

**IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL
JUDGE, HUBBALLI.**

PRESENT

SRI. A.K.NAGARAJAPPA, *B.Com.,LL.B.*

I ADDL.SR.CIVIL JUDGE, HUBBALLI.

O.S.No.167/2015

Dated this the 27th day of August, 2018.

PLAINTIFFS : Smt.Anasuya K. Katti & others

(By Sri S.S.Khateeb, Adv.)

V/S

DEFENDANTS : Smt.Basavva S. Huttakkanavar &
others

(By Sri M.S.Banad, Adv.)

PARTIES TO IA No.VIII

APPLICANT : A.K.Katti & others

V/S

OPPONENTS : B.S.Huttakkanavar & others

ORDERS ON IA No.VIII

The plaintiffs have filed this application u/o 39 rule 1 and 2 r/w section 151 of CPC for seeking ad-interim temporary injunction against the defendant No.2 and his

wife and children not to continue illegal construction in property bearing block No.85B plot No.21 measuring 9.99.13.75 anne which is also suit property liable for partition in the suit pending disposal of the suit.

2. Further plaintiff No.1 also filed affidavit in support of this application deposing that the averments of plaint may be treated as part and parcel of the affidavit. They have filed suit for partition and separate possession. The Block No.85B plot No.21 measuring 9.99.13.75 anne is one of the suit properties liable for partition and this court passed an order of status-quo on 19-6-2015 against the plaintiffs and defendants 2, 3 and 7 relating to suit property, the same was extended from time to time up to 8-9-2015 and thereafter through oversight it could not be extended. Now, defendant No.2 and his wife and children are stealthily, illegally engaged in the construction of houses in plot No.21, suit for partition is pending for consideration. Without any rule of law are indulged in illegal construction work and thereby intended to change the existing condition of the suit plot by illegal construction as a consequences of which other parties/owners to the suit would be illegally ousted from the lawful joint possession of the suit plot leading to multiplicity of cases. The same cannot be let to continue any further. The illegal construction in progress only two days before and hence plaintiffs are having prima

facie case and balance of convenience lying in their favour. If TI is not granted the plaintiffs will be put to irreparable loss and injury etc., hence, they prayed to allow the application.

3. Against the IA defendants 2, 3 and 7 filed objection by denying IA affidavit averments specifically and also denied affidavit para-4 to 7. Further they have contended that the property involved in the IA is self acquired property of defendant No.7 and he is the absolute owner in exclusive possession of the suit property and therefore, plaintiffs have no right, title or interest over the same. Defendant No.7 has invested huge amount for construction and same is already in completion stage and therefore, if TI is granted defendant No.7 will be put to irreparable loss and injustice since there is a heavy rainfall. On the contrary no loss or prejudice will be caused to the plaintiffs. Hence, they prayed to reject the IA.

4. Heard the arguments and perused the materials placed on record.

5. The following points that would arise for my consideration:

- (1) Whether applicants/plaintiffs have made out a prima facie case?**
- (2) Whether balance of convenience lies in favour of applicants/plaintiffs?**
- (3) Whether applicants/plaintiffs proves that if TI is not granted he will be put to**

irreparable loss and injury than the defendants?

(4) What order or decree?

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:** Admittedly plaintiffs has filed this suit against the defendants for seeking partition and separate possession in the suit property including the subject matter of the above IA. Now, during the pendency of this suit, plaintiffs have filed this IA seeking ad-interim temporary injunction against the defendant No.2 and his wife and children not to continue illegal construction in property bearing block No.85B plot No.21 as prayed in the above IA. It is true the evidence of plaintiffs already commenced and it is the completion stage. Now, the contention of plaintiffs is that plot No.21 is also joint family property of plaintiffs and defendants, plaintiffs are also having share and if defendants illegally constructed building it amounts to change the nature of suit property and it amounts to ...oust or loose the joint possession and thereby they will be put to loss and injury etc.

8. On the contrary opponents/ defendant No.2 has taken contention that suit property involved in the IA is self acquired property of defendant No.7 and he is the absolute owner in exclusive possession of the said property, plaintiffs have no manner of right over the property etc.

