

KABK610012572024



**IN THE COURT OF CIVIL JUDGE AND JMFC,
BANAHAATTI**

PRESENT: Smt. SAUMYA HOOLI
B.A.,LL.B.
Civil Judge & JMFC,
BANAHAATTI

O.S.No.56/2024

Dated this the 23rd day of January-2026

PLAINTIFFS:

1. Laxmavva W/o Parsappa Hangandi,
Age: 49 years, Occ: Agriculture,
2. Bouravva D/o Parsappa Hangandi,
Age: 29 years, Occ: Agriculture,
Both are R/o: Golbhanvi Road, Kallatti Galli,
Terdal, Tq: Rabakavi-Banahatti, Dist.: Bagalkot.

(By Sri A.S.G., Advocate)

//Versus//

DEFENDANTS:

1. Basavanni S/o Parsappa Hangandi,
Age: 33 years, Occ: Agriculture,

2. Prakash S/o Parsappa Hangandi,
Age: 24 years, Occ: Agriculture,
3. Surekha D/o Parsappa Hangandi,
Age: 27 years, Occ: Agriculture,
Defendant No.1 to 3 are R/o: Golbhanvi Road,
Kallatti Galli, Terdal, Tq: Rabakavi-Banahatti,
Dist.: Bagalkot.
4. Chidanand S/o Shetteppa Hosmani,
Age: 44 years, Occ: Agriculture,
R/o: Terdal, Tq: Rabakavi-Banahatti, Dist.: Bagalkot.

(Defendant No.1 & 2 by Sri. S.D.M., Advocate)
(Defendant No.3 is placed ex-parte)
(Defendant No.4 by Sri. A.V.B., Advocate)

PARTIES ON I.A.No.II

Applicants/Plaintiffs:

1. Laxmavva W/o Parsappa Hangandi & another

//Versus//

Opponents/ Defendants

1. Basavanni S/o Parsappa Hangandi & 3 others

Provision under which applications are filed	:	U/o 39 Rule 1 & 2 R/w sec.151 of CPC
Reliefs sought for	:	Discretionary relief of temporary injunction
Date of filing the application	:	20.03.2024
Number of the application	:	I.A No.II
Date of filing memo	:	02.12.2024
Date of pronouncement of the order	:	23.01.2026

ORDER ON IA.II

1. Stage: IA No.II is filed U/O 39 Rule 1 and 2 R/w sec.151 of CPC. The instant application is filed seeking temporary injunction against defendant No.4. The instant suit is filed for the relief of partition and separate possession. The I.A.No.II is filed on 20.03.2024. The number of applications in this suit are four. The date on which the orders on IA No.IV passed is 22.01.2026. The current stage is for compliance U/Sec.89 of CPC.

2. The applicant/plaintiffs have filed this IA No.II Under order 39 Rule 1 & 2 R/w sec.151 of C.P.C., seeking

temporary injunction against defendant No.4 to restrain him from alienating suit schedule property bearing RS No.13/3A measuring 01 acres 37 guntas situated at Terdal, Tq: Rabakavi-Banahatti, till the disposal of this suit.

3. In the affidavit annexed to IA No.II, the plaintiffs averred that, the propositus Parsappa died on 29.08.2014 leaving behind the plaintiffs and defendant No.1 to 3 as his class-I legal heirs and co-parceners and that the said class-I legal heirs have succeeded to the estate of the deceased. The plaintiffs averred that the suit property is the ancestral property and that the suit property had fallen to the share of Parsappa as per ME No.427 dated 01.07.1986. The defendant No.1 and 2 taking disadvantage of their names appearing in the record of rights sold the suit property to defendant No.4 on the strength of fake sale deed behind the back of the plaintiffs. The present plaintiffs requested to effect partition in the suit property but the defendant No.1 and 2 denied to allot the share to the plaintiffs. If the defendant No.4 alienates the suit property, the purpose of the suit will be

frustrated. On these grounds, the plaintiffs prayed to allow IA No.II.

4. On the other hand, the defendant No.4 has filed memo to treat the contents of the written statement as objections to IA No.II. In the objections, the defendant No.4 contended that, he is the owner and in possession of the suit property as the suit property was sold to him by defendant No.1 and 2. The said suit property was sold to defendant No.4 by way of sale deed on 04.01.2019. The defendant No.1 and 2 are the sons of deceased Parsappa and the said Parsappa was allotted a share to the extent of 1 acre 37 guntas in RS No.13/3A. The deceased Parsappa during his life time effected partition in favour of his sons i.e., in favour of defendant No.1 and 2. As defendant No.1 and 2 were then minors, the plaintiff No.1 was kept as minor guardian for defendant No.1 and 2. As the suit property was absolute property of Parsappa, the said Parsappa had right to deal with the said property as per his will and wish. The name of plaintiff No.1 got deleted after the defendant No.1 and 2 attained majority. The defendant No.1

and 2 were the absolute owners of the suit property and therefore the plaintiffs cannot claim partition in the suit property. The defendant No.4 after verifying the documents has purchased the suit property on payment of consideration amount of Rs.8,20,500/- to defendant No.1 and 2 and hence, defendant No.4 is a bonafide purchaser in possession of the suit property. On these grounds the defendant No.4 prayed to dismiss IA No.II.

