

KABG300000342023



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL**

PRESENT:

**Shri. Ravi Babu Chawan,
B.A.LL.B(Spl.).
Senior Civil Judge, Bailhongal.**

O.S. No. 11/2023

Dated this the 21st Day of June, 2025

1) Shri. Yallappa S/o Nagappa Rahutnavar,
Age: 57 years, Occ: Agriculture,
R/o: Shivanur village, Tq: Kittur,
Dist: Belagavi.

.....Plaintiff

(By Sri M.D.J., Advocate)

-Vs.-

1) Shri. Venkatsingh S/o Nagappa Rahutnavar,
Age: 60 years, Occ: Agriculture,
R/o: Shivanur village, Tq: Kittur,
Dist: Belagavi.

.....Defendant

(By Sri. S.D.B., Advocate)

PARTIES ON IA No.V

Shri. Venkatsingh S/o Nagappa Rahutnavar,
.....Applicant/Defendant
 (By Sri M.D.J., Advocate)

Vs.

1) Shri. Yallappa S/o Nagappa Rahutnavar,
.....Opponent/Plaintiff
 (By Sri. S.D.B., Advocate)

i	Provision under which the application is filed	U/o 39 rule-1 and 2 of CPC
ii	Relief sought for	Restraining the plaintiff from carrying out any sort of construction in the suit property bearing G.P. No.119 Nicchnanki village
iii	The date on which the application is filed	11-06-2025
iv	Number of the application	IA No.V
v	The date on which the objections are filed by the	13-06-2025

	opponents	
vi	The date on which the orders were passed on the said application	21-06-2025

ORDER ON I.A.NO. V

This is an application filed under Order 39 Rule 1 and 2 of CPC filed by the Applicants/defendant against the plaintiff from restraining the plaintiff from carrying out any sort of construction in the suit property bearing G.P. No.119 Nicchnanki village until the disposal of the suit.

Facts in brief are as follows:

2. In the affidavit accompanying the application it is submitted by the applicant/defendant that the instant suit has been filed by the plaintiff against defendant for partition and separate possession. The item No.2 property bearing G.P.No.119 of schedule B is the joint family property of plaintiff and defendant and their names. The plaintiff and defendant are jointly in possession and enjoyment of the said property and their names are jointly registered in the extract of the

property. Also the plaintiff has filed the present suit against defendant for partition of the suit properties and suit properties has not yet partitioned. It is alleged that, the plaintiff is constructing a house in the suit property G.P. No.119 described in the plaint schedule B without any Panchayat permission. He started construction of building in the said property without paying any attention to words of defendant and as well as elderly person. If the plaintiff succeeds in constructing the building in the said property completely, then defendant's share in the said property will be forfeited. Hence he prays to restrain the plaintiff from carrying out construction in the suit property. Therefore it is prayed to allow the I.A.

3. Per contra, the plaintiff has filed his detailed objection denying the contents of the application as well as the allegation made in affidavit as false, vexatious one and the same are not sustainable either in Law or facts of the case. It is further contended that defendant specifically admitted that the plaintiffs and defendant are the brothers and during the life time their

father Nagappa gave Wardi to the Panchayat authorities to entered the names of both plaintiff and defendant in respect of G.P. No.106 and 119 and further G.P. No.106 was given to the defendant and plaintiff is residing in G.P. No.119. It also stated that the plaintiff is residing old house in G.P. No.119 and said house in dilapidated condition due to heavy rain and his family members are residing neighbors' shed and there is alternative arrangement to residing the plaintiff and his family members. The plaintiff filed this application only to harass the plaintiff. Hence prayed for dismissal of the IA.

4. Heard the arguments. Perused the entire case records.

5. The following point would arise for my consideration:

Point No.1: Whether the defendant/applicant has made out a prima facie case?

Point No.2: Whether the balance of convenience lies in favour of the applicants/defendant?

Point No.3: Whether the applicants/defendant would be put to irreparable loss or injury in the event the application is not allowed?

Point No.4: What order?

6. My findings on the aforesaid points is as under:

Point No. 1: Negative

Point No. 2: Negative

Point No. 3: Negative

Point No. 4: As per final order for the following:

REASONS

7. **Point No. 1 to 3:-** Since these points are inter-connected, in order to avoid overlapping of discussion they are taken up together for discussion.

8. It is a suit for partition and separate possession. The suit properties are described in the plaint schedule A and B. The suit properties are alleged to be the joint family properties and it is averred that there was no

partition between the family members. The defendant in his written statement has admitted that, the plaintiff is residing the in the item No.2 property of schedule B.

