



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

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

O.S.No.1149/2007

Dated this the 04th day of February, 2026.

PLAINTIFFS: Smt. Jayamma Dead y her LRS

(By Advocate Sri. C.G.M.,)

V/s.

DEFENDANTS: Sri. Nanjappa & Others

(By Advocates Sri. R.M.G., S.M.A.,
M.C.S., S.R., K.A.H., & C.G.N.,)

i.	Provision under which the application is filed	Order 39 Rule 1 & 2
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	07.1.2026
iv.	Number of the application	11
v.	The date on which the objections are filed by different opponents	12.01.2026
vi.	The date on which the orders were passed on the said application	04.02.2026



ORDER ON I.A.NO.XI

I.A.No.11 is filed by the plaintiffs U/O. XXXIX Rules 1 & 2 R/w. Section 151 of C.P.C. restraining the defendants from changing the nature of the suit property till disposal of the suit.

2. It is stated in the accompanying affidavit that the legal heirs of plaintiff have filed this application. Their mother died on 22.08.2025 leaving behind them. Their mother filed suit on 05.12.2007 for the relief of partition in respect of suit properties which are joint family properties. The plaint may be considered as part and parcel of this affidavit. Defendant No.1 to 4 in order to deprive the legitimate share of the plaintiff have alienated portion of schedule property in favour of defendant No.9 on 23.11.2006. Defendants can't claim particular portion of suit property. On that basis, they are not supposed to make wrongful gain either by excluding the other sharers or to construct the building in the part of the schedule property unless share has been determined by the Court on full-fledged trial. The applicants have orally objected the defendants not to put up compound wall in the suit



property. The share of all the parties could be declared by the Court. Defendants are not to take Law into their own hands. They are bound to obey the decision of the Court. However defendants didn't heed the request of the applicants and stated that they have got every right to construct suit property and proclaimed that they would construct. They have continued the progress of the construction of compound wall. To show the same, applicants have taken photo of the construction. They have given complaint against Nanjappa and Others. Police have not taken any action. With deliberate intention, defendants continued putting up construction of compound wall in the suit property. The applicants have made out prima facie case and balance of convenience lies in their favour. If the order is not granted, they would be put to irreparable loss and injury. Defendants are constructing urgently without heeding the advice of anybody and they would complete compound wall. In such event, it will lead to multiplicity of proceedings. Hence, it is prayed to allow the application.



3. Defendant No.1 to 4 have filed objection stating that application is not maintainable. Plaintiff legal heirs are filing the applications unnecessarily to drag the case. It is filed at belated stage. Defendant No.1 to 4 have entered into registered Partition on 18.12.2002 among themselves and divided the suit property by metes and bounds. Out of share allotted to each of the sharers, defendant No.1, 3 and 4 alienated the portion of suit property under separate registered Sale Deeds on 23.11.2006. The purchasers have been in possession and enjoyment of the properties purchased by them by putting up barbed wire fencing. Since portion of the said fencing was removed by some miscreants recently, defendant No.9 has put up concrete slab compound replacing the barbed wire fencing. The work has been already completed long ago. Except that, no other development or construction is undertaken by any of the parties in the suit property. Application is misconceived. To drag the case, it is filed. Admittedly, there is partition in the family through registered Partition Deed and several alienations have been taken place before filing of suit. Hence, suit is not maintainable. Plaintiff has no right over the suit property.



She has not made out prima facie case. Hence, it is prayed to dismiss the application.

4. Proposed defendants have filed objection stating that the contrary stand is taken and it is different from the plaint averments. In the prayer, it is sought with respect to 1 Acre 32 Guntas. But in the application, 3 Acres 6 Guntas in Sy.No.347 is stated. Interim prayer will always be in consonance with main prayer. It shall not go beyond the main prayer. Hence, interim order can't be granted. Sy.No.347 has been bifurcated into many numbers. They have no right to question the developments carried out in the extent of 1 Acre 10 Guntas of property belonging to the share of Nanjappa Shetty from whom defendant No.25 and 27 have purchased. The said extent is not within the extent of 1 Acre 32 Guntas of the land of brother of plaintiff. The share of proposed defendant No.11 has been assigned as Sy.No.347/8 measuring 3 Guntas. The application is silent as to the status of the suit property and who actually are trying to change the nature of said property. Hence, application is devoid of merits. Application is silent about demarcation of Sy.No.347.



Without proper identification and proper pleading as to which part of suit property, there is attempt to change the nature of property, application can't be considered. The plaintiffs have not made out prima facie case. Hence, it is prayed to dismiss the application.

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

1. Whether the plaintiffs have established prima-facie case to grant Temporary Injunction ?
2. Whether the balance of convenience lies in favour of plaintiffs ?
3. Whether irreparable loss or hardship will be caused to the plaintiffs if Injunction as prayed in I.A.No.XI is not granted?
4. What order ?