5. Upon hearing the arguments and on perusal of materials placed on record, the following points that arise for consideration are;

- (1) Whether the plaintiffs have made out a prima-facie case in their favour?
- (2) Whether the balance of convenience lies in favour of plaintiffs?
- (3) Whether irreparable loss or hardship will be caused to the plaintiffs, if injunction is not granted?
- (4) What order?

6. The findings to the above points are as under;

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:- The facts of the present application are already narrated above and the same are not repeated hereinafter for the sake of brevity.

In brief, it is the case of the plaintiffs that, they are entitled to the share in the suit property and that the defendant No.1 and 2 have behind the back of plaintiffs executed fake sale deed in favour of defendant No.4 in order to engulf the share of the plaintiffs.

8. The plaintiffs and defendant No.4 in support of their averments and contentions have placed several documents on record. On perusal of ME No.427, it is forthcoming that, the deceased Parsappa had got the suit property upon partition among his brothers and the same is not disputed by

either side. On perusal of the copy of the sale deed and the RTC extracts of the suit property, at this stage, it is forthcoming that the defendant No.1 and 2 sold the suit property to defendant No.4 and that based on the said sale deed, the name of defendant No.4 came to be entered in the RTC extract of the suit property for the year 2023-24. On going through RTC extract of the suit property for the year 2020-21, the names of defendant No.1 and 2 are reflected in the column No.9. On perusal of ME No.554, at this stage, it is forthcoming that during the lifetime of the deceased propositus, the deceased effected partition wherein the suit property along with another property bearing No.287 was transferred in the name of defendant No.1 and 2 who were then minors represented by plaintiff No.1 as their minor guardian. On perusal of MR No.H4/2015-16, at this stage, it is forthcoming that, the name of plaintiff No.1 was deleted and only the names of defendant No.1 and 2 were continued. There are several documents produced by both parties such as copy of charge sheet to show alleged obstruction by

defendant No.4 and certified copies of order sheets of other original suits to show the alleged intention of the plaintiffs to harass the defendant No.4. In this case, at this stage, the revenue entries with respect to suit property placed on record, show that the defendant No.4 is in the possession of the suit property as on the date of the suit. It is also to be noted that, the ME No.554 appears to have been effected in the year 2000 and since then the names of defendant No.1 and 2 appeared in the revenue entries. In addition, the propositus got the suit property upon partition between his brothers and thus, at this stage, it is forthcoming that the suit property assumed the nature of separate property of deceased propositus. But however, it is also the principle of law that the separate property may also assume the nature of ancestral property. However in order to determine the nature of suit property, the evidence is required for which full fledged trial is necessary. The question as to whether the defendant No.4 is a bonafide purchaser is also to be determined after full fledged trial. In this case, at this stage, the documents on

record show the possession of defendant No.4 over the suit property. At this stage, the defendant No.4 has placed on record documentary materials indicating possession of the suit property. The validity of the alleged partition and subsequent sale requires trial. At this stage, this court is of the opinion that in order to determine the nature of the suit property, evidence is required for which full fledged trial is required and therefore this court is of the opinion that until the questions involved are determined, it is necessary to preserve the suit property. Moreover, the counsel for the defendant No.4 during the arguments submitted that, the defendant No.4 has no objection if the present application is allowed and that the defendant No.4 is not intending to alienate the suit property. When such is the case, this court is of the opinion that the plaintiffs have made out prima facie case with respect to this application and hence, this court answered point No.1 in the **Affirmative**.

9. Point No.2: It is a well-settled principle of law that prima facie case and balance of convenience go together. At this stage, the materials placed on record show the possession of suit property with defendant No.4. As already stated, this court is yet to determine the exact nature of the suit property and the entitlement of the share of the plaintiffs in the suit property. When the balance of convenience is weighed, the balance of convenience is more towards the plaintiffs because if the temporary injunction is refused without determination of the aforesaid questions involved in the suit, then the plaintiffs would suffer inconvenience rather than the defendants and in addition, if the suit property is allowed to be alienated then it would result to inconvenience to the third party as well. Hence, this court answered point no. 2 in the **Affirmative.**

10. Point No. 3: From the reasons assigned during discussion of point no. 1 and 2, at this stage, it is forthcoming that, the plaintiffs have established prima facie

case and balance of convenience in their favour. In addition, this court is of the opinion that if the present application is refused then the plaintiffs will suffer irreparable loss which cannot be adequately compensated in terms of money. It is relevant to note that if the present application is refused the irreparable injury would also be caused to the third party and it would also lead to multiplicity of proceedings. In order to avoid multiplicity of proceedings and to preserve the property until final adjudication, this court answered point no 3 in the **Affirmative.**

11. Point No.4: For the foregoing reasons assigned in point No. 1 to 3, this court proceeds to pass the following :

ORDER

The IA No. II filed by the applicants/ plaintiffs under Order 39 Rule 1 and 2 R/w sec.151 of CPC, is hereby allowed.

Consequently, the defendant No.4 is hereby restrained by way of temporary injunction from alienating the suit property bearing RS No.13/3A

measuring 1 acre 37 guntas situated at
Terdal, Tq: Rabakavi-Banahatti till the
disposal of the suit

No order as to cost.

*(Dictated to the stenographer directly on computer typed by him,
corrected by me, then pronounced in the open court on this the **23rd day of
January, 2026**)*

(SAUMYA HOOLI)
Civil Judge & JMFC
Banahatti