

KAVP500017522024



Presented on : 13-05-2024

Registered on : 14-05-2024

Decided on : 01-07-2026

Duration : 02-Years, 01-Months, 19-days

**IN THE COURT OF HON'BLE I ADDL. SENIOR CIVIL
JUDGE AND JMFC, SINDAGI
AT: SINDAGI.**

Present – Shri. Abdul Rahiman .A. Mulla
B.A.L,LL.B.(Hon's)

**I Addl. Sr. Civil Judge & JMFC,
Sindagi.**

Dated 1st day of July-2026

O.S.NO.79/2024

<u>plaintiff/s :</u>	1.	Sharifa W/o. Aayub Natikar Age: 52 Years., Occ:H.H.Work, R/o. Sunagar galli, Shahapete, Vijayapur. Dist: Vijayapur.
		(R/by Sri.S.S.S., Adv.,)
		// Versus //
<u>Defendant/s :</u>	1.	Babulal W/o. Husainsab Bagawan Age: 54 Yrs., Occ:Agril, R/o.Mannur, Tq : Devar-Hipparagi, Dist: Vijayapur.
	2.	Rajiyabegum W/o. Malangsab Bagawan Age: 55 years, Occ: H.H.Work, R/o. Mannur, Tq : Devar- Hipparagi, Dist: Vijayapur.

	3	Yasmin W/o. Mahammadsharif Badegar Age : 26 years, Occ: H.H.Work R/o. Ward No.01 K.S.R.T.C Guest House Neharu Nagar Workshop, Vijayapur
	4.	Mujahid S/o. Malangsab Bagawan Age 23 years, Occ:- R/o. Mannur, Tq : Devar-Hipparagi Dist: Vijayapur.
	5.	Tamarin @ Tamasin @ Tamakin D/o. Malagamsab W/o. Aasik Bagawan Age : 24 years, Occ: H.H.Work R/o. Mannur, Tq : Devar-Hipparagi Dist: Vijayapur.
	6.	Jaitumbi S/o. Malangsab Bagawan Age : 21 years, Occ: H.H.Work, R/o. Mannur, Tq : Devar-Hipparagi Dist: Vijayapur.
		(Def.No.2,3,5 and 6 Ex-parte) (Def.No.1 by Sri.S.G.K., Adv.,) (Def.No.4 inperson)

PARTIES IN I.A.No.I**Applicant/Plaintiff:**

1. Sharifa W/o. Aayub Natikar

V/s.**Opponents/Defendants:**

1. Babulal W/o. Husainsab Bagawan and others.

1.	Provision under which the application is filed	U/o.39 Rule 1 and 2 of CPC
2.	Relief sought for	To restrain defendants from alienating or transferring suit schedule properties bearing R.S.No.160/2 measuring 4 acres 8 guntas, R.S.No.160/3 measuring 3 acres, 20 guntas, R.S.No.160/4 measuring 4 acres 20 guntas, R.S.No.155/1 measuring 5 acres 37 guntas and R.S.No.155/4 measuring 5 acres all are situated at Ibrahimpur village, Devara-Hippargi taluka.
3.	The date on which application is filed	13-05-2024
4.	Number of the application	I.A.No.I
5.	The date on which objections/written statement are filed by different opponents	28-02-2026
6.	The date on which orders were passed on said application	01-07-2026

:-ORDERS ON I.A.No.I FILED BY PLAINTIFF

U/O.39 RULE 1 AND 2 OF CPC :-

1. The present suit is filed by plaintiff against defendants for the relief of partition and

separate possession and along with suit, present application is filed by plaintiff seeking order of temporary injunction restraining defendants from alienating or transferring suit schedule properties bearing R.S.No.160/2 measuring 4 acres 8 guntas, R.S.No.160/3 measuring 3 acres 20 guntas, R.S.No.160/4 measuring 4 acres 20 guntas, R.S.No.155/1 measuring 5 acres 37 guntas and R.S.No.155/4 measuring 5 acres all are situated at Ibrahimpur village, Devara-Hippargi taluka till disposal of suit.

2. In the affidavit annexed to the application, plaintiff averred that, she along with defendants are members of one family and some suit schedule properties are ancestral properties and some are purchased properties out of joint family nucleus and they are tenants-in-common with respect to same. The plaintiff has got 1/5th share in suit schedule properties. Now defendants in order to dupe the share

of plaintiff has got concocted documents. When plaintiff requested defendants to allot her share, defendants have refused for it and they are attempting to alienate and transfer the same and amongst these grounds, prayed to allow the application.

3. After issuance of summons, defendant No.2 to 6 remained ex-parte. Defendant No.1 appeared through his counsel and filed written statement denying the averments of the plaint and contended that, as per decree passed in O.S.No.58/2021 partition has been acted upon and decree is binding on the parties including plaintiff. The parties being Mohammedans concept of joint family is inapplicable. That defendant No.1 purchased land bearing R.S.No.155/1 and R.S.No.155/4. Further land bearing R.S.No.160 was purchased by father and during his lifetime father has orally gifted portion of the same to his sons i.e., defendant No.1 and husband of defendant No.2. That father had land bearing

R.S.No.160/3 mutated in his name at the time of death, wherein plaintiff has got 1/3rd share in it and amongst these grounds, prayed to dismiss the application.

