

KAUK210003152024



**IN THE COURT OF ADDL. CIVIL JUDGE AND JMFC, ANKOLA,
AT: ANKOLA, UTTARA KANNADA**

Presided Over by **ARPITHA B BELLAD**
B.Com., LL.B.,
Civil Judge and J.M.F.C.,
Ankola.

ORIGINAL SUIT NO.19/2024

Dated this the 2nd day of August, 2025

Plaintiff:-

Smt.Bhudevi Shankar Siddi,
Age: 70 years, O/c. Household,
R/o. Achave, Chanagar,
Tq. Ankola. U.K.

[By Sri. V.V.S., Advocate]

V/s

Defendants:-

1. Sri. Nagappa Narayan Naik,
Age: 68 years, O/c.Agriculturist,
2. Sri.Rama Narayan Naik,
Age:65 years, O/c.Agriculturist,
3. Sri. Vittal Narayan Naik,
Age:63 years, O/c.Agriculturist,

4. Sri. Masti Narayan Naik,
Age:48 years, O/c.Agriculturist,
5. Sri. Shekhar Narayan Naik
Age:45 years, O/c.Agriculturist,
6. Sri.Prabhakar Narayan Naik,
Age: 42 years, O/c.Agriculturist,
7. Sri.Kamalakar Narayan Naik,
Age:40 years, O/c.Agriculturist,
8. Smt. Parvati Puttu Narayan Naik,
Age:60 years, O/c. Agriculturist,
All are R/o: Achave, Angadibail,
Tq. Ankola.
9. Smt. Laxmi Narayan Naik,
Age: 58 years, O/c. Household,
R/o: Tingalabail, Hillur, Tq.Ankola.
10. Smt. Revati Timmanna Naik,
Age:50 years, O/c. Household,
R/o: Sunkasala, Tq. Ankola.
11. Smt. Jaya Ramesh Naik,
Age:48 years, O/c. Household,
R/o: Yellapur.
12. Smt.Devi Narayan Naik,
Age: 90 years, O/c. Household,
R/o: Achave, Angadibail, Tq. Ankola.

(D1 By: Sri. G.N.N., Advocate)

(D2 to 4 & 6 By: Smt. M.U.K., Advocate)

(D5, 7 to 11 By: Sri. A.I.N., Advocate)
(D12 By: Smt. P.L.N. Advocate)

ORDERS ON IA NO. I FILED BY PLAINTIFF UNDER ORDER 39
RULE 1 and 2 R/W Section 151 OF CODE OF CIVIL
PROCEDURE, 1908

1. Plaintiff has filed IA-I under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 restraining the defendant No.1, his men, agents or anybody claiming through him from alienating, transferring, mortgaging or creating charge over the suit schedule properties till the disposal of the suit.

2. Plaintiffs version in brief is recapitulated as under:

The genealogy described at para No.3 of the plaint depicts that the main propositus was one Narayan Naik and the plaintiff and defendant No.1 to 11 are his children and defendant No.12 is his wife. The plaintiff and the defendants are governed under Hindu Mitakshara Law. Originally the suit property was bearing Sy.No.58 measuring 12-33-00, out of which an area of 8-16-08 is the family property of the plaintiff and defendants and the said Narayan was in cultivation and enjoyment of the said property as an unauthorized occupant. The plaintiff also assisted her father in cultivation of the property and contributed towards development of the said property and the name of said Narayan Naik continued to be in revenue records. Thereafter, an area to an

extent of 4-38-0 out of the total extent was granted to said Narayan Naik and an area of 2-32-00 was granted to defendant No.1 through kabulayat on behalf of the family of plaintiff and defendants and in order to avoid future consequences, an area of 2-32-00 got granted to defendant No.1 and though the said extent was granted to defendant No.1, but it is granted on behalf of the family and not his self acquired property. Accordingly, Mutation Entry No.2051 and 3202 came to be mutated in the names of Narayan Naik and the defendant No.1. As a result the suit schedule properties are family properties of plaintiff and defendants.

3. It is further averred that being this the case defendant No.12 created the revenue documents claiming to have partitioned the property between her and her husband Narayan Naik and got created mutation entry in this regard to an extent of 2-19-0 to her and an area of 2-19-0 infavour of Narayan Naik . The said mutation entry is not registered one as such it is not legally valid. The defendant No.1 got separated an area of 2-32-0 as 0-22-00 and 2-10-00 through division which was granted on behalf of the family which is certified as M.R.No.T68/2018-19. The defendant No.1 taking advantage of his name in revenue records with an intention to defeat the rights of the plaintiff and remaining defendants created a charge in revenue documents which is not related to the plaintiff. Further submitted that defendant No.1 has filed an application in respect of Sl.No.1 and 2 of the suit

properties on behalf of the family at the time of the grant and accordingly, the suit property granted in the name of defendant No.1 on behalf of family. When the plaintiff requested the defendant No.1 to effect the partition and give his share, he stoutly denied for the same. It is further stated in the affidavit that she has established prima facie case and balance of convenience lies in her favour. If injunction is not granted, prejudice and hardship will be caused to to her. On these grounds, she has sought for interim injunction.

