



**IN THE COURT OF THE CIVIL JUDGE**  
**AT SIDDAPUR**

Present: Sri.UMESHA M.P., B.A.L., LL.B.  
CIVIL JUDGE & JMFC,  
SIDDAPUR

**DATED: ON THIS THE 02<sup>nd</sup> DAY OF DECEMBER – 2025**

**ORIGINAL SUIT No. 33 / 2025**

**PLAINTIFFS** :

1. **Smt. VEENA R** W/o G.V Ravi,  
Aged about 58 years, Occ: Homemaker,  
R/o #12/A, Wadnal Cross, Jambagaru,  
Tq: Sagara, Dist: Shivamogga,
2. **Smt. UMA** W/o Santosh K.  
Aged about 50 years, R/o Isiri Nilaya,  
B.H.Road, near Bapat Samudhaya Bhavana,  
Gandhinagara, Tq: Sagara, Dist: Shivamogga  
(BY PLEADER SRI. SKG)

**-V/s-**

**DEFENDANTS** :

1. **RAMACHANDRA LAKSHMANA NAIK**,  
Aged about 82 years,  
R/o Husuru, Post: Halageri,  
Tq: Siddapur, Dist: Uttara Kannada,
2. **LOKESH RAMACHANDRA NAIK**,  
Aged about 52 years,  
R/o Husuru, Post: Halageri,  
Tq: Siddapur, Dist: Uttara Kannada,
3. **Smt. SHANTHA** W/o Shivakumar K H,  
Aged about 56 years,  
R/o A-85, Shanthinikethana, A-Block,  
3<sup>rd</sup> Main Road, Swamy Vivekananda Badavane,  
Gopala, Shivamogga,
4. **ANANTH SANNAMAILA NAIK**,  
Aged about 66 years,  
R/o Husuru, Post: Halageri,  
Tq: Siddapur, Dist: Uttara Kannada,
5. **Smt. KUSUMA** D/o Ganapati Hegde,  
Aged about 66 years,  
R/o Shanthinagara, A.P.M.C Road,



Tq: Siddapur, Dist: Uttara Kannada

**6. PRASHANTH MANJUNATH HEGDE,**

Aged about 40 years,  
R/o Odlakone, Post: Lambapura,  
Tq: Siddapur, Dist: Uttrara Kannada.  
Now residing at Flat No.5133, Maiconos,  
Shoba City, Thanisandra Main Road,  
Thanisandra, Bengaluru North,  
Bengaluru-560077.

(BY PLEADER Sri.BV, FOR DEFENDANT No.1 & 2)  
(BY PLEADER Sri.MRP, FOR DEFENDANT No.4)  
(DEFENDANT NO.3 & 5 ARE PLACED EXPARTE)  
(BY PLEADER Sri.GSH/MNH, FOR DEFENDANT No.6)

**PARTIES TO I A No. II**

APPLICANTS/PLAINTIFFS : 1. **Smt. VEENA R** W/o G.V Ravi,  
Aged about 58 years, Occ: Homemaker,  
R/o #12/A, Wadnal Cross, Jambagaru,  
Tq: Sagara, Dist: Shivamogga,

2. **Smt. UMA** W/o Santosh K.  
Aged about 50 years, R/o Isiri Nilaya,  
B.H.Road, near Bapat Samudhaya Bhavana,  
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(BY PLEADER SRI. SKG)

-V/s-

OPONENTS/DEFENDANTS: 1. **RAMACHANDRA LAKSHMANA NAIK,**  
Aged about 82 years,  
R/o Husuru, Post: Halageri,  
Tq: Siddapur, Dist: Uttara Kannada,

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(DEFENDANT NO.3 & 5 ARE PLACED EXPARTE)  
(BY PLEADER Sri.GSH/MNH, FOR DEFENDANT No.6)

