

KABG040032582025



**IN THE COURT OF THE I ADDL CIVIL JUDGE AND JMFC,
AT: BELAGAVI**

DATED THIS THE 12th DAY OF NOVEMBER, 2025

**PRESENT : SRI PRASHANTHA G.C.,BAL., LL.M.,
I ADDL CIVIL JUDGE AND JMFC,
Belagavi.**

ORIGINAL SUIT No.1220/2025

PLAINTIFF : Smt. Renuka Wd/o. Prakash
Chougule,
Age: 56 years, Occ: Housewife,
R/o. C.T.S.No.5537, Goodshed Road,
Belagavi Tal & Dist Belagavi Others.

V/s

DEFENDANT : Shri. Milind S/o. Ramchandra
Chougule,
Age: 48 years, Occ: Business,
R/o. C.T.S.No.5538, 5539, 5540,
Old Good shed Road, Belagavi
and Others.

PARTICULARS

i	Provision under which the application is filed	Order XXXIX Rule 1 and 2 R/w Section 151 of C.P.C
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ii	Relief sought for	Seeking Order of temporary injunction
iii	The date on which the application is Filed	23.10.2025
iv	Number of application	I.A.No.I
v	The date on which the objections are filed by different opponents	30.10.2025
vi	The date on which the orders were passed on the said application	12.11.2025

PARTIES IN I.A.No.I

APPLICANT : Smt. Renuka Wd/o. Prakash Chougule,
and others.
..... Plaintiffs

V/s

OPPONENT : Shri. Milind S/o. Ramchandra Chougule,
and others.
..... Defendants

ORDERS ON I.A.No.I

The plaintiffs have filed I.A.No.I under Order XXXIX Rule 1 and 2 of the CPC against the defendants seeking an order of temporary injunction restraining the defendants or anybody acting under them from putting up illegal construction over the suit property i.e., C.T.S.No.5541/1 and C.T.S.No.5541/2 situated

at Old Goodshed road, Belagavi.

2. Plaintiff No.2 has filed an affidavit in support of I.A.No.I.

3. The defendants have filed objections to I.A.No.I praying to dismiss the same.

4. Heard counsel for both the parties. Perused the materials available on records.

5. The following points have arisen for consideration of this Court.

1. Whether the plaintiffs have made out prima-facie case in their favour ?
2. Whether the plaintiffs prove balance of convenience in their favor ?
3. Whether the plaintiffs prove irreparable loss and injury caused to them, if order of temporary injunction is not granted ?
4. What order ?

6. This Court answers the above points as follows;

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 TO 3:** These points are taken together for common discussion, in order to avoid repetition of facts as they are interconnected with each other.

8. The plaintiffs have filed this suit against the defendants for the relief of permanent injunction to restrain the defendants from disturbing their peaceful possession over the suit schedule property.

9. Plaintiff No.2 has stated in his affidavit that Tammanna is the propositus of them and the defendants, who died on 27.09.1966 leaving behind his three sons namely, Late Shivaji, Late Maruti and Late Ramchandra. Shivaji died on 07.07.2019 leaving behind his wife – Shanta and three children namely Late Prakash, Late Asha and Bharati. Late Prakash also died leaving behind his wife Renuka and three children namely Pranav, Raturaj and Ravi. They are the plaintiff No.1 to 4 in this case. Maruti died on 29.09.2021 leaving behind plaintiff No.5 to 8. The plaintiffs have succeeded to the properties left by Late Shivaji and Late Maruti. It is further contended that third son Ramchandra died in the year 2019 by leaving behind four children namely Milind, Somanath, Geeta and Seema. Milind and Somanath are defendant No.1 and 2 in this case. Geeta and Seema are residing in their husband's house. Defendant No.3 is the wife of defendant No.2. They are disturbing the possession of

them.

10. It is further contended in the affidavit that, the defendants are the cousin brothers of the plaintiffs, residing in C.T.S.No.5538, 5539 and 5540. Whereas, the plaintiffs are residing in C.T.S.No.5534, 5535 and 5537. Late Shivaji, Maruti and Ramchandra were the own brothers had entered into a registered partition on 23.12.1972. In the said partition, they have divided the family properties. The suit property measuring 10' X 40' totally measuring 400 sq fts fallen to the share of Late Shivaji and Late Maruti commonly, which has been clearly mentioned in the partition deed. When city survey came to be introduced in the year 1982, the property situated at Goodshed road, all the sharers name came to be recorded in the city survey office, Belagavi. The City Survey office given numbers separately to all the sharers as C.T.S.No.5533 to 5541. As per the partition deed, the names of particular sharers came to be recorded in City Survey Office, Belagavi. Such entries have not been challenged by anyone till date. The said partition deed is acted upon. The defendants have sold their share of property situated at Shastri Nagar, Belagavi under a registered sale deed to different buyers. The plaintiffs in the year 1980 have constructed cattle shed in an area measuring 10' X 18' i.e., towards eastern side of C.T.S.No.5541/1 i.e., suit property. The Well is being used and enjoyed by the plaintiffs and the defendants. Though the shed was constructed for cattle, but, afterwards cattle had been

sold, as a consequence, shed remained vacant, which is in possession of the plaintiffs.