4. Heard. Perused the records.

5. The points that arise for my consideration is as under:

- 1) Whether prima-facie case and balance of convenience lies in favour of plaintiff?
- 2) To whom irreparable loss and injury would be caused in case of granting temporary injunction or refusing to grant the same?
- 3) What order?

6. My findings to the above points are as under:

Point No.1 : Partly in the affirmative

Point No.2 : To plaintiff in case of refusing to grant temporary injunction.

Point No.3 : As per final order for the following;

:REASONS:

7. **POINT NO.1 AND 2:** As both these points are interlinked with each other, they are taken together for discussion to avoid repetition of facts.

8. It is specific case of plaintiff that, some of the suit schedule properties are ancestral properties and some are purchased out of joint family nucleus, wherein plaintiff has got 1/5th share. Now defendants are attempting to alienate the same in order to dupe the share of plaintiff in suit schedule properties.

9. In support of her contention, plaintiff produced in all 18 documents i.e., surviving family members certificate, genealogy, RTC extracts of suit schedule properties, mutation registers and certified copy of gift deed.

10. On the contrary, defendant No.1 contended that, he has purchased land bearing R.S.No.155/1 and R.S.No.155/4 whereas R.S.No.160/3 was only standing in the name of father

at the time of his death. No documents are produced by defendant No.1 in support of his contention.

11. On prima facie perusal of pleadings and documents produced by plaintiff, land bearing R.S.No.160/2 is mutated in the name of father Husainsab, R.S.No.160/3 is mutated in the name of defendant No.1 to 3, 5 and 6. Further, prima facie RTC extracts of land bearing R.S.No.155/1 reveals that, it was purchased by Kalima on 15.09.2012 and she has gifted the same to defendant No.1 on 16.12.2020. Further, RTC extract of land bearing R.S.No.155/4 reveals that, name of Zakira Babulal is mutated and column No.10 of RTC extract reveals that, it was purchased on 06.11.2012. Further as per the documents produced by plaintiff himself, it reveals that, as per decree passed in O.S.No.58/2021, R.S.No.160/3 was divided and same was given to defendant No.1 whereas R.S.No.160/4 is mutated in the name of defendants.

12. Further prima facie as per Ex.P6 produced by plaintiff, it reveals that, with respect to R.S.No.160/2 Husainsab has relinquished said property to Malangsab and defendant No.1, who are children of Husainsab, but plaintiff being daughter of Husainsab was not given any share. Further, prima facie to the partition in O.S.No.58/2021, plaintiff is not at all a party. Further prima facie documents produced by plaintiff reveals that, land bearing R.S.No.160/2, R.S.No.160/3 and R.S.No.160/4 are only properties, wherein plaintiff and defendants are enjoying the same as tenants-in-common. Whether plaintiff and defendants are enjoying land bearing R.S.No.155/1 and R.S.No.155/4 as tenants-in-common requires full fledged evidence and trial and same cannot be adjudicated at this stage of the case by holding mini trial.

13. In order to grant an order of temporary injunction, three essential ingredients are to be

fulfilled i.e., prima facie case, balance of convenience and irreparable loss and injury, wherein prima facie case and balance of convenience lies in favour of plaintiff with respect to suit item No.1 to 3 properties. If at all defendants alienate the same during the pendency of suit, it will lead to multiplicity of proceedings. If temporary injunction as prayed by plaintiff is not granted, irreparable loss and injury would be caused to plaintiff rather than defendants. Hence, for the above said reasons, I answer Point No.1 **Partly in the affirmative** and Point No.2 as “irreparable loss and injury would be caused to plaintiff in case of refusing to grant temporary injunction”.

14. **Point No.3:** For the reasonings and findings given to Point No.1 and 2, I proceed to pass following:

:ORDER:

I.A.No.I filed by plaintiff U/o.39 Rule 1

and 2 of CPC is hereby allowed in part.

Defendants are hereby restrained by an order of temporary injunction from alienating or transferring suit schedule properties bearing R.S.No.160/2 measuring 4 acres 8 guntas, R.S.No.160/3 measuring 3 acres, 20 guntas, R.S.No.160/4 measuring 4 acres 20 guntas all are situated at Ibrahimpur village, Devara-Hippargi taluka till disposal of suit.

The application of plaintiff with respect to lands bearing R.S.No.155/1 and R.S.No.155/4 is hereby dismissed.

The ad interim ex-parte temporary injunction order with respect to suit item No.1 to 3 properties dated 15.05.2024 is hereby confirmed.

(Dictated to the stenographer directly on computer, typed by her, corrected, signed by me and then pronounced in open court on 1st day of July-2026).

(Abdul Rahiman .A. Mulla)
I Addl. Sr. Civil Judge & JMFC,
Sindagi.