

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE &  
J.M.F.C., AT DEVANAHALLI.**

PRESENT

**SRI. PRAVEEN NAYAK, LL.M.,**

Addl. Senior Civil Judge & J.M.F.C.,  
Devanahalli.

**Dated this day of 12<sup>th</sup> January, 2024.**

**O.S.No.928/2006**

Sri. Venkatappa : **Plaintiff**

(Plt. - By Sri. N.N.S,  
Advocate)

- V/s. -

Sri. Munikempaiah & Another : **Defendants**

(Def.1 - By Sri. A.R.S.R.,  
Advocate)  
(Def.2 to 4 - By Sri. T.S.R.,  
Advocate)

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**ORDERS ON I.A. No.XX**

The instant application has been filed by defendant No.4 under Order XXXIX Rule 1 and 2 R/w.Sec.151 of C.P.C, seeking ad-interim order of Temporary Injunction to restrain the plaintiff from putting up any construction over the counter claim schedule property in item No.1.

2. In the affidavit, the defendant No.4 has stated that, the plaintiff has filed the present suit seeking the relief of Partition and Separate Possession and the defendants have sought counter claim in their written statement. In the counter claim they have sought for partition of suit schedule properties along with the properties which have been left out by the plaintiff, which belong to common propositus Late Thammaiah. The said Thammaiah and Bayamma had 2 children by name Hanumaiah and Hanumakka. Hanumaiah was married to one Nanjamma and they had no issues. Hanumakka married to Munishamappa and they had children by name Venkatappa and Patalappa. The legal heirs of said Venkatappa filed the present suit for partition. The plaintiff has claimed that though Thammaiah had 2 children, Hanumaiah had executed a Will, which has not seen the light of the day. The said properties belonged to Thammaiah. Hanumaiah had no absolute right over the same to execute the Will. The said Hanumaiah has not executed any Will. The plaintiff claims the share of Hanumaiah on the basis of the Will. The plaintiff has been putting up

construction over counter claim item No.1 property. Hence, prayed to allow the application.

3. The LRs of plaintiff filed objection to the present application by stating that, the application is not maintainable under law. The defendants have filed written statement by alleging that the properties described in the written statement are joint family properties and the suit is liable to be dismissed for non inclusion of said properties. The defendants have not filed written statement with counter claim by stating that those properties are also joint family properties. The properties situated at Bettahalasuru Village, are absolute properties of Hanumaiah and he has executed Will dated 06.05.1952 by bequeathing the said properties in favour of the plaintiff. There is no prima facie case in favour of the defendant No.4. Hence, prayed to reject the application with cost.

4. Head both sides.

**5. The following points would arise for my consideration:**

1. Whether the applicant proves that he has got prima-facie case and the balance of convenience tilts in his favour to pass an order of ad-interim injunction on I.A. No.XX ?

2. Whether the applicant proves that he will suffer irreparable loss and hardship if temporary injunction order has not been passed on I.A. No.XX ?
  3. What order or decree ?
6. **My answer to the above points are as follows:**

Points No.1 & 2 : **In the Negative**  
Point No.3 : **As per final Order  
for the following :**

### **REASONS**

7. **Point No.1:** The instant suit has been filed by the original plaintiff against the defendants seeking the relief of Partition and Separate Possession of suit schedule properties. There are as many as 7 suit schedule properties in the suit. The defendants entered their appearance and filed written statement along with counter claim and sought for partition of the properties shown in the written statement along with the suit schedule properties. Now, the defendant No.4 has filed the present application by stating that the plaintiffs are putting up construction over one of the properties stated in the counter claim. The plaintiff has not denied the same, but contended that the said properties have been bequeathed in favour of the

plaintiff by one Hanumaiah during the year 1968-1969 and those properties are not the joint family properties. It is the case of the plaintiff that counter claim schedule properties belong to maternal grandfather of the plaintiff and during his lifetime he has executed a Will in favour of the plaintiff. Accordingly, the original plaintiff has acquired lawful title and possession over those properties. On perusal of the photographs produced by the defendants No.4 there is no dispute that there is a construction work undertaken as alleged by the defendant No.4. It can be inferred that the LRs of the plaintiff have been putting up construction over item No.1 of counter claim schedule properties. In view of the same it is necessary to look into order XXXIX Rule 1 and 2 of C.P.C, wherein it is prescribed that, the court can grant Temporary Injunction pending litigation in cases where by filing affidavit it is proved that the property in dispute is in danger of being wastage, damage or alienated or the defendants threatened to dispose off his property to defraud the creditor or the defendants threatens to dispossess the plaintiff or otherwise cause injury in respect of any of the properties. In the present case none of the ingredients of order XXXIX Rule 1 and 2 of C.P.C are attracted. It is pertinent to note that there are many properties in respect of which the partition has been claimed by the plaintiff and the defendants. It is not the case of the defendant No.4 that the LRs of the plaintiff have been putting up construction over entire counter claim schedule properties. The construction work is undertaken over a small portion in the suit schedule properties. Under such circumstances, it is not proper to pas an order of Temporary Injunction by restraining the LRs of

the plaintiff from putting up construction over the said portion of the property. In view of this, there is no prima facie case in favour of the defendant No.4 and balance of convenience does not tilt in his favour. Hence, I answer **Point No.1 in the Negative.**

8. **Point No.2 :** While answering Point No.1 it is held that there no prima facie case in favour of the plaintiff. There is no doubt that the LRs of the plaintiff have been putting up construction over one of the counter claim schedule properties. It is the case of the LRs of the plaintiff that the plaintiff has acquired the said property by way of Will executed by one Hanumaiah. This court cannot hold a mini trial at this stage to decide the same. However, the LRs of the plaintiffs have invested huge money for construction of the building and if the Temporary Injunction is passed at this stage, they will suffer irreparable harm and injury. The construction undertaken by the LRs of the plaintiff is at their risk. If the defendant No.4 succeeds in this suit, since the construction has been put up during the pendency of the suit, the said property is also liable to be partitioned. Under such circumstances, defendant No.4 will not suffer any hardship in case of non granting of Temporary Injunction. Hence, I answer **Point No.2 in the Negative.**

9. **Point No.3 :** In view of the above findings, this court proceed to pass the following:

**ORDER**

I.A. No.XX filed by the defendant No.4 is hereby rejected.

No order as to cost.

**(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 12<sup>th</sup> Day of January, 2024).**

**(SRI. PRAVEEN NAYAK)  
Addl. Senior Civil Judge & J.M.F.C.,  
Devanahalli.**