11. It is further averred in the affidavit that plaintiff No.3 to 5 have given in marriage and they have relinquished their rights in favour of plaintiff No.6 to 8 on 07.01.2022. Defendant No.1 and 2 about a month back began construction on the first floor of C.T.S.No.5541, but, when the plaintiffs have received caveat petition seen about C.T.S.No.5541/2, but, out of C.T.S.No.5541 10' X 40' was allotted to the share of the plaintiffs. After enquiry, the plaintiffs came to know that defendant No.1 and 2 have subdivided C.T.S.No.5541 into two parts as C.T.S.No.5541/1 and 5541/2 by colluding with city survey office. The defendants have no independent right in C.T.S.No.5541.

12. The defendants have filed objections by contending that father of defendant No.1 and 2 by name Ramchandra Tammanna Chougule was allotted East to West 43'6" and North to South towards eastern 18'3" and towards western side 9.3" abutting open space 18' X 10¼' and other properties. Father of defendant No.1 and 2 constructed ground floor in the said open space in the year 2005-06. After introduction of city survey, the properties allotted to Ramchandra were numbered as C.T.S.No.5538, 5539, 5540 and 5541/2. The common well is numbered as C.T.S.No.5541/1. After the death of Ramchandra, the names of defendant No.1 and 2 came to be mutated. Since,

the building constructed by Ramchandra had a leakage, in order to renovate, the defendants began renovation and construction work. The plaintiffs intended to gulp the property of them.

13. This court has given anxious consideration to the materials placed by both the parties, submissions of the parties and the decisions relied by counsel for the defendants.

14. It is an undisputed fact that Tammanna has three children namely Shivaji, Maruti and Ramchandra. It is an undisputed fact that all three children of Tammanna have died on 07.07.2019, 29.09.2021 and in the year 2019 respectively. It is an undisputed fact that plaintiff No.1 to 4 represent the branch of Shivaji, plaintiff No.5 to 8 represent the branch of Maruti and the defendants represent the branch of Ramchandra.

15. It is an undisputed fact that all the children of Tammanna have entered registered partition on 23.12.1972. Copy of the said deed is submitted to the court by the plaintiffs. The plaintiffs contend that suit schedule property is allotted commonly in favour of Shivaji and Maruti. On the other hand, the defendants contend that suit property is allotted to Ramchandra. Both the parties claim right under the registered partition deed dated 23.12.1972. Counsel for the defendants argued that title of the plaintiffs is itself doubtful. Under such circumstances, suit for bare injunction without seeking the relief of declaration and possession is not maintainable. Counsel for

the defendants has relied on the decision of Hon'ble High Court of Karnataka in a case between **K. Puttaswamy and others Vs. Smt. Sudha and another** reported in HCR 2025 KANT 212, wherein, it is held that suit for bare injunction without seeking the relief of declaration is not maintainable, when there is dispute about the title of the plaintiffs.

16. Admittedly, in the present suit, there is no dispute about the partition entered by the children of Tammanna on 23.12.1972. Both the parties claiming that they have been allotted the suit property under the said deed. Therefore, one of the party must have been allotted the suit property. Hence, this court has to appreciate, who has been allotted the suit schedule property. Under such circumstances, title of the suit schedule property is not under dispute. The court has to look into who is in possession by virtue of allotment of share under the said partition deed. In the factual circumstances, the decision relied by the counsel for the defendants is not applicable.

17. The parties have entered partition on the aforesaid noted day and the same is in Marathi language. Counsel for the plaintiffs submitted English Translation of the said deed. On examination of the deed, it can be noticed that Shivaji and Maruti have been commonly allotted 10' X 40' in R.S.No.225 of Belagavi village out of 38' X 104'. The total extent shown to be bounded on East by share of Shivaji, West by share allotted to

Ramchandra, North by Nala and South by property allotted to Shivaji. 10' X 40', which is the subject matter of the suit shown to be an area existing towards western side of the well and house.

18. Ramchandra has been allotted East to West 43'6" and North to South towards eastern 18'3" and towards western side 9.3" abutting open space 18' X 10¼' and other properties. The property allotted to Ramchandra is shown to be bounded on East by share allotted to Maruti, West by land belongs to Kalaghatagi, North by Nala and South by common well.

19. The plaintiffs have produced C.T.S. extracts. On examination of the same, C.T.S.No.5534, 5535, 5536, 5537 shown to be standing in the name of Shivaji and Maruti. C.T.S.NO.5539, 5540 shown to be standing in the name of Ramchandra. The counsel for the plaintiff argued that suit property has been allotted C.T.S.No.5541/1. Counsel for the plaintiff further submitted that CTS No.5541 never subdivided by the city survey office as CTS No.5541/2, but, the defendants in collusion with city survey office, have illegally subdivided and shown C.T.S.No.5541/2 in respect of the property of the plaintiffs. The plaintiffs have produced records in respect of C.T.S.No.5541/1 and on examination of the same, the names of the plaintiffs is recorded in respect of the said property. The defendants have not produced any material documents to show

when C.T.S.No.5541/1 is subdivided as 5541/2.

