

IN THE COURT OF THE CIVIL JUDGE & JMFC, SANDUR

:: PRESENT ::

Sri. Md. Shaiz Chouthai,

B.A.,LL.B.(Hons.), LL.M,(M.L.)

Civil Judge & JMFC, Sandur.

Dated: 09th day of July 2026

O.S. No.73/2021

Plaintiff/s : Marathi Jambanna S/o Late M. Kashappa,
Aged about 56 years,
R/o House No.37, Ward No.13,
Nagaraj Swamy Mutt, Miller Pet,
Ballari.

(By Sri. S.M.N., Advocate)

V/S

Defendant/s : M. Subramanayam @ Subbanna and Others.

(D-1 By Sri. G.M. Advocate)

(D-2 to 4 & 6 Exparte)

(D-5 By Sri. P.B.K.R. Advocate)

I.A.No.II

Applicant : Marathi Jambanna S/o late M. Kashappa,
(Plaintiff)

V/S

Opponent/s : M. Subramanayam @ Subbanna and Others.
(Defendants)

ORDER ON I.A.No.II FILED UNDER ORDER 39**RULE 1 AND 2 R/w SECTION 151 OF C.P.C.**

This is an application filed by the plaintiff against the defendants with a prayer to restrain them from taking up construction activities in the suit property, till the disposal of the suit.

2. One Marthi Kashappa and M.Shankaramma had four children, namely the Marthi Jambanna – plaintiff, M. Subramanyam @ Subbanna – defendant No.1, Late Neelakanth and Jayalakshmi – defendant no.6. The defendant No.2 is the wife, defendant No.3 to 5 are the children of Late Neelakanth.

3. The suit property, bearing House No. 76 and measuring 32 x 25 feet within the boundaries described in the plaint schedule, is situated in Taranagar village, Sandur Taluk, and originally belonged to Marthi Kashappa. His name appeared in the revenue records right from the year 1961, and he was in peaceful possession and enjoyment of the suit property along with his family members. After his demise approximately 20 years ago,

his wife and children continued residing in the suit property. Subsequently, following the death of Neelakanth, the latter's wife and children likewise continued to reside in the said property. The plaintiff's mother also expired on 02.06.2013.

4. Until the demise of the plaintiff's mother, all the family members resided together. Subsequent to her death, the plaintiff commenced residing in Ballari with his family, while Defendant No. 6 resided in Hosapete and Defendants No. 2 to 5 stayed in the Davanagere District. Under these circumstances, it is only Defendant No. 1 who remains in actual possession and enjoyment of the suit property. The plaintiff alleges that Defendant No.1 is trying to construct a house on the suit property without the knowledge and consent of the plaintiff.

5. According to the plaintiff, Defendant No.1 fabricated a document dated 08.06.2011, purporting it to be executed by their mother, M. Shankamma, who allegedly declared that the property should devolve upon Defendant No.1. The plaintiff

asserts that the said document is forged and fabricated. The plaintiff approached Defendant No.1 and demanded his share in the suit property; however, Defendant No.1 postponed doing so on one pretext or another, before ultimately refusing to allot the share. Currently, as Defendant No.1 is constructing a house on the suit property without his knowledge or consent, the plaintiff seeks to restrain him from carrying out such construction. The plaintiff has a *prima facie* case and the balance of convenience lies in his favour. If the injunction is not granted, irreparable loss will be caused to him. On these grounds, the plaintiff prays to allow the application.

6. After service of summons, the defendant No.1 and 5 appeared through their learned counsel but they did not file any objections. Similarly, defendant No.2 to 4 and 6 did not respond to the summons, and as such they are placed *exparte*.

7. I have heard the learned counsel for the plaintiff. Perused the records.

8. The points that arise for my consideration are:-

1. Whether the applicant proves that he has *prima-facie* case in his favour?
2. Whether the applicant proves balance of convenience in his favour?
3. Whether the applicant proves that irreparable loss would be caused to him if injunction is not granted?
4. What order?

9. My answer on the above points are as follows:-

- Point No.1** : In the **Negative**
Point No.2 : In the **Negative**
Point No.3 : In the **Negative**
Point No.4 : As per final order
for the following:-

REASONS

10. **POINT NO.1 TO 3:-** This is a suit for the relief of partition and separate possession in respect of suit property bearing house No.76, ward No.1, Taranagar village, Sandur taluk.

11. The defendant No.1 and 6 are the brother and sister of the plaintiff. Defendant No.2 is the wife and defendant No.3 to 5

are the children of Late Neelakanth who is the brother of plaintiff. According to plaintiff, suit property was earlier standing in the name of M. Kashappa, who is the father of the plaintiff, defendant No.1 and 6 and Late Neelakanth. It is alleged that after the demise of M. Kashappa and his wife M. Shankramma, the defendant No.1 got his name mutated in the property records on the strength of document alleged to have been executed by Late M. Shankramma.

12. The suit property is admittedly a house property. The plaintiff at the time of institution of the suit had not filed any property records to show in whose name the property is existed. On the strength of interim application filed under Order XVI Rule 6 R/w Sec. 151 of C.P.C. the Secretary of Gram Panchayath, Taranagar was directed to produce documents pertaining to the suit property. As per the said directions, he produced certified copy of the assessment register which disclose that the suit property was earlier standing in the name of M. Shankramma who is none other than the mother of the plaintiff. The documents

further reflect that on a mere letter given by Late M. Shankramma, the mutation was carried out in the name of defendant No.1 to the exclusion of other family members i.e., plaintiff, defendant No.2 to 6. It has to be seen whether Late M. Shankramma had any absolute right to give consent for mutation of the name of defendant No.1 to the exclusion of other family members. To this extent there is triable case.

13. In the instant application what the plaintiff is seeking is a temporary injunction restraining the defendant No.1 from putting up any construction on the plaint schedule property. As indicated above, the suit property is a house property. If any construction activity is carried out, it will neither diminish the value of the suit property nor change its nature. The plaintiff can very well claim right even in respect of the improvements made in the suit property if he successfully prove his suit claim. The plaintiff has not stated in his application as to what hardship or injury will be caused to him if defendant No.1 take up construction activity. As such, it is not necessary to restrain

defendant No.1 from carrying out any construction in the suit property. The plaintiff has failed to show prima-facie case in his favour. Further, the balance of convenience does not favour the plaintiff. Hence, this Court answers Point No.1 to 3 in the **Negative.**

14. **POINT NO.4:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A. No.II filed by the plaintiff U/O.39 Rule 1 and 2 R/w Sec. 151 of C.P.C., is hereby dismissed.

The observations made in this order shall not come in the way of, affect or cause prejudice to the rights of the parties to prove their case by leading evidence during the trial.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 09th day of July 2026)

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.