

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

PRESENT

**SRI. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)**

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

Dated this day of 09th March ,2023.

O.S.No.645/2021

Smt. Sarojamma & Others, : **Plaintiffs**

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

- V/s. -

Smt. Muniyamma & Others, : **Defendants**

(Def.1 to 3 - -----
(Def.4 & 5- By Sri. P.A.,
Advocates)
(Def.4 - By Sri. N.H.,
Advocates)

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ORDERS ON I.A.No.2 FILED U/o.39 RULE 1 & 2 OF
C.P.C.

The plaintiffs have filed I.A. No.2 U/o.39 Rule 1 & 2 of C.P.C, seeking to restrain the defendant No.4 and his agents or anybody acting under him from putting up of structure or building over suit properties till disposal of suit.

2. Facts of case are unfurled here under : It is pleaded by the plaintiff that, they themselves and defendants constitute Hindu undivided joint family being Lineal descendants of one Munivenkatappa. The said Munivenkatappa had died leaving behind widow Muniyamma, four daughters and three sons. They are the daughters of said Munivenkatappa. The defendants No.1 is the widow of said Munivenkatappa. The defendants No.2 and 3 are the daughters and son of deceased Narayanswamy (who is son of Munivenkatappa). The defendants No.4 and 5 are the sons of said Munivenkatappa. Therefore they themselves and defendants constitute Hindu undivided joint family and suit properties are joint family properties of themselves and defendants. According to them the said Munivenkatappa has held the suit properties during his life time. He died leaving behind themselves and defendants to succeed the said properties. Therefore they themselves and defendants succeeded the properties. The request made by them to effect partition and separate possession has been turn down by defendants. Hence they approached this court. The suit summons are yet serve on defendants No.1 to 3. The defendants

No.4 & 5 have appeared through their counsel. The defendant No.4 has filed written statement by denying the claim of over suit property. He has not taken any specific defense against the claim of plaintiff over suit property.

3. During pendency of suit, the plaintiffs have filed I.A. No.2 under order 39 Rule 1 & 2 of C.P.C seeking to restrain the defendant No.4 and his agents or any body acting under him from putting up of construction over suit properties. According to them the defendant No.4 without any exclusive right over suit item No.1 property is trying to construct house. Therefore he may be restrained from doing so. The defendant No.4 has filed objections to the said application by opposing the request of plaintiff. According to him the property mentioned in the application indicates property bearing Sy.No.130/2. According to him the said property did not belong to his family. He has further contended that, he has not constructed any building in the said property. Hence he seeks to reject the application. Heard counsel for plaintiff and defendants No.4 & 5 on the said application.

4. Having heard the counsel for plaintiff and defendants No.4 & 5 and having perused the material on record, the following points would arise for my consideration:

1. Whether the plaintiff made out prima faice case for issuance of injunction ?

2. Whether the plaintiffs prove that, the balance of convenience lies in their favour ?
3. Whether the plaintiffs prove that, if injunction is refused, they would be put to irreparable loss which cannot be compensated in terms of money ?
4. What order?

5. Having heard and having perused the material on record, my findings to above points is as under :

Point Nos.1 to 3 : **In the party Affirmative**

Point No.4 : **As per final Order
for the following :**

REASONS

6. Point Nos.1 to 3 : In order to avoid the repetition of fact, these points are taken together for common consideration. It is the assertion of plaintiffs that, they themselves and defendants constitute Hindu undivided joint family and suit properties are joint family properties of themselves and said defendants. According to them the original propositors Munivenkatappa died leaving behind themselves and defendants to succeed the properties. Accordingly they themselves and defendants succeeded the properties. The defendants failed to effect partition and separate possession of their share over suit properties. Hence they approached this court. The defendant No.4 has filed written

statement by opposing the suit claim of plaintiff. He has not taken any specific defense against the claim of plaintiff over suit properties. Admittedly the record of rights produced by the plaintiff indicates the name of original propositurs Munivenkatappa. The suit properties are very small bit of extent of agricultural properties. The photograph produced by the plaintiff indicates that, the defendant No.4 is erecting stone pillar shed over suit item No.1 property. He has already erected substantial sheet roof stone pillar shed over suit item No.1 property. Therefore to meet an ends of justice the defendant No.4 could be permitted to complete the said shed as indicated in the photograph over suit item No.1 property. The measurement of all the suit properties is very small. If the defendant No.4 has under taken the activity of construction in the form of permanent structure, it would create hurdle to the plaintiffs in getting fruits of decree if they succeeded in the suit. Therefore in order to avoid inconvenience to the parties and to avoid any untoward hardship to the parties the defendant No.4 could be directed to not make any further construction over suit properties in the form of permanent structure. Therefore I hold that, the plaintiffs have made out prima facie case for issuance of injunction against defendant No.4 to not make any further construction over suit properties in the nature of permanent structure. Therefore i hold above point in the partly Affirmative.

7. Point No.4 : In the light of aforesaid finding on the above said point, i proceed to pass the following :

ORDER

The I.A. filed by plaintiffs U/o. 39 Rule 1 & 2 of C.P.C. is hereby allowed and defendant No.4 is restrained by way of temporary injunction from putting up of any permanent structure over suit properties till disposal of suit.

However he is entitled to complete the shed already erected over suit item No.1 property as indicated in the photographs dated 04-03-2023. Therefore with this observation I.A. is disposed of and Issue summons to defendants No.1 to 3.

Call on : 02-06-2023.

(Dictated to the Stenographer, transcribed and computerized by her, same is corrected and then pronounced by me in the open court on this the 09th Day of March 2023).

**(SRI. PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**