

KAUK310013852021



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE
AND JMFC BHATKAL**

PRESENT

Smt.Dhanavathi. B.A.(law) LL.B.,
Addl. Civil Judge and J.M.F.C, Bhatkal

O.S.No.58/2021

Dated this the 29th day of January, 2025

PLAINTIFF :

1. Smitha Raghuv eer Pai,
Aged about: 65 years,
R/o: Konkankeri, MGM Temple Road,
Shirali, Bhatkal Taluk.
2. Vinayaka Durgarama Borker,
Aged about: 62 years,
R/o: 313, D Block, Vijay Hills Apartment,
Vijaya Hills Road, A.C Guards,
Ladakika Pool, Hyderabad-580004
3. Vijaya @ Anitha Krishna Kamath,
Aged about: 60 years,
R/o: Room No.77, Block No.11,
1st Floor, Fishermen Colony,
Behind Raheja Hospital,
Mahim, West Mumbai,

(By Sri.V.F.G., Advocate)

// Versus //

DEFENDANTS :

1. Vittaldas Vaikunta Kamath(Dead)
By his legal heirs.
- 1(a). Kalpana W/o Vittaldas Kamath,
Aged about: 55 years,
- 1(b). Vishvas S/o Vittaldas Kamath,
Aged about: 32 years,
- 1(c). Manoj S/o Vitaldas Kamath,
Aged about: 33 years,
all are R/o: Flat No. 87, U.T Nagar,
Near Pillar No.17, Mehadi Pattanam,
Hydrabad, Telangana State-500028.
2. Ganapathi S/o Vaikunta Kamath,
Aged about: 55 years,
R/o: Flat No. 104, Jeevan Kala
Mandir Lane, Beside Nishan Car
Showroom, Old MLA Quarters,
Hydrabad, Telangana State-540008.
3. Shankar Bin Vaikunta Kamath,,
Aged about: 52 years,
R/o: Near Kamath Bekary,
Chitrapur Road, Shirali,Bhatkal Taluk.
4. Kaveri W/o Krishna Kamath,
Aged about:72 years,
R/o:Near M.E.M Temple,
Opposite Gram Panchayat,
Shirali,Bhatkal Taluk.
5. Shantha W/o Ramachandra Bhat,
Aged about:70 years,

R/o:Huliyappanagudda, Sirsi,
Sirsi Taluk, Uttara Kannada.

6. Ganesh Ganapayya Kamath (Died)
By his legal heirs.
- 6(a). Raghavendra Ganesh Kamath,
Aged about: 42 years,
R/o: Nilekani, Near Ganapathi Temple,
Sirsi, Uttara Kannada.
- 6(b). Ravi Ganesh Kamath,
Aged about: 40 years,
R/o: Nilekani, Near Ganapathi Temple,
Sirsi, Uttara Kannada.
7. Sathish Ganapayya Kamath,
Aged about: 69 years,
R/o: Nilekani, Near Ganapathi Temple,
Sirsi, Uttara Kannada.
8. Sheethal @ Malathi W/o Venkatesh Pai,
Aged about: 70 years,
R/o: Airport Road, Chikalim, Vasco,
Goa-403 711.
**(Defendant No. 2 to 4 by Sri.S.B.B.,
Advocate, Defendant No. 6(a)& 6(b),
D7 by Sri. U.N.N Advocate, Defendant
D1(a) to(c) and 8 -Ex-parte)**

Parties to I.A.No.III

APPLICANT/ PLAINTIFF :

Smitha Raghuv eer Pai and others,

// Versus //

RESPONDENT/DEFENDANT :

Vittaladas Vaikunta Kamath(Died) by is legal heirs of 1(a) Kalpana W/o Vittaladas Kamath and others

ORDER ON I.A.No. III FILED UNDER ORDER XXXIX RULE 1 AND 2 R/W. SEC. 151 OF CIVIL PROCEDURE CODE.

