

KAVP310089262022



Presented on : 17-12-2022

Registered on : 17-12-2022

Decided on : 08.04.2026

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

-PRESENT-

SHREE VIKAS DALAWAI.

B.A., LL.B.

I Additional Civil Judge & JMFC, Indi.

Dated this the 08th Day of April, 2026

Original Suit No.636/2022

PLAINTIFF/S:

1. **Shri. Siddanna S/o. Honnappa Jevoor and others.**

-V/s-

DEFENDANT/S

1. **Shri. Sidaray S/o. Honnappa Jevoor and others.**

I.A.NO.I

Applicant/s/Plaintiffs

1. **Shri. Siddanna S/o. Honnappa Jevoor.**
Age : 53 Yrs., Occ: Agril.,
R/o. Channegaon, Tq:Chadachan, Dist:Vijayapur
and others.

-V/s-

Opponent/s/Defendant No.2 & 3**2. Shri. Mahadev S/o. Sharanappa Jevoor**

Age: 58 years, Occ: Agril.,

3. Shri. Somaning S/o. Sharanappa Jevoor

Age: 55 years, Occ: Agril.,

Both R/o. Channegaon, Tq:Chadachan,

Dist:Vijayapur and others.

(By Sri. SSP Adv. for Plaintiffs)**(By Sri.SGK Adv. for D-1)****(By Sri. SGH Adv. for D-2)****(D-3 & 4 Exparte)**

In which provision the application is filed	Application U/O.39 Rule 1 & 2 of CPC
The relief sought to be claimed	An order of temporary injunction
Date of application	17.12.2022
Number of application	I
Date of Objection	13.10.2023
Date of order.	08.04.2026

ORDERS ON I.A.NO.I

The plaintiffs have filed an application under Order 39 Rule 1 and 2 of the CPC seeking an order of temporary injunction restraining the defendant No.2 & 3 from alienating the suit schedule property till the disposal of the suit.

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

In the application supported by an affidavit, the plaintiffs averred that, themselves and defendant No.1 and 4 constitute a Hindu joint family and they are the members of the said joint family. The suit schedule properties are the joint family properties. The plaintiffs and defendant Nos. 1 and 4 are the joint owners and are in joint possession of the suit properties. The plaintiffs claim that they are entitled to 4/6th share in the suit properties. Further they stated that they have filed the present suit for partition and separate possession of their alleged 5/6th share in the suit properties. The suit property stands in the name of defendant No.2. Taking advantage of his name appearing in the Record of Rights pertaining to the suit property, the defendant No.2 is attempting to alienate the same. If defendant No.2 alienates the suit property, it would be difficult for the plaintiffs to secure their share, and it would also lead to

multiplicity of proceedings. Hence, the plaintiffs have sought an order restraining alienation.

3. The defendant No.2 has filed objections to I.A. No.1 by adopting the contentions raised in the written statement. He contends that the suit property is not limited to land bearing Sy.No.68/3 measuring 04 acres, but that the joint family also owns other properties, namely: Sy.No.26/*/A/1 measuring 04 acres 05 guntas, Sy.No.33 measuring 20 guntas, Sy.No.32 measuring 9 acres 9 guntas, and Sy.No. 50/*/3 measuring 3 acres. The plaintiffs have suppressed these material facts. It is an admitted position that the plaintiffs have filed a suit for partition; therefore, it is their duty to bring all joint family properties into the hotchpotch of the partition suit. The suit is bad for non-inclusion of all joint family properties and is therefore not maintainable in the eye of law.