4. Per contra, the objections came to be filed on behalf of defendant No.1 denying the entire contents of the affidavit by contending that the father of the plaintiff was originally belonged to Bargi village of Kumta taluk and he had been cultivating the tenanted property of one Shankar Bhat by residing in shed of their house and he used to climb the coconut tress of all the houses of Bhat since the said Shankar Bhat made him to leave the tenanted property, the said Narayan Naik and his wife defendant No.12 started to reside in small hut in the suit property to an extent of 4-38-0 in 1976-1977 but since the suit property was was surrounded by forest area, it was not possible to reside there, as such the father of the plaintiff took 4-5 years to develop the said property . Thereafter, the said property was granted in the year 1980 after the father of the plaintiff filed an application. But the plaintiff has never cultivated the said property and she ran away from the house and got married to one Shankar Siddi,

as such she never cultivated nor developed the said property granted to her father.

5. It is further contended that if in case, the father of the plaintiff had developed the property to an entire extent of 08-16-08, then the entire extent ought to have been granted to him but not did so. After the period of 15 years of the grant, the said property was granted on 11/10/1995 as per the order of the Tahsildar and the defendant No.1 paid the purchase amount of sum of Rs.1268/- and accordingly, it got granted in his favour, as such it is his self acquired property. The Sl.No.1 and 2 of the suit properties are not joint family properties but they are self acquired properties of defendant No.1 and the plaintiff has no right or share over the said properties. On all these grounds, prays to dismiss the said application.

6. Heard learned counsel for the plaintiff as well as learned counsel for the defendant No.1 at length.

7. Upon hearing arguments and on perusal of material placed on record, the following points arise for consideration:

- 1. Whether plaintiff has established prima facie case?**
- 2. Whether balance of convenience tilts in favour of plaintiff?**

- 3. Whether irreparable loss or injury will be caused to the plaintiff, if the injunction is not granted?**
- 4. What order?**

8. My answers 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

9. POINT NO.1 to 3: The instant suit has been instituted by the plaintiff seeking partition of her 1/13th share over suit schedule proeptries. It is the case of the plaintiff that originally suit property was total measuring an area of 12-33-0 comprised in Sy.No.58 and the father of the plaintiff was cultivating the said property to an extent of 8-16-08 as an unauthorized cultivator and an area to an extent of 4-38-0 was granted infvour of father and an area to an extent of 2-32-00 was granted infavour of defendant No.1 on behalf of the family. The said property which was granted is now divided into 4 hissas as per the revenue records got created by defendant No.12 claiming to have partitioned the property and defendant No.1 got entered his name in Sl.No.1 and 2 of the suit properties. The suit properties are joint family properties but defendant No.1 by taking undue

advantage of his name in revenue records in order to defeat the rights of the plaintiff and remaining defendants in suit properties has created charge over the suit properties and trying to alienate the same. The plaintiff is having 1/13th share over the suit properties.

10. Per contra it is the urge of the defendant No.1 that the Sl.No.1 and 2 of the suit properties are self acquired properties of the defendant No.1 having been purchased for sum of Rs.1268/- by giving it to the Government as per the order of the Tahasildar and the same are not the joint family properties and plaintiff is not having any share over Sl.No.1 and 2 of the suit properties.

11. It is to be noted here that the said application was moved by the plaintiff during her cross-examination and Ex.P.1 to Ex.P10 are marked.

12. It is the core contention of the plaintiff that the suit properties are joint family properties having been granted to her father and defendant No.1. In this background, on meticulous perusal of the Ex.P.10 which is the old Record of Rights from the year 1965-1966 to 1993-94 peregrinating to the Sy.No.58, it can be ascertained that it was total measuring 12-33-0 and the name of the father of the plaintiff Narayan Beerappa Naik can be seen as an unauthorised cultivator in column No.12 and further it discloses that he was cultivating an area to an extent of 8-16-8. Further on perusal of Ex.P.6 which is the certified copy of

Mutation Entry No.2051 dated 05/04/1980, it manifests that the property bearing Sy.No.58 to an extent of 4-38-0 is granted to father of the plaintiff through kabulayat. Further Ex.P.5 which is the certified copy of Mutation Entry No.3202 discloses that an area to an extent to 2-19-0 was granted to the defendant No.1 and accordingly the names of the defendant No.1 came to be mutated in record of rights pertaining to Sl.No.1 and 2 of the suit properties which is evident from Ex.P.1 and Ex.P.2 and the name of defendant No.12 came to be mutated in respect of Sl.No.3 of the property as per Ex.P.3 as per the alleged Mutation Entry No.2658 styled as vantani and on perusal of Ex.P.4 record of rights pertaining to Sl.No.4 of the suit property, the names of plaintiff and defendants are entered jointly.

