

KAVP500066092023



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

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

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

Dated 10th day of December, 2024

O.S. NO.177/2023

Plaintiff/s :

1. Borawwa @ Boramma W/o. Ningappa Busti,
Age: 63 Yrs., Occ: H.H.Work,
R/o. Jambagi (A) Village,
Tq: & Dist: Vijayapura.

(R/by Shri. S.P.M., Adv.,)

// Versus //

Defendant/s :

1. Mallesh S/o. Siddramappa Mashyal,
Age: 60 Yrs., Occ: Agriculture,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.
2. Ratnawwa W/o. Hirageppa Mashyal,
Age: 58 Yrs., Occ: H.H.Work,

R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.

3. Laximbai W/o. Madu Mungi,
Age: 40 Yrs., Occ: Govt. Teacher,
R/o. Tamba, Tq: Indi,
Dist: Vijayapur.
4. Siddappa S/o. Hirageppa Mashyal,
Age: 40 Yrs., Occ: Agriculture,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.
5. Vidya W/o. Mallu Awati,
Age: 38 Yrs., Occ: H.H.Work,
R/o. Gonasagi Village,
Tq: Tikota, Dist: Vijayapur.
6. Sagar S/o. Hirageppa Mashyal,
Age: 35 Yrs., Occ: Agriculture,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.
7. Shantabai W/o. Shivayogeppa Mashyal,
Age: 50 Yrs., Occ: H.H.Work,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.
8. Rajashri W/o. Somu Zalki,
Age: 50 Yrs., Occ: H.H.Work,
R/o. Hirerugu village,
Tq: Indi, Dist: Vijayapur.
9. Bhagyashri W/o. Siddu Totagond,
Age: 35 Yrs., Occ: H.H.Work,

R/o. Prakash Dosa Center,
Ashram Gate, Vijayapur.

10. Shivamma W/o. Shivalingappa Nimbargi,
Age: 38 Yrs., Occ: H.H.Work,
R/o. Gunadal Village,
Tq: Babaleshwar, Dist: Vijayapur.
11. Amogi S/o. Shivalingappa Mashyal,
Age: 38 Yrs., Occ: Agriculture,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.
12. Siddram S/o. Shivalingappa Mashyal,
Age: 38 Yrs., Occ: Agriculture,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.
13. KalawwaW/o. Kallappa Malagar,
Age: 38 Yrs., Occ: H.H.Work,
R/o. Satalagon Village,
Tq: Indi, Dist: Vijayapur.
14. Shivagondappa S/o. Siddramappa Mashyal,
Age: 55 Yrs., Occ: Agriculture,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.
15. Honnavva W/o. Raju Mali,
Age: 45 Yrs., Occ: H.H.Work,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.
16. Shoba W/o. Shivagondppa Mashyal,
Age: 38 Yrs., Occ: Agriculture,

R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.

17. Annapurna W/o. Ramesh Deshapande,
Age: 40 Yrs., Occ: H.H.Work,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.

18. Shivananda S/o. Sayabanna Kadlewad,
Age: Major, Occ: Agriculture,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.

19. Jagadevi W/o. Sayabanna Kadlewad,
Age: Major, Occ: H.H.Work,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.

20. Sharanappa S/o. Irappa Awati,
Age: Major, Occ: Agriculture,
R/o. Chikkarugi village,
Tq: Devar Hipparagi,
Dist: Vijayapur.

(Shri. P.M.B., Adv., for D-1, 4, 11 & 14)
(Shri. A.K.K., Adv., for D-17 to 19)
(Defendant No.5,6, 9 & 13-Ex-parte)
(Defendant No.2,3,7,8,10,12,15,16 to 20-
Steps not taken)

PARTIES IN I.A.No.1

Applicant
Plaintiff:

1. Borawwa @ Boramma W/o. Ningappa Busti.

V/s.

