

KAUK410000822024



**IN THE COURT OF
CIVIL JUDGE AND JMFC COURT, DANDELI
AT DANDELI, UTTARA KANNADA**

Presided Over by SMT. ROHINI D BASAPUR LLM

Civil Judge & JMFC, DANDELI

O.S. 14/2024

DATED THIS THE 28th DAY OF FEBRUARY 2024

Plaintiffs/Applicants:1. Sri. Nagappa Parappa Mashal,

Age- 42 years, Occ- Private Service,

R/o: Azad Nagar, Dandeli,

Tq- Dandeli, District- Uttara Kannada

2) Sri. Manjunath Parappa Mashal,

Age- 41 years, Occ- Private Service,

R/o: Azad Nagar, Dandeli,

Tq- Dandeli, District- Uttara Kannada

[By pleader Sri. S.M.D., Advocate]

-V/s-

**Defendants/Opponents: 1. Smt. Vithabai D/o. Hanumant
Mashal,**

Age- Major, Occ- Household,

R/o: Akash Kirani Store, Azad Nagar,
Dandeli, Tq- Dandeli

2) Sri. Devendra Kallappa Mashal,

Age- Major, Occ- Private Service,

R/o. Akash Kirani Store, Azad Nagar,
Dandeli, Tq- Dandeli

3) Sri. Shivanand Kallappa Mashal,

Age- Major, Occ- Private Service,

R/o: Akash Kirani Store, Azad Nagar,
Dandeli, Tq- Dandeli

4) Sri. Sunil Kallappa Mashal,

Age- Major, Occ- Private Service,

R/o. Akash Kirani Store, Azad Nagar,
Dandeli, Tq- Dandeli

**5) Smt. Gangavva W/o. Parappa
Mashal,**

Age- 67 years, Occ- Household,

R/o. Miragi, Indi, Vijaypura

6) Sri. Suryakanth Parappa Mashal,

Age- 50 years, Occ- Private Service,

R/o. Miragi, Indi, Vijaypura

7) Smt. Lalita W/o. Sadashiv Zende

D/o. Parappa Mashal,

Age- 46 years, Occ- Household,

R/o. Sanglikar Galli, Jamakhandi,
Bagalkot

**8) Smt. Mallavva Parappa Mashal
W/o. K. Sreenivasulu,**

Age- 44 years, Occ- Household,

R/o. Sarada Nagar, Anantpur,
Andhra Pradesh

**9) Sri. Basavaraj Chandrasha
Mashal,**

Age- 49 years, Occ- Private Service,

R/o. J.N. Road, 14th Block, Tq-Dandeli,

**10) Smt. Bhagavva Chandrasha
Mashal,**

Age- 68 years, Occ- Household,

R/o. J.N. Road, 14th Block, Dandeli,

Tq- Dandeli

**11) Smt. Laxmi W/o. Haralayya
Logavi D/o. Chandrasha Mashal,**

Age- 45 years, Occ- Household,

R/o. Vijay Nagar, Dandeli, Tq-Dandeli

12) Smt. Girija W/o. Basappa

Mandoli D/o. Chandrasha Mashal,
Age- 43 years, Occ- Household,
R/o. Vijay Nagar, Dandeli, Tq-
Dandeli

**13) Smt. Saraswati D/o.
Chandrasha Mashal,**

Age- 42 years, Occ- Household,
R/o: C/o. Haralayya Logavi, Vijay
Nagar, Dandeli, Tq- Dandeli

[Def No. 1 to 4 by Shri R.I.H. Advocate]

ORDERS ON IA NO.I FILED BY THE PLAINTIFFS
UNDER ORDER 39 RULE 1 AND 2 OF C.P.C.

The present suit is filed for partition. Along with the suit, the present application is filed seeking to grant ad-interim temporary injunction against the defendant No. 1 to 4 or any person on their behalf from alienating and constructing the house property till the disposal of the suit.

2. Along with the suit, the present application is filed. In the affidavit, the plaintiff No.2 states that, defendant No.1 has inherited the suit property as a Karta of Hindu undivided family. Defendant No.1 by creating false document without any authority and partitioning the suit property got entered her name in the suit property as owner. Now she is constructing additional building structure in the suit schedule property.

3. Plaintiff No.1 issued notice on 01-07-2023 to defendant No.1, 2, 3 and 4 for seeking 1/4th share including Shri Suryakant P Mashal, Smt Lalita Sadashiv Zende D/o Parappa Mashal and Smt. Mallavva Parappa Mashal W/o K Shrinivasulu and Smt Gangavva W/o Prappa Mashal and plaintiff No.1 and 2. After issuing the notice, defendant No.1 to 4 have not replied and also not given the share of the house property till today. Therefore, plaintiff moved an application for not to alienate and not to construct house property. If property is constructed it is very difficult to divide among plaintiff and defendants. As such, the present application.

