



IN THE COURT OF I ADDL SENIOR CIVIL JUDGE & JMFC,
DEVANAHALLI.

Present: Sri Lokesha M.G., B.A.L.,LL.B.,

O.S.No.238/2018

Dated this the 23rd day of June, 2023.

PLAINTIFF: Sri. Anjula.A
(By Advocate Sri.M.M.N.,)

V/s.

DEFENDANTS: Smt. Huchamma & Others
(D2 to 4 - By Advocate Sri. K.S., &
M.R.G.,)

ORDER ON I.A.NO.XII

I.A.No.12 is filed by the plaintiff U/O. XXXIX Rules 1 & 2 R/w. Section 151 of C.P.C. restraining the defendants No.2 to 4 and their general power of attorney holders from putting up any kind of construction in Item No.13 of schedule property till disposal of the suit.



2. It is stated in the accompanying affidavit that the suit is filed for Partition in respect of suit properties. By taking undue advantage of summer vacation, defendant No.4 in collusion with defendant No.2 and 3 has started on 05.05.2025 illegal construction of a building over suit item No.13 property in violation of doctrine of lis pendens and to defeat the valuable rights of the plaintiff. When it is questioned about the illegal construction, defendant No.4 picked up quarrel. Hence, police complaint is filed. NCR is issued. Defendant No.4 has stated that plaintiff and her sisters have orally given consent to carryout the construction and it is false. If defendant No.4 has succeeded to raise construction, it will affect the right of the plaintiff. It may lead to multiplicity of proceedings and it will change the nature of suit property. It creates unwanted problems. It can't be compensated in terms of money. Hence, it is prayed to allow the application.

3. Defendant No.4 has filed objection stating that application is not maintainable. There are no grounds in the application. Application averments are false. Already there is a house existed in item No.13 of schedule



property. It is older one. It is almost in collapsing stage. Other joint family members are having their house and residing in their house. For the sake of renovation of old house, they are involved in renovating the old house. It is very well known by the plaintiff and other joint family members. But to harass the defendants, plaintiff has filed this false application and it is not maintainable. If the application is allowed, defendants will be put to greater hardship. Hence, it is prayed to dismiss the application.

4. Upon hearing arguments and on perusal of materials placed on record, the following points that arise for my consideration are ;

1. Whether the plaintiff has established prima-facie case to grant temporary Injunction ?
2. Whether the balance of convenience lies in favour of plaintiff ?



3. Whether irreparable loss or hardship will be caused to the plaintiff if Injunction as prayed in I.A.No.XII is not granted?

4. What order ?

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

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

REASONS

6. POINT NO.1: The plaintiff has filed suit for the relief of Partition seeking share in respect of suit properties. They are 14 in number. It is also sought for the relief of Permanent Injunction restraining the defendants from alienating the suit properties in any manner. In the plaint, the relationship is stated. Plaintiff and defendant No.1 to 6 are the joint family members and they are in joint possession and enjoyment of suit properties. They have got equal rights. They are entitled to share. It is also stated that when the demand is made to effect Partition, it has been postponed. It is also stated that portion of item



No.4 property was fallen to the share of Late Anjinappa and it has been acquired. Defendant No.7 has deposited compensation amount in the name of Anjinappa. Defendants are trying to withdraw the said amount claiming that they are the only legal heirs. If it is released, it is not possible to reclaim the compensation amount. Defendants are trying to alienate the suit properties. It is also stated about the nature of properties. There is no Partition between them. But now the plaintiff has filed this present application restraining the defendant No.2 to 4 from putting up any kind of construction in item No.13 property. Schedule is shown as vacant house property. In the objection it is stated that there is already house in the said property and it is old house and hence renovation is necessary and hence construction is being made. At the time of arguments also, the advocate for defendant No.4 has filed memo of undertaking stating that in the event of the suit of the plaintiffs is decreed, then he will leave the said property to the plaintiff in respect of item No.13 of the schedule property. It has to be taken into consideration. There is no hurdle to the plaintiff if there is construction. Memo with documents filed, they are police



endorsement, complaint, statement and photographs. They show that construction is being made. It is not disputed by the defendant No.4. In fact there is undertaking with respect to the said aspect. It has to be complied by the defendant No.4 as per the order of the Court at the time of final disposal of the suit. At this time, only prima facie case is to be made out. On perusal of entire materials on the record, I am of the opinion that the plaintiff has not made out prima facie case to grant Temporary Injunction order. It is also not shown by the plaintiff about causing of greater hardship to her if the building is constructed in the said property. Hence, On perusal of entire materials on the record, I am of the opinion that there are no grounds in the application at this stage. Objection is sustainable. It is to be noted that it is not absolute order. No one can take advantage of this order during the pendency of suit and at the time of final disposal of the suit. With such observation, I answer Point No.1 in the **“NEGATIVE”**.

7. POINT No.2 & 3: Apart from showing the prima facie case, it is duty of the plaintiff to show that balance of



convenience lies in his favour and hardship and loss will be caused to him if the temporary Injunction order is not granted. But, on perusal of the records, I am of the opinion that balance of convenience lies in favour of the defendants No.2 to 4 more than the plaintiff. I am also of the opinion that if the temporary Injunction order is granted at this stage, defendants No.2 to 4 will be put to hardship and inconvenience will be caused to the defendants No.2 to 4. Therefore, I am of the opinion that their right will not be extinguished at this stage. Hence, I am of the opinion that the plaintiff has not shown balance of convenience and hardship to be caused.

8. I have already answered Point No.1 in the negative holding that the plaintiff has failed to make out prima-facie case. It is held in the reported decision in between Sri. Gowrishankara Swamigalu Versus Siddhaganga Mutt reported in ILR 1989 KAR 1701 that proving of prima-facie case is necessary to consider the other aspects such as balance of convenience and irreparable loss. If the plaintiff failed to make out the prima-facie case, it is not



necessary to consider the other aspects. Therefore, I answer Point No. 2 and 3 in the **“NEGATIVE”**.

9. POINT No.4: As per the above discussion, I pass the following :

ORDER

I.A.No.12 filed by the plaintiff
Under Order 39 Rule 1 and 2
R/w. Sec.151 of C.P.C is hereby
dismissed.

(Directly dictated to the Stenographer, corrected and then pronounced by me, in the Open Court, on this the **23rd** day of **June, 2025**).

Sd/-
(**Lokesha.M.G.**)
I Addl Sr.Civil Judge & Jmfc.,
Devanahalli.