

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &  
J.M.F.C., HUBBALLI

Present:  
Sri. RAGHAVENDRA.R.  
B.A.L, L.L.B.  
I Additional Senior Civil Judge and JMFC.,  
Hubballi.

**O.S. No.76/2024**

Dated this the 04<sup>th</sup> day of January, 2025

Plaintiff : Shreya D/o Shashidhargouda Patil and  
others.

.Vs.

Defendant : Channabasan Gouda S/o Siddangouda  
Patil and others.

**PARTIES TO I.A. NO.XVI**

Applicant/s : Shreya D/o Shashidhargouda Patil and  
others.

.Vs.

Opponent/s : Channabasan Gouda S/o Siddangouda  
Patil and others.

- i. Provision under which application is filed : Under Order 39 Rule 1 and 2 R/w Sec.151 of CPC.
- ii. Relief sought for : To restrain the defendants, their men, servants, or any persons claiming through be restrained from obstructing and interfering in the lawful and peaceful possession, wahivata and enjoyment of the suit schedule A property at Serial No.1 in

any manner pending disposal of this suit, in the interest of justice and equity.

- iii. The date on which : 10.12.2024  
application is filed
- iv. Number of the : XVI  
application
- v. The date on which : 13.12.2024  
objections are filed  
by different  
opponents
- vi. The date on which : 04.01.2025  
orders were passed  
on the said  
application

\*\*\*\*\*

### **ORDERS ON IA No.XVI**

**This order arises out of interlocutory application No.I filed by the applicants/plaintiff under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendants, their men, servants, or any persons claiming through be restrained from obstructing and interfering in the lawful and peaceful possession, wahivata and enjoyment of the suit schedule A property at Serial No.1 in any manner pending disposal of this suit, in the interest of justice and equity.**

2. The brief facts of the affidavit annexed to application is that, the plaintiffs have filed the suit for declaration, partition and separate possession of their legitimate share in the suit schedule properties against the defendants. The

plaintiffs have been in possession and enjoyment of the suit schedule A-property at serial No.1. The Court has been pleased to pass the order of Ad-interim temporary injunction against the defendants from alienating or transferring the suit schedule properties. That now the defendant No.1 being the head of the family, just with an intention to cause harassment and inconvenience to plaintiffs has got disconnected the electricity supply to the suit Schedule A property by colluding with HESCOM authorities from 06.12.2024 and since then the plaintiffs have been suffering every day without having electricity in the said building. The plaintiff No.1 to 3 are school going and they have put to every day hardship and inconvenience. That on account of the disconnection of the electricity to the said property, the plaintiffs have also not getting water supply to the said building. The defendant No.1 is causing such high handed and illegal act just because of taking revenge against plaintiffs. Hence, plaintiffs have filed this petition to restrain the defendant No.1 from causing obstruction over the Suit schedule serial No.1 property.

3. The defendants have resisted the application by filling counter to application. They have denied all allegation made in the affidavit annexed to application. They contended that, the suit schedule A-1 property consist of seven houses but he plaintiff have suppressed the said fact and have filed this application. That the plaintiffs are claiming the right over the suit properties and also they are

claiming that they are in joint possession of the suit properties. If it so the one co-owner is not entitle for any injunction against another owner. Hence, prayed to dismiss the application with costs.

4. I have heard the arguments canvassed by learned counsel for parties.

5. The following points are for my consideration.

- Point No.1: Whether the plaintiff have made out a prima facie case in their favour?
- Point No.2: Whether balance of convenience lies in favour of the plaintiff?
- Point No.3: Whether the plaintiff would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by him in interim application?
- Point No.4. What order?

6. My findings 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**

7. **Point No.1 to 3**: These points are interlinked each other, as such I considered these points together to avoid repetition of facts of the case and for common discussion. The plaintiffs have filed this suit for following reliefs:

a. A decree for partition and separate possession may kindly be drawn, directing the defendants to affect partition and give separate possession of the plaintiff's 1/5th share each i.e, 4/5<sup>th</sup> share jointly, in the suit property by declaring that the alleged Registered watni Patra dated 07.01.2022 under document No.10122, registered before Sub-registrar, Hubballi (North) is illegal and null and void and not binding upon the plaintiffs and their share in the suit schedule properties and it be declared that, the alleged sale deed dated 07.04.2022 subsequently registered infavour of the defendant No.17 in respect to R.S.No.5/1A+1B/2 property at Sl.No.2(i) of the schedule-B of the suit properties, is illegal and not binding upon the plaintiffs and their share in the suit property.

b. further it be declared that the alleged registered sale deeds in respect to Schedule B properties at Sl.No.1, on 14.07.2005, registered as document No.2412, in favour of defendant No.14 and the sale deed dated 03.07.2014 in respect to Sl.No.3 property in favour of the defendant No.15 registered under document No.3705 and sale deed dated 08.04.2004 in respect of Sl.No.5 property in favour of the defendant No.16 registered before Sub-register, Hubballi. Is illegal, null and void and not binding upon the plaintiffs and their share in the respect of the suit properties.

