

KAHS710020322014



**IN THE COURT OF THE CIVIL JUDGE AT
HOLENARSIPURA**

DATED THIS THE 31st DAY OF AUGUST 2023

PRESENT

**Sri. PRAVEEN R.J.S,
B.A.LL.B,
CIVIL JUDGE HOLENARASIPURA.**

ORIGINAL SUIT No.213/2014

Plaintiff/s: Kalaiah
S/o Late Doolaiiah @ Kodaiah,
aged 60 years,
Occ; Retired Govt. Employee
R/at Ankanahalli village,
Kasaba Hobli,
Holenarasipura Taluk.

[Represented by MES., Advocate]

-Vs-

Defendant/s 1.Swamy S/o Late Doolaiiah @ Kodaiah,
aged 58 years,

2. Devaraja
S/o Late Doolaiiah @ Kodaiah,
aged 55 years,

3. Kamalamma
W/o Devaraja @ Kodaiah
aged 40 years,

All are R/at Ankanahalli village,
Kasaba Hobli,
Holenarasipura Taluk.

(D1 to D3 Represented by HSA., Advocate.,)

ORDERS ON APPLICATION FILED BY THE PLAINTIFF
UNDER ORDER 39 RULE 1 AND 2 OF THE CODE OF CIVIL
PROCEDURE

The Plaintiff has filed the present application for an injunction to restrain the Defendants from putting up any shed, compound or a house and it is contended that the present suit is one for partition and that the suit properties are the joint family properties of which there has been no partition till date and while the trial is complete, despite the

Defendants having known of the Plaintiff's right are trying to put up a shed, compound or a house and if the same is allowed irreparable loss would be caused to him.

2. The Defendants have resisted the application of the Plaintiff contending that this application is but an attempt to protract the proceedings; that the Defendants are but only covering the plastic sheet over the property belonging to them to protect the same from rains and that this is not an overnight development but that the same has been the situation for the past 5 to 6 years; that the said property of the Defendants is situated a kilometer away from the village and since it would be difficult to travel to the said property every time they have adopted the method of covering a plastic sheet and that the Plaintiff has no right to question the same and that they are not putting up any compound as

alleged; that there is no joint possession of the suit properties as claimed by the Plaintiff and that the same belongs to the Defendants exclusively and the present application being an attempt to drag on the proceedings has to be rejected.

3. CONTENTION OF THE PARTIES;

Sri.MES learned Counsel for the Plaintiff would at the first instance contend that orders are required to be passed to protect the interests of the Plaintiff.

Sri.HSA learned Advocate for the Defendants would contend:

- a) that multiple reliefs cannot be claimed in a single application;*
- b) that there are no material particulars forthcoming in the affidavit;*
- c) that the land in question is governed by the provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act of 1978;*
- d) that the pillar threat that is now being complained of is existing from the past 5 to 6 years and that too the same is in the Defendants' property not over the Plaintiff's property;*

- e) that the application has been filed at the fag end of the suit and the same is only to drag on the proceedings and that even before the Hon'ble High Court they have filed a writ petition and that the present application is only to bide time till the petition before the Hon'ble High Court is disposed off;*
- f) that whatever pillars have been put up are for the convenience of the Defendants and not the Plaintiff;*
- g) that even at this stage it is the Defendants who have been harassed and in this regard a police complaint has also been lodged;*
- h) that the Plaintiff is not at all a son of Kodaiah;*
- i) that the application as has been filed is but a vague one*
- j) that no document has been produced to show the joint possession of the Plaintiff with the Defendants;*
- k) that the Plaintiff has no locus to file the present application;*
- l) that the Plaintiff has not shown any construction material said to have been put up by the Defendants.*

By way of reply Sri.MES would contend:

- a) that the suit property was not at all granted to Devaraju in the first place;*
- b) that the Court has to take note of the fact that the suit is one for the relief of partition;*
- c) that the contention of the Defendants is that the Plaintiff is not the son of Kodaiah and that the same is on the basis of a*

mistake that had crept in the plaint at the time of filing and as against the same a writ petition is pending before the Hon'ble High Court;

d) that all the construction activities have commenced one week prior to the filing of the present application;

e) that the Defendants have misconstrued the prayer of the Plaintiff in that what the Plaintiff has actually sought is an injunction in respect of “any structure”.

