

KAVP310086582022



Presented on : 18-11-2022

Registered on : 21-11-2022

Decided on : 21.08.2025

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC, INDI.**

-PRESENT-

SHREE VIKAS DALAWAI.

B.A., LL.B.

Additional Civil Judge & JMFC, Indi.

Dated this the 21st Day of August, 2025

Original Suit No.576/2022

PLAINTIFF/S:

1. Shri. Malappa S/o. Vithoba Talawar @ Koli

-V/s-

DEFENDANT/S

**1. Shri. Siddappa S/o. Dyamanna Talawar @ Koli
and others.**

I.A.NO.I

Applicant/s/Plaintiff:

**1. Shri. Malappa S/o. Vithoba Talawar @ Koli,
Age: 65 years, Occ: Agril.,
R/o.Loni B.K., Tq: Chadachan, Dist: Vijayapur**

-V/s-

Opponents/Defendants :

1. **Shri. Siddappa S/o. Dyamanna Talawar @ Koli,**
Age : 30 Yrs., Occ : Agril.,
2. **Shri. Shivanand S/o. Mahadev Jadagi @ Koli,**
Age : 26 Yrs., Occ : Agril.,
3. **Shri.Dyamanna S/o. Malappa Talawar @ Koli,**
Age : 32 Yrs., Occ : Agril.,
4. **Smt. Ambawwa W/o. Yegappa Talawar @ Koli,**
Age : 50 Yrs., Occ : HH work,
5. **Shri. Ningappa S/o. Yegappa Talawar @ Koli,**
Age : 26 Yrs., Occ : Agril.,
6. **Shri. Mallikarjun S/o. Yegappa Talawar @ Koli,**
Age : 24 Yrs., Occ : Agril.,
7. **Laxmi D/o. Yegappa Talawar @ Koli,**
Age : 22 Yrs., Occ : HH work,
8. **Dhanamma D/o. Yegappa Talawar @ Koli,,**
Age : 20 Yrs., Occ : HH work,
9. **Shri. Siddaram S/o.Malappa Talawar @ Koli,**
Age : 28 Yrs., Occ : Agril,
All R/o. Loni B.K. Tq: Chadachan, Dist. Vijayapur.

(By Sri. SRM. Adv. for Plaintiff)
(Sri. SVK Adv. for D-2, 4 to 8)
(D-1, 3 & 9 Exparte)

ORDERS ON I.A.NO.I

The plaintiff has filed this application under Order
39 Rule 1 & 2 seeking ad-interim injunction against the

defendants restraining them from alienating the suit properties, till the disposal of suit.

2. The Brief facts of the plaintiff's and defendants' case are as follows:-

The application is accompanied with an affidavit sworn by plaintiff. In the affidavit the plaintiff has stated that, originally the suit land Sy.No.205 measuring 05 acres 04 guntas was in the name of his father by name: Vithoba S/o.Satteppa Talawar. His father has purchased the suit land bearing Survey No.205 measuring 05 acres 04 guntas for consideration amount of Rs.500/- from Revappa Shireppa Talwar and Lakkappa Shireppa Talwar on 07.10.1974 which has been duly registered before Sub-Registrar Office, Indi. The plaintiff further stated that that, ME No.2299 had been duly certified in the year 1975, the suit land was in the name of Shireppa Lakkappa Talawar and after his death his two sons by name Revappa and Lakkappa became the owner of the suit land by way of Warsa. The plaintiff further stated

that the said Revappa and Lakkappa for their family and legal necessity and other antecedents they have sold the suit land to his father by name Vithoba Satteppa Talawar. He further stated that. After the death of his father he only became the owner of the suit land. To that effect, MR No.114 had been duly certified and now he is in the actual physical position and peaceful enjoyment and cultivating the suit land, till today without obstruction or interruption of anybody else. He further stated that all the defendants colluding with each other made a partition in between themselves only without taking his proper consent and without intimating the same to him and to that effect MR No. H4 had been certified, and the alleged partition is behind the back and without his knowledge and same is not binding upon him, but the defendants are no way concerned to the suit lands and they are having no right, title, interest over the suit lands and defendants never came into the suit lands and now they are trying to alienate the suit lands to the

others to dupe his legitimate share. If the defendants are alienated the suit land, he will be put into heavy irreparable loss and hardship, which cannot be compensated by any means. On the said material grounds the plaintiff prayed for allowing the present application.

