



IN THE COURT OF THE CIVIL JUDGE
AT SIDDAPURA

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

DATED: ON THIS THE 26th DAY OF JUNE - 2025

ORIGINAL SUIT No. 92 / 2024

PLAINTIFFS

- : 1. **GANESH** S/o Manjunath Gowda,
Aged about 17 years, Occ: Student,
Since minor and she is represented by her next friend and
natural Gaurdian Mother Smt.JAYA W/o Manjunath Gowda,
2. **Kum:SUSHMITHA** D/o Manjunath Gowda,
Aged about 15 years, Occ: Student,
Since minor and she is represented by her next friend and
natural Gaurdian Mother Smt.JAYA W/o Manjunath Gowda
both are R/o Haralikoppa, Akkanji,
Siddapura Taluk,
(BY PLEADER SRI.MGH)

-V/s-

DEFENDANTS

- : 1. **ERAJI @ ERAJAMMA** W/o Erappa Gowda,
Aged about 70 years, Occ: Agriculturist,
R/o Haralikoppa, Akkanji,
Siddapura Taluk, Uttara Kannada District,
2. **SMT.NAGARATHNA** W/o Basavara Gowdar,
Aged about 38years, Occ: Agriculturist,
R/o Nejjur, Siddapura Taluk, Uttara Kannada District,
3. **SMT.SHARADAMMA @ SHARADA** W/o Gurupadappa Gowda,
Aged about 52years, Occ: Agriculturist,
R/o Thalagadde, Sorabha Taluk, Shimoga District,
4. **MANJUNATHA** S/o Erappa Gowda,
Aged about 40 years, Occ: Agriculturist,



R/o Haralikoppa, Akkanji,
Siddapura Taluk, Uttara Kannada District,

5. **PANDURANGA S/o Marya Naik Sanve**,
Aged about 52 years, Occ: Agriculturist,
R/o Laxminagara, Hosuru,
Siddapura Taluk, Uttara Kannada District,
6. **RAJU S/o Basavarajappa Gowda**,
Aged about 60 years, Occ: Agriculturist,
R/o Haralikoppa, Akkanji,
Siddapura Taluk, Uttara Kannada District,
(BY PLEADER SRI.NMN FOR DEFENDANT NO.1 TO 4)
(BY PLEADER SRI.SBG FOR DEFENDANT NO.5)

PARTIES TO I A NO. III

APPLICANTS/PLAINTIFFS: 1. **GANESH S/o Manjunath Gowda**,
Aged about 17 years, Occ: Student,
Since minor and she is represented by her next friend and
natural Gaurdian Mother Smt.JAYA W/o Manjunath Gowda,

2. **Kum:SUSHMITHA D/o Manjunath Gowda**,
Aged about 15 years, Occ: Student,
Since minor and she is represented by her next friend and
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both are R/o Haralikoppa, Akkanji,
Siddapura Taluk,
(BY PLEADER SRI.MGH)

-V/s-

- OPPONENTS/DEFENDANTS:** 1. **ERAJI @ ERAJAMMA W/o Erappa Gowda**,
Aged about 70 years, Occ: Agriculturist,
R/o Haralikoppa, Akkanji,
Siddapura Taluk, Uttara Kannada District,
2. **SMT.NAGARATHNA W/o Basavara Gowdar**,
Aged about 38years, Occ: Agriculturist,
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R/o Haralikoppa, Akkanji,
Siddapura Taluk, Uttara Kannada District,
(BY PLEADER SRI.NMN FOR DEFENDANT NO.1 TO 4)
(BY PLEADER SRI.SBG FOR DEFENDANT NO.5)

ORDERS ON I A NO. III

The Applicants / plaintiffs have filed IA No.3 under order XXXIX Rule 1 and 2 R/w Sec.151 of Civil Procedure Code praying to order to restraining the defendant No.5 from alienating the suit “B” properties to any others, in any manner, till disposal of the suit by allowing this application in the ends of justice and equity.

2. According to the plaintiffs, they have filed this suit against the defendants for partition and separate possession of their respective share in the suit properties and other reliefs. It is further stated that, the suit schedule properties are



the ancestral and Hindu joint undivided joint family properties of plaintiffs and defendants. It is further stated that, the plaintiffs approached the defendants and demanded their respective share in the suit schedule properties. It is further stated that, the defendants have refused to give the income and also share of the plaintiffs in the suit schedule properties, and also denied the share of the plaintiffs in the suit schedule properties. It is further stated that, so many panchayaths were conveyed in presence of the elders of the Village. But the panchayaths were went in vain. Hence, the plaintiffs have filed this suit for partition and separate possession of the suit schedule properties. Therefore, they prayed to allow the present interim application and grant temporary injunction as prayed.

