



**IN THE COURT OF ADDL SENIOR CIVIL JUDGE AND JMFC,
HAVERI**

:: PRESENT ::

SRI BALMUKUND R.MUTALIKDESAI

B.A., L.L.B(Spl).,

ADDL SENIOR CIVIL JUDGE AND JMFC,Haveri

Dated this the 4th day of January-2024

ORIGINAL SUIT NO.107/2021

PLAINTIFF/S: Umesh Pujar S/o Nagappa Pujar,
Age: about 56 Years, Occ:Agriculturist,
Permanent resident of Galaganath-Village,
Haveri Tq, Haveri-District, presently
Residing at Near MK Building,
Basavarajpete, Davanagere,
Davanagere-Dist.

V/s

DEFENDANT/S: Nagappa Pujar S/o Late.Karilingappa Pujar,
Age:78 years, Occ: Hindu, Agriculture,
R/o: Galaganatha-Village, Haveri-Tq.
Haveri-District and others.

PARTIES IN IA NO. VIII

APPLICANTS: Umesh Pujar S/o Nagappa Pujar.
(Plaintiffs)

(By Sri. K.B. Gangadhar Naik., Advocate)

V/s

OPPONENTS: Nagappa Pujar S/o Late.Karilingappa Pujar,
(Defendants) and others.

(D1 to 3 By Sri. S.S.K.,Adv.)

(D4 By Sri.M.A.S., Adv.)



ORDERS ON IA No.VIII

The plaintiff filed present suit for partition and separate possession. Now plaintiff has moved this application to stop the construction of houses in schedule B properties in item No.4 bearing VPC No.19/1 and 19/2 till disposal of the suit.

2. Counsel for defendant No.1 to 3 filed their objections stating that, present application is not maintainable. The plaintiff has not proved prima facie case. Hence he prayed to reject the application.

3. Heard on IA No.8.

4. Now points that would arise for my consideration are:

POINTS

Point No.1: Whether the plaintiff proves that he has a prima facie case?

Point No.2: Whether the plaintiff proves that balance of convenience lies in his favour?

Point No.3: Whether the plaintiff proves that if the application is not allowed he will be put to irreparable loss?

Point No.4: What Order?



5. On perusal of materials placed on record and in the light of arguments advanced, my findings on the above points are as under:

Point No.1 to 3 : In the **Negative**

Point No.4 : As per the final order for the following:

REASONS

6. **Point No.1:** The plaintiff filed the present suit for the relief of partition and separate possession in respect of suit properties claiming his 1/4th share.

7. The plaintiff in his plaint averred that defendant No.1 is the propositus of the family and plaintiff and defendant No.2 and 3 are the sons of defendant No.1. The plaintiff along with defendant No.1 to 3 constitute joint Hindu family.

8. Further plaintiff averred that, defendant No.1 succeeded to the suit properties under the partition among his brothers and sisters. The suit properties are standing in the name of defendant No.1. Now, plaintiff sought for his share and defendant No.1 denied the same. Hence the present suit.



9. In this case issues have been framed and now plaintiff filed this application restraining the construction of houses in VPC No.19/1 and 19/2. The plaintiff to get interim relief firstly he has to prove prima facie case.

10. The plaintiff in his application not specifically mentioned against which particular defendant he sought interim relief. But, in the affidavit annexed to the IA No.8, the plaintiff at para No.7 of the affidavit sought interim injunction against defendant No.5 and 6. When plaintiff has taken up a contention stating that, construction work is going on in suit property the burden is on him to show that the construction work is going on. But, unfortunately the plaintiff has not produced any documents in support of his contention. Moreover, the present suit is filed for relief of partition and separate possession. So, at this juncture without completion of evidence court cannot decide the right of plaintiff.

11. Hence for all these reasons I am of the view that at this juncture plaintiff failed to prove prima facie case. Hence, I answer **Point No.1 in the Negative.**



12. Point No.2 and 3: As both the points are interlinked I will take up both the points together for common discussion.

13. As discussed in point No.1 the plaintiff failed to prove prima facie case. So, when plaintiff failed to prove prima-facie case then the question of irreparable loss and balance of convenience does not arise. Further my this view is supported by decision reported in ***ILR 1989 Karnataka 1701 between "GOWRISHANKAR SWAMIGALU V/s SIDDAGANGA MATH"*** wherein it is held that:

"CIVIL PROCEDURE CODE, 1908 (Central Act No. 5 of 1908) — Order 39 Rules 1 & 2 — Grant of ad-interim injunction — Principles applicable — Existence of prima facie case is harbinger to investigate other aspects — If no prima facie case, balance of convenience, irreparable loss etc. need no consideration — Existence of prima facie case does not permit leap-frogging by plaintiff to injunction directly without evaluation of other considerations unmindful of other consequences — Even if unbeatable prima facie case exists injunction not to be granted, if consequences of grant, detrimental in nature".

Hence, in the light of above referred decision I answer **point No.2 and 3 in the Negative.**



14. Point No.4: For the discussions made in above points, I proceed to pass the following:

ORDER

IA No. 8 filed by the plaintiff
U/order 39 Rule 1 and 2 R/w Sec. 151 of
CPC is hereby **dismissed**.

No order as to costs.

(Dictated to the stenographer, transcribed and typed by her, and then corrected, signed and pronounced by me in the Open Court, on this **4th day of January 2024.**)

(Sri.B.R.MutalikDesai)
Addl. Senior Civil Judge and JMFC,
Haveri.