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i.	Date of institution of suit	21.04.2025
ii.	Nature of suit	Suit for declaration, partition and separate possession
iii.	Provision under which the application is filed	U/o 39 Rule 1 & 2 of CPC
iv.	Relief sought	Praying to an interim order of temporary injunction in favour of the plaintiffs and against the defendant No.1, 2, 4 & 6 restraining the defendant No.1, 2, 4 & 6, from alienating suit schedule properties and creating any charge / encumbrance over the suit schedule properties, in any manner, till disposal of the suit.
v.	The date on which the application is filed	21.04.2025
vi.	Number of the application	IA No.2
vii.	The date on which the defendants / opponents are / were filed their objections to IA No.2	02.08.2025 & 04.11.2025
viii.	The date on which both the parties have addressed their arguments on IA No.2	01.12.2025
ix.	The date on which the orders were passed on the said application	02.12.2025

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

The Applicants / plaintiffs have filed IA No.2 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to an interim order of temporary injunction in favour of the plaintiffs and against the defendant No.1, 2, 4 & 6 restraining the defendant No.1, 2, 4 & 6 from alienating suit schedule properties and creating any charge / encumbrance over the suit schedule property, in any manner, till disposal of the suit in the ends of justice.

2. According to the plaintiffs, in the accompanying affidavit it is sworn that, they have filed this suit against the defendants for the relief of declaration, partition and separate possession with respect to the suit properties. It is further stated that, the suit schedule properties are the ancestral and joint family property of plaintiffs and the defendants. It is further stated that, there is no partition was effected in the family of the plaintiffs and the defendants till today. It is further stated that, the defendants have no absolute right over the suit schedule properties. It is further stated that, the plaintiffs have got right over the suit properties. It is further stated that, recently he came to know that, the defendant No.1, 2, 4 & 6 by taking advantage of revenue entries standing in their names are making hectic efforts to alienate suit properties in order to defeat the right and share of the plaintiffs in the suit schedule properties. Hence, this suit is for declaration partition and separate possession with respect to the suit properties. So it is just and necessary to



restrain the defendant No.1, 2, 4 & 6 from alienating the Suit properties in any manner till the rights of the parties to the suit is to be adjudicated. If the defendant No.1, 2, 4 & 6 are succeeding in their act, the plaintiffs will put into great loss and injustice. Hence, they prayed to allow the application.

3. In response to the summons issued by this court, the defendant No.3 & 5 failed to appear before this Court and they have been placed *exparte*. Further, the defendant No.1, 2, 4 & 6 have appeared before this court through their respective counsels and the defendants have taken the contention that, the suit of the Plaintiffs is perverse vexatious an opposed to facts and law as such liable to be rejected. It is further contended that, the properties mentioned in the suit schedule were already partitioned in terms of Hissa Tahanama dated:10.01.1994 and as per the said partition, M.E.No.1877 has been certified. It is further contended that, a Partition between defendant No. 1 and 2 in the year 1994 which has been incorporated in the revenue record since then. It is further contended that, the above partition was never challenged by the plaintiffs. It is significant to note that the plaintiff had no right to seek partition at that relevant point of time. It is further contended that, the above said partition is complete final and effective. It is further contended that, the defendant No. 2 purchased an extent of 1-3-0 in the same Survey number from on Samba Lakshman Naik vide a Registered Sale deed in the year 2001. Pursuant to the above Sale Deed M.E. No. 2061 was certified in accordance with provision of law governing transfer of right. Therefore, the defendant