3. Per contra, the defendant No.5 has opposed the same by filing the objection contended that, the application of the plaintiffs is not maintainable in law. It is further contended that, the mother of the minor plaintiffs has sworn the false facts in the application enclosed affidavit and all the contents of said affidavit are denied as false and base-less. It is further contended that, the defendant No.1 had acquired the suit “B” schedule properties through her family partition. It is further contended that, the defendant No.5 has purchased the suit “B” schedule properties from the defendant No.1 to3. It is further stated that, the revenue entries stands in the name of the defendant No.5 vide MR No.H9/2023-2024 & MR No.H10/2023-24 and he is paying tax to the Govt. It is further stated that, the



defendant No.5 is in peaceful possession and enjoyment of suit schedule “B” properties. It is further stated that, the defendant No.1 to 4 have no rights in the suit schedule “B” properties. It is further contended that, the defendant No.5 has developed the same by spending huge amount. It is further contended that, the plaintiffs have no right over the suit schedule “B” properties. It is further contended that, the plaintiffs have filed the false suit against the defendants. It is further contended that, the defendant No.5 is the absolute owner in possession of the suit schedule “B” properties. It is further contended that, the application filed by the plaintiffs is not maintainable in law. On these grounds, the defendant No.5 prayed to dismiss the IA No.3.

4. I have heard the arguments of learned counsel for the plaintiffs and the learned counsel for the defendant No.5 on IA No.3. Perused the documents on record.

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

1. *Whether the plaintiffs have established prima-facie case?*
2. *Whether the balance of convenience lies in favour of plaintiffs?*
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 AFFIRMATIVE.

Point No.2 - In the AFFIRMATIVE.

Point No.3 - In the AFFIRMATIVE.

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 partition and separate possession with respect to the suit properties.

8. The Applicants / plaintiffs have filed IA No.3 under order XXXIX Rule 1 and 2 R/w Sec.151 of Civil Procedure Code praying to order to restraining the defendant No.5 from alienating the suit “B” properties to any others, in any manner, till disposal of the suit by allowing this application in the ends of justice and equity.

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 defendants threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff No.1 in relation to any properties 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 plaintiffs 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 partition and separate possession of their respective share in the suit properties and other reliefs. It is further stated that, the suit schedule properties are the ancestral and Hindu joint undivided joint family properties of plaintiffs and defendants. It is further stated that, the plaintiffs approached the defendants and demanded their respective share in the suit schedule properties. It is further stated that, the defendants have refused to give the income and also share of the plaintiffs in the suit schedule properties, and also denied the share of the plaintiffs in the suit schedule properties. It is further stated that, so many panchayaths were conveyed in presence of the elders of the Village. But the panchayaths were went in vain. It is further stated that, the defendant No.5 is trying to sell the suit “B” schedule properties. It is further stated that, the defendants have no absolute right, title and interest over the suit properties. So it is just and necessary to restrain the defendant No.5 from alienating the Suit “B” schedule properties in any manner till the rights of the parties to the suit is to be adjudicated. It is stated that if the present interim



application is not allowed, the plaintiffs will be put to heavy loss. On the other hand, if the application is allowed, no harm or inconvenience will be caused to the other side. Therefore, they prayed to allow the present interim application and grant temporary injunction as prayed.

13. In the supporting affidavit, the mother of the minor plaintiffs sworn to an affidavit that, they have filed this suit against the defendants for partition and separate possession of their respective share in the suit properties and other reliefs. It is further stated that, the suit properties are the ancestral and Hindu undivided joint family of the plaintiffs and defendants. It is further stated that, the suit schedule properties are the ancestral and Hindu joint undivided joint family properties of plaintiffs and defendants. It is further stated that, the plaintiffs approached the defendants and demanded their respective share in the suit schedule properties. It is further stated that, the defendants have refused to give the income and also share of the plaintiffs in the suit schedule properties, and also denied the share of the plaintiffs in the suit schedule properties. It is further stated that, so many panchayaths were conveyed in presence of the elders of the Village. But the panchayaths were went in vain. It is further stated that, the defendant No.5 is trying to sell the suit "B" schedule properties. It is further stated that, the defendants have no absolute right, title and interest over the suit properties. So it is



just and necessary to restrain the defendant No.5 from alienating the Suit “B” schedule properties in any manner till the rights of the parties to the suit is to be adjudicated. It is stated that if the present interim application is not allowed, the plaintiffs will be put to heavy loss. On the other hand, if the application is allowed, no harm or inconvenience will be caused to the other side. They have made out prima-facie case and balance of convenience lies in their favour. Therefore, they prayed to allow the present interim application and grant temporary injunction as prayed.

