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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.,
c/c Addl. Civil Judge & JMFC., Tarikere.

Dated: 26th Day of July 2024

ORIGINAL SUIT NO.240/2024

PLAINTIFF/s :

Lakshmana.H. S/o Hanumanthappa,
aged 38 years, Coolie, R/o Behind
S.J.M.College, Galihalli, Tarikere Town,
Tarikere Taluk.

(Reptd. By : Sri T.P., Advocate.)

Vs.

DEFENDANT/s:

- 1) Smt.Thimmamma W/o Hanumanthappa,
aged 60 years, Household Work,
- 2) Srinivasa S/o Hanumanthappa, aged 37
years. Coolie Work,

Both are R/o Behind S.J.M.College,
Galihalli, Tarikere Town, Tarikere Taluk.

(Reptd. By : Sri C.B.V., Advocate.)

PARTIES TO I.A.NO.I

Applicant : Lakshman.H.

Vs.

Opponent : Thimmamma and another

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

The applicant/plaintiff has filed this interlocutory application under Order XXXIX Rule 1 and 2 of CPC for the relief of temporary injunction restraining the defendants from putting up further construction over the suit schedule properties till disposal of this suit.

2. The I.A., is supported with the affidavit of the applicant/plaintiff. In the affidavit he has stated that, he has filed this suit against the defendants for the relief of injunction. The defendant No.1 is his mother and defendant No.2 is his brother. It is further stated that his father namely Hanumanthappa, said Hanumanthappa's 1st wife namely Gowramma and 2nd wife namely Thimmamma defendant No.1 herein, and other family members i.e., himself, defendant No.2, Narasimhamurthy.H., Jyothi, Nagaraja.T., Sannamma, Krishnamurthy.N., Netravathi.N. Parameshwarappa.G.N. and Devamma had partitioned their family properties through

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registered partition deed dated 30.11.2022. As per the said partition, the suit schedule properties were fallen to the joint share of plaintiff and defendants and thereafter, the plaintiff and defendants have sold some extent in the said properties. It is further stated that since the date of partition, the plaintiff and defendants are in joint possession and enjoyment of suit schedule property and the khata is also standing in their joint names and they are paying kadayam to the suit schedule properties. It is further stated that the plaintiff is having 1/3rd share in the suit schedule properties and the defendants have no absolute right, title, interest and possession over the suit schedule properties and there was no partition took place between the plaintiff and defendants in respect of suit schedule properties, but the defendants by including the plaintiff's share of property are trying to dig foundation in the middle of the suit schedule property and the plaintiff has restrained the said act of the defendants.

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3. It is further stated that when the plaintiff has gone to his relatives village on 26.06.2024, the defendants taking advantage of the same has dug the foundation in the middle of suit schedule properties and constructed 3 feet wall and the plaintiff after coming know about the said act of the defendants, he has restrained the same. Thereafter when he has gone to the Police Station to give complaint in respect of said act of the defendants, the police have orally informed the plaintiff that the complaint is of civil nature and to get the relief in the court. It is further stated that the defendants are economically and politically influential persons and he cannot restrain the defendants from constructing the building. If the temporary injunction is granted in favour of the plaintiff, no hardship and loss will cause to the defendants and on the other hand, if temporary injunction is not granted, the plaintiff will suffer irreparable loss and injury. Hence, this I.A.

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4. The I.A., copy served to the other side. The counsel for the defendants has filed detailed objections and resisted the I.A., filed by the plaintiff and inter alia contended that the I.A., filed by the plaintiff is not maintainable either in law or on facts and probabilities of the case due to lack of merits and bonafide and the same is liable to be rejected in limine and the present I.A., is filed only to harass the defendants and to get unjust and illegal order from this court with malafide intention. It is further contended that the plaintiff has not shown sufficient grounds to file the present I.A., and the plaintiff has filed false affidavit to grab the property of the defendants. It is further contended that before the partition, the defendant No.2 has paid all the kadayam in respect of suit schedule property and after partition, the defendant No.2 has put up construction on the suit schedule property by investing his own hard laboured money. The plaintiff has not made any attempts to stop construction while the defendant

