

**IN THE COURT OF THE II ADDL CIVIL JUDGE &
JMFC, CHANNAGIRI.**

Dated: 04th Day of March 2025

PRESENT: **SMT. MAHALAKSHMI G M.A., L.L.B.,
II Addl Civil Judge & JMFC, Channagiri.
OS No.296-2022**

BETWEEN :

Halasidappa

...Plaintiff

AND

K. Anandappa and others

...Defendants

I.A. No. VII

BETWEEN :

K. Anandappa and others

...Applicants/Original defendants

AND

Halasidappa

...Opponent/Original Plaintiff

1.	Provision under which the application is filed:	:	U/o 39 rule 1 and 2 R/w Sec.151 of CPC.,
2.	Relief sought for	:	Interim Temporary injunction
3.	Date on which the application is filed	:	20.08.2024
4.	Number of the application	:	IA.No.VII

5.	Date on which the objections are filed by different opponents:	:	30.09.2024
6.	The date on which the orders is passed:		04-03-2025

Date:04-03-2025
Place: Channagiri.

(Smt.Mahalakshmi. G)
II Addl Civil Judge And Jmfc.,
Channagiri.

ORDER ON IA No.VII

When the case is posted for further cross of PW.1, the defendant No.1 has filed instant application U/o 39 rule 1 and 2 R/w Sec.151 of CPC., seeking temporary injunction against the plaintiff and the defendant No.5, their men, henchmen, coolies and other persons, retraining them from causing interference and obstruction the peaceful cultivation of the to suit schedule item No.1,4 to 12 i.e., application schedule properties.

2. Sum and Substance of the affidavit as under:

In support of the application the defendant No.1 sworn an affidavit and has stated that, he has filed the present affidavit on his behalf and on behalf of the defendant No.1,4,6 and 8 also. The present suit filed by the plaintiff against them and other defendants for the relief of partition and separate possession of the suit schedule properties as mentioned in the plaint schedule. When the case is posted for further cross examination of PW.1 the plaintiff and defendant No.5, on 08.08.2024 at about 3.00 p.m. have disturbed them while tilling work is in progress in the land bearing Sy,No.14/4P1 i.e., suit schedule item No.9. They

both did not let the defendant No.1 to do agricultural work in the alleged suit properties. Both the plaintiff and defendant No.5 have attacked on them with wooden clubs and that, they have threatened them with dire consequences if they stepped into the land in future. At the same time the defendant No.1 and his son and the defendant No.2,6 and 8 were present. After the said attack by the plaintiff they have approached Basavapatna police and lodged complaint. The plaintiff with an malafide intention has created ruckos and caused disturbance to them. It is very difficult for them to lead life in the village. The defendants are depending upon the agricultural activities for sustenance of their families. There is no other source of income for their livelihood. It is an illegal act being committed by the plaintiff with an intention to create disturbance and to evict their families from the village itself. If they not proceeded to agricultural work in the suit schedule property certainly their families will be on street. The illegal acts of the plaintiff shows his cruel intention. It is also asserted by the defendant No.1 that, since 5-6 years the plaintiff and defendant No.5 have not let them to cultivate the application schedule properties and has such they are facing difficulties to lead their life and to earn their livelihood. If the plaintiff and defendant No.5 continues their illegal acts the defendant No.2,4,6 and 8 will be deprived of their legitimate right to get any share in the suit schedule property i.e., item No.1 and 4 to 16 but they have got every right to get their legitimate share in the said properties. Since they are the ancestral properties. With a malafideness as also included the suit schedule item No.2 and 3 properties though he know the nature of said property which is

self acquired property of this defendant. Thus, prays to allow the application.

3. The defendant No.5 filed statement of objection and contended that the present application is not maintainable. The plaintiff has filed the present suit seeking the relief of partition and separate possession in and over the suit schedule properties which are belongs to ancestral and joint family properties of plaintiff and defendants. If this application is allowed then it will curtail the rights so other co owners. The defendant No.1 also filed permanent injunction suit before the Prl. Civil Judge and JMFC., Channagiri seeking the relief of permanent injunction with respect to application schedule properties vide No. OS No.151/2022. wherein the present plaintiff as arraigned as defendant No.1 and the present defendant No.3,5 and 7 also made parties to that suit. The defendant No.1 also approached the court with clean hands and suppressed material facts from the court with respect to application schedule properties. The application schedule properties are in the joint possession of the plaintiff and defendant No.3,5 and 7. The present application filed by the defendant no.1 to cause harassment to them and giving false information to the court. Thus, prays to reject the application. The present application schedule properties are purchased from the income generated from the joint family properties during life time of their father. Thus, the defendant No.1 with an intention to defraud the legitimate share of the plaintiff and defendant No.5 in the application schedule properties as filed the present application. Thus, prays to dismiss the application.