Opponents/Defendants:

1. Mallesh S/o. Siddramappa Mashyal 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 the suit schedule properties
3.	The date on which application is filed	18-12-2023
4.	Number of the application	I.A.No.1
5.	The date on which objections/written statement are filed by different opponents	07-08-2024
6.	The date on which orders were passed on said application	10-12-2024

:-ORDERS ON I.A.No.1 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 the suit, the present application is filed by plaintiff seeking order of temporary injunction restraining defendants from alienating the suit schedule properties bearing

R.S.No.153/*/1, R.S.No.153/*/2, R.S.No.153/*/3,
R.S.No.153/*/4, R.S.No.153/*/5, R.S.No.313/*/1,
R.S.No.313/*/2, R.S.No.313/*/3, R.S.No.313/*/4,
R.S.No.313/*/5 and R.S.No.313/*/6 all are situated
at Chikkarugi village by way of sale, gift, mortgage,
exchange, lease or agreement of sale till disposal of suit.

2. In the affidavit annexed to the application, plaintiff averred that, she along with defendant No.1 to 16 are members of Hindu undivided joint family and they are in joint possession and enjoyment of the suit schedule properties, as it was acquired by their mother Tippavva, who acquired it from Channamallappa and M.E.No.1246 dated 15-03-1954 is certified. She being elder sister was given assurance that they will effect partition, hence she has kept mum. In the month of October-2023 she enquired defendants regarding division of properties, but they did not give positive reply. When she demanded her share they denied the same. When she obtained

documents, she came to know that defendant No.1 has alienated portion of properties to defendant No.17 and amongst these grounds, prayed to allow the application.

3. After issuance of summons, defendant No.5,6,9 and 13 are remained ex-parte, defendant No.2,3,7,8,10,12,15,16 to 20 not taken any steps, whereas defendant No.1,4,11 and 14 appeared through their counsel and filed their written statement contending that, Tippavva has effected oral family arrangement cum partition in the year 1991 between her daughter Mallavva and grand-sons and M.E.No.4910 is effected. Plaintiff and defendant No.1, 3 and 14 have not challenged the same and amongst these grounds prayed to dismiss the application. Defendant No.17 to 19 have filed their written statement contending that they are bonafide purchasers of portion of suit schedule properties and 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 : 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, Tippavva acquired suit schedule properties under M.E.No.1246 and no partition is effected. Behind the back of plaintiff, defendant No.1 has alienated suit schedule properties. In support of this contention, plaintiff produced in all 23 documents i.e. RTC extracts of suit schedule properties and mutation extracts.

9. On the contrary, defendant No.1, 4 11 and 14 contended that, Tippavva had already effected oral family arrangement in the year-1991 and plaintiff has not challenged the same. In support of this contention, five documents i.e. mutation extracts are produced.

10. On prima-facie perusal of pleadings and documents produced by parties, it reveals that, suit schedule properties are ancestral properties devolved upon Tippavva as per M.E.No.1246, but as per

M.E.No.4910, Tippavva has effected partition, but admittedly plaintiff is not a party to the same. Whether said document is credible or not is a question, which requires full fledged evidence and trial and same cannot be adjudicated at this stage of case by holding mini trial.

11. Prima-facie on perusal of documents produced by plaintiff, RTC extracts of suit schedule properties are standing in the name of defendants. If suit schedule properties are alienated during the pendency of suit, it will lead to multiplicity of proceedings and suit schedule properties may not be available for partition to enjoy the fruits of decree.

12. In order to grant an order of temporary injunction, three essential ingredients have to be fulfilled i.e. prima-facie case, balance of convenience and irreparable loss and injury in favour of plaintiff. If suit schedule properties are alienated 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 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”.

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

:ORDER:

I.A.No.1 filed by plaintiff U/o.39 Rule 1 and 2 of CPC is hereby allowed.

The defendants are hereby restrained by an order of temporary injunction from alienating the suit schedule properties by way of sale, mortgage, exchange, lease or agreement of sale till disposal of suit.

The interim ex-parte temporary
injunction order dated 21-12-2023 is hereby
confirmed.

*(Dictated to the stenographer directly on computer, typed by him, corrected,
signed by me and then pronounced in open court on 10th day of December,
2024).*

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