

IN THE COURT OF THE MUNSIFF OF HOSDURG

Present : Sri.Dileep.M.R (Civil Judge (Junior Division))

Saturday, the 06th day of June, 2026/ 16th Jyaishtha, 1948.

I.A.No.2/2026 in O.S.No.106/2026

Between:-

Shivaji Ganeshan, aged 58 years,

S/o. Late Achu,

Marakkappu Kadappuram, Kanhangad Village,

Hosdurg Taluk, Ozhinha Valappu PO,

Kasaragod District-671314.

} Applicant/Plaintiff

AND

1. Thottiyil Geetha, aged 70 years,

2. Thottiyil Sunantha, aged 65 years,

3. K.P.Rajeevan, aged 51 years,

1 to 3 are the Children of Late Achu,

R/at. Marakappu Kadappuram, Kanhangad Village,

Hosdurg Taluk, Ozhinha Valappu PO,

Kasaragod District-671314.

4. Rajan.K, aged 64 years,

R/at. Rajbhavan, Sakthi Road, Padanakkad Post,

Kanhangad Village, Hosdurg Taluk,

Kasaragod District-671314.

5. Hemalatha.K.P, aged 75 years,

R/at. Punchavikadappuram. Hosdurg Village,

Ozhinha valappu Post, Hosdurg Taluk,

Kasaragod District-671314.

} Respondents/
Defendants

Application filed Under Order XXXIX Rules 1 and 2 and Section 151 of Civil Procedure Code to issue an order of temporary prohibitory injunction restraining the respondents/ defendants from alienating the petition schedule property or committing any waste and damages to the plaint schedule property and grant such other and further relief as may be prayed. An ad interim injunction before notice is also prayed for.

Petition presented on : 25.03.2026

Court fee paid : ₹ 125.00

This Petition coming on 4th day of June, 2026 for final hearing before me in the presence of S/Sri. P.Padmanabhan and P.Venugopalan Nair , Advocates for Applicant; of Sri.N.Rajamohanam, Advocate for respondents No.1 to 3; Smt.Bhavya.K, Advocate for respondents No.4 and 5; and having stood over to this day for consideration and the court delivered the following:-

ORDER

This is an application for a temporary prohibitory injunction from the plaintiff in a suit for partition.

2. The petitioner's case, in brief, is as follows: The plaintiff A schedule property was part of a 1.47-acre parcel sold to Marakkappukadappurath Achu by Thalakkal Kunhippiri by deed no.2798/1959 of the Hosdurg sub registrar's office. Achu gifted 20 cents out of that property to the plaintiff by deed no.2410/1987 of the Hosdurg sub registrar's office. He gifted another 1.08 acres to the plaintiff and defendant nos. 1 to 3 by deed no.2409/1987. The 19-cent parcel retained by Achu from the property purchased from Kunhippiri is the Plaintiff A schedule property. Defendant nos. 4 and 5 are the children of Achu and his wife Leela. The plaintiff and defendant nos.1 to 3 are the children of Achu and Meenakshi. The plaintiff's father had an extra-marital affair with their mother Meenakshi. On Achu's death on 24.12.1991, the plaintiff A schedule property devolved on Achu's wife Leela and the parties to this suit. Leela died in 2017 and her interest in the property devolved on defendant nos.4 and 5. The plaintiff and defendant nos.1 to 3 have a 2/14 interest each in the plaintiff A schedule property and defendant nos.4 and 5 have a 3/14 interest each in it. The defendants are not willing to partition the property. Hence, the suit. The defendants are about to sell the plaintiff A schedule property to Chandran.B.K of Marakkappukadappuram as if they are its exclusive owners. Hence, this application to restrain the defendants from alienating the plaintiff schedule property or committing waste thereon until the disposal of the suit.

3. The respondents were served with notices. Respondent nos. 1 to 3 filed a counter statement. Their contentions are as follows: The allegations and the statements in the affidavit in support of the petition are false. The property left by Achu and the property covered by gift deed no.2409/1987 were partitioned by the plaintiff, defendant nos. 1 to 3 and their mother Meenakshi by deed no.5041/2013 of the Hosdurg sub registrar's office. The plaintiff was allotted the property in schedule

B of that partition deed and has built a house on it. Defendant nos.1 and 2 and their mother Meenakshi gifted their interest in the property allotted to them to the third defendant by deed no.3307/2025 of the Hosdurg sub registrar's office, and the third defendant sold that property to a certain Nazir Rah by deed no.434/2026 of the Hosdurg sub registrar's office.

4. Defendant nos.4 and 5 instituted a suit for partition of the property left by Achu in this court in 2026 and it was numbered as OS.43/2026. They later realized that they have no right, title or interest in the property and admitted Nazir Rah's exclusive title to the property. Defendant nos.4 and 5 are not Achu's heirs. OS.43/2026 was instituted at the instigation of the plaintiff. The petition should be dismissed.

5. Defendant nos.4 and 5 filed a counter statement. Their contentions are as follows:- Defendant nos.4 and 5 do not claim any right, title or interest in the plaint A schedule property. Defendants nos.4 and 5 instituted a suit for partition of the plaint A schedule property in this court at the instigation of the plaintiff, but as soon as they realized that the plaintiff had an ulterior motive, they admitted the defendants' title to the property and withdrew the suit. The petition should be dismissed.

6. Heard both sides.

7. The point that arises for consideration is: "Is the petitioner entitled to a temporary prohibitory injunction?"

8. **Discussion and decision**

Defendant nos.1 to 3 produced along with their counter statement deed no.5041/2013 of the Hosdurg sub registrar's office. It is a partition deed executed by defendant nos.1 to 3, the plaintiff and their mother Meenakshi. The plaint A schedule property is the first property in schedule A of that partition deed. The court granted the plaintiff an opportunity to file an additional affidavit regarding the partition deed produced in court by defendant nos.1 to 3, but the plaintiff did not make use of that opportunity. It appears that the plaintiff, defendant nos.1 to 3 and their mother Meenakshi partitioned the property left by Achu and the property covered by gift

deed no.2409/1987 in 2013. The plaintiff A schedule property was allotted to defendant nos.1 to 3 and their mother Meenakshi in the 2013 partition. It does not appear that the plaintiff has an undivided interest in the plaintiff A schedule property anymore. It is also pertinent to note that the plaintiff does not claim to be the legitimate son of Achu. He says that his father had an extra-marital affair with his mother. The plaintiff has not specified in the plaint the personal law applicable to the parties, but it appears from their names that they are Hindus. The plaintiff says that his father died on 24.12.1991, more than three decades after the commencement of the Hindu Succession Act. Under the Hindu Succession Act, an illegitimate son cannot inherit his father's property [see the judgments of Honourable High Court of Kerala in **Karthi Pankajakshy v. Lalitha Sujatha (1990 KHC 57)** and **Chodon Puthiyoth Shyamalavalli Amma and Others v. Kavalam Jisha and Another (2007 (2) KHC 976)**]. The plaintiff does not have a claim that there was a void or voidable marriage between his father and mother, so he is not entitled to the benefit of Section 16 of the Hindu Marriage Act. The plaintiff does not have a prima facie case, so the point is answered in the negative and the petition is dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court, this the 6th day of June, 2026.

CIVIL JUDGE (JUNIOR DIVISION)

Typed by : Robin.K.J
Compared by : Sheeba.V.P

Fair/Copy of Order in
IA. 02/2026 in
O.S.No.106/2026
Dated: 06.06.2026