4. On the basis of rival contention this court formulated the following points for determination.

POINTS

1. Whether the defendant No.1 has made out prima facie case?
2. Whether the balance of convenience lies in favor of the defendant No.1?
3. Whether the defendant No.1 will be put to irreparable loss, if the order as prayed for is not granted ?
4. What order?

5. Heard the learned counsels appearing for the plaintiff and defendants. Perused the records and on perusal of the same, my findings to said points are as under;

POINTS

Point No.1 to 3 : In the Negative

Point No.4 : As per the final order

for the following.,

REASONS

6. Point No. 1: In order to establish the prima facie case, the defendant produced C/c of plaint filed in OS No.608/2015 and copy of sale deed pertaining to house property, the encumbrance certificate consisting for the year 01.04.2004 to 06.09.2018, tax paid receipts dated 17.08.2015 and the representation made by the plaintiff

to the President, Shivamogga Town Municipal Authority, Shivamogga to ascertain of the said property. One CD, 5 photos, acknowledgment given by the Basavapattna Police and copy of complainant given by the present defendant No.1 against the plaintiff dated 14.02.2024 and the acknowledgment issued by the Basavapattna Police to the complainant. Except these documents the defendants have not placed any other documents.

7. Having taken note of the pleadings and the records placed by the plaintiff and defendants, on record, this court observed that, it is the case of the plaintiff that, the suit schedule properties item No.1 to 16 are the ancestral and joint family properties of plaintiff and defendants. When the case is posted for further cross of PW.1 the defendant No.1 has come up with this application seeking temporary injunction against the defendant for causing interference for the peaceful possession and enjoyment and cultivation of the application schedule properties. It is specific assertion of the plaintiff that the application schedule properties are purchased from the income generated from the joint family property and the said properties are during the life time of their father. Such being the case, the defendant No.1 seeking restraint order against the plaintiff and defendant No.5 who are his co owners. Till the evidence of both side is not completed. As the question of restraining the plaintiff and defendant No.5 from interfering the application schedule properties does not arise at all. Since the trial is pending before this

court. The defendants are being the co-owners in respect of application schedule properties claiming relief against co owner is not maintainable in the present suit. Moreover, the defendant in his application stated that the plaintiff and defendant No.5 are not living them to cultivate the application schedule properties since from 5-7 years, then if so what prevented them to take appropriate legal action against the plaintiff and defendant No.5 is not explained by the defendant No.1 and there is no effective partition held between the plaintiff and defendants with respect to ancestral and joint family properties are concerned till date. Thus, the defendant No.1 has failed to prove the prima facie case in his favour.

8. It is well settled law that, one co-owner cannot get injunction against another co-owner from enjoying the property right. Thus, till the trial is not completed and the property rights are not divided as per their co-sharers. It is well settled law that Possession of one Co-Sharers is possession of all co-sharers. They can not claim injunction against Co-Sharers. Hence the present application filed by the defendant during the time of further cross of PW.1 is not maintainable. Hence, this court answered the **issue No.1 in the Negative.**

9. Point No.2 and 3: These two points are interconnected. As such are taken at once for discussion.

The existence of prima-facie case is fundamental for the grant of interim temporary injunction. The

defendant No.1 has to prove the said aspect at first by placing prima-facie materials too. The balance of convenience and irreparable injuries are always fall in line with prima-facie case. In the case on hand, the defendant No.1 has failed to prove the very existence of prima-facie case and therefore, balance of convenience, irreparable injury would also not in favour of defendant No.1. Thus, the **point no. 2 and 3 are held in the Negative.**

10. **Point No.4** : As a result, this court proceed to pass the following:

Order

**The IA No.VII filed U/o 39 Rule
1 and 2 R/w Sec.151 of CPC by the
defendant No.1 with respect to
application schedule properties is
hereby rejected.**

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and then pronounced by me in Open Court on this 04th day of March 2025)

**Date: 04-03-2025
Place: Channagiri.**

**(Smt.Mahalakshmi .G)
II Addl Civil Judge And Jmfc.
Channagiri.**