8. It is needless to say that, the defendant No.1 has not disputed the relationship of the plaintiffs with them. It is undisputed fact that, the Sessions Case has been registered against the husband of the plaintiff No.4 ended in a

conviction. The main contentions of the plaintiffs that, despite of several cases, the plaintiff No.4 has never thought to desert the company of the defendant No.8. The learned counsel for the defendant No.1 to 9, 11 to 13 have vehemently argued that the plaintiffs have filling one or other cases or complaint against them only to harass them and nothing more than. On perusal of the documents placed by the plaintiffs and these defendants are clearly demonstrated that, the parties have fighting for their best known reasons in various complaints and cases. It is pertinent note herein that, the plaintiff No.4 had deposed in the cross examination did by the counsel for the defendant No.8 in the Sessions Case No.38-2020 that, she was let one house for rent of Rs.6,000/- by obtaining the advance amount of Rs.30,000/-. She further deposed that remaining six houses were locked by the defendant No.8 or accused No.2. Apart from this, the plaintiff No.4 has pleaded in the written statement filed in OS No.39/2020 on the file of Hon'ble V Additional Civil Judge, Hubballi that, she is residing in one of the house in the suit schedule property along with her minor children and the said house is only shelter for her residence. The version of the plaintiff No.4 in the above referred criminal Case or Sessions Case and contentions raised in the written statement filed in OS No.39-2020, the plaintiff No.4 and her minor children are living in only one house. The Suit serial No.1 property consist more than one house. It is not the case of the plaintiffs that, they are in exclusive possession over the

entire suit serial No.1 property. The counsel for the plaintiff has highlighted the orders passed by the Assistant Commissioner in ASCA/DR/26/2021-2022. The petition filed by the defendant No.1 was dismissed by the concerned forum by holding the cases are pending for adjudication between the parties. It does not mean that, the plaintiffs are in exclusive possession over the entire Suit Serial No.1 property. It can be gathered from reading of the plaint that the plaintiffs have contending about joint possession over suit properties. If it so, the one co-owner is not entitle for any injunction against another owner.

9. It is well settled principle of Law that, the discretion of the Court is exercised to grant a temporary injunction only when the plaintiffs have made out existence of prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; when the need for protection of the defendant's right is compared with or weighed against the need for protection of the defendants rights, the balance of convenience tilting in favour of the plaintiffs and clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction order is not granted. The facility to Principles Governing Grant of Injunction is at the discretion from the Court. This foresight, however, should be exercised reasonably, judiciously as well as on sound lawful principles. Injunction must not be lightly granted mainly because it adversely affects the other side. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly

capacity to impose such terms and conditions as it perceives fit. It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his right in a suit or any other proceeding.

10. Therefore, the Court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunction restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further orders of the Court. At this point of time, I would like to place reliance on the decisions reported in (2010) 1 SCC 689 - Kashi Mata Samsthan and another V/s Shrimad Sudhindra Thirtha Swamy and another. In the Hon'ble Supreme Court held in para 16 that:

“It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience of irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his

favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.....”.

The ratio laid down in the above decision clarifies that the plaintiffs ought to made out prima facie case in order to obtain temporary injunction. The grant of injunction was in the nature connected with equitable relief, and the Court room has undoubtedly capacity to impose such terms and conditions as it perceives fit. As mentioned above, a full-fledged trial is needed to decide the parties' contentions. By considering all the materials on record it is appears to Court that, it is not necessary to issue prohibitory order against the defendant No.3 as prayed by the plaintiff in this application. If the injunction has been granted in favour of the plaintiffs, the plaintiff might be used the injunction order against the defendants as a sword rather than shield. In other words, the plaintiff has failed to establish the prima facie case and balance of convenience to get relief as prayed in the application. Hence, I answer **point No.1 to 3 in the Negative.**

11. **Point No.4:** As per following;

### **ORDER**

**Interlocutory Application No.XVI filed  
by the plaintiffs under Order XXXIX rules 1**

**and 2 of Code of Civil Procedure is hereby  
dismissed with costs.**

(Directly typed and computerized by me in laptop and corrected, signed and then pronounced by me in Open Court on this the **04<sup>th</sup> day of January, 2025**)

(Raghavendra. R)  
I Addl. Senior Civil Judge and JMFC.,  
Hubballi.