14. The Plaintiffs have placed the copy of MR No.H13/2011-12 with respect to the suit properties, copy of partition deed dated:30.12.2023 with respect to the suit properties, MR No.H4/2023-24 with respect to the suit properties, copy of RTC bearing Sy.No.51/1 of Haralikoppa Village, Kondli Hobli, Siddapura Tq, for the year 2023-2024, copy of RTC bearing Sy.No.51/4 of Haralikoppa Village, Kondli Hobli, Siddapura Tq, for the year 2023-2024, copy of RTC bearing Sy.No.51/5 of Haralikoppa Village, Kondli Hobli, Siddapura Tq, for the year 2023-2024, copy of Sale deeds dated:07.06.2024, MR No.H10/2023-24 with respect to the suit properties, copy of plaint in OS No.27/2024, copy of RTC bearing Sy.No.51 of Haralikoppa Village, Kondli Hobli, Siddapura Tq, for the year 2019-2020, copy of RTC bearing Sy.No.57 of Haralikoppa Village, Kondli



Hobli, Siddapura Tq, for the year 2024-2025, copy of RTC bearing Sy.No.60 of Haralikoppa Village, Kondli Hobli, Siddapura Tq, for the year 2024-2025, copy of RTC bearing Sy.No.51/1 of Haralikoppa Village, Kondli Hobli, Siddapura Tq, for the year 2024-2025, copy of RTC bearing Sy.No.51/5 of Haralikoppa Village, Kondli Hobli, Siddapura Tq, for the year 2024-2025, copy of RTC bearing Sy.No.51/4 of Haralikoppa Village, Kondli Hobli, Siddapura Tq, for the year 2024-2025, MR No.H9/2023-24 with respect to the suit properties, MR No.H10/2023-24 with respect to the suit properties.

15. It is the specific case of the defendant No.5 that, the present application filed by the plaintiffs is not maintainable in law. It is further contended that, the mother of the minor plaintiffs has sworn the false facts in the application enclosed affidavit and all the contents of said affidavit are denied as false and base-less. It is further contended that, the defendant No.1 had acquired the suit “B” schedule properties through her family partition. It is further contended that, the defendant No.5 has purchased the suit “B” schedule properties from the defendant No.1 to 3. It is further stated that, the revenue entries stands in the name of the defendant No.5 vide MR No.H9/2023-2024 & MR No.H10/2023-24 and he is paying tax to the Govt. It is further stated that, the defendant No.5 is in peaceful possession and enjoyment of suit schedule “B” properties. It is further stated that, the defendant No.1 to 4 have no rights in the suit schedule “B” properties. It is further contended



that, the defendant No.5 has developed the same by spending huge amount. It is further contended that, the plaintiffs have no right over the suit schedule “B” properties. It is further contended that, the plaintiffs have filed the false suit against the defendants. It is further contended that, the defendant No.5 is the absolute owner in possession of the suit schedule “B” properties. It is further contended that, the application filed by the plaintiffs is not maintainable in law. On these grounds, the defendant No.5 prayed to dismiss the IA No.3.

16. 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.

17. Admittedly, the plaintiffs are the minors and interest of minors has to be protected. It is to be noted that, the right of parties in suit properties to be decided after conclusion of trial. If during pendency of suit any subject properties of suit alienated by the defendant No.5 that will leads to un-necessary complications and multiplicity of suit. Hence it is shown that, balance of convenience lies in favour



of plaintiffs. Taking in consideration of nature of suit and rights of parties to be decided in present suit in respect of suit properties, if ad-interim temporary injunction as prayed for not granted, the plaintiffs will be put to hardship and injury. On the other hand no hardship or injury would be caused to defendants if temporary injunction as prayed for is granted. The plaint averments, affidavit annexed to I.A No.3 is very much consistent and in conformity with documents placed on record. There are no reasons to disbelieve or to doubt the documents produced by the plaintiffs at this stage of litigation. Therefore based on these documents, it can be safely held that, the plaintiffs have got prima-facie case for grant of temporary injunction. Hence I answer point No.1 in the affirmative.

POINTS NO. 2 & 3:

18. 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.

19. Whether the plaintiffs have got right or not is a matter of trial. Under these circumstance, the balance of convenience is lies in favour of the plaintiffs and not in favour of the defendant No.5. Under these circumstance, there is every likely would of causing injury to the plaintiffs in relation to the property in question. In weighing the risk of injustice which granting or refusing injunction would entitled there appearance to me that there is justification in granting order of temporary injunction now sought by the plaintiffs. Therefore if the injunction is refused, it is who the plaintiffs would be put to irreparable loss and injury and not the defendants. Therefore for the reasons discussed above, this Court is of the considered view that the balance of convenience also lies in favour of the plaintiffs and irreparable loss and injury would be caused to plaintiffs if a temporary injunction is refused. Hence I answer points No.2 & 3 in the affirmative.

POINT NO. 4

20. In view of my findings on Points No.1 to 3, I proceed to pass the following order:

ORDER

I.A.No.3 filed by the plaintiffs under order 39 rule 1 and 2 of CPC is hereby allowed.



The defendant No.5 is hereby restrained by way of temporary injunction from alienating the suit “B” schedule properties, in any manner till disposal of the suit.

The cost of this application shall follow the result of the suit.

(Directly dictated to Stenographer on computer, typed by her, corrected by me, signed and then pronounced in open court on the 26th day of JUNE - 2025)

(UMESHA M.P)
Civil Judge,
Siddapura

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