3. On service of summons, defendants have appeared through their counsel and resisted the claim made by the plaintiff by way of filing memo for adopting the contention of written statement of defendant No. 1 as an objection to IA.No.I. The defendants further stated that themselves and plaintiffs are brothers and the land bearing Sy.Nos.102, 103 and 104 were granted to them who belong to the Natikar, Kolkar and Thalwar community. These lands are Inam lands. They further contended that in the year 2011 and 2012, as per the shares allotted to them by the Government, and they have partitioned their respective shares. Out of the said lands 1 acre 12 guntas of land goes to the share of

Sri.Lakshman Shireppa Jadagi. Thereafter on 16.06.2016 according to his wish and in the presence of witness witnesses he has executed registered 'Will' in favour of defendant no. 2 by name Sri.Sivanand Mahadev Jadagi, @ Koli. After the demise of Sri.Lakshman Shireppa Jadagi the name of defendant No.2 duly entered in the records as per the said 'Will'. The defendant further contended that as per 'Will', the defendant No.2 is in a lawful position and enjoyment of the land measuring 1 acre 12 guntas. The plaintiff and his father Vithoba have no right, title or interest over the suit property. The defendants are the absolute owners of the suit land and the plaintiffs have no rights over the suit property of the defendants. There is no prima-facie and balance of convenience in the suit. Hence, Defendants have filed this false suit to harass the defendant. This suit is not maintainable in the eye of law. On the shared materials grounds, the defendants prayed for rejection of the present application.

4. Heard both sides, perused the materials available on record.

5. The following points that arise for consideration of this Court is as under:

1. **Whether the plaintiff has made out *prima-facie* case?**

2. **Whether the balance of convenience lies in favour of the plaintiff?**

3. **Whether the plaintiff will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?**

4. **What Order?**

6. My answer to the above points are as follows;

Point No:1. **In the Affirmative.**

Point No:2. **In the Affirmative**

Point No:3. **In the Affirmative**

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

REASONS

7. **Point No 1 to 3:-** These points are taken up together for common discussion to avoid repetition facts and circumstances.

8. It is specific case of the plaintiffs that originally all the suit lands were at Survey No. 209 measuring 05 acres 04 guntas was in the name of father of the plaintiff by name Vithoba S/o.Satteppa Talawar. The father of the plaintiff said Vithoba S/o.Satteppa Talawar has purchased the suit land Survey No.209 measuring 05 acres 04 guntas for the consideration amount of RS 500/- from Revappa Shireppa Talawar and Lakkappa Shireppa Talawar on 07.10.1974 which has been duly registered before Sub-registrar Office Indi, to that, ME No.2299 had been duly certified in the year 1975, and after his death his two sons by name Revappa and Lakkappa became the owner of the suit land by way of Warsa. The said Revappa and Lakkappa for their family and legal necessity and other antecedents they have sold the said land to the father of the plaintiff by name Vithoba Satteppa Talawar. After the death of said Vithob, his son the present plaintiff by name Malappa Vithoba Talawar became the owner of the suit land. To

that effect, MR No.114 had been duly certified and now the plaintiff in the actual physical position and peaceful enjoyment and cultivating the suit land, till today without obstruction or interruption of anybody else. The defendants colluding with each other made a partition in between themselves only without taking proper consent of plaintiff and without intimating the same to the plaintiff and to that effect MR No.H4 had been certified and the alleged partition is behind the back and without knowledge of the plaintiff and same is not binding upon the plaintiff, but the defendants are no way concerned to the suit lands and they are having no right, title, interest over the suit lands and defendants never came into the suit lands and now they are trying to alienate the suit lands to the others to dupe the share the plaintiff.

