

**ORDER ON IA NO.X FILED BY THE PLAINTIFFS UNDER ORDER
XXXIX RULE 1 AND 2 OF THE CODE OF CIVIL PROCEDURE**

The plaintiffs have filed present IA under Order XXXIX Rule 1 and 2 of Code of Civil Procedure seeking ad interim Order of Temporary Injunction restraining the defendant no.3 from carry out the further construction in suit 'B' schedule property pending disposal of the suit.

2. In support of the application the plaintiff no.1 has sworn to an affidavit and stated that originally the suit schedule property belonged to one Shivalingappa S/o Shantha Shivbasappadevaru. The said Shivalingappa had given the said land to the father of the plaintiffs by name Sri Rangaiah S/o Kyathaiah on lease basis. Thereafter the father of plaintiffs had given an application before the land tribunal in LRF No.24/1975-76 seeking occupancy rights in respect of the suit schedule properties. Thereafter on 09.07.1976 the land tribunal had passed an order conferring the occupancy right in respect of the suit schedule properties to the plaintiffs father Sri Rangaiah. As such he became absolute owner in possession of the suit schedule properties and accordingly the khata of the

suit schedule properties were changed in his name and he was in peaceful possession and enjoyment of the same by cultivating the same. Thereafter on 22.05.1995 he died leaving the plaintiffs as his legal heirs and accordingly the khata of the suit schedule properties were changed in the joint names of the plaintiffs vide MRH No. 61/2017-18. He further averred that 'B' schedule property comes within the suit 'A' schedule property. In the 'B' schedule property the defendants are running petty shops and since they failed to pay the rent regularly, the plaintiffs have filed the suit for evicting them from the suit 'B' schedule property. He further averred that except the above said limited rights the defendants have no manner of right, title or interest over the suit 'B' schedule property. However, now the defendant no.3 by removing the said petty shop has started to construct the permanent building for running milk dairy. In spite of repeated request made by the plaintiffs to the defendant no.3 not to put up any construction, he has not heeded to their request. Hence this application.

3. The affidavit shows that the defendant no.3 is trying to construct a permanent building in the suit 'B' schedule property. If such construction is made, it gives room for multiplicity of proceedings and in that event the plaintiffs will be put to irreparable loss. Further in spite of service of summons the defendant no.3 has not appeared before the court to rebut the case of the plaintiffs. Thus, there is no reason to disbelieve the averments made by the plaintiffs. For all these reasons it is clear that the plaintiffs have made out prima facie case for

trial. Keeping in view the fact and circumstances of case, at this stage this court is opinion that balance of convenience is in favour of preventing further construction in the suit 'B' schedule property in order to avoid multiplicity of proceedings. If Temporary Injunction is not granted, the plaintiffs would be put to irreparable loss. For all these reason it is fit case to exercise the discretion to grant Temporary Injunction in favour of the plaintiffs until further orders. In the result the following order:-

ORDER

As per IA No.X the defendant no.3 is hereby restrained by order of Temporary Injunction from carry out any further construction in the suit 'B' schedule property until further orders. For cross of PW1 by 18.12.2020.

Prl. Civil Judge & JMFC.,
Kollegala.

OK

O.S.No.220/2018

(Vide Separate Order pronounced in open Court)

ORDER

OK