4. The defendant No.2 further contends that in the year 2008, the father of the plaintiffs owned land

bearing Sy.No.68/3 measuring 4 acres 5 guntas situated at Chanegaon village. The defendant No.2 approached the father of the plaintiffs and defendant No.1 and 4 and enquired about the suit property. The father of the plaintiffs and defendant No.1 informed him that they also owned another property bearing Sy.No.26/*/A/1 measuring 04 acres 05 guntas, situated at a distance of about 2 km. The defendant No.2 further contends that he has purchased the suit schedule property for a valuable consideration of Rs.2,24,000/-. The father of the plaintiffs along with plaintiff No.1 and defendant No.1 and 4 received the said consideration amount. On 26.12.2008, they executed a registered sale deed in favour of defendant No.2. On the same day, they handed over physical possession of the suit schedule property to him. It is further contended that the plaintiffs and defendants have shares in the lands bearing Sy.No.26/*/A1, Sy.No.32 and Sy.No.33, all situated at Chennegaon Revenue Village. He submits that the father of plaintiff

No.1 and defendant No.1 and 4 having utilized the sale proceeds of the suit schedule property, have relinquished and lost all their rights and interests in the suit property. Instead, they have acquired rights and shares in Sy.No. 32 and 33 which are in the nature of ancestral properties. Hence, the suit filed by the plaintiffs is not maintainable in the eye of law. Accordingly, defendant No.2 prays for dismissal of I.A. No.I.

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

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

1. **Whether the plaintiffs have made out *prima-facie* case?**
2. **Whether the balance of convenience lies in favour of the plaintiffs?**
3. **Whether the plaintiffs will be put to great hardship and irreparable loss if temporary injunction is not granted, as prayed?**
4. **What Order?**

7. 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

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

9. It is the specific case of the plaintiffs that, themselves and defendant No.1 and 4 constitute a Hindu joint family and they are the members of the said joint family. The suit schedule properties are the joint family properties and themselves and defendant Nos.1 & 4 are the joint owners and are in joint possession of the suit properties. The plaintiffs claim that they are entitled to 4/6th share in the suit properties. Further they stated that they have filed the present suit for partition and separate possession of their alleged 5/6th share in the suit properties. The suit property stands in the name of

defendant No.2. Taking advantage of his name appearing in the Record of Rights pertaining to the suit property, the defendant No.2 is attempting to alienate the same. If defendant No.2 alienates the suit property, it would be difficult for the plaintiffs to secure their share, and it would also lead to multiplicity of proceedings.

10. The defendant No.2 in his objections contended that the suit property is not limited to land bearing Sy.No.68/3 measuring 04 acres, but that the joint family also owns other properties, namely: Sy.No.26/*/A/1 measuring 04 acres 05 guntas, Sy.No.33 measuring 20 guntas, Sy.No.32 measuring 09 acres 09 guntas, and Sy.No.50/*/3 measuring 03 acres. The plaintiffs have suppressed these material facts. It is an admitted position that the plaintiffs have filed a suit for partition; therefore, it is their duty to bring all joint family properties into the hotchpotch of the partition suit. The suit is bad for non-inclusion of all joint family properties and is therefore not maintainable in the eye of law.

11. The defendant No.2 further contends that in the year 2008, the father of the plaintiffs owned land bearing Sy.No.68/3 measuring 4 acres 5 guntas situated at Chanegaon village. The defendant No.2 approached the father of the plaintiffs and defendant No.1 and 4 and enquired about the suit property. The father of the plaintiffs and defendant No.1 informed him that they also owned another property bearing Sy.No.26/*/A/1 measuring 04 acres 05 guntas, situated at a distance of about 2 km. The defendant No.2 further contends that he has purchased the suit schedule property for a valuable consideration of Rs.2,24,000/-. The father of the plaintiffs along with plaintiff No.1 and defendant No.1 and 4 received the said consideration amount. On 26.12.2008, they executed a registered sale deed in favour of defendant No.2. On the same day, they handed over physical possession of the suit schedule property to him. It is further contended that the plaintiffs and defendants have shares in the lands bearing Sy.No.26/*/

A1, Sy.No.32 and Sy.No.33, all situated at Chennegaon Revenue Village. He submits that the father of plaintiff No.1 and defendant No.1 and 4 having utilized the sale proceeds of the suit schedule property, have relinquished and lost all their rights and interests in the suit property. Instead, they have acquired rights and shares in Sy.No. 32 and 33 which are in the nature of ancestral properties. Hence, the suit filed by the plaintiffs is not maintainable in the eye of law.