I	Provision under which the applications are filed	U/o XXXIX Rule 1 and 2 R/w 151 of C.P.C
II	Relief sought for	IA-III : Praying for an temporary injunction against the defendant No.1(a), (b), (c), 2 and 3 from creating charge or alienating suit schedule property and not to demolish and not to interfere the possession of the house i.e., suit Sl.No.4 of the schedule of the property till the disposal of suit.
III	The date on which the application filed.	27.04.2021
IV	Number of application.	I.A.No.III
V	The date on which the objection filed by opponent.	The defendant No. 3 has filed objection on 10.05.2021 and same is adopted by the defendant No.2 and 4.
VI	The date of which the order passed on the application.	29.01.2025

2. Briefly, the plaintiffs case is as follows:-

Description of Suit properties:-

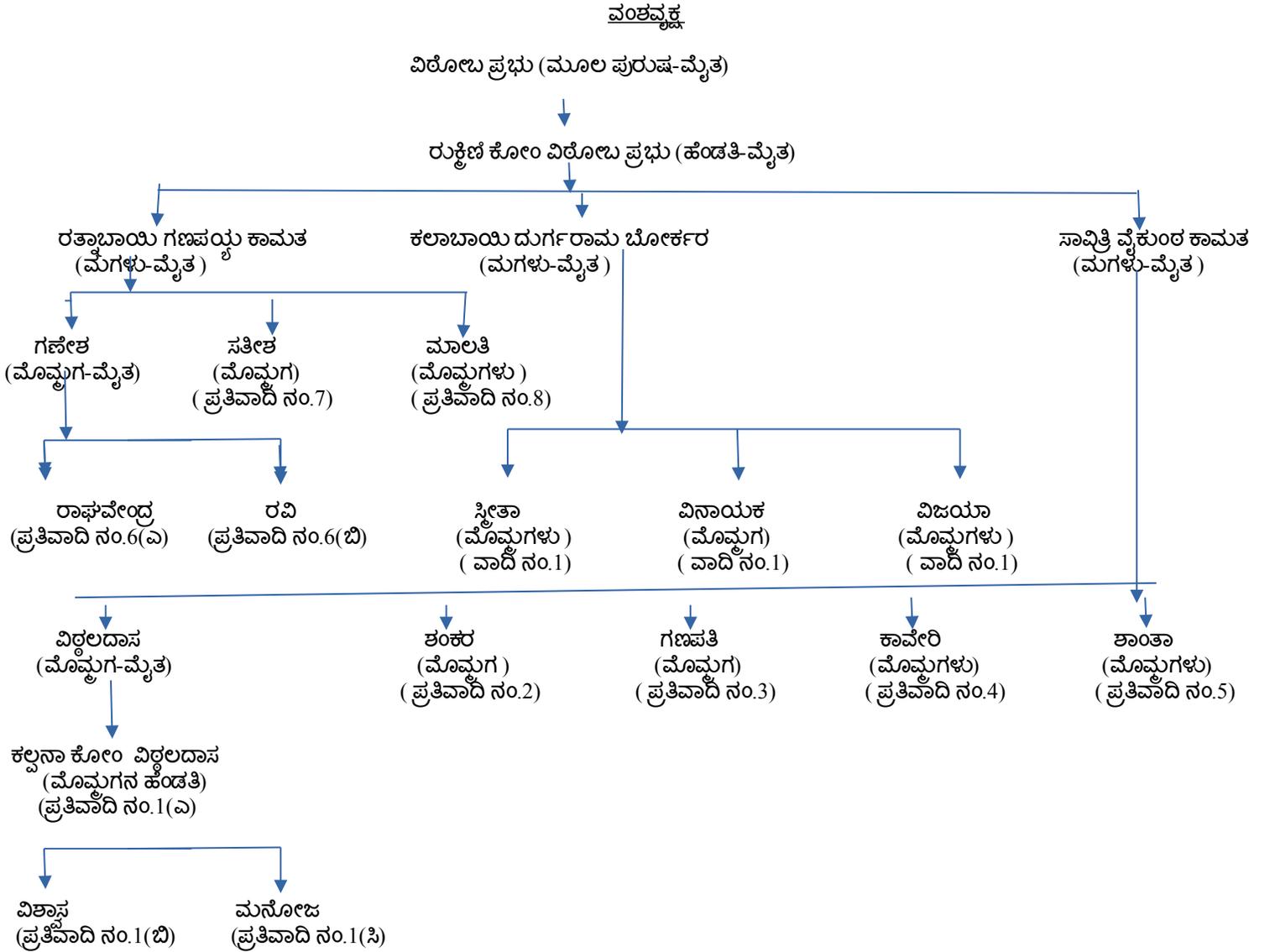
ದಾವಾ ಪರಿಶಿಷ್ಟ

ಉತ್ತರ ಕನ್ನಡ ಜಿಲ್ಲಾ ಭಟ್ಟಳ ತಾಲೂಕು ಶಿರಾಲಿ-2 ಗ್ರಾಮದ ದಾವಾಸ್ತಿಗಳ ವಿವರ

ಅ.ನಂ	ಸರ್ವೆ ನಂ.	ಹಿಸ್ಸಾ ನಂ.	ಕ್ಷೇತ್ರ	ಆಕಾರ	ಚತುರ್ಗಡಿ
1.	815 ಅ	1-1	00-02-00	0.14	ಸರ್ವೆ ವ ಹಿಸ್ಸಾಗಡಿ ವೈವಾಟಿ ಗಡಿ

