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**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC ANKOLA AT: ANKOLA, UTTAR KANNADA**

Dated this the 02nd day of May, 2025

PRESENT:

Sri. Manohara M. LL.M.
Senior Civil Judge, Ankola.

ORIGINAL SUIT No.05/2024

Plaintiffs: 1. Smt.Rachana w/o Jaideep Algeri
and another.

-Vs-

Defendants: 1. Smt.Jayamala w/o Arun Shetty
and others.

I.A.No.II

APPLICANTS: 1. Smt.Rachana w/o Jaideep Algeri
Plaintiffs and another.

V/s

OPPONENTS: 1. Smt.Jayamala w/o Arun Shetty
Defendants and others.

ORDERS ON I.A.NO.II

The plaintiffs filed this application under Order 39
Rule 1 and 2 r/w Sec. 151 of CPC to restrain defendant

No. 2 and her men from interfering the peaceful possession and enjoyment of plaintiffs over suit schedule No.1 property by way of temporary injunction till disposal of this suit.

2. In support of this application, the plaintiff No. 1 has sworn to an affidavit stating that she filed the suit for declaration and partition and averments made in plaint may be considered as part and parcel of this application. The suit properties are family properties of them and defendant No. 1, she and plaintiff No.2, and defendant No. 1 to 3 have got common 1/4 share each in the suit properties. The suit schedule No. 1 and 2 properties are in the peaceful possession and enjoyment of her and defendant No. 1. There is no partition among them. Hence, the defendant No.2 has no absolute right over the suit properties and she contends that she got exclusive right over portion of suit properties under alleged sale deed No. 02145/2021-22 dated 31-03-2022 and will dated 10-08-2022 said to have been executed by late Vandana Nagesh Shetti. The said Vandana had no desire to execute such documents in her favour and no right to do so. The suit properties are joint family properties. On 25-02-2024 she approached defendants and demanded to give their share by metes and bounds. But, they did not considered her demand. On demanding 1/4 right

over schedule No. 3 of the suit property, defendant No. 1 and 2 insisted her to go to court for share. The defendant No.2 is making hurry efforts to alienate Sl. No.2 of schedule 1 property to somebody else by disturbing her peaceful possession over the same. If she succeeds they will be put to irreparable loss and injustice and it will lead to multiplicity of litigations. They have prima facie case and balance of convenience if in their favour. If the application is not allowed, they will be put to irreparable loss and injury. Hence this application is filed.

3. The learned counsel for defendant No.2 submits that the written statement may be considered as objection on this application.

4. Having heard both side and having perused the plaint, IA No.II, WS, objections and other materials following points arise for consideration.

1. Whether the plaintiffs made out prima facie case?

2. Whether the balance of convenience lies in favour of plaintiffs?

3. Whether the plaintiffs are put to irreparable loss and injury which cannot be compensated in terms of money if the temporary injunction is

not granted?

4. What order?

5. My answer to the above points are as under:-

Point No.1 : In the **Negative**

Point No.2 : In the **Negative**

Point No.3 : In the **Negative**

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

REASONS

6. **POINT No.1**: There is no dispute that the husband of plaintiff No.1 and Vandana Nagesh Shetti died, and on 02-02-2022, defendant No.2 sent a notice to plaintiff No. 1 and defendant No. 3 stating late Vandana Shetti was absolute owner in possession of Sl. No. 2 of schedule one property and area of land measuring 0-7-0 surrounding to it.

7. It is the contention of plaintiffs that the suit properties are family properties of them and defendant No. 1, she and plaintiff No. 2, and defendant No. 1 to 3 have got common 1/4 share each in the suit properties. The suit schedule No.1 and 2 properties are in the peaceful possession and enjoyment of her and defendant No.1. There is no partition among them. Hence, the defendant No.2 has no absolute right over the suit properties and she contends that she got exclusive right

over portion of suit properties under alleged sale deed No. 02145/2021-22 dated 31-03-2022 and will dated 10-08-2022 said to have been executed by late Vandana Nagesh Shetti. The said Vandana had no desire to execute such documents in her favour and no right to do so. The suit properties are joint family properties. On 25-02-2024 she approached defendants and demanded to give their share by metes and bounds. But, they did not consider her demand. On demanding 1/4 right over schedule No. 3 of the suit property, defendant No. 1 and 2 insisted her to go to court for share.

8. The defendant No.2 contended that mother Vandana Nagesh Shetti served in the MTNEL and she constructed house in Sl. No. 2 of schedule II property out of her own earning and with the help of defendant No.2 as defendant No.2 was working at Hongkong bank. Tghew father Nagesh Venkatram Shetti allotted area in Sy. No.27 and 469/3 to Vandana Nagesh Shetti by way of partition and the same has been evidence by mutation entry No. 3688 dated: 25-04-1986 and the said partition was made with the knowledge all the members of the family. The husband of plaintiff and the other defendants remand silent since 25-04-1986. The Vandana Nagesh Shetti explained the reasons to execute the sale deed dt: 31-03-2022. During her life time mother executed Will

voluntarily bequeathing the surrounding area of 0-7-0 of land of house property in favour of defendant No.2 as she was the head of the family and having 1/5 right in Sl. No. 1 of suit schedule I. The said Will was duly registered before Sub Register Office, Ankola on 10-08-2022. Mother made financial assistance to husband of plaintiff No.1 for his business and purchase of house property. The defendant No.1 has given the house property situating at Malad Mumbai by way of gift. The defendant NO.2 is in possession and enjoyment of after execution of absolute sale deed dt: 31-03-2022. The defendant NO. 2 got her name entered as per the sale deed and last will of her mother. The defendant No. 2 made expenses for the treatment of her mother. Hence, her mother nominated her name for her money. Defendant No.2 constructed compound wall and renovated the house by spending huge money.

9. It is also contention of plaintiff that the defendant No. 2 is making hurry efforts to alienate Sl. No.2 of schedule 1 property to somebody else by disturbing his possession. If she succeeds they will be put to irreparable loss and injustice and it will lead to multiplicity of litigations. The defendant No.2 has not filed objection. But, she filed written statement taking above said contention.

10. This suit is one for partition. The possession of one of the co-parcener is the possession of all the co-parceners. Every co-parceners or share holders have got right to enjoy the entire property along with other co-sharers till partition by metes and bounds. Hence, the defendant No.2 shall not be restrained from interference over the suit item No.1 by way of temporary injunction. Consequently, I answer **point No.1 in the negative.**

11. **POINT NOS.2 & 3**:- These points are taken up together for consideration as the plaintiffs failed to make out prima facie case. It is useful to refer a decision reported in ILR 1989 KAR 1701 Sri Gowrishankara Swamigalu vs Sri Siddhaganga Mutt, the Hon'ble High Court of Karnataka held as under:-

The existence of a prima facie case in the matter of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the plaintiff would fall at the very first stile itself.

8. The plaintiffs have failed to make out prima facie case. In view of the above ratio of Hon'ble High Court of Karnataka, as there is no prima facie case at

all, further questions of balance of convenience and irreparable loss need not be considered since the plaintiffs fell at the very first stile itself. Under these circumstances, I answer **point No.2 and 3 in the negative.**

13. **Point No.4:** In view of my reasons on Point No.1 to 3, I proceed to pass the following:

ORDER

**I.A No.II filed under Order
XXXIX Rule 1 and 2 R/w Section
151 of CPC is hereby dismissed.**

(Directly dictated to the Typist, typed by her, revised and corrected by me and then pronounced in the open court on **2nd May, 2025**)

sd/-
(Manohara M.)
Senior Civil Judge, Ankola