9. There is no dispute with regard to the relationship between the parties. The defendant in Para No.9(a) specifically and categorically taken up plea that, the father of plaintiff and defendant namely Nagappa gave Wardi to Panchayat authorities to enter the names of plaintiff and defendant to the house properties bearing G.P. No.106 and G.P. No.119. Accordingly Panchayat authorities have passed resolution by its meeting held on 21-12-1995 and accordingly, the names of the plaintiff defendant are came to be entered into the Gram Panchayat extract. Accordingly the plaintiff and defendant are in separate possession of their respective shares. He further taken up plea that the G.P. No.119 is given to the plaintiff and G.P. No.106 was given to the defendant. According written statement of the defendant the plaintiff is residing in G.P. No.119 and defendant is residing in G.P. No.106. But at first time in the affidavit filed in support of

application has contends that, the property G.P. No.119 is joint family properties of plaintiff and defendant and they are in joint possession and enjoyment of the said property.

10. Moreover as per Order XXXIX, Rule-1(a) of CPC only when the suit schedule properties is in danger of being wasted, damaged or alienated, or sold in execution of a decree, the defendant can maintain an application seeking temporary injunction. The defendant cannot seeking temporary injunction under Order XXXIX, Rule-1(b) and 1(c) of CPC. This view is expressed basing on the decision of Hon'ble High Court of Karnataka reported in **AIR 2015 KAR 13** (Smt. *Shakunthamma Vs. Smt. Kanthamma*). The relevant para of the said decision is reported below:

"33. The correct legal position as is clear from the statutory provision is as under:

(i) Both the plaintiff and the defendant can maintain an application under Order XXXIX Rule 1(a) of the Code for the reliefs set out in the said provision;

(ii) Insofar as relief under Order XXXIX Rule 1(b) and (c) is concerned, such a relief is available only to the plaintiff and the defendant cannot maintain an application for the said reliefs in a suit filed by the plaintiff, irrespective of the fact that his right to such relief

arises either from the same cause of action or a cause of action that arises subsequent to filing of the suit.

However it is open to the defendant to maintain a separate suit against the plaintiff and seek relief provided under Order 39 Rule 1(b) and (c) of the Code.

(iii) In cases which do not fall under Order XXXIX Rule 1 of the Code, the Court has the inherent jurisdiction to grant the relief of injunction in its discretion, if it is satisfied that such an order is necessary to meet the ends of justice or to prevent abuse of process of the court and nothing in this Code shall limit or otherwise affect such inherent power of the court."

11. In the present case in hand, the temporary injunction is sought by the defendants under Order XXXIX, Rule 1(c) of CPC, wherein Defendant has prayed to restrain plaintiff from construction work in G.P. No.119 in which plaintiff is residing as admitted by the defendant in his written statement. Therefore the present I.A.No. V in the present form is not maintainable. Hence I am of the opinion that the defendant has made out a prima facie case to grant the injunction order.

12. As far as Point No.2 and 3 is concerned, Since it is a suit for partition and the relief sought under this IA in respect of property bearing GP No.119 among the

suit schedule A and B properties, and the loss or damages if any may be compensated in terms of money or other valuable consideration. The plaintiff intend to construct the building in order protect the house in GP No.119 which is under dilapidated conditions in view of the approaching monsoon season. The defendant will not suffer any irreparable loss or hardship if the construction is carried on by the plaintiff. Because, the construction of the house building is only improvement of the suit properties and does not amount to damaging of it. Further the during argument the learned counsel for plaintiff argued that, plaintiff has ready to come forward to give an undertake that he will give the shares of defendant if it is held the defendant is entitled for the share in the said property. It must be noted that the defendant himself has admitted in written statement that already partition effected and the property GP No.119 was given to the plaintiff and plaintiff is residing above property. Thus at no point of imagination the balance of convenience lies in favour of the defendant and he will not suffer any irreparable loss

in the event of not granting the injunction. Hence I answer point No.1 to 3 are answered in Negative.

13. **Point No. 4:-** For the reasons assigned to Point No.1 to 3, to meet the ends of justice I proceed to pass the following:

ORDER

I.A.No.V filed under Order 39 Rule 1
and 2 of C.P.C. is hereby dismissed.

The costs shall follow the result of this
suit.

(Dictated to the stenographer, Direct on computer typed by him, corrected, revised then signed by me and pronounced in the open Court on this the 21st day of June, 2025)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