13. There is no dispute in respect of the relationship of the parties and also there is no dispute in respect of the existence of the properties. It is also not under dispute that father of the plaintiff was an unauthorized cultivator of Sy.No.58 and accordingly, he was granted an area to an extent of 4-38-0 out of the total extent and an area to an extent of 2-19-0 is granted in name of the defendant No.1.

14. But the plaintiff asserts that the property granted infavour of defendant No.1 is on behalf of the family and not his self acquired property, as such all the suit properties are joint family properties of plaintiff and defendants but the defendant No.1 contends that Sl.No.1 and 2 of the suit properties are self

acquired properties of defendant No.1 since he has paid sum of Rs.1268/- to the government, as such it is not the joint family property. The counsel for the defendant No.1 has heavily relied upon the mutation entry No.3202 Ex.P.5 and Ex.P.1 and Ex.P.2 record of rights wherein the names of defendant No.1 came to be mutated but it is well settled position of law that the mutation entries in the revenue records are made only for the fiscal purpose of recovering the revenue and do not constitute a document of which title is created or has been conferred. Mutation entries are neither the conclusive proof of the partition nor it can be presumed to be a self acquired property of a person in whose name it is standing. Ex.P.10 which is the record of rights prima-facie shows that the suit property is joint family property of plaintiff and defendants since the father was presumed to be cultivating the said property on behalf of the family. Cultivation by one member of the family is on behalf of all the members of the family. Whether the Sl.No.1 and 2 of the suit properties are self acquired properties of defendant No.1 or joint family properties and whether the defendant No.1 has filed an application in his individual capacity or on behalf of the family requires full pledge trial. At the stage of deciding the application for temporary injunction, only prima-facie case requires to be seen and not the prima-facie title.

15. On perusal of the documents produced by the plaintiffs, it prima-facie shows that the suit property is joint family property in which the interest of the plaintiff is also included and the plaintiff

can seek an injunction in order to prevent violation of her rights over the suit property. Prima facie case cannot be equated with prima facie title. Prima facie case is a triable issue. At this juncture, Court is not expected to hold a mini trial. At this juncture, the plaintiff has made out a triable issue.

16. It is also trite that, main intention of granting temporary injunction is to maintain the status quo of things as it is till conclusion of the trial. If the parties are permitted to change the nature of the suit property or permitted to alienate it, it will leads to multiplicity of proceedings.

17. The core question to be determined in the present suit is “Whether the plaintiff is entitled for 1/13th share in the suit property”. Unless this question is determined, the suit property is required to be kept intact without affecting it. To maintain status quo, it is just and necessary to grant temporary injunction. The plaintiff has apprehension that defendant No.1 may alienate, create charge or transfer the suit property. If in case, the defendant No.1 alienates, mortgages or creates a charge on the suit property, it will certainly cause much hardship to the plaintiff to implead the subsequent purchasers also as one of the parties to the suit, on the other hand it will cause hardship to the subsequent purchasers also which may lead to multiplicity of proceedings. And also defendant no.1 has not taken undertaking for not transferring the suit property. As a result, I can safely hold that the plaintiff has made out an arguable case.

18. At this juncture, the affidavit of the plaintiff, coupled with documentary evidence placed on record, the plaintiff has established a triable issue i.e. Prima Facie case. If the injunction is not granted and the defendant No.1 is able to transfer the suit property in any manner, the hardship will be caused to the plaintiff. Balance of convenience also tilts in favour of plaintiff. Hence considering over all circumstances of the case, Points No.1 to 3 is answered in the **Affirmative.**

19. Point NO.4: For the foregoing reasons, this Court proceeds to pass the following:

ORDER

Interim Application No. I filed by the plaintiff U/O XXXIX Rules 1 and 2 R/W 151 of the Code of Civil Procedure, 1908 is hereby allowed.

The defendant No.1 or anybody acting on his behalf is hereby restrained from transferring, alienating, mortgaging or creating a charge over the suit schedule properties in any manner till the disposal of this suit.

Note : Any observations/findings made in this order is confined only to the disposal of this IA. None of the parties are permitted to take the benefit of the findings/observations of this order during the course of trial or for any other purposes.

(Prepared and typed by me, directly on computer then corrected by me and then pronounced by me in the open court on this the 2nd day of August- 2025)

(Arpitha B. Bellad)
C/c Addl. Civil Judge & JMFC.,
Ankola.

ORDER

Interim Application No. I filed by the plaintiff U/O XXXIX Rules 1 and 2 R/W 151 of the Code of Civil Procedure, 1908 is hereby allowed.

The defendant No.1 or anybody acting on his behalf is hereby restrained from transferring, alienating, mortgaging or creating a charge over the suit schedule properties in any manner till the disposal of this suit.

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C/c Addl. Civil Judge, Ankola.

