



**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,  
AT: MUNDGOD**

**PRESENT: Smt. Akshatha C.R.  
B.B.A., L.L.B.(Hons.)  
Civil Judge & J.M.F.C-Mundgod.**

**ORIGINAL SUIT NO.05/2022**

**Dated: 09<sup>th</sup> Day of April 2026**

**Plaintiff:**

Smt. Shantavva W/o Hanumantappa Talavar,  
Age: 73 years, Occ: Agriculturist,  
R/o: Singanhalli, Post: Katur,  
Tq: Mundgod, Uttara Kannada.

***(By Sri.R.N.H. Advocate)***

**V/s**

**Defendants:**

1. Mukkanna Yane Mahabaleshwar Balappa Talavar, Age: 52 years, Occ: Agriculturist, R/o: Katur, Post: Katur, Tq: Mundgod, Uttara Kannada.  
Present: C/o Manjavva Fakkirappa Talavar, R/o: Lakkikoppa, Tq:Shiggaon, Dist:Haveri. and 8 others.

***(By Sri.S.M.M, Advocate for D-8  
D-1 and 2- Unrepresented  
D-3 and 7 Ex-parte  
D-4 to 6 Absent)***



**I.A.No.VII**

**Applicant/plaintiff:**

Smt. Shantavva W/o Hanumantappa Talavar,  
Age: 73 years, Occ: Agriculturist,  
R/o: Singanhalli, Post: Katur,  
Tq: Mundgod, Uttara Kannada.

**V/s.**

**Opponent/**

**Defendant No. 1, 2(a) to (d):**

1. Mukkanna Yane Mahabaleshwar Balappa Talavar, Age: 52 years, Occ: Agriculturist, R/o: Katur, Post: Katur, Tq: Mundgod, Uttara Kannada.  
Present: C/o Manjavva Fakkirappa Talavar, R/o: Lakkikoppa, Tq:Shiggaon, Dist:Haveri.
- 2(a) Smt. Kusuma W/o Hanumanth Talavar @ Baiyaluseeme, Age: 38 years, Occ: Household, R/o: Katur, Tq: Mundgod, Uttara Kannada.
- 2(b) Kumar S/o Hanumanth Talavar @ Baiyaluseeme, Age: 20 years, Occ: Shetgi, R/o: Katur, Tq: Mundgod, Uttara Kannada.
- 2(c) Basavaraj S/o Hanumanth Talavar @ Baiyaluseeme, Age: 19 years, Occ: Shetgi, R/o: Katur, Tq: Mundgod, Uttara Kannada.



2(d) Smt. Anitha W/o Sharanu Kalakatti,  
 Age: 21 years, Occ: Government Hospital,  
 R/o: Hangal, Tq: Hangal,  
 Present: Katur, Tq: Mundgod, Uttara Kannada.

1	Provision under which the application is filed	<b>Under Order XXXIX Rule 1 and 2 of CPC</b>
2	Relief sought for	to forbid them from alienating suit 'A' schedule property and creating any charges over it till the disposal of the suit.
3	The date on which the applications filed	23-08-2025
4	Number of application	I.A No.VII
5	The date on which the objection is filed by the opponent	-----
6	The date on which the order is passed on the applications	09-04-2026

### **ORDERS ON I.A.NO.VII**

1. The plaintiff has filed this application against the defendant No.1 and 2(a) to (d) under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC seeking to forbid them from alienating suit 'A' schedule property and creating any charges over it till the disposal of the suit.



2. In the accompanying affidavit sworn to by the plaintiff it is stated that, she has sued the defendants seeking the relief of partition and separate possession. That, the suit schedule property is the joint family property. However, defendant No.1 and Late defendant No.2 unnecessarily raised objections for its cultivation as such she obtained the records. It is only then she learnt that, defendant No.2 got his name and his brother's name effected in the records on the strength of the alleged Will dated 20-10-1979 purported to be executed by the proposita namely Smt. Gangavva Thimmanna Talvar. Further, she also learnt that defendant No.2 by taking undue advantage of the physical and mental health of the proposita, got the Will fabricated. However, the proposita has not executed any testament neither on 20-10-1979 or at any point of time. Even she had no authority for disposition of the property. It is further stated that, the impugned Will is void and unlawful. That the defendant No.2 with the malafide intention of causing loss to her and to the other defendants has created such Will. It is also asserted that, the impugned Will has not negated the right of herself and other defendants in the suit schedule property. At the same



time, it has not created any right in the suit property to defendant No.1 and 2. That the defendant No.2 by taking the Revenue Officials to his confidence got affected the Mutation Entry without bringing it to knowledge of stake holders. She found that, the concerned officials before effecting the entry have not issued notice to the concerned, as required by the provisions of the Land Revenue Laws and thereby unlawfully effected name of defendant No.1 and 2. Such being the case defendant No.1 and 2 by taking undue advantage of the fact that their names alone are reflected in the RTC, legal heirs of defendant No.2/opponents by colluding with defendant No.1 got their names alone entered, pursuant to the death of defendant No.2 and thereby conspiring to alienate the suit property. Besides, they may also create charges over it by obtaining loan at Financial Institutions merely to cause monetary loss to them. She further submits that, she has got 1/8<sup>th</sup> share in the suit schedule property and the suit is pending for adjudication. Such being the case the opponents by colluding with each other with the venomous intention of precluding them from succeeding the suit schedule property are conspiring to do such acts. In this regard she



sought to interdict the opponents in the aforesaid manner by way of temporary injunction.

3. On the very next date of hearing Sri. V.V.R., Advocate submitted that, he has issued NOC Vakalath. Thereafter, defendant No.1 and 2 chose not to appear before the Court and to engage new counsel. When they failed to file their objections, this Court proceeded to hear the counsel for the plaintiff and posted the case for orders.