12. The relationship between the parties as number of Hindu joint family is not seriously disputed. The court contention of the plaintiff is that, the suit property is the joint family property, that the alleged sale in favour of defendant No.2 is not binding on their share.

13. At this interlocutory stage, this court is not expected to conduct a detailed trial on the validity of sale deed. The existence of sale deed in favour of defendant No.2, on the one hand, and the claim of the plaintiffs

that the same is not binding on their share. On the other a triable issue.

14. The law relating to grant of temporary injunction is well settled in **Hon'ble Supreme Court in Dalpat Kumar and another V/s. Pralhadsingh and others 1992 (1) SCC 719** clearly held that;

Grant of temporary injunction is not automatic and plaintiff must independently establish the following 3 essential ingredients. Existence of prima-facie case, balance of convenience in his favour and likelihood of irreparable injury if injunction is refused. The Hon'ble Supreme Court further held that, mere existence of triable issue are a weak prima-facie case is not sufficient, and court must exercise discretion judiciously

15. Applying the above principle to this case, the contention of the plaintiffs that the suit schedule property is joint family property and that the alleged sale in favour of defendant No.2 is not binding on their share raises a serious triable issue which requires adjudication

during trial. At this stage, this court cannot conclusively decide the validity of the sale deed dtd: 26.12.2008. Hence, plaintiffs have successfully establish a prima-facie case in their favour.

16. In view of the above discussions and principles laid down in the Dalapathkumar case, this court is of the opinion that, the plaintiff has satisfied all the necessary ingredients to grant temporary injunction.

17. At this stage, this court would place reliance on the decision of supreme court in ***The Pepsi Cola and The Cola Cola- Gujarat Botting Co. Ltd vs Coca cola Co.***1995(5) SCC 545.

“The grant of interim injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court”.

“The decision whether or not to grant an interim injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain

and remain uncertain till they are established at the trial on evidence. Relief by way of interim injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved.”

18. Applying the above principles to this case, if defendant No.2 is not restrained from alienating the suit schedule property, there is every possibility of creation of 3rd party interest, which would complicate the proceedings and defeat the very purpose of filing the suit for partition. Therefore, in order to preserve the suit property and safeguard the rights of the plaintiffs pending adjudication, it is just and necessary to grant an order of temporary injunction. Therefore, considering the equitable principles governing grant of injunction and the need to preserve the subject matter of the suit, this court finds it just and necessary to grant temporary injunction in favour of the plaintiffs. On perusal of the all materials it appears that, plaintiff has made out prima-

facie case and balance of convenience and irreparable loss to grant temporary injunction. On perusal of the all materials it appears that, plaintiff has made out prima-facie case and balance of convenience and irreparable loss to grant temporary injunction.

19. I have gone through the above materials available on record, the plaintiffs have produced documents pertaining to suit property, prima-facie appears that, at this juncture this court cannot come to the conclusion or right of the parties. I have carefully considered the pleadings, objections and documents on record and submission of both parties the plaintiffs have made out prima-facie case by producing the documents and balance of convenience also tilts in favour of plaintiffs, if TI order is not granted plaintiffs will be put great hardship. It is made clear that the observations made herein are only for the purpose of disposal of this application and shall not influence the trial on merits. Without expressing any opinion on the merits of the

case, this court is of view that it is just and proper to restrain defendant from alienating the suit property pending disposal of the suit. Accordingly, I answer point No.1 to 3 in the **AFFIRMATIVE**.

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

ORDER

I.A.No.I filed by the plaintiff against the defendant No.2 & 3 under Order 39 Rule 1 and 2 of CPC is hereby allowed.

Consequently, Defendant No.2 & 3 are hereby temporarily restrained from alienating or transferring the suit property bearing Sy.No.68/3 measuring 03 acres 31.08 guntas situated at Channegaon village, Chadachan taluka, Vijaypur district by way of sale, mortgage, gift, lease or any other kinds of transfer till disposal of the suit.

Note: Any observations/finding made in this order are confined only to the disposal of this I.A. none of the parties

are permitted to take the benefits of findings/observation of this order during the course of trial or for any other purpose.

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 **08th day of April, 2026**)

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