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**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND  
J.M.F.C., AT TARIKERE**

**Present:** Sri Shivakumar.R. B.A.L., LL.B.,  
Addl. Civil Judge & JMFC, Tarikere.

**Dated: 22<sup>nd</sup> Day of June 2023**

**ORIGINAL SUIT NO.56/2018**

**PLAINTIFF/s** :

K.V.Shanthakumar S/o late  
Venkataiahgowda, aged 62 years,  
Agriculturist, R/o Kenchikoppa Village,  
Halasuru Post, Lakkavalli Hobli, Tarikere  
Taluk, Chikkamagaluru District.

(Reptd. By : Sri M.L., Advocate.)

**Vs.**

**DEFENDANT/s:**

- 1) B.S.Devika W/o late K.V.Sridhar, aged 50 years, Agriculturist,
- 2) Prarthana W/o Naveen, D/o late K.V.Sridhar, aged 28 years, Housewife, R/o Vijayanagara, 8<sup>th</sup> Cross, Near Ganesh Bhavan and Sahyadri College, Shivamogga Town. Shivamogga District.
- 3) Pavan S/o late K.V.Sridhar, aged 26 years,  
D.1 and 3 are R/o Kenchikoppa Village,  
Halasuru Post, Lakkavalli Hobli,

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Tarikere Taluk, Chikkamagaluru  
District.

- 4) K.V.Veena D/o late Venkategowda @  
Venkataiahgowda, W/o Ravikumar.K.P.,  
aged 55 years, Household work, R/o  
Kumbaragodu, Mudigere Taluk.

(Reptd. By : Sri B.N.K., Advocate.)

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**PARTIES TO I.A.NO.VIII**

Applicant : K.V.Shanthakumar

Vs.

Opponent : B.S.Devika and others

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**ORDER ON I.A.NO.VIII**

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1, 2 and 7 r/w Section 151 of CPC for the relief of temporary injunction restraining the defendant No.1 and 3 from putting up any construction on the suit schedule property and also to maintain status quo till disposal of the suit.

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2. The I.A., is supported with the affidavit of the plaintiff. In the affidavit the plaintiff has stated that, he has filed this suit against the defendants for the relief of partition and separate possession of his half share in the suit schedule property by metes and bounds. It is further stated that the defendants No.1 and 3 dug the foundation in the suit schedule property to construct the house. When he questioned the same, the defendants No.1 and 3 have started to quarrel with him and brought men to dig the foundation. The defendants No.1 and 3 are powerful persons and taking law into their own hands committing illegal acts and it is very difficult to him to stop the construction in the suit schedule property by the defendants No.1 and 3 without the orders of this court. It is further submitted that if the I.A., is allowed, no hardship will be caused to the defendants as balance of convenience lies in his favour and he has got prima facie case

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and if the I.A., is not allowed, he will be put to untold hardship. Hence, this I.A.

3. The I.A., copy served to the other side. The defendant No.3 has filed the detailed statement of objections and resisted the I.A., filed by the plaintiff. The defendant No.1 has filed the memo adopting the statement of objections filed by the defendant No.3 to the present I.A., on behalf of her also. In the objections it is contended that the I.A., filed by the plaintiff is not maintainable either in law or on facts and the same is to be dismissed in limine. The plaintiff has sworn to a false affidavit. The suit schedule property measuring East-West 120 feet and North-South 50 feet situated at Kenchikoppa village, Lakkavalli Hobli, Tarikere Taluk is belongs to the grandfather of the defendant No.3. The plaintiff has given wrong measurement of Mangalore tiled house as 34 x 50 feet. In fact the Mangalore tiled house built by his

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grandfather to the extent of 50 feet and additionally 5 feet on North-South. The plaintiff is residing on the southern side of one portion of the house and the defendant No.3 and his mother are residing on the northern side of the same house. It is further contended that in fact during the lifetime of father of defendant No.3, he had constructed bathroom and toilet on the property in which he is residing. The defendant No.3 has demolished the old toilet and new toilet being constructed. The defendant No.1 who is the mother of defendant No.3 is suffering from spinal problem re-joint with other ailments and hence, the doctors have advised to use toilet in western commode. The defendants No.1 and 3 are constructing the toilet and bathroom in place of old bathroom and toilet and the plaintiff still has no absolute right over the suit schedule property and he has no right to seek temporary injunction on the entire suit schedule property shown in the application. The plaintiff knowingly about the ill-health of

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defendant No.1 and marriage of defendant No.3, with jealous nature in order to give problem and pricks to defendant No.1 and 3, filed this I.A.

