

Aged about 53 years,
R/at No.99, Adarsh Apartment,
Sector-3, Pocket- 16,
Dwaraka, New Delhi – 110075.

(D.1 by Sri.S.S.A., Advocate
D.2 - Exparte)

**ORDER ON INTERLOCUTORY APPLICATION No.I FILED
BY THE PLAINTIFF UNDER ORDER XXXIX RULE 1 AND 2
R/W SEC.151 OF CODE OF CIVIL PROCEDURE.**

The learned counsel for the plaintiff has filed I.A.No.1 under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC, for the relief of order of ad-interim injunction against the defendants restraining them, their men, agent, servants or any person/s acting under them or claiming on their behalf, from carrying out any structural alteration in the suit schedule property i.e. schedule 'A' during the pendency of the suit.

2. The plaintiff has sworn to an accompanying affidavit stating that the plaintiff and defendants are Hindus and that they are governed by Hindu Succession Act, 1956. One Sri.D.Sathyanarayana and Smt.Nagarathna ore the parents of plaintiff and defendants

herein respectively. The said Sri.D.Sathyanarayana and Smt.Nagarathna had three daughters out of their wed-lock i.e. plaintiff and the defendants No.1 and 2 herein respectively. One Sri.Mysore Ramajetty Subramanya Jetty and Smt.Kamamma are the grand-parents of plaintiff and defendants herein respectively. The said grand-parents of plaintiff had only one child out of the wed-lock i.e, Smt.Nagarathna mother of the plaintiff and the defendants herein. During the lifetime of said Sri.Mysore Ramajetty Subramanya Jetty herein after referred to as M.R. Subramanya Jetty, out of his earnings he had owned and possessed suit 'A' schedule property. The supra detailed suit schedule property was acquired by said Sri.M.R.Subramanya Jetty by virtue of allotment from the than Mysore Housing Board, Bengaluru. Consequently, the said authority was renamed as Karnataka Housing Board and subsequent to the same, after payment of the entire balance consideration to the said authority, a Registered Sale Deed dated 23.03.1979 was executed in

favour of the vendor i.e, Sri. M.R. Subramanya Jetty. Consequent to the execution of the sale deed in his favour he being the lawful purchaser in peaceful possession and enjoyment of the property and exercising absolute right over the suit schedule property without any let or hindrance whatsoever continued to be in uninterrupted physical possession. Further, he also obtained revenue records in respect of the suit schedule property in his name. At this juncture that, the said Sri.M.R.Subramanya Jetty had developed the schedule property by putting up constructions i.e., first floor and some additional construction in ground floor out of his own funds.

2(a). Smt.Kamalakshmma wife of Sri.M.R.Subramanya Jetty had predeceased her husband in the month of February 1980, leaving behind her husband and their only daughter Smt.Nagarathna. During the lifetime of said Sri.M.R.Subramanya Jetty had executed a Registered Will dated 03.06.1980 in respect of

suit schedule property. As per the intention/desire of the Testator under the supra Will is only daughter Smt.Nagarathna wife of Sri.D.Sathyanarayana i.e., mother of plaintiff and defendants herein was entitled to possess and enjoy the schedule property for her lifetime i.e, only life interest subject to condition that, the beneficiary (life interest holder) under the Will shall in no manner be entitled to alienate the schedule property either by way of sale, gift, mortgage or otherwise. It is crystal clear from the intention of the testator of the supra Will that, the daughter Smt.S.Nagarathna was entitled only for life interest in the schedule property during her lifetime subject to the conditions recited in the Will. The testator intended to bequeath the entire schedule property to his grandchildren i.e., plaintiff and defendants herein respectively in equal share and the said legatees under the Will were also entitled to possess and enjoy the said supra property in any manner they like as absolute owners after the lifetime of said Smt.S.Nagarathna. The only condition imposed by

the Testator was to arrange and performance of "Kalasha Poojayuktha Panchamrita Abisheka" to the deity at Kukke Sri Subramanya Swamy Temple, every year, without fail on a auspicious and convenience day that too by utilizing funds out of the proceeds from the schedule property. The said testator Sri.M.R.Subramanya Jetty passed away on 28.04.1988, leaving behind the legatees under the Will to act accordingly and succeed to the suit schedule property as per his intention in the supra detailed Will. Consequent to the demise of testator, all the beneficiaries under the Will having acted upon the Will executed by the Testator, agreed to nominally transfer the revenue records pertaining to the suit schedule property in name of Smt.S.Nagarathna as she had life interest in the said property as per the intention of the testator. Without prejudice to the above it is pertinent to submit that, all the daughters of Smt.S.Nagarathna i.e. plaintiff and defendants herein, after their marriages started to live separately with their respective families. Meanwhile, said

Smt.Nagarathna was occupying/leaving in the 1st floor of the schedule premises during her lifetime and she had also let out ground floor portion and out house to tenants on a monthly rent and she was solely receiving and enjoying the said rents. While such being the fact, the said Smt.Nagarathna who was confronted/granted only with life interest in the schedule property as detailed supra, without any absolute right, title or interest for the reasons best known to her in an illegal manner and in violation of the restrictive covenants contained in the said Will dated 03.06.1980 i.e, limited ownership has executed a Will in respect of suit schedule property.