20. The plaintiffs have contended that Shivaji and Maruti have constructed cattle shed to house the cattle, later cattle have been sold, as a result, the shed remained vacant and also contended that all of a sudden, the defendants began raising construction over the ground floor of the building constructed by Shivaji and Maruti. On the other hand, the defendants are contended that Ramchandra has constructed the ground floor in the year 2005-06.

21. The counsel for the plaintiffs contended that it is the case of the defendants that suit property is measuring 18' X 10', but, on examination of the photographs, produced by both the parties, the extent of property can be seen measuring 10' X 18'. It is further submitted that the measurement of the suit property towards East to West is 10' and towards North to South 18'. On perusal of the photographs produced by the parties and the sketch issued by the city survey office, appears that the extent of the suit property towards East to West is less and towards North and South, it is more. The ground floor, which is already in existence, do not tally with the extent of the suit property relied by the defendants. Infact, the extent supports the case of the plaintiffs. Moreover, as per the sketch issued by the city survey office, the C.T.S.No.5541/2 appears to be existing towards the western side of the well. Therefore, the suit property

is in existence as per the descriptions shown in the partition deed, which has been allotted to the share of Shivaji and Maruti.

22. Counsel for the defendants argued that the plaintiffs have admitted about the construction by the defendants in the suit property and also contended that such admission goes to show that the defendants are in possession of the suit schedule property. It is also contended that if the temporary injunction is granted, much hardship would be caused to the defendants rather than to the plaintiffs. It is also contended that the plaintiffs can mould the relief by seeking relief of mandatory injunction. Counsel for the defendants has relied on the decisions of Hon'ble High Court of Karnataka in a case between **Sri. T. S. Nagaraja Vs. Smt. Radhamma and others** reported in 2021(1) KCCR 739, wherein, it is held that, *when the plaintiff had admitted that the defendants are in possession of the suit property and have put up construction thereon, the title of the respective parties to the suit property has to be decided by the court below. In that view of the matter, even if the defendants put up construction of whatsoever nature over the suit property, the same shall be subject to the outcome of the suit. If the plaintiff succeeds in the suit, any or all construction that may be put up in the suit property shall be liable to be removed.*

23. The defendants in their objections contended that father of defendant No.1 and 2 has constructed the ground floor,

as the same is having leakage due to heavy rainfall, they have renovated the ground floor and thereafter, they are raising the first floor. If at all, renovation made in the ground floor, there is no impediment for them to produce necessary material documents to show the renovation. However, there is no material to show the renovation as stated by the defendants.

24. On examination of the photographs, produced by both the parties, admittedly, the defendants began constructing the first floor. The first floor is at the stage of inception. The documents produced by the parties at this stage, goes to show that the suit property belongs to the plaintiffs. On the building belongs to the plaintiffs, the defendants began construction in the first floor. If the defendants complete the construction by spending huge amount, they would suffer irreparable loss, in case the plaintiffs succeed in the suit, the building constructed by the defendants has to be removed. Even otherwise, the building is permitted to be constructed it also causes irreparable loss and injury to the plaintiffs, as they are in possession of the suit schedule property.

25. Admittedly, the defendants are doing the construction. However, the defendants have not produced any license from the City Corporation, Belagavi to make such construction. The defendants without such license are making construction. The conduct of the defendants show that they had

filed caveat before this court and began raising the construction and they have perceived that the court do not grant any exparte injunction, if caveat is filed. On that basis, they began construction at full speed. The documents produced at this stage goes to show that, the plaintiffs are in possession of the suit property / ground floor. However, the defendants are raising construction on the first floor and the same is in the primary stage of construction. Under such circumstance the decision relied by the defendants is not applicable to the facts of the case. Therefore, the plaintiffs have made out prima-facie case at this stage and balance of convenience lies in their favour. If the temporary injunction is not granted, much hardship will be caused to the plaintiffs. With these observations, ***this Court holds Point No.1 to 3 in the Affirmative.***

26. **POINT No.4:-** For the reasons stated above I.A.I is required to be *allowed*, hence, this Court proceeds to pass the following:

ORDER

***I.A.No.I filed by the plaintiffs
under Order XXXIX Rule 1 and 2
R/w. Section 151 of the Code of
Civil Procedure is hereby allowed.***

***In the result, the defendants
or anybody acting under them are***

***hereby restrained from putting up
construction over the suit
schedule property till the
disposal of the suit.***

No order as to costs.

(Dictation given to the Stenographer typed and then corrected by me
printout taken, corrected and then pronounced by me in the open court on
this the 12th day of November 2025)

**(PRASHANTHA G.C.)
I Addl Civil Judge and JMFC.,
Belagavi.**