2.	815 ಅ	4	00-01-12	0.13	ಸರ್ವೆ ವ ಹಿಸ್ಸಾಗಡಿ ವೈವಾಟಿ ಗಡಿ
2.	815 ಅ	5	00-01-12	0.13	ಸರ್ವೆ ವ ಹಿಸ್ಸಾಗಡಿ ವೈವಾಟಿ ಗಡಿ
4.	ತಿರಾಲಿ ಗ್ರಾಮ ಪಂಚಾಯತ ಕರಾಕರಣೆಗೊಳಪಟ್ಟ ಕಟ್ಟಡ ನಂ.VIII/ 30 ರ ಮನೆ ಇರುತ್ತದೆ.				

The genealogy of the plaintiffs and defendants family as follows.



3. In the annexed affidavit to I.A.No.III it is stated that,the suit schedule properties are originally belong to the

propositus of the plaintiffs and defendants family by name Smt. Rukmini W/o Vitoba Prabhu. The land tribunal has granted the land in Survey No. 815A/1A measuring 00-04-08 of Shirali Village as per the order L.R.M No. 17/432 to Smt. Rukmini W/o Vitobha. Thereafter as per the order of District Collector, Karwar ALM-1-SR-117/86-87 dated 17-11-1987 the said land was converted and a house was constructed in it, which was registered in Shirali-2 Gram Panchyat and in the year 1988-89 numbered as 1243 in the name of Smt. Kalabai Borkar. In the year 1997-98, the said building was renumbered as 1509 and then again in the year 2002-03 renumbered as VIII/30 in the name of Smt. Kalabai Borkar. The said house is old and is in the possession of the plaintiff since the time of Smt. Kalabayi, the mother of the plaintiff.

Further, Smt. Rukmini W/o Vitoba Prabhu, the propositus of the plaintiffs and defendants, had three daughter by name Ratnabayi Ganapayya Kamath, Kalabayi Durgarama Borkara, Savitri W/o Vaikunta Kamath and she has no sons. Her three daughters are also deceased. Smt. Rukmini W/o Vitobha Prabhu who was died on 04-08-1997 and her husband also died prior to her death. Hence three daughters of Rukmini W/o Vitoba Prabhu have 1/3 right each in the item No.1 to 3 of the suit property, and also the item No.4 of the suit schedule house belongs to Kalabayi W/o Durgaram Borkar and the plaintiffs are the owners of said house and they are in the possession of the said house.

The plaintiff No.1 to 3 are the legal heirs of the deceased Kalabayi Durgaram, the defendant No. 1(a) to 5 are the legal heirs of deceased Smt. Savitri W/o Vaikunta Kamath and defendant No.6(a) to 8 are the legal heirs of deceased Ratnabayi Ganapayya Kamath. Thus the suit property was originally belong to Rukmini W/o Vitoba Prabhu and the plaintiffs have 1/3rd share in the suit property along with the defendant No.1 to 8. When such being the case, after the death of Smt.Rukmini Vitoba Prabhu, the suit property has to be muted in the name of her three daughters. But the son of Smt.Savitri W/o Vitobha Prabhu by name Vitaladasa Vaikunta Kamath has mutated his name by executing will as per mutation entry no. A4537. The said Will was not executed by Smt. Rukmini W/o Vitoba or she was not in a position to execute the same and the said Will was fraudently created behind the back of the plaintiffs, hence the mutation entry No. A4537 is invalid. The suit property was granted by the Land Tribunal and it is the joint family property. Hence the right of Vitaladas Vaikunta Kamath, the husband and father of the defendant No. 1(a)(b)(c) over the suit property through will, is not correct. The said Vitaldas Vaikunta Kamath who had shared the said property with his brothers Ganapathi and Shankar through Tondi Vantani in the year 1999 and the mutation entry No. A4848, which was done behind the back of the plaintiffs, which does not affect the plaintiffs right over the suit schedule property. After the death of Vitaladas Vaikunta