4. It is further contended that about one year back, the plaintiff has renovated the house at the time of marriage of his son. The defendants No.1 and 3 did not object for the renovation of the house on the southern side of suit schedule property wherein the plaintiff is residing and hence, the present I.A., does not have any nature of prima facie case. It is further contended that the present suit is filed for partition and separate possession in respect of suit schedule property. Out of the earnings of the defendant No.3, he is spending the amount for construction of bathroom and toilet with new structure at his risk. Hence, in a suit for partition and separate possession, unless the plaintiff establishes his absolute right on the schedule property, the suit for bare

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injunction on the co-sharer is not maintainable and plaintiff has forgotten that the co-sharer has also got equal right over the suit schedule property. It is further contended that the plaintiff has no prima facie case and balance of convenience and if the I.A., is allowed, then more hardship and inconvenience will be caused to the defendants No.1 and 3. For all these grounds, the defendants No.1 and 3 pray for to reject the I.A., filed by the plaintiff with exemplary cost.

5. Heard arguments on both sides.

6. Upon hearing arguments and on perusal of materials placed on record, the following points that would arise for my consideration are as under:

- 1) Whether the plaintiff/applicant has made out a prima facie case?
- 2) Whether the balance of convenience lies in favour of the plaintiff/applicant?
- 3) Whether the plaintiff/applicant will be put to irreparable loss and injury, if the temporary

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injunction is not granted as prayed in the I.A.?

4) What order?

7. My answer 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 the Order,

for the following:

### **REASONS**

8. **POINT NO.1 TO 3** : As these points are interconnected and interlinked with each other, these points are taken up together for common discussion to avoid repetition of facts. The plaintiff has filed this suit against the defendants for the relief of partition and separate possession in respect of suit schedule property. I have already narrated in brief what is the case of the plaintiff and what is the case of the defendant is. It is the urge of the plaintiff that the

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defendants No.1 and 3 dug the foundation in the suit schedule property to construct a house, if the defendants No.1 and 3 have succeeded in their attempt, certainly the rights of the plaintiff over the suit schedule property will be deprived. Hence, it is just and necessary to issue temporary injunction restraining the defendants No.1 and 3 not to put up construction over the suit schedule property till disposal of the suit. In order substantiate his contention at this stage the plaintiff has produced the photographs.

9. On the other hand, the defendants No.1 and 3 have contended that the suit schedule property is belongs to the grandfather of the defendant No.3. The defendant No.1 who is the mother of defendant No.3 is suffering from spinal problem and re-joint with other ailments and hence, the doctor has advised her to use the western commode and hence, the defendants No.1 and 3 are constructing the toilet in the suit

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schedule property and further contended that the plaintiff has no manner of right to object the same.

10. At this stage, without going through the merits of the case and conducting mini trail, the court has considering the aspect of prima facie, at this stage this court makes very clear that this court is looking towards prima facie case and not for the prima facie title. In the instant I.A., the plaintiff has sought for the interim order to restrain the defendants No.1 and 3 from constructing the house in the suit schedule property till disposal of the suit. On perusal of the materials placed on record, admittedly the plaintiff has filed the present suit against the defendants for the relief of half share in the suit schedule property by metes and bounds. It is very pertinent to note that, the plaintiff in his pleadings specifically pleaded that the suit schedule property is the ancestral and joint family property of plaintiff and defendants

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and they are in joint possession of the same. When such being the case, it is well settled law that the possession of one co-sharer/co-owner is the possession of all co-sharer/co-owners. In a suit for partition, all the plaintiffs are defendants and all the defendants are plaintiffs, there is no discrimination in the rank of the parties. In the present case on hand, as per the plaintiff, the suit schedule property is the ancestral and joint family property of plaintiff and defendants and they are in joint possession of the same. Considering the pleadings of plaintiff, it shows that both plaintiff and defendants are in joint possession of the suit schedule property as a co-sharer/co-owner. It is well settled law that the injunctive relief cannot be granted against co-owner or co-sharer. If the plaintiff has succeeded in the above matter, certainly he will also get the share in the constructed area. Under these facts and circumstances, the I.A., filed by the plaintiff is devoid of merits.

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11. At this stage, the rights of the parties cannot be adjudicated. Looking into the pleadings and documents produced by the plaintiff and defendants, at this stage the plaintiff has not made out a prima facie case and also balance of convenience is not lies in favour of the plaintiff. If this application is allowed, the defendants will be put to great hardship and injury. On the other hand, if this application is not allowed, there is no hardship and injury will be caused to the plaintiff. For considering all these reasons, I answer Point No.1 to 3 in the Negative.

12. **POINT NO.4** : In the light of the above discussion on Point No.1 to 3, I proceed the following :

**ORDER**

I.A.No.VIII filed by the plaintiff/applicant under Order XXXIX Rule 1, 2 and 7 r/w Section of CPC is hereby rejected.

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No order as to cost.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court, on this the day of 22<sup>nd</sup> day of June 2023)

Sd/-  
**(SHIVAKUMAR.R)**  
**ADDL.CIVIL JUDGE &**  
**J.M.F.C., TARIKERE.**