4. Having heard the learned counsel for the parties, perused the record the points that arise for my consideration are as follows:-

POINTS

- 1. Whether the Plaintiff has made out a prima-facie case for grant of temporary injunction?***
- 2. Whether the balance of inconvenience is in favor of the Plaintiff?***
- 3. Whether the Plaintiff would suffer irreparable loss or injury if the prayer for injunction is not granted?***
- 4. What order?***

5. My answer to the above points is as follows:-

POINT No.1 :- In the Negative

POINT No.2 :- Does not survive of consideration

POINT No.3 :- Does not survive of consideration

POINT No.4 :- As per my final order for the following :-

REASONS

6. **POINT NO.1 TO 4:** The provision of Order 39 of the Code reads as under:

Cases in which temporary injunction may be granted: Where in any suit it is proved by affidavit or otherwise:-

(a) that any property in dispute in a suit in danger of being wasted, damaged or alienated by any party to the suit, wrongfully sold in execution of a decree, or

(b) that the defendant threatens – or intends to remove or dispose of his property with a view to his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit]

the Court may be order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

Though no specific juncture for filing an application under the said provision is stipulated, it is understood that the application for injunction is one to secure the suit property *till such time the rights of the parties are adjudicated.* This is so because trial may generally entail a long period of

time and if in the interregnum parties are permitted to waste away the suit property the damage that could be caused would be irreversible. Bearing the said principle in mind and advertent to the facts of the present case it is to be seen that the suit is one for partition. The Plaintiff claims to be in joint possession of the suit property. In a suit for partition possession of one is possession of all. Under such a circumstance the question as to how the Plaintiff can seek an injunction against his co-owner is unanswered. Further even if any construction is put up to the detriment of the Plaintiff it is always open to him to seek for proper accounts in the event he succeeds in the suit. In fact the specific case of the Defendants is that they are protecting the property by covering a plastic sheet. That would in fact mean that any injunction would deter the Defendants from protecting the

properties, which would go against the very wordings of Order 39 Rule 1 and 2 of the Code

7. The trial in the present suit is complete and at this stage parties quarreling over an interim prayer rather than proceeding towards the final adjudication would only be counter productive. Interim Orders are always subject to and would merge with the final adjudication and they cannot take precedence over the main merits of the case. Further there is no material forthcoming in the affidavit or otherwise to either indicate the stage of the construction or as to whether the said construction is in any manner detrimental to the Plaintiff's interests over the suit properties. Given the stage at which the application has been filed and for the aforesaid circumstances it cannot be said that the Plaintiff

has made out a prima facie case for grant of injunction and once that is the case, the question of this Court having to advert to the other aspects would not arise which is what has been held by the Hon'ble High Court in the case of ***Gowrishankara Swamigalu v. Sri Siddhaganga Mutt***, reported in ILR 1989 KAR 1701 wherein it has been held as under

25. I need hardly add the existence of a prima facie case in these matters of granting injunction is really the harbinger or the all clear sign to go ahead in investigating other aspects of the question governing the grant or refusal of injunction. If there was no prima facie case at all or the case put forward was so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since

the Plaintiff would fall at the very first stile itself. But if there was a prima facie case then other considerations governing the grant of injunction would come into play and will also have to be evaluated before granting or refusing the injunction

Therefore for the aforesaid reasons I pass the following:

ORDER

Application filed by the Plaintiff under Order XXXIX Rule 1 and 2 is dismissed. Call on 20.09.2023 for arguments.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this **the 31st day of August 2023**)

**(PRAVEEN.R.J.S)
CIVIL JUDGE., HOLENARSIPURA.**