



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

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

**O.S.No.320/2021**

**Dated this the 17<sup>th</sup> day of March, 2026.**

**PLAINTIFFS:** Smt. Kadiramma & Others  
(By Advocate Sri. M.S.)

**V/s.**

**DEFENDANTS:** Smt. Poojamma & Others  
(By Advocates Sri. B.R.S., B.N.H.,  
P.K.)

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<b>i.</b>	Provision under which the application is filed	Order 39 Rule 1 & 2
<b>ii.</b>	Relief sought for	Temporary Injunction
<b>iii.</b>	The date on which the application is filed	27.10.2025
<b>iv.</b>	Number of the application	3
<b>v.</b>	The date on which the objections are filed by different opponents	12.11.2025 & 18.11.2025
<b>vi.</b>	The date on which the orders were passed on the said application	17.03.2026



### **ORDER ON IA.NO.III**

I.A.No.3 is filed by the plaintiffs U/O XXXIX Rule 1 & 2 of C.P.C., restraining the defendant No.7 from putting up any construction in the suit property and from changing nature of suit property until disposal of the suit.

**2.** It is stated in the accompanying affidavit that plaintiffs have filed the suit for Partition. On 15<sup>th</sup> October 2025, plaintiffs were outside due to celebrate family function, by taking advantage of the same, defendants came near the schedule property along with rowdy elements and trespassed their property and fenced in some portion of schedule property to grab the valuable property. Before filing of the suit, the property was vacant. Photographs are produced to show the same. It shows that defendant No.7 forcefully trespassed into the suit property and fenced the same. After knowing the said facts we have questioned the illegal acts of the defendant and without bothering the plaintiffs, defendant tried to construct the property. Plaintiffs have resisted the illegal activities of the defendant with the help of friends and neighbors.



Defendant went from the spot stating that she would come again to start construction activities. Plaintiffs have been in uninterrupted peaceful possession and enjoyment of schedule property and it is the joint family property of defendant No.1 to 6 and plaintiffs. They were exercising right and title in respect of the suit property. They are coparceners. The sale transaction between the defendant No.1 and defendant No.4 to 7 shall not bind the plaintiffs. When the plaintiffs questioned the illegal acts of the defendants, they have threatened the plaintiffs. Plaintiffs are entitling lawful right over the suit property. Defendants have been attempting to put up construction in the suit property. Defendant No.7 intentionally trespassed into the property. Plaintiffs have got prima facie case and balance of convenience lies in their favour. Hence, it is just and necessary to pass restraint order against the defendants. Accordingly, it is prayed to allow the application.

**3.** Defendant No.4 and 7 have filed objection stating that application is not maintainable. Plaintiffs have filed the suit with instigation. Plain averments are false.



Plaintiffs are not connected to the defendants and there is no relationship with defendants. The genealogy is created one and it is false. For the purpose of suit, it is concocted and filed. The plaintiffs are strangers to the suit property and defendants. Based on the misrepresentation and impersonation with wrongful gain, with dishonest intention, they have filed the suit to grab the valuable properties. The plaintiffs have to prove the relationship first and they have to furnish the details and particulars with respect to family background first. They are making false claim. As per the Partition in the family of defendants after death of Narasimhaiah, 'A' schedule was allotted in the name of defendant No.1. 'B' schedule was allotted in the name of defendant No.2. 'C' schedule was allotted in the name of defendant No.3 in the year 2020. Thereafter, defendants along with their family members are in peaceful possession and enjoyment of schedule property by growing seasonal crops. Plaintiffs were never living jointly with the defendants. Hence, they are not entitled to the relief. Plaintiffs have no right over the suit property. They have created the story to knock off the suit property which was purchased by defendant No.7. Plaintiffs are not



in possession of suit property. There is no cause of action. Defendant No.7 is the bonafide purchaser of suit property. 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 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.III 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 plaintiffs have filed the suit for the relief of Partition. They have sought for Declaration with respect to Partition Deed for the year 2020 and Sale Deed for the year 2020 and for the relief of Permanent Injunction. It is stated by the plaintiffs about kartha of the joint family namely Doddavasanthappa. He had 3 children namely Narasimhaiah, Hanumappa and Kondappa. It is also stated that Hanumappa is no more and the plaintiff No.1 and Gundappa are the children of Hanumappa. It is also stated about the relationship of the plaintiffs with defendant No.1 to 6. They are family members. They are in joint possession and enjoyment of suit property. Suit property is the ancestral property. Revenue records were standing in the name of Doddavasanthappa. Thereafter, they were transferred in the name of Narasimhaiah. It is also stated that plaintiffs and defendant No.1 to 6 are jointly cultivating the suit property. It is also stated that defendant No.1 to 3 initially agreed to effect partition and later, they have denied. It is also stated that they have got partition in the year 2020 and 'A', 'B' and 'C' schedule are



allotted in the names of defendant No.1 to 3. It is also stated about Sale Deed executed by defendant No.1, 4 to 6 in favour of defendant No.7 in respect of portion of suit property without knowledge of the plaintiffs. All these aspects have to be proved by the plaintiffs. It requires trial. But at this time, only prima facie case is to be considered. On the other hand, defendant No.4 and 7 have contended that there is no relationship of the plaintiffs with the defendant No.1 to 6. Plaintiffs are strangers to the suit property and joint family. These aspects are also to be proved by the defendants. But at this stage, prima facie case is to be looked into. Plaintiffs have sought for the partition and sought for share in the suit property. They have also produced documents. Family Tree, Mutation Register, R.T.Cs, Sale Deed, Partition Deed. They are standing in the name of Chikkavasanthappa, Narasimhaiah, Doddavasanthappa. There was Partition in the year 2020. Sale Deed shows that defendant No.7 purchased the portion of suit property in the year 2020. Since relationship is denied and plaint averments are denied, it is the duty of the plaintiffs to show the same. Present application is filed by the plaintiffs stating that



defendant No.7 has tried to put up construction and changing the nature of suit property. Accordingly, plaintiffs have sought for the restraint order. Along with the application, Photographs and CD are produced. One Photograph shows that there is compound wall constructed in the property. Other 2 Photographs don't show any construction activities. They have also not produced Photographs to show that at the time of filing of suit, the suit property was vacant. Even otherwise, the produced Photographs don't show the construction activities as alleged in the application. Hence, I am of the opinion that the plaintiffs have not made out prima facie case. Objection is sustainable at this time. They have also stated that the defendants have trespassed into portion of suit property. To show the same, there are no prima facie materials on the record. Hence, on perusal of entire materials on the record, nature of the suit, facts and circumstances of the case, contentions of the defendants, I am of the opinion that there is no prima facie case in favour of the plaintiffs at this stage. Accordingly, 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 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 defendant No.7 more than the plaintiffs. I am also of the opinion that if the Temporary Injunction order is granted at this stage, defendant No.7 will be put to hardship and inconvenience will be caused to the defendant No.7. Therefore, I am of the opinion that his 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.

**8.** 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**”.

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

**ORDER**

I.A.No.3 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 **17<sup>th</sup>** day of **March, 2026**).

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