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

**Present: Smt. Amrin Sultana. B.A.L, L.L.B.,**  
I Addl. Civil Judge & JMFC, Kadur.

**Dated:** This the 08<sup>th</sup> day of November 2024

**OS.No. 324/2024**

Sri. Ramaiah S/o Late. Yallappa,  
Aged about 69 years, Agriculturist,  
R/o Saraswathipuram, 4<sup>th</sup> Cross,  
Birur Pattana, Kadur Taluk,  
Chickmagalore district.

**PLAINTIFF**

**(Reptd. By Sri. Y.N.N. Advocate)**

**-versus-**

1. Smt. Anusuya W/o Late. Rangaswamy,  
Aged about 45 years, Agriculturist,
2. Sri. Hemanth S/o Late. Rangaswamy,  
Aged about 45 years, Agriculturist,
3. Smt. Maheshwari W/o Hemanthkumar,  
Aged about 30 years, Housewife,
4. Sri. Vinod S/o Late. Rangaswamy,  
Aged about 38 years, Agriculturist,

All are R/o 4<sup>th</sup> Cross, Saraswathipura Badavane,  
Birur Pattana, Kadur Taluk,  
Chikkamagalore District.

**DEFENDANT**

**(D.1 & 3 Reptd by Sri. Y.T.M. Advocate  
D-2 and 4 – Exparte)**

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**I.A.No.I**

Sri. Ramaiah

**Applicant**

Vs

Smt. Anusuya and Others

**Opponents**

1.	Provision under which the application is filed.	U/O 39 Rule 1 & 2 of CPC
2	Relief sought for	Ad-interim Temporary Injunction against defendants.
3	The date on which the application is filed	27.05.2024
4	Number of applications	I.A.No.I
5	The date on which the objections are filed by opponents	30.08.2024 filed by defendant.
6	The date of order	08.11.2024

**ORDERS ON IA-I**

IA No.I is filed by the Learned Counsel for the Plaintiff under Order 39 Rule 1 and 2 of Code of Civil Procedure seeking the relief of Temporary Injunction in favour of the Plaintiff and thereby restraining the Defendants their agents, servants or anybody acting on their behalf from putting up the Foundation towards eastern side of the suit schedule property and from interfering with the peaceful

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possession and enjoyment of the Plaintiff over the Plaint schedule property till the disposal of the suit.

2. The Plaintiff sworn to an affidavit in support of the application, wherein he has stated that, they have filed this suit seeking the relief of Permanent Injunction. Further stated that, the plaintiff is the absolute owner and in possession of Plaint schedule property bearing assement No. 1349X1308 property No.11-516-131 measuring East to West 7,6200015 X 15.240030. He had acquired the same by way of partition. The Defendants are illegally trying to lay foundation towards the Eastern side of the property. Against the same, the Plaintiff have approached the Jurisdictional Police. But the Police did not take any action. Hence, he approached this court by filling this suit along with the suit he maintained this application.

3. The Learned Counsel for the Defendants filed objections to IA No.1, wherein he has denied the contents of the affidavit sworn in support of the application as false, frivolous and vexatious one. It is stated that, the Defendants are the owner and in possession of the property bearing

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Assessment No. 1350/1309 bearing property ID No. 11-516-133 measuring east to west 7.620015 meter and North-South 15.240030 meter. The above property is described in the written statement and they have acquired the same by way of inheritance. Now, the Defendants are constructing the house by obtaining license from competent authority. It is stated that, the progenitor of the Defendants had purchased the item No.2 property from family of the plaintiff, but the Plaintiff got changed the khata on pwavthi ground. The Plaintiff have filed this suit only to garb the property of the Defendant and prayed to dismiss the I.A No.1 with cost.

4. Heard the Learned Counsels appearing for the parties and perused the materials on record.

5. The following points arise for consideration of this Court.

**Point No.1: Whether the Plaintiff have made out prima-facie case for grant of Temporary Injunction as sought for?**

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**Point No.2: Whether the balance of convenience lies in favour of the Plaintiff?**

**Point No.3: Whether the Plaintiff will be put to irreparable loss and hardship, if IA No.I is not allowed?**

**Point No.4 : What Order?**

6. The findings of this Court on the above said 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 the final order for the following:**

### **REASONS**

7. **Point No.1:** In light of arguments canvassed by the Learned Counsels for the parties, this Court has carefully perused the list of documents produced by the parties to the suit.

8. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it

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very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

9. The primary purpose for granting interim relief is the preservation of the things in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the

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suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

10. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

11. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

12. In order to ascertain the prima-facie case, this Court has carefully perused the materials on record. The case of the Plaintiff is that, the Defendants by encroaching the property of the trying to put up the construction. On

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the other hand, the case of the Defendant is that, the item No.2 property was purchased by the progenitor of the Defendant's family by name Chikkarangaih from the family of the plaintiff as per registered sale deed dated 23.04.1971 vide SR No. 240/1971-72 and the Defendants were in possession of the item No.2 of the written statement schedule property, the Item No.1 property belongs to the Defendants where in the Defendants proposed to construct the house. The Defendants by denying the title of the plaintiff over the plaint schedule property, has created a cloud over the plaint schedule property. When there is a cloud over the title of the property mere suit for bare injunction not suffice. The Hon'ble High Court of Karnataka in a decision reported in **1992 SCC online Kar 302 M/s. Patel Enterprise Vs M.P. Ahuja** has held that, the prima facie case includes nature and maintainability of the suit. The Documents produced by the Defendant indicate that, the progenitor of the Defendant's family by name Chikkarangaih from the family of the plaintiff has purchased the property as per registered sale deed dated

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23.04.1971 vide SR No. 240/1971-72, therefore, filling of the suit by the plaintiff for the relief of permanent injunction without declaration is not prima facie maintainable. Hence, this court answers **point No.1 in the Negative.**

**13. Points No.2 and 3 Balance of Convenience & Irreparable Loss and Injury:-** The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

14. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no

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other remedy open to him by which he can protect himself from the consequences of apprehended injury.

15. This Court has already opined that, the Plaintiff has not made out prima facie case and in these circumstances, this court is of the opinion that, if the present application is allowed more mischief and hardship will be cause to the Defendant when compared to the mischief and hardship will cause to the Plaintiff. The Plaintiff has not stated in what way he will put to irreparable loss and hardship if the present application is rejected. Further the if this Court granted injunction it will cause to lose the Defendants as the Defendants already demolished the house for the purpose of construction of new house. Hence this court is of the opinion that the balance of convenience does not lean in favour of the Plaintiff and if the present application is not allowed, the Plaintiff will not be put to any irreparable loss and hardship. With these observations, this Court answered **Points No.2 and 3 in the Negative.**

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16. **Point No.4:** For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

**ORDER**

**I.A.No.1 filed by the Learned Counsel for the Plaintiff under Order 39 Rule 1 and 2 of CPC is hereby rejected.**

**No order as to cost.**

*[Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this day of 08<sup>th</sup> day of November 2024]*

Sd/-  
**(AMRIN SULTANA)**  
**I Addl. Civil Judge & JMFC,**  
**Kadur.**

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