Kamath , the names of defendant No.1(a) (b) (c) are mutated in the records by inheritance. But these documents will not affect the plaintiff's right. The plaintiffs also have 1/3rd share in the suit properties. As the suit properties are now in the name of the defendants No.1(a), (b), (c), 2 and 3 and there is every possibility of getting the deed or selling the same in any manner. If the suit properties are sold, the plaintiffs will suffer a loss and that cannot be compensated by way of money. There is an old house related to plaintiffs in the suit properties and the defendants may demolish the said house at any time. Therefore, it is necessary to issue an interim injunction against the defendants not to demolish the said house and to restrain them from interfering with their possession. Therefore, it is very necessary to grant an interim injunction to prevent defendants from selling the suit properties. Hence, prays to allow this application.

4. After service of summons, the defendants No.2 to 4 and 6(a), (b), have appeared through their counsel. After service of summons, the defendants No. 1(a) to (c) and 8 are not appeared before this court and they placed ex-parte. The defendant No.3 has filed objection to the application and same has been adopted by the defendant No.2 and 4.

5. In the objection, the defendant No.2 to 4 have denied the averments made in the application and the affidavit. It is stated that, the property in Survey No. 815A/1A of Shirali-II village measuring 00-04-08 is originally granted to Smt.

Rukmini W/o Vittal Prabhu by the land Tribunal in LRM No.17/432. But denied the construction of house in the said property and also denied the fact that, the plaintiff's mother Smt. Kamalabai was in the possession of the said house. Before granting of the said property, the husband of Smt. Rukmini W/o Vittal Prabhu was died and at that time her three daughters were got married and she alone residing in the suit property. Since, she was unable to manage her livelihood, her younger daughter Smt. Savitri W/o Vaikunta Kamath and her husband and children i.e., defendant No.1 to 5 were resided along with the her since from 1958. The parents of the defendant No.1 to 5 were taking care of Smt. Rukmini W/o Vitoba Prabhu. For the said love and affection, Smt. Rukmini W/o Vitoba Prabhu has executed Will dated: 05-11-1958 in favour of the parents of the defendant No. 1 to 5 and bequeathed the schedule properties in their name. At that time the suit properties are not granted to Smt. Rukmini W/o Vitoba Prabhu by the Land Tribunal. The parents of defendant No. 1 to 5 have filed application in the name of Smt. Rukmini W/o Vitoba Prabhu to the Land Tribunal and got granted the property.

Thereafter Smt. Rukmini W/o Vitoba Prabhu on 15-03-1987 has executed General Power Attorney in favour of her grandson i.e., defendant No. 1 Vittala Dasa Vaikunta Kamath with respect to the Survey No. 815A/1A measuring 00-04-08 of Shirali-2 village Bhatkal Taluk. On the basis of said

General Power Attorney the entire land which is in the name of Smt. Rukmini W/o Vitoba Prabhu got converted and then defendant No.1 constructed a building in the said suit property, since 1989 the said building was given for rent to the Vijaya Bank till 2018-19 and subsequently the said building was acquired for widening of National Highway and this defendant has received the compensation from the government.

Further, the defendant No.1 was taking care of the entire suit properties on the basis of the General Favor of Attorney executed by Smt. Rukmini W/o Vitoba Prabhu in year 1987. The defendant No.1 was took care of Smt. Rukmini W/o Vitoba Prabhu and as a reward, she has executed registered will dated 21-09-1990 and bequeathed her properties in the name of defendant No.1 with an intention that after her death her property should go to her grandson. After 7 years from the date of execution of Will, on 04-08-1997 Smt. Rukmini W/o Vitoba Prabhu had died. On the basis of said will, on 28-01-1998 , As per Mutation Entry No. A4537 of Shirali-2 Village the property in Survey No. 815A/1A measuring 00-04-08 was mutated in the name of defendant No.1. Thereafter, the defendant No.1 as per the first Will dated 05-11-1958 executed by Smt. Rukmini W/o Vitoba Prabhu , with the consent of all the children of Smt. Savitri Kom Vaikunta Kamath, he has divided the suit schedule properties to the defendant No.2 and 3 through Tondi

