

**KABK710028822021**



**O.S./118/2021**

**IN THE COURT OF ADDITIONAL CIVIL JUDGE &  
JMFC, JAMKHANDI, AT: JAMKHANDI.**

**PRESENT :**  
**SHRI ARASHAD ANSARI,**  
***B.Com, L.L.M.,***  
**Addl. Civil Judge & JMFC,**  
**Jamkhandi.**

**Dated this 13<sup>th</sup> day of February – 2025**

**O.S. No.118/2021**

1. Shri.Madhukar S/o Bhimarao Joshi,  
Age: 60 years, Occ: Retired Service,  
R/o. Jagad Yallamma Temple,  
Jamkhandi, Dist: Bagalkot.

**..... Plaintiff.**

**(By Shri.D.M.J., Advocate)**

**Vs.**

1. Shri.Mohan S/o Ramachandra Manur,  
Age: 63 years, Occ: Retired Service,  
R/o. Hulyalkar Galli,  
Jamkhandi, Dist: Bagalkot and Others

**..... Defendants.**

**(By Shri.R.H.K., Advocate)**

**I. A. No.IV**

1. Shri.Madhukar S/o Bhimarao Joshi,

**..... Applicant/Plaintiff.**

**Vs.**

1. Shri.Mohan S/o Ramachandra Manur  
and Others.

**.....Opponents/Defendants.**

\* \* \*

Sl.No.	Details	Particulars
1	Provision under which the application is filed	Under Order 39 Rule 1 and 2 of CPC R/w Section 151 of CPC
2	Relief sought for	Ad-interim Ex-parte Temporary Injunction
3	The date on which the application is filed	02-04-2024
4	Number of the applications	I.A.No.IV
5	The date on which the objections are filed by the different opponent/s	24-04-2024
6	The date on which the orders were passed on the said application/s.	13-02-2025

**ORDERS ON I.A. No.IV FILED BY  
PLAINTIFF/APPLICANT UNDER ORDER 39  
RULE 1 AND 2 R/W SECTION 151 OF C.P.C.**

This application is filed by the plaintiff/applicant seeking an order for the grant of a temporary injunction

against defendants No.2 and 3, restraining them from causing any damage to the 'AB' and 'BC' walls until the final disposal of the suit, based on the grounds set forth in the accompanying affidavit.

2. On contrary defendants No. 2 and 3 have filed objections and have sought the rejection of the application as stated in their objections.

3. Heard the arguments, perused the records placed before the court.

4. The points that arose for my consideration is as under:

- 1) Whether plaintiff has made out prima-facie case to grant the temporary injunction in their favour?
- 2) Whether the balance of convenience lies in favour of plaintiff?
- 3) Whether plaintiff prove that irreparable loss will be caused to them if temporary injunction is not granted?
- 4) What Order?

5. My findings to the above points is as under:

**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 :

**: R E A S O N S :**

6. **POINT No.1 TO 3:-** For the sake of convenience and to avoid repetition of facts, the following points are being addressed together for a consolidated discussion.

7. It is the case of plaintiff that, the Hon'ble Fast-Track Court, Jamkhandi, in its order in R.A No.1/2007, held that the suit 'AB' and 'BC' walls are common to both the plaintiff and the defendants, granting the defendants equal rights to the use and enjoyment of the suit walls. The staircase is affixed to the 'AB' wall at the location marked "X" in the plaint and schedule. However, the defendants, with malafide intent, are attempting to remove the staircase, which is fixed to the 'AB' wall, thereby causing damage to the 'BC' wall.

This action threatens to loosen and damage the 'AB' wall, potentially leading to the collapse of the plaintiff's first-floor building, endangering lives. In light of these circumstances, the plaintiff seeks the issuance of a temporary injunction restraining defendants No.2 and 3 from causing damage to the 'AB' and 'BC' walls until the disposal of the suit. The plaintiff asserts that there is a prima facie case in their favor, the balance of convenience supports the grant of the injunction, and failure to grant the application would result in substantial loss to the plaintiff, with no corresponding loss to the defendants. The plaintiff further submits that any delay would frustrate the purpose of the suit and it is necessary to preserve the subject matter until the rights of the parties are determined, in the interest of justice and equity.