9. It is true plaintiffs have produced some documents as per Ex.P-1 to 11. Out of them survival certificate, RTCs pertaining to suit property including block No.85B plot No.21 which is standing in the name of Mallappa s/o Basappa Katti who is defendant No.7 in the above suit on the basis of sale deed. When defendants 2 and 7 have taken contention that the above plot No.21 is self acquired property by virtue of the sale deed. Whereas plaintiffs have taken contention that the said suit property is also joint family property, under such circumstances whether the so called property is joint family property or self acquired property of defendant No.7 or not will be decided only after full pledged trial, but not at this stage. It is well settled principle of law that against the co-owner the relief of injunction cannot be granted. When plaintiffs are claiming that they are the co-owners of the suit property and now they are seeking injunction against the co-owner not to continue the construction cannot be granted at this stage because as per the photographs produced by plaintiffs themselves the construction of the house is already

completed up to RCC and defendant also produced number of photographs to show about the construction of house is already completion stage. Moreover, as per the contention of defendants that they have already stored the building materials by spending huge amount etc.

10. It is also submission of defendant counsel that if plaintiffs have proved that the said plot No.21 is also joint family property they are entitled share in the constructed house also but if TI is granted, due to grant of TI the construction of the building will be incompleted and consequently entire building material will be damaged and also chances of collapse the constructed house due to heavy rain unless it is completed etc. Since the said plot No.21 is standing in the name of defendant No.7 on the basis of sale deed it is very much necessary to decide only after full pledged trial whether plaintiffs are also having share in the said property or it is self acquired property of defendant No.7 or not. Now, the property standing in the name of defendant No.7. When plaintiffs are claiming that themselves and defendants are co-owners of property and against the co-owner injunction cannot be granted as discussed supra. Under such circumstances, unless and until plaintiffs have proved that the said property is also joint family property if TI is granted defendants will be put to irreparable loss and injury. Hence, I am of the considered

opinion that plaintiffs have not made out a prima facie case.

Hence, I answer point No.1 in the negative.

11. **Points 2 and 3:** Since both points are interconnected to each other and hence both points are taken up for answer together to avoid repetition of facts.

12. In view of the findings on point No.1 at this stage plaintiffs have not made out a prima facie case in view of the construction of building as it is already in completion stage. At this stage if TI is granted defendants will be put to irreparable loss and injury. If at all TI is granted the entire building material will be damaged and also chances of collapse of constructed house due to heavy rain unless it is completed. Suppose if plaintiffs have proved that the said property is also joint family property under such circumstances plaintiffs can entitled share in the constructed house as there is no bar as such. On the other hand, if TI is granted if the said house is collapsed due to heavy rain it amounts to curtail legal right of the defendants, the same cannot be compensated in terms of money. Whatever the construction of defendant amount to improvement of the suit property and he is not going to damage the existing the suit property. Under such circumstances the decision cited by defendants counsel reported in ***2012 (5) KCCR 3959 (Madhu Product v/s Sundaram Files and others); (2016) 1 Supreme Court Cases 743 (Pramila***

Sanfui and others v/s Bengal Ambuja Housing Development Limited); 2016 (2) KLJ 612 (Smt.Gangu @ Nirmal v/s Gogte Textiles Limited, Kakati); 2015 (4) KCCR 3811 (M.Krishnappa v/s K.T.Srinivas & others). When I gone through the said decision in detail though facts of the said decision and present case on hand different but the principle laid down in the above said decision are helpful to the case of defendants. In the result, I am of the considered opinion that plaintiffs have failed to show that balance of convenience lies in their favour and also failed to prove that they will be put to irreparable loss and injury if TI is not granted. ***Hence, I answer points 2 and 3 in the negative.***

13. **Point No.4:** For the foregoing reasons and discussions and considering the findings on the above points, the IA No.8 filed by the plaintiffs is liable to be dismissed without cost under the above circumstances. Hence, I proceed to pass the following:

ORDER

I.A.No.8 filed by the applicant/plaintiff u/o 39 rule 1 and 2 r/w section 151 of CPC is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected and then pronounced by me in the open court on this the 27th day of August-2018).

(A.K.Nagarajappa)
I Addl.Senior Civil Judge, Hubballi.
