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

**Dated this the 02<sup>nd</sup> 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.I**

**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.I**

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

defendant No.2 and her men from alienating or creating any charge over the suit properties 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 the plaint may be considered as part and parcel of this application. The suit properties are family properties of them and defendant No. 1, and 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 the defendant No. 2 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. The defendant No.2 is making hurry efforts to alienate Sl. No. 2 of schedule 1 property to somebody else. 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.I, 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 **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**

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 case of plaintiff that the suit properties are family properties of them and defendant No. 1, and 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 the defendant No. 2 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.

8. The defendant No.2 contended that her mother Vandana Nagesh Shetti served in the MTNEL and constructed house in Sl. No. 2 of schedule II property out of her own earning and with her help as she was working at Hongkong bank. 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 evidenced 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 remained silent since 25-04-1986. The Vandana Nagesh Shetti explained the reasons to execute the sale deed dt: 31-03-2022. During life time her mother executed will voluntarily bequeathing the surrounding area of 0-7-0 of land of house property in her favour of 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. The 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, and her name is entered as per the sale deed and last will of her mother. She made expenses for the treatment of her mother. Hence, her mother nominated her name for her money. She constructed compound wall and renovated the house by spending huge money.

9. It is also contention of plaintiffs that the defendant No. 2 is making hurry efforts to alienate Sl. No. 2 of schedule 1 property to somebody else. 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. Whether the defendant No. 2 acquired absolute title over the above said properties under sale deed and will, is a matter of trial. Till deciding the said question, the properties are to be kept intact. They have prima facie case and balance of convenience is in their favour. If the application is not allowed, they will be put to irreparable loss and injury.

10. The prima facie case is a case which is not frivolous or vexatious, but it includes serious questions to be investigated. In the instant case, whether the defendant No. 2 has acquired absolute right on the basis of sale deed and will as prayed for or the plaintiffs are entitled for share in the said land etc., are the serious questions to be investigated. Till deciding of the said serious questions, the said land is to be preserved intact for the benefit of both the parties. In result, I am of the considered opinion that the plaintiffs have made out prima facie case to restrain the defendant No. 2 from alienating the said said land. Consequently, I answer this point in the **affirmative**.

11. **POINT NOS.2 & 3**:- These points are taken up together for consideration.

12. In the affidavit, the plaintiffs have stated that the defendant No. 2 is making hurry efforts to alienate Sl. No. 2 of schedule 1 property to somebody else, and if she succeeds they will be put to irreparable loss and injustice and it will lead to multiplicity of litigation. Certainly, if it is done like that, there will be multiplicity of proceeding, and they will be put to irreparable loss. The alienation of the said land way of sale or encumbrance will certainly create third party right. If the right of alienation by way

of sale or creating encumbrance is restrained, the right of such alienation will only be postponed. The very right will not be restrained permanently. If the defendant No. 2 succeeded in this case, she will certainly exercise the said right. If the defendant No. 2 succeeded in their attempt of alienation and the plaintiffs succeeded to their right of getting share in the said land, certainly plaintiffs will be put irreparable loss and injury which cannot be compensated in terms of money as the right of enjoyment of property is a statutory right. Therefore, the comparative hardship is more to plaintiffs than defendants if the injunction is denied. Under these circumstances, I am of the considered opinion that the balance of convenience lies in favour of plaintiffs and the plaintiffs will be put to more hardship and injury if the injunction is denied. Consequently, I answer **point No.2 and 3 in the affirmative.**

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.I filed under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC is hereby allowed as under:**

**The defendants are restrained from alienating or encumbering the suit schedule property in any way by way of temporary injunction till disposal of this suit.**

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

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