8. On the contrary it is the case of the defendants that, in the application it is erroneously stated that the staircase is fixed to the AB wall at location X. This information is incorrect, as the staircase is actually

abutting the AB wall, with the staircase beginning where the wall ends. Therefore, there is no connection between the wall and the staircase, as they are merely positioned side by side. Furthermore, the application alleges that the defendants are attempting to demolish the staircase, thereby causing damage to the 'AB' wall and weakening the plaintiff's structure. This is a false claim, as the staircase is located within the premises exclusively belonging to the defendants. Removing the staircase will not cause any damage to the plaintiff's structure. The application also references the order made by the Hon'ble Fast-Track Court, Jamkhandi, in R.A.No.1/2007, which states that the 'AB' and 'BC' walls are common walls shared by the plaintiff and the defendants. However, the plaintiff has failed to mention that the width of both walls is 3 feet, and each party has an exclusive right to 18 inches of the wall. Given that modern construction allows for 9-inch walls to bear structural loads, there is sufficient space for the plaintiff to fortify their structure without any impact

from the defendants actions. The defendants have made modifications to their own structure without affecting the 'AB' and 'BC' walls. Based on these facts, the application filed by the plaintiff is not only false and frivolous but also misleading to the Hon'ble Court. The plaintiff has not established a prima facie case, as the defendants have not interfered with the 'AB' and 'BC' walls. There is no balance of convenience in favour of the plaintiff, as granting the application would cause significant inconvenience to the defendants, which cannot be compensated financially. On the other hand, rejecting the application will cause no harm to the plaintiff.

9. It is material to note here that, the applicant's concern is based on the apprehension that the removal of the staircase, being attached or abutting the common 'AB' and 'BC' walls, may result in harm to the structural integrity of these walls. The applicant has a vested interest in preserving the common wall, which is equally shared by the defendants, as both parties have rights

over its use and maintenance. It is an established fact that the property on the other side of the common wall belongs to defendants No.2 and 3 and they possess an equal right to utilize and modify their property. However, this right is not absolute and must be exercised with due care and caution, particularly when the actions may affect shared or common property.

10. In this context, the legal principle of *actio negatoria* comes into play, where one party's actions should not negatively affect the rights of the other party over shared or common property. The defendants must ensure that any modifications, such as removing the staircase, do not lead to damage or deterioration of the common 'AB' and 'BC' walls, as this could infringe upon the plaintiff's right to enjoy and use the property in a safe and secure manner.

11. The Hon'ble Court has already decided in R.A. No.1/2007 that the 'AB' and 'BC' walls are common property, any changes made to the walls, even on the

defendants' side, must respect the equal rights of both parties. The defendants are, therefore, legally bound to carry out any work or modifications within their own property without endangering or harming the shared wall. This principle aligns with the *doctrine of easement* and *common ownership*, which implies that neither party should interfere with the other's enjoyment or use of the common property in a way that causes damage.

12. The defendants actions should be guided by the principle of *utmost care and diligence* when dealing with shared walls, as any failure to do so may lead to irreparable damage, which would result in significant loss to the plaintiff. As such, the plaintiff has a legitimate concern, and the defendants are obligated to exercise caution to prevent harm to the common wall, especially when the removal of the staircase could directly impact its structural integrity. Therefore, the grant of a temporary injunction is necessary to protect the plaintiff's rights and ensure the preservation of the

common wall until the rights of the parties are adjudicated on the merits of the case.

13. The plaintiff has established a prima-facie case, ascertaining that the staircase, which is affixed to the 'AB' wall, is at risk of being removed by the defendants, potentially causing damage to the 'AB' and 'BC' walls and compromising the structural integrity of the plaintiff's property. The plaintiff has demonstrated that any damage to the walls could result in the collapse of the first-floor building, posing a risk to life and property and that such harm would be irreparable and not compensable by money. The balance of convenience favors the plaintiff, as granting the injunction would prevent substantial harm while causing minimal inconvenience to the defendants, who have not shown how they would be harmed by such an order. Furthermore, denying the injunction would frustrate the purpose of the suit, as any damage to the walls would undermine the plaintiff's case. Preserving the same until the matter is resolved is in the interest of

justice, ensuring that no further damage occurs while the court decides the merits of the dispute. Allowing the application would also prevent future legal complications by ensuring that the subject matter of the suit is protected in the interim. Hence for these reasons, I answer Point No.1 to 3 in the '**Affirmative**'.

14. **Point No.4:-** For the reasons and findings given to Point No.1 to 3, I proceed to pass the following:

**: O R D E R :**

I.A. No.IV filed by plaintiff under Order 39 Rule 1 and 2 of C.P.C. is hereby allowed.

The defendants No.2 and 3 are restrained from removing the staircase or making any alterations that may damage the common 'AB' and 'BC' walls until the disposal of the suit. Defendants are directed to ensure that no harm is caused to the common walls during any modifications to their property.

No order as to costs.

*(Dictated to the Stenographer directly on computer and typed by him, and corrected, printout taken, signed by me and then pronounced in the open court on this the **13<sup>th</sup> day of February - 2025**)*

Sd/-  
**(Arashad Ansari),**  
**Addl. Civil Judge & JMFC,**  
**Jamkhandi.**