2(b). The plaintiff submits that the alleged Will executed by Smt.Nagarathna dated 10.08.2011 is without any right, title or interest over the suit schedule property and contrary to the restrictive conditions/recitals contained in the original instrument executed by Sri.M.R.Subramanya Jetty dated 03.06.1980. In the supra

Will dated 10.08.2011, illegally executed by Smt.Nagarathna she has desired to bequeath the schedule 'A' to 'C' properties among her daughters. The said bequeath is without any absolute right, title or interest over the suit schedule property. A legatee under testamentary disposition is bound by the restrictive covenants contained in the instrument i.e, Will dated 03.06.1980 and same is binding on her. Hence, she remains to be a limited owner in terms there off. In-view of the same the bequeath made by the said Smt.S.Nagarathna under a registered Will dated 10.08.2011 is not binding on the plaintiff and the same is null and void. It is further specifically submitted that, the WILL supra mentioned is non-est in law. Smt.S.Nagarathna passed away on 08.09.2024, leaving behind the three daughters i.e, plaintiff and defendants herein as her only legal heirs. After the demise of said S.Nagarathna, the plaintiff and the defendants are equally entitled for the 1/3rd share in the entire extent of suit

schedule property as per the intention and bequeath of late Sri.M.R.Subramanya Jetty under the Will dated 03.06.1980. The plaintiff intends to take her share in the schedule property for her exclusive use and to be in separate possession in this regard the plaintiff demanded the defendants several times to divide the property by metes and bounds but in vain. The 2nd defendant herein has illegally and without any absolute right have rented the out house and ground floor portion to tenants on a monthly rent basis without even consulting/ informing the plaintiff herein after demise of their mother. Further, 2nd defendant alone is enjoying the rent without taking into consideration the other co-sharers rights in the schedule property. The 2nd defendant who is presently residing in Delhi has not responded to any of the demands claims made by the plaintiff and 1st defendant. The original title deeds and other documents pertaining to the suit schedule property are in custody of 2nd defendant. Hence, the plaintiff have produced certified copies of the documents in support of

her case. Smt.Nagarathna also owned and possessed gold and silver ornaments as per schedule 'B' and 'C' properties and these properties are not the subject matter of testament and they were possessed by Smt.Nagarathna, purchased by her out of rents received from "A" Schedule property. The 2nd defendant was nominated as nominee in the said FD accounts maintained by plaintiff's mother and the same was withdrawn by the 2nd defendant without the consent of other plaintiff and 1st defendant. The gold and silver articles are also in custody of 2nd defendant. All the three siblings are entitled for equal share in all the scheduled properties including schedule 'B' and 'C' of the plaint. The 2nd defendant with an intention to depriving the plaintiff of her legitimate share and is making hectic efforts to change over the schedule property by trying to carrying out structural alterations in suit 'A' schedule property. The plaintiff has made out prima facie case. Balance of convenience lies in favour of the plaintiff. Therefore, prayed to allow the application.

3. On the other hand, the defendant No.1 has filed memo to adopt the written statement as objections to I.A.No.1. The defendant No.1 in her written statement has stated that the defendant No.1 has not disputed the relationship between the plaintiff and defendants. The defendant No.1 submitted that after the death of M.S.Subramanya Jetty, the plaintiff and defendants have held discussions with their mother Smt.Nagarathna regarding the distribution of the suit 'A' schedule property amongst them. At the time of discussion, it was agreed that the defendants No.1 and 2 have to look after the medical need and welfare of their mother Smt.Nagarathna. Under the such circumstances, Smt.Nagarathna had expressed her intention to execute a Will allotting specific shares in suit 'A' schedule property to the plaintiff and defendants. As per her wish she has executed a registered Will dated 10.08.2011 distributing suit 'A' schedule property by allotting specific shares to the plaintiff and defendants. The said Will was executed by Smt.Nagarathna with prior intimation and concurrence of the

plaintiff and defendants. The plaintiff having given her ascent to Smt.Nagarathna to distribute the suit 'A' schedule property among plaintiff and defendants by allotting specific shares as per her wish to the plaintiff and defendants, however, at this juncture plaintiff is disputing the said aspect. In view of the consent given by the plaintiff to Smt.Nagarathna to execute a Will as per her wish, the plaintiff cannot deny the allotment made in the said Will. The present suit is not maintainable and the same is liable to be dismissed. The allegations made in the plaint are denied by the defendant No.1 as false and imaginary. There is no cause of action for the suit. If this Court come to a conclusion that the registered Will dated 10.08.2011 executed by Smt.Nagarathna is not legally valid, the defendant No.1 is entitled for 1/3rd share in the suit 'A' to 'C' schedule properties. Therefore, the defendant has prayed to reject the application.