No.2 became the absolute owner in possession of item No. 6 of suit schedule property. It is further contended that, the defendant No.2 is working as a Lecturer in a Government College for the last several years. As stated above an extent of 1-3-0 was purchased by the defendant No.2 out of his savings as such the above said extent is the self acquired property of defendant No. 1. It is further contended that, th defendant No.2 has sold item No. 6 of the suit schedule in favour of defendant No.6 on 31.01.2025 vide a Registered Sale Deed. Pursuant to the above sale deed M. R. No. 122/2024-23 of Husur village was certified. It is further contended that, the defendant No.6 is a bonafide Purchaser and thereby became the absolute owner in possession of item No. 6. It is further contended that, the plaintiffs who are no other than the sisters of defendant No.2 and the daughters of defendant No 1 were fully aware of all these transaction and having kept quite for such a long period now have approached this Hon'ble Court seeking for partition and separate possession of suit schedule property which is wholly illegal and highly belated as such the said suit suffers from law of limitation. Hence the suit is hit by the provision of limitation Act. This Hon'ble Court has no pecuniary jurisdiction to try this suit. It is further contended that, the plaintiffs are not entitled for any of the relief's claimed in the plaint. It is further contended that, the plaintiff and the other defendants have no manner of right, title and interest over the suit property. It is further contended that, the alleged cause of action is imaginary. Hence, the plaintiffs have not made out any case much less prima-



facie case and balance of convenience does not lie in their favour. No injury would be cause to the other side in case their prayer in the accompanying application is allowed. On the other hand the defendants will be put to untold hardship in case their prayer in the accompanying application is not allowed. On all these grounds, they prayed to dismiss the IA No. 2, in the ends of justice.

4. I have heard the arguments of plaintiffs and defendants on IA No.2 and perused the the entire case records.

5. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

1. *Whether the plaintiffs have established prima-facie case to allow the IA No.II?*
2. *Whether the balance of convenience lies in favour of plaintiffs to allow the IA No.II?*
3. *Whether irreparable loss or hardship will be caused to the plaintiffs if injunction is not granted?*
4. *What order?*

6. My answer for the above points are as under because of my below-discussed reasons:

Point No.1- In the NEGATIVE

Point No.2 - In the NEGATIVE

Point No.3 - In the NEGATIVE

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

#### **REASONS**

#### **POINT NO.1:**

7. The plaintiffs have filed the suit against the defendants seeking relief of declaration, partition and separate possession with respect to the suit properties.



8. The Applicants / plaintiffs have filed IA No.2 under order XXXIX Rule 1 and 2 of Civil Procedure Code praying to an interim order of temporary injunction in favour of the plaintiffs and against the defendant No.1, 2, 4 & 6 restraining the defendant No.1, 2, 4 & 6 from alienating suit schedule properties and creating any charge / encumbrance over the suit schedule property, in any manner, till disposal of the suit in the ends of justice.

9. As per the provisions of Order 39 Rule 1 of CPC, where in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in a execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.



10. Admittedly, granting or refusing injunction is a discretionary in nature. It is well settled position of law that the following preposition are to be established in order to invoke the jurisdiction of the Court to get an order of injunction under the provisions of Order 39 Rule 1 and 2 of CPC. (1) the plaintiff has to establish the prima-facie case, (2) the balance of inconvenience is in favour of the plaintiff and (3) that the plaintiff will suffer irreparable loss and injury if injunction is refused.

11. Therefore the ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come with clean hands and place all the materials before the Court so that the Court will be satisfied about the prima-facie case in favour of the party seeking order. It is no part of Court's duty or function at this stage of litigation to try to resolve difficult questions of facts and law which require elaborate evaluation of the evidence to be recorded at the trial. Now keeping the above said provisions of law and also principles in mind, let us consider as to whether the plaintiff could able to establish prima-facie case for grant of temporary injunction.

12. It is specific case of the plaintiffs that, they have filed this suit against the defendants for the relief of declaration, partition and separate possession with respect to the suit properties. It is further stated that, the



suit schedule properties are the ancestral and joint family property of plaintiffs and the defendants. It is further stated that, there is no partition was effected in the family of the plaintiffs and the defendants till today. It is further stated that, the defendants have no absolute right over the suit schedule properties. It is further stated that, the plaintiffs have got right over the suit properties. It is further stated that, recently he came to know that, the defendant No.1, 2, 4 & 6 by taking advantage of revenue entries standing in their names are making hectic efforts to alienate suit properties in order to defeat the right and share of the plaintiffs in the suit schedule properties. Hence, this suit is for declaration partition and separate possession with respect to the suit properties. So it is just and necessary to restrain the defendant No.1, 2, 4 & 6 from alienating the Suit properties in any manner till the rights of the parties to the suit is to be adjudicated. If the defendant No.1, 2, 4 & 6 are succeeding in their act, the plaintiffs will put into great loss and injustice. Hence, they prayed to allow the application.