4. Upon service of notice, defendant No. 1 to 4 have filed objection contending that, the plaintiff has totally suppressed the material facts before this court. The suit property is absolutely not a joint family property and defendant No.1 is not a manager of undivided joint family and plaintiff no way concerned to the suit property. The defendant No.1 is occupier of the suit property since from more than 25 years and her name has been entered in occupier column since then and she used to pay the house tax and water bill. Being an occupier of the suit property, the city municipal council has granted and executed title agreement. The same has been registered before the Sub-Registrar Haliyal. Thereafter the name of the defendant No.1 has been entered in ownership column. The defendant No.1 is residing independently.

5. The defendant No. 5 to 13 are residing in their independent house. At no point of time they have resided in suit property,

and further defendant No.1 is widow and old age lady she undergone in heart surgery and she is under the treatment and she is in need of regular treatment this circumstances the plaintiff has filed the present suit with an intention to harass mentally and to cause huge effect to her mental condition. Hence, the plaintiff are not have any right, interest title over the suit property. Hence, prayed to dismiss the applications.

6. Having heard learned counsel for the parties and perusing the record, the points that arise for my consideration are as follows:-

POINTS

1. Whether the plaintiffs have made out a prima-facie case?
2. Whether the balance of inconvenience is in favor of the plaintiffs?
3. Whether the plaintiffs would suffer irreparable loss or injury if the prayer for injunction is not be granted?
4. What order?

7. My answer to the above points are as follows:-

POINT No.1 to 3 :- In the affirmative

POINT No.4 :- As per the final order,
for the following:-

REASONS

8. Point No.1 to 3: All these three points are taken up together for common discussion for brevity. At the outset, the suit is for

partition and separate possession. Plaintiff claims that the suit property is the ancestral and joint family property. Whereas defendant No. 1 to 4 claim that it is the absolute property of defendant No.1.

9. In support of the application the plaintiff has produced death certificates of Hanumanth, Saatavva, Parappa, Chandrasha, Kallappa and Saatavva Cholappa. Property tax register, Hanumanth Mashyal, photocopy of Agreement dated 16-08-1996 (ಫಲಾನುಭವಿಗಳಿಗೆ ಆಶ್ರಯ ಯೋಜನೆಯಡಿಯಲ್ಲಿ ನಿವೇಶನ ಮಂಜೂರಿಯಿಂದ ನೀಡಿದ ಹಕ್ಕು ಬದಲಾವಣೆ ಆದ ಕುರಿತಂತೆ ಮಾಡಲಾದ ಕರಾರು ಪತ್ರ), no encumbrance certificate, Letter issued by the Commissioner, CMC, Dandeli, Tax paid receipt, Property card extract of CTS No. 8399 of Dandeli city, Map of the property, property title deed, Notice dated 01-07-2023, postal receipts and postal acknowledgments, photos, CD.

10. On the other hand, defendant No.1 to 4 have produced Form No.3, Tax paid receipt, Property tax register, General receipt, tax paid receipt for the year 2003 to 04 upto 2008-09, 2017-18 and 2018-19, photocopy of Agreement dated 16-08-1996 (ಫಲಾನುಭವಿಗಳಿಗೆ ಆಶ್ರಯ ಯೋಜನೆಯಡಿಯಲ್ಲಿ ನಿವೇಶನ ಮಂಜೂರಿಯಿಂದ ನೀಡಿದ ಹಕ್ಕು ಬದಲಾವಣೆ ಆದ ಕುರಿತಂತೆ ಮಾಡಲಾದ ಕರಾರು ಪತ್ರ).

11. With respect to non-alienation of suit property, at this stage the court cannot hold a mini trial. As such it is very essential to preserve the suit property until the disposal of the suit. If the application is not allowed, it might lead to

complications in multiple transactions. As such it is essential to allow the application in the interest of justice and equity. If the temporary injunction is not granted, it would not cause any grater hardship to the defendants. For the reasons stated above, I answer point No.1 to 3 in the affirmative.

12. POINT No. 4 :- Therefore for the aforesaid reasons I pass the following:

ORDER

IA No.I under Order 39 Rule 1 & 2 of CPC is allowed.

Further, defendant No. 1 to 4 or any person on their behalf are restrained from alienating the suit property till the disposal of suit.

No order as to cost.

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in the open court on this the **28th day of February-2024**)

(SMT. ROHINI D. BASAPUR)
Civil Judge & JMFC, Dandeli.