4. Keenly perused the materials available on record.

5. Anent to the assertions and contentions of the parties, the following points arise for the consideration of this court.

*(1) Whether the plaintiff has made out a prima facie case?*

*(2) Whether balance of convenience leans in favour of the plaintiff?*

*(3) Whether dismissal of this application would*



*cause irreparable loss to the plaintiff?*

*(4) What order?*

6. Answers to the above points are as follows:

- 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**

7. **POINT NO.1 TO 3:** These points are taken together for common discussion as they can be conveniently discussed at once. Outdooring the unnecessary details, this Court would like to directly delve into the discussion upon the issue involved. This is the suit filed by the plaintiff seeking to seeking for partition and separate possession of her 1/8<sup>th</sup> share and consequently to declare Mutation Entry at M.E. No. 1666 is not binding on her share. Proceedings *pendente lite* plaintiff has filed this application with a prayer to restrain defendant No.1 and 2(a) to (d) from alienating suit 'A' schedule property and from creating any charges.



8. The plaintiff in support of her case has produced RTC pertaining to Sy. No. 123\* Hissa \* situated at Katur village of Mundgod taluk, impugned Mutation Entry at M.E. No. 1666, Mutation Entry at M.E. No. 1508, Death Certificate of the proposita, Varadi made to Village Accountant Katur village along with the photocopy of the Will and certified copy of the Will.

9. I have given my anxious consideration to the materials available on record. As aforesaid one Smt. Gangavva Thimmanna Talavar is the proposita and she has shown to died leaving behind her 4 children namely Smt.Fakkiravva, Smt. Eshaberavva, Sri. Durgappa and Sri. Mahadevappa. Said Fakkiravva in turn left her behind her 2 daughters namely Smt. Shantavva and Gowravva. Said Shantavva is the plaintiff here. She has filed this suit against all the legal heirs of 3 other branches of the proposita. It is asserted that, suit schedule properties belong to the proposita. That she died on 14-01-1984. In that regard the jointness in possession of the suit schedule properties is asserted. No doubt defendant No.1 and legal heirs of defendant No.2 did not protest the I.A by filing



objections. Nonetheless, the plaintiff herself has placed the impugned Mutation Entry at M.E. No. 1666 and the testament said to be executed by the proposita dated 20-10-1979. By virtue of said testament, the proposita bequeathed suit 'A' schedule property in favour of defendant No.1 and original defendant No.2. As aforestated said document relates back to the year 1979. Besides, it is a registered document. It was registered at the office of Sub-Registrar, Sirsi. No doubt a mini trial cannot be hold for the sake of disposal of this application. It is to be noted here that, pursuant to the death of the propositus, defendant No.1 and original defendant No.2 made Varadi to the then Katur Village Accountant seeking to effect their names in the records, on the strength of the Will such Varadi relates back to 1984. No doubt the plaintiff has challenged the genuineness of the testament. Such being the case its genuineness has to be tested in the full fledged trial. Nevertheless, what made the plaintiff to seek recourse under Law well in time, for enforcement of her rights is not forthcoming. Why she slept over her rights for long and considerable period of time is not shown. At the same time, why the other legal heirs of the proposita did not



question such a disposition cannot be brushed aside. Relatively Registered document carry presumption. Besides, it can be seen that suit 'A' schedule property was granted in her favour. As such she was fully competent to dispose off the property in the manner she wishes. Most importantly, the plaintiff before claiming the relief should establish/show cause the genealogy. On keen perusal it can be seen that, at Mutation Entry at M.E. No. 1666 it is stated that, "ಶ್ರೀಮತಿ ಗಂಗವ್ವ ಕೋಂ ತಿಮ್ಮಣ್ಣ ತಳವಾರ ಸಾಕೀನ ಕಾತೂರ ಇವರು ತಾರೀಖು **04-01-83**ಕ್ಕೆ ಕಾತೂರು ಗ್ರಾಮದಲ್ಲಿ ಮೈತರಾಗಿರುತ್ತಾರೆ. ಮೈತರಿಗೆ ಗಂಡ ಹಾಗೂ ಗಂಡು ಮಕ್ಕಳು ಇರುವುದಿಲ್ಲ. ಒಬ್ಬಳು ಹೆಣ್ಣು ಮಗಳು ಇರುವುದು." Corresponding to the same, it is mentioned in the Will that, "ನನ್ನ ಪತಿ ಹಯಾತಿಯಲ್ಲಿದ್ದಾಗಲೇ ನಾವು ನಮ್ಮ ವಬ್ಬಳೇ ಮಗಳಾದ ಈಶ್ವರವ್ವ ---". The plaintiff has placed no any records to show that, proposita has left behind her 4 children as shown in the genealogy. When the plaintiff's case is filled with such loop holes/doubts this Court opines that it is not feasible to grant the relief claimed.



10. The decision reported in **ILR 1989 KAR 1701** between **Gowrishankara Swamigalu v. Siddhaganga Mutt** wherein it is observed that,

*“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. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction.”*

Thus, in the interest of justice and equity and in order to protect the legitimate rights of the parties, this court answers point No.1 to 3 in the **Negative as against the plaintiff.**

11. **POINT No.4:** In light of answering point No.1 to 3 as



aforesaid, this Court proceeds to pass the following.

**ORDER**

I.A. No.VII filed by the plaintiff under Order XXXIX Rule 1 and 2 R/w Section 151 of CPC is hereby dismissed.

Costs are made easy.

*(Dictated to the Stenographer, directly on computer, corrected and then pronounced by me in the open Court on this **09<sup>th</sup> day of April, 2026.**)*

**Civil Judge and  
JMFC, Mundgod.**