13. In the supporting affidavit, the plaintiff No.1 sworn that, they have filed this suit against the defendants for the relief of declaration, partition and separate possession with respect to the suit properties. It is further stated that, the suit schedule properties are the ancestral and joint family property of plaintiffs and the defendants. It is further stated that, there is no partition was effected in the family of the plaintiffs and the defendants



till today. It is further stated that, the defendants have no absolute right over the suit schedule properties. It is further stated that, the plaintiffs have got right over the suit properties. It is further stated that, recently he came to know that, the defendant No.1, 2, 4 & 6 by taking advantage of revenue entries standing in their names are making hectic efforts to alienate suit properties in order to defeat the right and share of the plaintiffs in the suit schedule properties. Hence, this suit is for declaration partition and separate possession with respect to the suit properties. So it is just and necessary to restrain the defendant No.1, 2, 4 & 6 from alienating the Suit properties in any manner till the rights of the parties to the suit is to be adjudicated. If the defendant No.1, 2, 4 & 6 are succeeding in their act, the plaintiffs will put into great loss and injustice. Hence, they prayed to allow the application.

14. The plaintiffs have placed the copy of sale deed dated:13.05.2005, copy of Gift deed dated:05.12.2007, copy of Gift deed dated:24.08.2018, copy of sale deed dated:20.04.2022, copy of sale deed dated:31.01.2025, copy of sale deed dated:28.02.2025 with respect to the suit properties, copy of RTC extracts of the suit properties, copy of MR extracts of the suit properties.

15. It is specific case of the defendant No1, 2, 4 & 6 that, the plaintiffs have filed this false suit by suppressing true and material facts of this case



and obtained exparte temporary injunction against them which is causing a great inconvenience to them. It is further contended that the present suit filed by the plaintiffs is not tenable, misconceived and is not maintainable on law or on facts and circumstance of the case and the same is liable to be dismissed with costs. It is further contended that, the properties mentioned in the suit schedule were already partitioned in terms of Hissa Tahanama dated:10.01.1994 and as per the said partition, M.E.No.1877 has been certified. It is further contended that, a Partition between defendant No. 1 and 2 in the year 1994 which has been incorporated in the revenue record since then. It is further contended that, the above partition was never challenged by the plaintiffs. It is significant to note that the plaintiff had no right to seek partition at that relevant point of time. It is further contended that, the above said partition is complete final and effective. It is further contended that, the defendant No. 2 purchased an extent of 1-3-0 in the same Survey number from on Samba Lakshman Naik vide a Registered Sale deed in the year 2001. Pursuant to the above Sale Deed M.E. No. 2061 was certified in accordance with provision of law governing transfer of right. Therefore, the defendant No.2 became the absolute owner in possession of item No. 6 of suit schedule property. It is further contended that, the defendant No.2 is working as a Lecturer in a Government College for the last several years. As stated above an extent of 1-3-0 was purchased by the defendant No.2 out of his savings as such



the above said extent is the self acquired property of defendant No. 1. It is further contended that, th defendant No.2 has sold item No. 6 of the suit schedule in favour of defendant No.6 on 31.01.2025 vide a Registered Sale Deed. Pursuant to the above sale deed M. R. No. 122/2024-23 of Husur village was certified. It is further contended that, the defendant No.6 is a bonafide Purchaser and thereby became the absolute owner in possession of item No. 6. It is further contended that, the plaintiffs who are no other than the sisters of defendant No.2 and the daughters of defendant No 1 were fully aware of all these transaction and having kept quite for such a long period now have approached this Hon'ble Court seeking for partition and separate possession of suit schedule property which is wholly illegal and highly belated as such the said suit suffers from law of limitation. Hence the suit is hit by the provision of limitation Act. This Hon'ble Court has no pecuniary jurisdiction to try this suit. It is further contended that, the plaintiffs are not entitled for any of the relief's claimed in the plaint. It is further contended that, the plaintiff and the other defendants have no manner of right, title and interest over the suit property. It is further contended that, the alleged cause of action is imaginary. Hence, the plaintiffs have not made out any case much less prima-facie case and balance of convenience does not lie in their favour. No injury would be cause to the other side in case their prayer in the accompanying application is allowed. On the other hand the defendants



