

KADG320003242024



**IN THE COURT OF  
PRL. CIVIL JUDGE AND JMFC HARIHAR,  
AT HARIHAR**

**(Presided Over by SMT. JYOTI ASHOK PATTAR)**  
(B.E., LL.B.)

**O.S. No.28/2024**

Dated this the 17<sup>th</sup> day of March, 2026

Smt. Susheelamma

**....PLAINTIFF**

**Vs.**

Sharanappa S/o Late. Halappa

**.....DEFENDANT**

**PARTIES TO I.A.No.1**

Smt. Susheelamma

**....APPLICANT/  
PLAINTIFF**

**Vs.**

Sharanappa S/o Late. Halappa

**....OPPONENT/  
DEFENDANT**

i	Provision under which the application is filed	U/O. XXXIX Rule 1 and 2 R/w Sec.151 of CPC
ii	Relief sought for	T. I
iii	The date on which the application is filed	07.02.2024
iv	Number of the application	01
v	The date on which the objections are filed by the defendants opponents	20.11.2024
vi	The date on which the orders were passed on the said application.	17.03.2026

### **ORDER ON I.A.No.1**

The present application is filed by the plaintiff U/O. XXXIX Rule 1 and 2 R/w Sec.151 of CPC along with plaint, seeking an order of temporary injunction against the defendant, his agents, henchmen or anybody on their behalf from interfering with her peaceful possession and enjoyment of the suit schedule properties.

**2.** It is stated in the accompanying affidavit that suit schedule item No.1 property is her ancestral property and suit schedule item No.2 property is also ancestral property and the same belongs to her and her sisters. That the suit schedule properties were originally belongs to her grandfather by name Nandyappa and the suit schedule item No.1 was in dilapidation condition. The said house property fell down and the documents of the properties

were destroyed except the Will. Even though she had made efforts to obtain the documents of the suit schedule properties from the concerned authorities it went in vain. That due to the collapsation of house property she had started to reside in a rental house in the same village and by taking advantage of the same the defendant started to construct house property at the western side of the suit schedule item No.1 by encroaching its portion and thereby interfering in the plaintiffs possession of suit schedule property. Hence the present suit and application.

**3.** Per contra, the defendants filed objection stating to consider the written statement contents as part of the objection. Wherein the defendants denied the contents of plaint averments in toto and contended that one Halappa Hirebasur i.e., deceased defendant's father (grandfather of defendant No.1(c)) was the owner and possession of the black tiled house in K.S. No.414/4p measuring 24X50 feet situated at Bhanuvalli Gramapanchayath and the katha of the above said property was also standing in his name till his death. The said Halappa Hirebasur died long back, after the death of the Halappa Hirebasur his children i.e., 1) Hemappa 2) Rudrappa 3) Veerabhadrappa 4) Basavarajappa 5) Ramappa 6) Hanumanthappa and 7) Sharanappa (defendant No.1(c)'s father) got partitioned their ancestral and joint family property through " Jubani palu vibhaga" on 16.06.1992, in the presence of the

witnesses and elders of the village. In the said partition the deceased defendant has got half portion of the black tiled house in K.S. No.414/4p i.e., 12 feet X 50 feet. The katha and E- katha extract was also standing in the name of the deceased defendant. During the life time of deceased defendant demolished the dilapidated conditioned house and started construction of New house in K.S. No.414/4p by obtaining building license from the Bhanuvalli Gramapanchayath on 05.12.2023. Before obtaining the building license the deceased defendant measured his property and obtained Grama Thana Sketch from the Bhanuvalli Gramapanchayath. After obtaining the building license the deceased defendant started construction of RCC as per the rules and regulations of the Gramapanchayath and completed the construction of the RCC House on 15.05.2024. After completion of the house the defendant and his family members started living in newly constructed house till his death. The defendant died on 24.05.2024. After the death of defendant the defendant No.1(a) and (c) are in peaceful possession and enjoyment of house property in K.S.No.414/4p E property No.151200301300120791 without anybodies interruption till today. The deceased defendant never encroached the plaintiff's property as alleged in the plaint. On these grounds prays to reject the application.

