

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.167/2015**

Dated this the 01<sup>st</sup> day of February, 2025

Plaintiff : Smt. Anasuya W/o Kallappa Katti and  
others.

.Vs.

Defendant : Smt. Basavva W/o Shivappa  
Huttakkanavar and others.

**PARTIES TO I.A. NO.XXI**

Applicant/s : Smt. Anasuya W/o Kallappa Katti.

.Vs.

Opponent/s : Smt. Basavva W/o Shivappa  
Huttakkanavar 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 not to construct any structure on suit property at Schedule C, Serial No.7, Block No.95/1B, plot No.110 measuring 01 guntas 01 Anna having Municipal Ward No.36T, PID No.36T/1313 situated at Tarihal Village, Hubballi Taluk in the interest of justice and equity.

- iii. The date on which : 15.01.2025  
application is filed
- iv. Number of the : XXI  
application
- v. The date on which : 23.01.2025  
objections are filed  
by different  
opponents
- vi. The date on which : 01.02.2025  
orders were passed  
on the said  
application

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### **ORDERS ON IA No.XXI**

This order arises out of interlocutory application No.XXI filed by the applicant/plaintiff No.1 under Order XXXIX Rule 1 and 2 of Civil Procedure Code to restrain the defendants not to construct any structure on suit property at Schedule C, Serial No.7, Block No.95/1B, plot No.110 measuring 01 guntas 01 Anna having Municipal Ward No.36T, PID No.36T/1313 situated at Tarihal Village, Hubballi Taluk in the interest of justice and equity.

2. The brief facts of the affidavit annexed to application is that, the plaintiff has filed this suit for partition and separate possession. Evidence on plaintiffs side is completed. Suit is now posted for defendant evidence. The defendants have clandestinely started construction on Schedule C, Serial No.7, Block No.95/1B, plot No.110 measuring 01 guntas 01 Anna having Municipal Ward No.36T, PID No.36T/1313 situated at Tarihal Village, Hubballi

Taluk. This property stands in the name of defendant No.8 but it is joint family property having joint shares of the plaintiff and defendants. All the defendants are hand-in-glove in undertaking construction to cause loss to plaintiffs. If the defendants are not restrained by suitable orders nature of the property will change, new grounds for the suit will arise and the plaintiffs would be put to more hardship. Hence, prayed to allow the application.

3. The defendants have resisted the application by filing detailed objections statement by contending that the application is false, frivolous, vexatious and same is neither tenable nor on the facts of the case. They denied the share of the plaintiff over the properties. The plaintiffs have suppressed the material facts that, they got constructed residential house in the suit schedule C item No.3 property by investing huge money wherein they are residing comfortably but this defendant No.9 has not suitable accommodation to live comfortably. Therefore, she is effecting construction in the same i.e., too her self acquired property wherein the plaintiffs have no right, title and interest in and over the same. That the plaintiffs have not approached the Court with clean hands and the case of the plaintiffs is tainted with malafides. Therefore, application is liable to be dismissed with cost Rs.10,000/- to meet the ends of justice and equity.

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

5. The following points are for my consideration.
- Point No.1: Whether the plaintiffs 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 plaintiffs would suffer irreparable loss and injury if the temporary injunction is not granted as prayed by her 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. It is true that the present suit is for partition and separate possession.

8. it can be seen from the affidavit of the plaintiff No.1 to annexed application that, Serial No.7, Block No.95/1B, plot No.110 measuring 01 guntas 01 Anna having Municipal Ward No.36T, PID No.36T/1313 situated at Tarihal Village, Hubballi Taluk is stands in the name of defendant No.8. The

counsel for the defendants have vehemently argued that defendant No.8 is constructing the house which exclusively belongs to them. A perusal of the cross examination of the PW.1, it pertinent to note herein that the plaintiffs have constructed the house during pendency of the suit over schedule C, Item No.3 property. The PW.1 has admitted the income of the defendant No.7 in the cross examination. It is main contention of the plaintiffs that though the suit item No.7 of Schedule C property stands in the name of the defendant No.8 but the property is joint family property. The evidence on behalf of plaintiff has completed and the case is listed for defendants side evidence. Either party ought to have prove their contention taken in their respective pleading by adducing cogent evidence. Under these circumstances, the evidence on defendants side is very much necessary to give specific finding on the rival controversies or contention of the parties. So, Heavy burden is on the both to prove their respective contentions. The photographs placed by the plaintiffs are clearly demonstrated that initial construction work was started. The defendants have not disputed the same in any where in the objections statement. Their contention is that the defendants have developing the property for their livelihood.

9. The plaintiffs have not disputed in their entire cross-examination regarding construction made in item No.3 of Schedule C property during the pendency of the suit. When the parties approach the Court with specific relief, she must

be in clean hands. It is no doubt that the defendants have intent to investing huge money to complete the building. If, during the course of the trial the plaintiffs able to establish that they have a share over the suit schedule properties and if the defendants have failed to prove their defense, in such circumstances the defendants ought to have complied with the orders of the Court.

10. 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.

11. At this point of time, I would like to place reliance on the decision 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 appears to Court that, it is not necessary to issue prohibitory order against the defendants 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 defendant 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.**

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

**ORDER**

**Interlocutory Application No.XXI 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 **01<sup>st</sup> day of February, 2025**)

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