4. From the contents of the I.A. and counter parts filed by the parties the following points that arise for my consideration:-

1. Whether the plaintiff has made out a prima-facie for grant of temporary injunction as prayed in the I.A.No.1?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the irreparable loss or injury caused to plaintiff?
4. What order?
5. Heard arguments. After hearing the arguments and after considering the available material on record my answer to the above points are:-

POINT NO.1 : In the **Affirmative**,

POINT NO.2 : In the **Affirmative**,

POINT NO.3 : In the **Affirmative**,

POINT NO.2 : As per the final order,
for the following:-

REASONS

6. **POINT NO.1 PRIMA-FACIE CASE:-** This suit is filed by the plaintiff for partition of the suit 'A' schedule property by metes and bounds and placing the plaintiff in separate possession of her 1/ 3rd share in the suit property,

to direct the defendant No.2 to equal partition the movables i.e. 1/ 3rd share in respect of 'B' and 'C' schedule properties and to declare registered Will dated 10.08.2011 executed by Smt.S.Nagarathna as null and void and not binding on the plaintiff and for permanent injunction restraining the defendants or any one action through or under them from carrying/ making out any structural alterations in whatsoever manner over the schedule property and such other reliefs.

7. All the three daughters i.e., plaintiff and defendants of one late Smt.Nagarathna. Originally the suit schedule property is belongs to Sri.M.R.Subramanya Jetty. Smt.Kamalakshmma wife of Sri.M.R.Subramanya Jetty had predeceased her husband in the month of February 1980, leaving behind her husband and their only daughter Smt.Nagarathna, who is none other than mother of plaintiff and defendants. Sri.M.R.Subramanya Jetty has executed a Will on 03.06.1980 bequeathing right, as per the intention/desire of the testator under the said Will is only

daughter Smt.Nagarathna wife of Sri.D.Sathyanarayana i.e., mother of plaintiff and defendants herein was entitled to possess and enjoy the schedule property for her lifetime i.e., only life interest subject to condition that, the beneficiary (life interest holder) under the Will shall in no manner be entitled to alienate the schedule property either by way of sale, gift, mortgage or otherwise and Sri.M.R.Subramanya Jetty died on 28.04.1988. Consequent to the demise of testator, all the beneficiaries under the Will having acted upon the Will executed by the Testator, agreed to nominally transfer the revenue records pertaining to the suit schedule property in name of Smt.S.Nagarathna as she had life interest in the said property as per the intention of the testator. Smt.Nagarathna executed a Will dated 10.08.2011, after her death the properties are to bequeathed to all the three daughters and she died on 08.09.2024. Later on the mother and plaintiff and defendants without having any right has bequeathed property on 10.08.2011 is not binding. Therefore, the defendants are the sisters and they have filed

their objections and they have not disputed the relationship. The plaintiff has files death certificate of late Smt.Nagarathna and Will copies dated 03.06.1980 and 10.08.2011 and other FD documents standing in the name of their mother. As the relationship is admitted, it appears that all the three have their right over the suit schedule property. If this application is not allowed, it would defeats for delay. The defendants are restrained from alienating. It is necessary to preserve the property intact. Therefore, if the property is alienated to third party it would leads to multiplicity of proceedings. Therefore, at this stage prima facie case is made out by the plaintiff. Hence, I answer Point No.1 in **Affirmative**.

8. POINT NOS.2 & 3 - BALANCE OF CONVENIENCE & IRREPARABLE LOSS:- The plaintiff has made out prima facie case, balance of convenience and irreparable loss lies in favour of the plaintiff. Hence, I answer **Point Nos.2 and 3 in the Affirmative**.

9. **POINT No.4:-** For the foregoing reasons, I proceed to pass the following:-

ORDER

I.A.No.I filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC is hereby allowed.

The defendants, their men, agent, servants or any person/s acting under them or claiming on their behalf are restrained by way of temporary injunction from carrying out any structural alteration in the suit schedule property i.e. schedule 'A', **till the disposal of the suit.**

(Dictated to the Stenographer on computer, typed by her, corrected and pronounced by me in open Court on this **24th day of November, 2025**).

**(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.**