

KABG040039462025



IN THE COURT OF IV ADDL. CIVIL JUDGE AND JMFC, BELAGAVI

**PRESENT: Bhuvaneshwari D. BA, LLB (Hon's), LLM
IV Addl. Civil Judge & JMFC.,
Belagavi**

Dated on this the 07th day of August, 2026

ORIGINAL SUIT No.564/2025

PLAINTIFF:	Smt. Kalpana W/o. Prakash Satennavar, (Before marriage – Kalpana Nagappa Kabbur), Age: 42 years, Occ: Household work, R/o: Ambedkar Galli, Balekundri (K.H), Tal/Dist: Belagavi.
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V/s.

DEFENDANT:	Shri Santosh S/o. Nagappa Kabbur, Age: 45 years, Occ: Business, R/o: Ambedkar Galli, Balekundri (K.H), Tal/Dist: Belagavi.
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<u>ORDER ON I.A.No.I</u>	
APPLICANT/ PLAINTIFF:	Smt. Kalpana W/o. Prakash Satennavar
(By Shri S. M. Tigadi, Advocate)	
-AND-	
OPPONENT/ DEFENDANT:	Shri Santosh S/o. Nagappa Kabbur
(Exparte)	

ORDERS ON I.A.No.I FILED UNDER ORDER XXXIX
RULE 1 AND 2 R/W SECTION 151 OF CPC

This I.A is filed under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC seeking to restrain the defendant, his agents, servants, coolies or anybody acting on his behalf from putting up construction work in the suit property till disposal of the suit on merits.

2. In the accompanying affidavit it is submitted that present suit is instituted for the relief of partition and separate possession contending that the plaintiff and defendant have inherited the suit property from the father. It is submitted that the name of the mother of the plaintiff was appearing in the G.P. records. Further, it is alleged that the defendant without bringing it to the notice of the plaintiff has got his name mutated in the panchayath records with an intention to deprive the plaintiff's legitimate share over the suit property. On these grounds present application is filed.

3. Heard Smt. S.H.K., counsel for plaintiff on I.A No.I.

4. Perused the pleadings of counsel for plaintiff and upon placing emphasis on rival contentions canvassed by plaintiff, the following points arise for the determination of this Court;

POINTS

- 1. Whether the plaintiff has made out sufficient grounds to obtain the relief as sought for in the I.A?***

2. What order?

5. After hearing counsel for plaintiff and placing emphasis on pleadings and documents produced before the Court. This Court answers the aforementioned points as under;

<i>Point No.1</i>	<i>In the Negative,</i>
<i>Point No.2</i>	<i>As per the final Order, for the following;</i>

REASONS

6. **POINT No.1:-** It is settled proposition of law that while granting order of temporary injunction the applicant seeking the said relief has to demonstrate the existence of prima-facie case and he has to prove to the satisfaction of the Court that balance of convenience leans in his favour and has to prove he would be put to irreparable injury which cannot be adequately compensated in terms of money if the order granting temporary injunction is refused to be granted.

7. The present suit is instituted by the plaintiff seeking the relief of partition and separate possession contending that the suit property is inherited from their deceased father. It is submitted that the plaintiff and the defendants are governed under the Hindu Law and after the demise of their father the property is stated to be standing in the name of their mother. It is further submitted that

after the demise of their mother, the defendant by colluding with the gram panchayat officials has got his name mutated with the gram panchayat records. The plaintiff alleging the same contends that the said act is done with the intention to deprive the plaintiff from her legitimate share in respect of the suit property.

8. The plaintiffs in support of suit claim has produced gram panchayath extracts in which the name of the defendant is appearing, copy of death certificates, copy of Warsa certificate issued by Village Accountant, copy of application for mutation submitted by the plaintiff to Gram Panchayath, Balekundri (KH), copy of legal notice, photographs of suit property, postal receipt and acknowledgment. No documents at this stage are produced to show that property is in the possession of the plaintiff. It is pertinent to note that plaintiff has alleged that defendant is constructing the building without seeking valid permission. The photographs produced by the plaintiff would also depict that the construction of the building has been raised substantially.

9. At this stage, this Court would place reliance on the decision of the Hon'ble High Court of Karnataka in **Miscellaneous First Appeal No.8149 OF 2017 (CPC) Sri. Hemanth vs Sri. N Jayarama Reddy** decided on 13 December, 2017. at Para 25 and 26;

"25. The defendant has produced photographs to show the stage of construction. These photographs show that

actually the first floor is under construction. As discussed above, the plaintiff has not sought for the relief of possession. This is a very important aspect to be considered. The defendant states that he is ready to surrender the possession of the 'C' schedule property without claiming equity in case plaintiff succeeds in the suit. At this juncture, I find it appropriate to place reliance on the judgment of the Supreme Court in the case of ECE Industries Limited (2) (supra). In this judgment, the Supreme Court in a situation as found in this case has held as below :-

26. It is well settled that when construction has been made on a land, which is of considerable magnitude, and when the plaintiff shall not face any substantial injury, if no order of injunction is granted because of payment/deposit of the entire amount payable by the defendant to the plaintiff under the agreement, though belatedly, we are of the view that the Court will not, as a matter of course, pass an order of injunction against the other party restraining the other party from raising any construction on the suit property till the disposal of the suit."

10. The above principles can be applied here also. Since, construction had come up to a certain stage by the time suit was filed, it cannot be said balance of convenience lies in favour of plaintiff and that he has right to seek the construction undertaken by defendant to be stopped. Placing reliance on this decision and upon laying due emphasis to the nature of the relief sought in the suit which is suit for partition and separate possession and where

question of encroachment is the crux of dispute and this Court cannot exercise its powers beyond the scope of the suit even by way of granting the interim relief.

11. The other rival contentions raised by the parties can be fully adjudicated upon only after the conclusion of trial. Hence, no findings are expressed on them in this regard, since those findings might have direct bearing on the decision of the suit. **Hence, this Court answers Point No.1 in the Negative.**

12. **POINT No.2:-** In view of the findings arrived at Point No.1, this Court proceeds to pass the following;

ORDER

I.A.No.1 filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC are hereby dismissed.

No order as to costs keeping in view the nature of the application.

(Dictated to the Stenographer Grade-III, transcribed and typed by her, corrected by me and then pronounced in the Open Court, on this the 07th day of August, 2026).

Sd/-
(Bhuvaneshwari D.)
IV Addl. Civil Judge & JMFC,
Belagavi.