

**IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
HOSAKOTE.**

PRESENT:

Sri. Arun Kumar.G. B.A., LL.B.
Senior Civil Judge & JMFC,
Hosakote.

Dated this the 25th day of March - 2024

O.S.No.1168/2022 (Old No.214/2020)

Plaintiff/s : Sri.Muniyappa & Ors.

- V/s -

Defendant/s : Sri.D.Muniraju & Ors.

i. Provision under which the application is filed.	U/o 39 Rule 1 and 2 R/w Section 151 of CPC.
ii. Relief sought for	Temporary injunction.
iii. The date in which the application is filed	04-03-2024
iv. Number of the application	IA No.3
v. The date on which the objections are filed by different opponents	06-03-2024
vi. The date on which the orders were passed on the said application.	25-03-2024

Orders on I.A.No.3

The defendant has filed the above application under Order 39 Rule 1 and 2 R/w Section 151 of CPC seeking an order of temporary injunction restraining the plaintiff No.1 from putting

up further construction towards the western side of item No.2 property till disposal of the suit.

2. In the annexed affidavit it is stated that, the plaintiffs have filed the above suit against the defendant for partition and separate possession with respect to suit schedule properties. The item No.1 and 2 properties are the joint family properties of the plaintiffs and the defendant and after the demise of their father, the katha of the suit schedule properties are standing in the name of the defendant and his mother. When such being the case, in the month of February, the plaintiff No.1 has illegally trying to construct the house over the western portion of the suit schedule item No.2 property by depriving the rights of other plaintiffs and the defendant. Hence, prays to allow the application.

3. Per contra, the plaintiff filed objections to the above application by denying the statement made by the defendant and further contended that he has constructed the house in the government karab land bearing Sy.No. 127 of Kambalipura Village, Sulibele Hobli, Hosakote Taluk and the said property

was not included in the plaint schedule property and the survey number is also different. Further, the said property is not the ancestral and joint family property. Hence, prays to reject the application.

4. Heard arguments. Perused the records.

5. Based upon the above contentions of the plaintiffs and defendants, following points arise for consideration:

1. Whether the defendant has made out prima facie case in his favour?
2. Whether the balance of convenience lies in his favour?
3. If temporary injunction is not granted who will suffer great hardship and injustice?
4. What order?

6. The court findings on the above points are as under:

Point No.1 to 3 : In the Affirmative,

Point No.4 : As per the final order
for the following;

REASONS

7. **Point No. 1 to 3:-** These points are inter-linked with each other. Therefore, in order to avoid the repetition of facts, they are taken together at one stretch for common discussion.

The above suit is filed by the plaintiffs against the defendant for the relief of partition and separate possession with respect to suit schedule properties. On service of suit summons, the defendant appeared through his counsel and filed written statement wherein he has taken a specific contention that the suit schedule item No.1 and 2 properties are belongs to joint family and suit item No.3 property is his self acquired property having purchased the same from his hard earned money.

8. When the case was posted for plaintiff evidence, the defendant has filed the above application seeking an ad interim order of temporary injunction against the plaintiff. In support of his claim, he has produced the copies of RTC and mutation extracts along with photographs. Further, the plaintiffs have also produced the RTC extracts, death certificate and genealogical tree.

9. On perusal of available records, it is an admitted fact that the suit item No.1 and 2 properties are the joint family properties belong to both parties. Whether the suit item No.3 is the self acquired property or not, it requires a full fledged trial. The plaintiff No.1 through his objections and arguments, taken a contention that he has constructed the building in Sy.No.127 which belongs to government gomala land and they are not constructing any building in the suit schedule property. But, in order to establish the same, they have not produced any documents.

10. It is the specific contention of the defendant that the plaintiff No.1 is constructing the building in a portion of suit item No.1 property. Whether the plaintiff has obtained any license from the concerned panchayath for construction of alleged building in Sy.No.127, he has not placed any material documents. As the suit is filed for partition, it is just and necessary to protect the property intact, otherwise it may difficult for the parties to get their share at the time of final decree proceedings. e,

11. On available records, the defendant has made out prima facie case and also the balance of convenience lies in his favour. If temporary injunction is not granted, the defendant may put to great loss and injustice and it may leads to multiplicity of proceedings between the parties. Hence, on the above said reasons I, answer point No. 1 to 3 in the “**Affirmative**”.

12. **Point No.4 :-** In view of the aforesaid findings on point No.1 to 3, I proceed to pass the following:

ORDER

I.A.No.3 filed by the defendant under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

The plaintiff No.1 is hereby restrained from putting up further construction over the western side of the suit schedule item No.2 property till disposal of the suit.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected by me and then pronounced in the open court on this the 25th day of March 2024.)

(Arun Kumar.G)
Senior Civil Judge & JMFC,
Hosakote.

Order pronounced in the open court vide separate :

ORDER

I.A.No.3 filed by the defendant under Order 39 Rule 1 and 2 R/w Section 151 of CPC is hereby allowed.

The plaintiff No.1 is hereby restrained from putting up further construction over the western side of the suit schedule item No.2 property till disposal of the suit.

No order as to costs.

Senior Civil Judge & JMFC,
Hosakote.

The counsel for the plaintiff filed
I.A.No.4 under Order 39 Rule 3 of
CPC along with photographss.

For objections to I.A.No.4,

Call on: 19-6-2024.

Senior Civil Judge & JMFC,
Hosakote.