6. 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

7. POINT NO.1: The plaintiff has filed the suit for the relief of Partition seeking share in respect of suit property in Sy.No.347 measuring 3 Acres 6 Guntas. The prayer is sought to allot 1/6th share(1/3rd share in 1 Acre 32 Guntas of land of brother of plaintiff). It is stated that suit property is the ancestral property. The plaintiff and defendant No.1 to 8 are in joint possession and enjoyment of suit property. It is also stated about propositus of joint family. It is also stated that joint family business is assisted by the father of plaintiff and father of defendants No.5 to 7. Joint family had good source of income. Out of joint family fund and joint labour of father of plaintiff and uncle, suit property was acquired and hence it is joint family property and plaintiff and defendant No.1 to 8 are in joint possession and enjoyment of suit property. They are in peaceful possession and enjoyment of the same. There is no partition in the joint family. Without effecting



partition, the plaintiff and her brothers are living separately in a joint family house. It is also stated that defendant No.1 to 4 on 18.12.2002 effected partition between themselves under registered Partition Deed without joining plaintiff as party. They have not allotted share to the plaintiff. They have got revenue entries and plaintiff demanded defendants to effect partition and they have failed to allot the share. To deprive the legitimate share of the plaintiff, defendant No.1, 3 and 4 and their family members alienated portion of suit property in favour of defendant No.9 under registered Sale Deeds on 23.11.2006 and hence Sale Deeds are not binding on the plaintiff. Plaintiff is not party to the said Sale Deeds. Defendants are making hectic efforts to alienate suit property in favour of third person.

8. Present application is filed by the plaintiffs stating that defendants are constructing compound in the schedule property and hence their act is to be restrained till disposal of the suit. But, it is denied by the defendants. It is also stated that there are other purchasers with respect to portion of suit property and suit property



Sy.No.347 has been assigned into 347/1 to 347/17. It is not stated by the plaintiff in the suit and hence suit itself is not maintainable and application also is not maintainable. It is also argued by the advocate for defendants that in support of application, no sufficient documents are produced. The advocate for defendant No.9 has also filed memo with photographs stating that defendant No.9 has already put up compound to the property purchased by him. The photographs show the construction of compound wall. In the objection also, it is stated that except that compound wall, there is no other development or construction undertaken by the parties to the suit. The reason is stated that the purchasers are in possession and enjoyment of property purchased by them by putting up barbed wire fencing. Since portion of the said fencing was removed by some miscreants recently, defendant No.9 has put up concrete slab compound replacing the barbed wire fencing. It is also stated that the work has been already completed. The documents are produced. They are the R.T.Cs. They are pertaining to Sy.No.347 and they show that Sy.No.347 has been assigned as 347/1 to 347/17. It is standing in the names



of various persons. For that purpose only, impleading application has been filed and it is still at notice stage. It is to implead all the necessary parties who are having prima facie right over the said survey number.

9. Advocate for plaintiffs has also produced documents. They are Survey Sketch, R.T.Cs, Photographs, Police Complaint and Acknowledgment. The sketch shows the bifurcation of survey number. Revenue Notice is also issued to the parties. Photographs show that there was no compound wall. Further photographs show that the compound wall is being constructed and photographs also show that compound wall is already constructed. It is the burden of the plaintiff/applicants to show the prima facie case. If prima facie case is shown, then only Temporary Injunction will be granted. On perusal of entire materials on the record, I am of the opinion at this stage that the applicants have not shown prima facie case to grant Temporary Injunction order. It is fact that the plaintiff has filed the suit for the relief of partition. It is also stated that suit property is the joint family property. It is her burden to prove the same. Since, present application is filed, only



prima facie case is to be made out by the plaintiff/applicants. The memo along with photographs filed. It shows that there is already construction of compound wall. Hence, the prayed relief can't be granted at this stage in this case.

10. The advocate for plaintiffs has filed written arguments along with rulings reported in **1. 1998 SCC OnLine Kar 662 in between Smt. Rathnamma Vs. B.A.Srinivasa Gupta & Others, 2. AIR 2008 SC 2291 in between Mandali Ranganna & Othes Vs. T. Ramachandra & Others and 3. (1992) 1 SCC 719 in between Dalpat Kumar & Another Vs. Prahlad Singh & Others.** It is held that prima facie case is not to be confused with prima facie title. The relief can't be denied on technicalities. On technical grounds, relief can't be denied. Disputed questions of Fact and Law are involved which required determination during the trial. The Court can't give finding on the merits of the case while deciding this application. The Court shall consider conduct of the parties. It is also held that if non grant of Injunction must result in irreparable injury to the parties seeking relief, in



such case, Temporary Injunction order can be granted. In this case, it is not shown that if interim injunction is not granted, the applicants will suffer irreparable injury. The reasons are already stated in the objection by the defendants with respect to construction of compound wall and it is already completed. Hence, the plaintiffs can't take advantage of the principles and observations laid down in the said Judgments. Hence, on perusal of entire materials on the record, I am of the opinion that there is no prima facie case in favour of the applicants as prayed in the application. Hence, I answer Point No.1 in the **“NEGATIVE”**.

11. POINT No.2 & 3: Apart from showing the prima facie case, it is duty of the plaintiffs to show that balance of convenience lies in their favour and hardship and loss will be caused to them 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 more than the plaintiffs. I am also of the opinion that if the Temporary Injunction order is granted at this stage, defendants will be put to hardship and



inconvenience will be caused to the defendants. Therefore, I am of the opinion that their right will not be extinguished at this stage. Hence, I am of the opinion that the plaintiffs have not shown balance of convenience and hardship to be caused.

12. I have already answered Point No.1 in the Negative holding that the plaintiffs have 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 plaintiffs 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”**.

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

ORDER

I.A.No.11 filed by the plaintiffs
Under Order 39 Rule 1 and 2



R/w. Sec.151 of C.P.C is hereby
dismissed.

(Dictated to the Stenographer, transcribed and computerized
by her, transcript revised, corrected and pronounced by me, in the
Open Court, dated this the **04th** day of **February, 2026**).

Sd/-

(Loksha.M.G.)

**I Addl Sr.Civil Judge & Jmfc.,
Devanahalli.**