant No.9 pleaded regarding sale deed dated 28.08.2016 and regarding to execution of sale dated 08.07.2022 and pray to dismiss the application.

9. On the basis of the application, plaint, written statement and documents on record, the following

points that arise for the determination of this court.

1. Whether the plaintiff has made out prima- facie case in her favour?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the plaintiff will be put to great hardship and irreparable loss if, order of temporary injunction is not granted?
4. What order?

10. Heard arguments. Perused the materials available on record.

11. My finding on 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 the final order for the following

::REASONS::

12. **Point No.1:-** Admittedly plaintiff has filed this suit for the relief of partition and separate

possession. In order to support his contention the plaintiff has produced genealogical affidavit and in this case the relationship between the parties is not in dispute. The plaintiff has also produced RTC in respect of Sy.No. 173/1 for the year 2022-23 and in the same, husband of the defendant No.3, plaintiff and defendant no.4 are appearing jointly and mode of acquisition shown as ancestral properties. The plaintiff has also produced office copy of letter submitted by the plaintiff to Assistant Director of land records and Tahasildar Kunigal and in the same he has requested them to not to effect any Durasth work by stating that they are in joint possession but defendant No.4 illegally executed agreement in favour of defendant No.9.

13. It is noted that plaintiff has also produced

photostat copy of sale agreement on 08.07.2022 which alleged to be executed by defendant No.4 and 5 in respect of suit schedule property and in the same the defendant No.4 and 5 have described that the said property was allotted to them as per Panchayath Parikath dated 10.03.1987. The plaintiff has also produced hand written ROR of Sy.No. 173/1 in which same is stood in the name of son of Channarayigowda i.e. husband of the defendant No.3, along with plaintiff and defendant No.4. Again as per the version of the defendant No.4 if partition had taken place in the year 1958 then why would in the year 2022-23 plaintiff father name is still appearing jointly is not made out.

14. On the other hand, the defendants have produced Genealogical tree and they claimed that

plaintiff has not included other necessary parties in the suit. But anyway said aspect can be looked into at the time of final disposal and still that he has ample opportunity to add them whoever he wants. Again they have also produced photostat copy of Panchayath Parikath dated 02.06.1968 and in same sons of the Channigarayigowda who are Chikkaiah, Channiganna @ Mallaiah and Nanjundaiah have entered into partition to the properties belongs to Channirayigowda and in the same in Sy.No. 173/1 towards eastern side of 1 acre 10 guntas was allotted to Chikkaiah and in the same survey number 30 guntas shown towards western side was allotted to Channiganna. But on perusal of boundaries of the suit schedule property as well as property described in the partition deed it appears that same are one and

the same.

15. Moreover, the present RTC is also appearing in the name of Channiganna i.e defendant No.4 and father of the plaintiff and in that situation the contentions of the defendant No.4 with regard to exclusive right over the suit property is to be established during the trial. Further more there is no explanation from defendant No.4 and 9 though they claimed partition in the year 1958 itself then why name of the sons of Channarayi gowda appearing jointly is not made out. Hence the plaintiff has made out prima facie case in her favour to grant relief as sought under this application. Accordingly, Point No.1 answered in the ***Affirmative***.

16. **Point No. 2 and 3:** Since these points are inter connected with each other, they are taken

together for the discussion in order to avoid the repetition of the facts and circumstances.

According to plaintiff the defendant No.4 & 5 are trying to alienate the suit schedule property, when the plaintiff has demanded his share over the suit schedule property, but same was refused by the defendants and instead they contended that same was allotted to their share and accordingly they have exclusive right over the same and thereby they had executed sale agreement for clearing their hand loans. Therefore at this time as observed by this court, the suit schedule property till 2022 was standing in the name of father of plaintiff and whether defendants have exclusive right to execute sale agreement in favour of defendant No.8 is to be considered only at the time conclusion of full fledged trial and till that time, the suit schedule property is to be kept in-tact to adjudicate the matter. If the defendants are proceeded to create any encumbrance or if any alienation is

made, certainly rights of the plaintiff would get prejudiced and same will leads to multiplicity of proceedings. **Hence I answer Points No.2 and 3 are in the Affirmative.**

17. **Point No.4::** For the above discussed reasons, this court proceeds to pass the following:

::ORDER::

IA.No.I filed by the plaintiff under order XXXIX Rule 1 and 2 of C.P.C. is hereby allowed.

The defendant No.4 and 5 or their agents or servants or attorneys or anybody acting on behalf of them are hereby restrained from alienating or creating any encumbrance over the suit schedule property till disposal of the suit.

No order as to costs.

[Dictated to the stenographer directly on computer and then corrected by me and thereafter pronounced in the open court on this the **1st day of April, 2025**]

(**Sujatha A.B.)**
Prl. Civil Judge and JMFC,
Kunigal.