Vantani on 27-12-1999. As such the suit property, where the original family house(ಮೂಲ ಮನೆ), cowshed and bath house has been given to the share of defendant No.2. The original house was demolished and house No.VIII/29 of Shirali Gram Panchayath belonging to the defendant No.2 was constructed. On the other side of the said house, there is a cowshed and bathroom which is in deteriorative condition and its roof has fell down and now only mud wall is remaining . The said land is adjacent to the main road of Chitrapur and same was allotted to the share of the defendant No.2. But now the defendant No.2 is residing in the state of Telangana for his employment and has given a power of attorney to his brother i.e., defendant No.3 to take care of his property. The plaintiffs who were knowing that there was an old fallen cowshed and bathroom in the land allotted to defendant No.2, the they brought this false suit with an intention of grabbing the said land. All the above facts are within the knowledge of the plaintiff and the defendant no 6 to 8. In spite of that, the plaintiffs by suppressing the true facts, without questioning any revenue entry in the revenue records, after 23 years of the death of Smt. Rukmini W/o Vitoba Prabhu, have filed this false suit.

After 1998, the original suit Survey No. 815A/1A measuring 0-4-8 of Shirali Village Bhatkala Taluk has been divided between the defendant No. 1 to 3, according to which there is a podi entry was made in the item No.1 to 3 of the

schedule property. This suit brought by the plaintiffs without challenging any revenue entry is not maintainable under law.

Neither the plaintiffs nor their mother Kalabai had possession of the suit property and they have not constructed the house nor lived in the house situated in the schedule property. The names of the defendant No.1 to 3 were entered in the revenue records since from 1998-99, thereafter this defendant constructed 1 bakery and 2 shops on the land allotted to him. In the property allotted to the defendant No. 2 and 3 there was a Vijaya bank building and same acquired to the National Highway in the year 2019 and in the remaining land there is 1 house and 1 shop . All these facts are known to the plaintiffs and defendants No.6 to 8 and they are not in the possession of the suit property. Hence they are not entitle for the injunction relief.

The residence of the plaintiff No.1 is 200 meters away from the suit property and the suit schedule property is adjacent to the National Highway, knowing that the defendant No.1 to 3 and their parents have been residing in the suit schedule property since time immemorial, this suit has been filed to obtain an ex parte temporary injunction by concealing the fact. If an order of temporary injunction is granted , irreparable loss will be caused to these defendants. The defendants spent a lot of money in the suit property and built a building and rented it to Vijaya Bank. This fact is known to the plaintiffs in the year 1989. Similarly, the

defendants No.1 to 3 built a separate shop, house in the property belonging to them. The suit is barred by limitation. Knowing all the facts, this application is filed and same shall be dismissed with costs,

6. Heard arguments, perused the plaint and the documents available on record.

7. In view of above the following points that would arise for my consideration are as follows:-

1. Whether, at this stage the plaintiffs have made out prima facie case in their favour?
2. Whether the plaintiffs prove the balance of convenience lies in their favour?
3. Whether the plaintiffs prove that in event of not allowing I.A.No.II, they will be put to irreparable loss and injury?
4. What Order?

8. My answers to the above points is as follows:-

- | | | |
|------------|---|------------------------------------|
| Point No.1 | : | In the Partly Affirmative , |
| Point No.2 | : | In the Partly Affirmative , |
| Point No.3 | : | In the Partly Affirmative , |
| Point No.4 | : | As per final order |

for the following:-

REASONS

9. **Points No.1 to 3:** These three points are taken up for discussion together in order to avoid repetition of facts.

10. This application is filed at the stage of filing the suit. The plaintiffs have filed this suit for declaration and partition against the defendants and for temporary injunction against the defendant No.1(a) to (c), 2 and defendant No.3.

10. It is the case of the plaintiff that, the original suit survey No. 815A/1A measuring 00-04-08 of Shirali Village is granted to to Smt. Rukmini W/o Vitobha as per the order in L.R.M No. 17/432 and same is the joint family property. The mother of the plaintiffs by name Smt. Kalabai Borkar has constructed the house shown in the suit property and now plaintiffs are in the possession. after the death of Smt.Rukmini Vitoba Prabhu, the suit property has to be muted in the name of her three daughters. But the son of Smt.Savitri W/o Vitobha Prabhu by name Vitaladasa Vaikunta Kamath has mutated his name by executing will as per mutation entry no. A4537. The said Will was not executed by Smt. Rukmini W/o Vitoba or she was not in a position to execute the same and the said Will was fraudently created behind the back of the plaintiffs. Hence the right of Vithaladas Vaikuntha Kamath, the husband and father of the defendant No. 1(a)(b)(c) over the suit property through will, is not correct. The said Vitaldas Vaikunta Kamath who had shared the said property with his brothers