will be put to untold hardship in case their prayer in the accompanying application is not allowed. On all these grounds, they prayed to dismiss the IA No. 2, in the ends of justice.

16. The defendants have placed the copy of memorandum of partition dated:10.01.1994 with respect to the suit properties, copy MR extracts with respect to the suit properties, copy of sale deed dated:08.01.2001, copy of Gift deed dated:05.12.2007, copy of Gift deed dated:24.08.2018, copy of Mortgage documents, copy of release deed dated:29.08.2018, copy of sale deed dated:20.04.2022, copy of RTC extracts with respect to the suit properties, copy of MR extracts with respect to the suit properties.

***17. In this connection it is relevant to extract the provisions of Sec.52 of Transfer of property Act, 1882 – Transfer of property pending suit relating thereto:-***

“During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may



be made therein, except under the authority of the Court and on such terms as it may impose”.

Explanation: For the purpose of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the prescribed for the execution thereof by any law for the time being in force.

**18. *In this connection it is relevant to extract the provisions of Sec.41 of Specific Relief Act, 1963 – Injunction when refused:-***

“An injunction cannot be granted:-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not sub-ordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;



- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
- (i) when the conduct of the plaintiff or his agent has been such as to dis-entitle him to be the assistance of the Court;
- (j) when the plaintiff has no personal interest in the matter.

19. Admittedly, the plaintiff has filed the suit against the defendants seeking relief of declaration, partition and separate possession with respect to the suit properties.

20. It is to be noted that, the right of parties in suit properties is to be decided after conclusion of trial.

21. It is to be noted that, the right of parties in suit properties to be decided after conclusion of trial. The acquisition and nature of the suit



properties is disputed by the contesting defendants. Therefore, based on the documents on record, it can be safely held that the plaintiffs have not made out prima-facie case and balance of convenience do not lies in their favour for grant of temporary injunction. Hence I answer point No.1 in the Negative.

**POINTS NO.2 & 3:**

22. These two points are taken up together for common discussion, for the sake of convenience, clarity and also to avoid repetition of facts. In considering the question of balance of convenience, the Court has to consider the comparative mischief or inconvenience of both the parties or otherwise it is necessary or proper to maintain the status quo until the disputes are finally decided. Further, in considering the question of irreparable loss and injury, the Court has to see that the plaintiffs will sustain such injury which cannot possibly and adequately be remedied by way of damage and the damage would be inadequate in case of success of plaintiffs.

23. Under these circumstance, the balance of convenience is do not lies in favour of the plaintiffs and in favour of the defendants. Therefore for the reasons discussed above, this Court is of the considered view that the balance of convenience do not lies in favour of the plaintiffs and irreparable loss and injury would not be caused to plaintiffs if a temporary injunction is refused. Hence I answer points No.2 & 3 in the Negative.



**POINT No.4:**

24. In view of my findings on Points No.1 to 4, I proceed to pass the following order:

**ORDER**

I.A.No.II filed by the plaintiffs under order 39 rule 1 and 2 of CPC is hereby dismissed.

The exparte temporary injunction granted against the defendants on 22.04.2025 is hereby vacated.

The cost of these applications shall follow the result of the suit.

(Dictated to the Court hall typist directly on Computer, typed by her, order corrected and signed by me, then pronounced by me in the Open Court on this the 02<sup>nd</sup> day of DECEMBER – 2025)

(UMESHA M.P.)  
Civil Judge,  
Siddapur