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No.2 has put the foundation pit on the suit schedule property, but later on the evil advise of his supporters, he has filed the present suit in order to give trouble to the defendants. It is further contended that the defendant has made construction in the space allotted to him and the plaintiff has no right over the said property and the defendant has constructed his house in the suit schedule property by leaving all necessary space for light, air and road. The defendant has nowhere encroached the land of the plaintiff and the plaintiff having malafide intention and jealousy filed the present suit. Hence, it is prayed to dismiss the I.A., with 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:

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- 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 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 final 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 in order to avoid repetition of facts and findings. The plaintiff has filed this suit against the defendants for the relief of mandatory

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injunction directing the defendants to remove 3 feet wall constructed in the suit schedule properties or to remove the said construction through court commissioner at the cost of the defendants and also for the relief of permanent injunction restraining the defendants from making further construction in the suit schedule properties. It is the urge of the plaintiff that the plaintiff and defendants are in joint possession of the suit schedule properties having acquired the same by way of registered partition deed 30.11.2022. Accordingly the khata of the suit schedule properties is jointly standing in the names of plaintiff and defendants. The defendants alone have no manner of right, title, interest and possession over the suit schedule properties, and the defendant No.2 is constructing the building over the suit schedule properties in order to deprive the rights of the plaintiff.

9. In order to substantiate the case of the plaintiff, at this stage, he has produced on line copy of registered

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partition deed dated 30.11.2022, certified copies of assessment extracts, E-swattu extracts, tax paid receipts and photograph.

10. On the other hand, the defendants have contended that the plaintiff with an intention to grab the property of the defendants illegally filed this frivolous suit, the defendant No.2 further contended that he has made construction by investing huge money in the space allotted to the defendant No.2 and the plaintiff has no right over the said property. In order to substantiate the contention of the defendants, at this stage, they have not produced any iota of documents.

11. At this stage, without going through the merits of the case and conducting mini trial, 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. It is the contention of the plaintiff

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that the defendants have illegally constructing the house in the suit schedule properties in order to deprive the right of the plaintiff. In order to show the prima facie case, the plaintiff has produced the on line copy of the registered partition deed dated 30.11.2022, on perusal of the same, at this stage, it discloses that the 'C' schedule property of the said partition deed was jointly allotted to the share of the plaintiff and defendants herein. The plaintiff produced E-swattu extracts in respect of the suit schedule properties, on perusal of the same, at this stage it discloses that the khata of the suit schedule properties jointly standing in the names of the plaintiff and defendants. It is not the case of the plaintiff that, the plaintiff and defendants have partitioned the suit schedule properties and put separate possession of their legitimate share over the suit schedule properties. It is to be noted that, on perusal of the documents available on record, at this stage it appears that the khata of the suit schedule

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properties jointly standing in the names of plaintiff and defendants. It is well settled law that, the injunctive relief cannot be granted against the co-owners or co-sharers, the said proposition of law is aptly applicable to the present case on hand. At this stage, the rights of the parties cannot be adjudicated and it needs full fledged trial.

12. It is very significant to note that, even if the plaintiff succeeded in the above suit, the developments if any made by the defendants in the application schedule properties would also enure to the benefit of the plaintiff. Under these facts and circumstances and also on perusal of pleadings and documents adduced by the plaintiff, at this stage, the plaintiff has not made out prima facie case and balance of convenience is also not lies in favour of plaintiff. If this I.A., is allowed, the defendants will be put to great hardship and injury, on the other hand, if this I.A., is not allowed, there is

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no harm caused to the plaintiff. For considering all these reasons, I answer Point No.1 to 3 in the Negative.

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

ORDER

I.A.No.I filed by the plaintiff/applicant under Order XXXIX 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 by me and then pronounced in the open Court, on this the day of 26th day of July 2024)

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