

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C AT BYADGI**

Present: Smt.Rajeshwari.J.Puranik, B.A. L.L.B.(Spl.),
Senior Civil Judge & JMFC., Byadgi.

**Dated :- This the 7th day of April-2026
O.S.No.172/2022**

PLAINTIFFS:-

Smt.Lata W/o Irappa Sankannanavar
Age: 48 Years, Occ: Household work,
R/o Neharu Nagar, Byadgi, Tq: Byadgi,
Dist: Haveri. And others.

(By Sri.G.S.H., Advocate)

V/S

DEFENDANTS:-

1. Smt.Neelamma W/o Manjunath Kulihalli
Age: 59 years, Occ: Household work,
R/o Bennihalli, Tq: Harapanahalli, Dist:
Vijaynagar. And others.

(Deft.No.1 to 11, 13 by Sri.F.M.M., Adv.)
(P.Deft.No.14 by Sri.C.H.G., Adv.)
(Deft.No.12 Exparte)

INTERLOCUTORY APPLICATION No.IX

APPLICANT:
(Pltff.)

Smt.Lata W/o Irappa Sankannanavar.
And others.

V/S

RESPONDENT/S: 1. Smt.Neelamma W/o Manjunath Kulihalli.
(Dfts.) And others.

ORDERS ON I.A.No.IX

This is an application filed by the plaintiffs U/Order 39
Rule 1 & 2 R/w Sec.151 of CPC against the defendants

restraining them from changing the nature or any kind of change in the suit property in any manner.

2. It is contended in the annexed affidavit of IA No.I that, this suit is filed for partition and separate possession claiming 1/5th share in suit schedule properties. Suit schedule B & C properties are joint family properties and no partition is effected till today. But recently defendant No.10 to 12 & 14 were trying to make changes in the suit properties, if defendant No.10 to 12 & 14 make changes in the suit properties, then it would lead to multiplicity of proceedings and it would cause hindrance in partition and division of suit properties. It is contended that, the plaintiffs have got prima-facie case, balance of convenience in their favour, if temporary injunction is not granted great hardship would be caused to plaintiffs and prayed to allow the application.

3. The defendant No.14 filed objections to this application and contended that, the application filed by the plaintiffs is not maintainable. The plaintiffs have not mentioned regarding which property the defendants were trying make changes in the suit properties. It is contended that, already partition has taken place between the plaintiffs and defendants and the suit was decreed and final decree was also drawn. So the present application is not maintainable. Photographs produced by the plaintiffs is not annexed with certificate 65B of Evidence Act. The defendant No.14 is no way concerned to suit and suit property and the defendant

No.14 is not necessary party to the suit. So prays to dismiss the application.

4. The defendant No.9 & 10 filed separate objections to this objections, interalia contended that, the application filed by the plaintiffs is not maintainable. The defendant No.8 died two years back and plaintiffs had not brought the LRs of defendant No.8 on record. Hence, the present application is not maintainable. About 30 years back the sons of propositus by name. Basavanneppa, Veerabhadrappa, Channabasappa and Mallikarjunappa got partitioned the suit schedule B & C properties. Accordingly ಸ No.6350 was certified and after the partition all the sons had been enjoying the suit schedule properties respectively as per their share. Further the son of Veerabhadrappa by name Gangadhar. His wife filed OS 107/1999 on the file of Senior Civil Judge, Ranebennur and said suit was decreed. FDP No.13/2006 is also decreed. But the plaintiffs or defendants had not challenged the said decree till today and said apsata vatni was not challenged. Hence, same is binding upon the plaintiffs.

5. It is contended that, the plaintiffs have not mentioned in which property defendants were trying to make changes. The plaintiffs have not mentioned the property number for which the defendants were trying to make changes. The plaintiffs have no share in the suit schedule properties. The plaintiffs had not included the properties allotted to the Channabasappa in the partition with his brother. Without including those properties the plaintiffs

have included only the properties allotted to the share of defendants and filed false suit.

6. The father of these defendants during his life-time who was working in Syndicate Bank obtained loan and constructed his own house towards Western side of RS. No.306 by putting compound and he had been enjoying along with his family. The question of restraining the defendants from making any changes in respect of all the properties allotted to their share does not arise. The plaintiffs have no prima-facie case, balance of convenience is also not in favour of plaintiffs.

7. It is contended that, the father of defendants filed OS No.76/2004 against the father of plaintiffs by name Channabasappa and which was decreed and unauthorizedly constructed toilet was removed. Hence, to harass the defendants the present suit is filed by the plaintiffs. The photographs produced by newly constructed house of defendants does not disclose change of property and prays to dismiss the IA with cost.

8. Heard the arguments of both side on IA No.IX and perused the material available on record.

9. Now in deciding this application, the following points would arise for my consideration:

POINTS

- 1) Whether the plaintiffs have made out prima facie case?

2) Whether balance of convenience lies in favour of plaintiffs?

3) Whether the plaintiffs would suffer from irreparable injury if the temporary injunction is not granted?

4) What order?

10. My answer to the above points are as follows:-

Point No.1 : In Negative

Point No.2 : In Negative

Point No.3 : In Negative

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

REASONS

11. Point No: 1 to 3:- These points are interlinked with each other, hence to avoid repetition of facts these points are discussed together.

12. The present suit is filed by the plaintiffs against the defendants for partition and separate possession of suit properties.

13. It is contended by the plaintiffs in IA No.9 that, the defendant No.10, 12 & 14 were trying to change the suit property and defendants are to be restrained from changing the suit properties. The prayer sought by the plaintiffs under IA No.9 is ambiguous and vague. The relief sought for is that, defendants are to be restrained from changing the nature of suit property and changing the suit property. There is no specific and certain prayer where the defendants are trying to change the nature of suit property or trying to make changes in the Khata. The photographs produced by the plaintiffs

discloses the collection of construction material stone, sand and iron rod, these photographs will not show that, the construction is going on in suit property, if so in which Survey number or CTS number. The prayer sought by the plaintiffs under this application cannot be granted. The plaintiffs have not mentioned what kind of change the defendants were trying to carry forward or put-forth.

14. There are 17 schedule properties in schedule B, but plaintiffs had not specifically mentioned in which property the defendants were making any kind of change. Therefore, the application and prayer sought for is ambiguous. When the plaintiffs are not sure about their case, then discretionary relief of temporary injunction cannot be granted. The plaintiffs has to establish that, they have got prima-facie case and balance of convenience in their favour. When the plaintiffs have no prima-facie case, then question of balance of convenience and hardship would arise for consideration. Hence, **Point No.1 to 3 are answered in Negative.**

15. Point No.4:- For the reasons stated while discussing Point No.1 to 3, I proceed to pass the following;

ORDER

I.A.No.IX filed by the plaintiffs
U/Order 39 Rule 1 & 2 R/w Sec.151 of CPC
is hereby dismissed with Rs.500/- cost.

(Dictated to the Stenographer, typed by him and corrected by me, signed and then pronounced by me in the Open Court on this 7th day of April-2026).

(Rajeshwari.J.Puranik)
Senior Civil Judge & J.M.F.C.,
Byadagi.