**4.** Heard both side.

5. The following points arise for this Court determination;

- 1) Whether the plaintiff has made out prima-facie case?
- 2) Whether plaintiff has made out the balance of convenience in her favour?
- 3) Whether the plaintiff will be put to irreparable injury, if the temporary injunction as claimed by her is refused?
- 4) What Order?

6. This Court findings on 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**

7. Point No.1 to 3: In order to get the order of temporary injunction the plaintiff has to show that, prima facie case is in her favour and balance of convenience lies in her favour. Further she has to show that in case of temporary injunction order as sought by is not granted, she will be put to heavy and irreparable loss, which cannot be compensated in terms of money.

8. That in order to grant temporary injunction the Court has to consider the three cardinal principles. That is prima facie case, balance of convenience and irreparable loss.

The prima facie case means “evidence sufficient in law to raise a presumption of fact or establish the fact in question unless rebutted”. It means “on its face” or “at first glance”. The balance of convenience means whether the hardship or inconvenience of the plaintiff, if injunction is refused is greater than the hardship to the defendant if it is granted. The irreparable injuries means the applicant will suffer harm that cannot be adequately compensated by monetary damages if the injunction is denied.

**9.** Keeping the above cardinal principles in mind, this Court has gone through the materials placed on record. The specific case of the plaintiff is that she is in peaceful possession and enjoyment of suit schedule properties and the defendant is trying to construct house by encroaching suit schedule item No.1 property. In support of her case she has relied on the following documents i.e., certified copy of Will dated: 30.01.1980, typed Will, House panchayatha book, Endorsement, Photos, C.D., Aadhar card, Complaint and E- katha extract.

**10.** It is pertinent to note that, admittedly the plaintiff has no other documents except a Will dated: 30.01.1980 in support of her case and she herself stated in her plaint that the efforts made by her to obtain documents of the plaintiff schedule are in vain. The Will dated: 30.01.1980 reveals that the suit schedule properties are bequeathed

by the father of the plaintiff by name Gangappa to the plaintiff and her sisters by name Karibasamma, Lalithamma and Sowbhagyamma. But no measurement/extent has been mentioned in the said Will as well as in the plaint schedule. Moreover the said properties bequeathed to plaintiff and her sisters, but the plaintiff alone has come up with present suit. That the E-katha extract relied by the plaintiff reveals that at the eastern side of the defendants property the plaintiff and her sisters property is there. That means the defendant is an adjacent property owner. However there is no material on record to show the measurement/extent of the suit schedule properties. Under such circumstances it is heard to believe the story of the plaintiff and there arises cloud over the possession of the plaintiff over the suit schedule properties. Moreover admittedly the black tiled house of the plaintiff is collapsed, but the schedule is shown as black tiled house only. Thus the very description of the property itself is not believable. Therefore the plaintiff failed to establish prima facie case.

**11.** At this juncture, any opinion on merits of the case will prejudice the mind of the parties. Therefore, without going to the merits of the case. As stated above there is no material on record to show that the plaintiff is in the possession of the suit schedule properties. Hence, considering the materials placed on record, it can be said that, the plaintiff has not made out prima facie case.

**12.** That keeping open the contention of the both the parties for the trial. This Court opines that, the plaintiff has failed to establish prima facie case in her favour for the reasons stated supra. Hence the other two principles i.e. balance of convenience and irreparable loss does not taken for consideration. Hence the point No.1 to 3 are answered in the Negative.

**13.** Point No.4 : In view of the above discussion, this Court proceed to pass the following:

**ORDER**

I.A.No.1 filed by the plaintiff  
U/O XXXIX Rule 1 & 2 R/w Sec. 151 of  
CPC., is rejected.

No order as to costs.

(Dictated to the Stenographer directly on computer, typed by her, revised and corrected by me and then pronounced in the open Court on this the 17<sup>th</sup> day of March 2026)

**(Jyoti Ashok Pattar)**  
**Prl. Civil Judge & JMFC.,**  
**Harihar.**