9. The plaintiffs and defendants are brothers and the land bearing Survey Nos. 102, 103 and 104 were granted to them who belong to the Natikar, Kolkar and Thalwar community. These lands are Inam lands. In the

year 2011 and 2012, as per the shares allotted by the Government, the plaintiff and defendants partitioned their respective portion, out of the said lands 1 acre 10 guntas of land is fallen to the share of Sri Lakshman Satteppa Jadagi. Thereafter on 16.06.2016 according to his wish and in the presence of witnesses he has executed a registered 'Will' in favour of defendant No. 2 by name Sri Sivanand Mahadev Jadagi, @ Koli. After the demise of Sri Lakshman Jadagi the name of the defendant No. 2 has been duly entered in the records as per the said "Will" then the defendant no. 2 is in a lawful position and enjoyment of the land measuring 01 acre 12 guntas. The plaintiffs and his father, Vithoba have no right, title or interest over the suit property. The defendants are the absolute owner of the suit land and the plaintiffs have no rights over the suit property.

10. In support of his case, plaintiffs have produced record of rights pertaining to the landed property and mutation register, wardi and other documents.

11. On perusal of the documents, it appears that, to decide the real controversy between the parties, this court cannot held mini trial and purpose and primary aim of temprary injunction is to maintain status quo of the property in question until the court can resolve the underlying issues of ownership

12. In the decision reported in 2008 (5) KLJ 613 SC between 2008 (5) KLJ 613(SC) between *Mandali Ranganna and others Vs. T. Ramachandra and others* wherein Hon'ble Supreme Court of India at para No.21 and 22 has held that;-

“21. While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto viz. existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.,

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties

exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.”

13. As per ratio laid down in the above said decision and on perusal of documents it appears that, the plaintiff has filed this suit for partition and separate possession and consequential relief of permanent injunction while granting temporary injunction, the court has to consider the conduct of the parties including the basic ingredients such as existence of prima-facie case, balance of convenience and irreparable loss to the parties.

14. I have gone through the documents produced by the both parties and perused the pleadings on rival

contention of the parties. In the instance case, the plaintiff has denied the partition of defendants. But to decide the real controversy between the parties, this Court cannot hold mini trial. At this stage, one bare perusal of the contents of the documents itself reveals that it needs to full pledged trial. The other rival contentions raised by the parties can be fully adjudicated upon only after the conclusion of trial. Hence no findings are expressed on them in this regard, since those findings are expressed on them in this regard, those findings might have direct bearing on the decision of the suit. Hence, keep proving the same to the parties openly till disposal of the suit. If the defendants are restrained from alienating the suit schedule properties, No harm or prejudice will be caused to the plaintiff. If the defendants are allowed, it creates a multiplicity of proceedings, granting a temporary injunction is not a conclusive order, the same will be considered at the full-fledged trial. Hence the plaintiffs have made out prima-facie case by producing the documents

and balance of convenience also tilted in favour of plaintiff. If TI order is not granted, plaintiff will put great hardship. Accordingly, the plaintiff is entitled for the temporary injunction. Accordingly, I answered point No.1 to 3 in the **Affirmative**.

15. Point No.4: That for the above reasons, I proceed to pass the following;

ORDER

I.A.No.I filed by the plaintiff under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Consequently, Defendants are hereby temporarily restrained from alienating the suit schedule property till disposal of the suit.

No order as to costs.

(Dictated to Stenographer directly on computer, typed by her, corrected and then pronounced by me, in the open Court on this the 21st day of August, 2025)

(Vikas Dalawai)
Addl Civil Judge and J.M.F.C.,
Indi