Ganapathi and Shankar through Tondi Vantani in the year 1999 and the mutation entry No. A4848, which was done behind the back of the plaintiffs, which does not affect the plaintiffs right over the suit schedule property. After the death of Vitaladas Vaikunta Kamath , the names of defendant No.1(a) (b) (c) are mutated in the records by inheritance. But these documents will not affect the plaintiff's right. The plaintiffs also have 1/3rd share in the suit properties. Therefore, this suit has been filed by the plaintiffs. As the suit properties are now in the name of the defendants No.1(a), (b), (c), 2 and 3 and there is every possibility of getting the deed or selling the same in any manner. If the suit properties are sold, the plaintiffs will suffer a loss and that cannot compensated by way of money. There is an old house related to plaintiffs in the suit properties and the defendants may demolish the said house at any time. Therefore, it is necessary to issue an interim injunction against the defendants not to demolish the said house and to restrain them from interfering their possession. Therefore, it is very necessary to grant an interim injunction to prevent defendants from selling the suit properties. Hence, prays to allow this application. On the other hand the defendant No.2 to 4 have filed objection and denied the allegations made in the application and prays to dismiss the application.

11. The plaintiffs have filed this suit for declaration and

partition of the suit property against the defendants. The plaintiff has shown the apprehension that the defendant No.1(a) to (c), 2 and 3 will sell the suit property and they will disturb their possession over the item No.4 house in the suit property. The granting of injunction is the discretionary power of the court. It is important, on the part of the plaintiff to prove and establish the prima facie case before the court to get order of the temporary injunction in his favour from the court. He also demonstrate before the court that the balance of convenience lies in his favour and if the order is not granted he will be put to irreparable loss. The primary intention of granting the temporary injunction is to preserve the subject matter of dispute till the right, title and dispute between the parties is adjudicated by the court. At the time of deciding the application filed U/o XXXIX the court has to decide that who is in the possession of the property and to whom hardship will be caused if the temporary injunction is not granted. In the present case there is no dispute with regard to the relationship between the parties.

12. The plaintiff has produced several revenue records relating to the schedule properties and photographs of the alleged house situated in the suit schedule property and also tax paid receipt to the house which is shown in the plaint schedule property. At the time of arguments, the counsel for the defendant No. 2 to 4 has also submitted that, he has no

objection for granting injunction for restraining the alienation of the suit property and further argued that, no survey number is mentioned regarding in which the item No. 4 of the suit schedule property is situated and there is no house in the schedule property. On perusal of rival contention of the parties to the suit, it is clear that, there is dispute regarding the existence of the house and possession of the item No.4 of the suit schedule property. At this stage, this court cannot presume on the basis of photographs regarding the possession of the house and the survey number of the property where the said house is situated, it requires detailed trial.

13. Further, with regard to the alienation or creating charge over the suit schedule property, it is necessary to restrain the defendants from alienating the suit schedule properties in order to avoid multiplicity of the proceedings. If order is passed for non alienation of the suit properties no hardship will cause to the defendants. Hence, the plaintiffs have made out prima-facie case for granting of injunction order against the defendant No.1(a) to (c), 2 and 3 to restrain them from alienating or creating charge over the suit schedule property. In view of the above discussion, the plaintiff has made out a prima-facie case and balance of convenience lies in their favour. If the relief of temporary injunction is not granted in favour of the plaintiffs, they will be caused irreparable loss and injustice. Accordingly, this Court answers

point No.1 to 3 in the **Partly Affirmative**.

14. **Point No.4:** In view of the findings to the point No.1 to 3, this Court proceed to pass the following:

ORDER

The I.A.No.III filed U/o XXXIX Rule 1 and 2 R/w Section 151 of CPC is hereby partly allowed.

The defendant No.1(a) to (c), 2 and 4, their men or claiming under them are hereby restrained from alienating or creating charge over the suit schedule properties in any manner, by way of ad-interim temporary injunction, till the disposal of suit.

Any observations made above, will not be having bearing on the main matter.

(Dictated to the stenographer directly on computer, corrected by me and then pronounced in the open court this the 29th day of January, 2025)