

**IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HANGAL**

**PRESENT: Smt.Aishwarya Chidanand Pattanshetti, B.COM, LL.M.,
Civil Judge & J.M.F.C., Hangal.**

O.S.No.143 of 2024

DATED THIS THE 9th DAY OF FEBRUARY 2026

Plaintiffs : Sri.Puttappa S/o Hanumanthappa Karabulli
Age: 69 years, Occ: Agriculturist
R/o: Makaravalli, Tq:Hangal, Dist: Haveri
and 2 others.

(By Sri.B.S.Kulkarni – Adv.)

V/s.

Defendants : Sri.Nagendra S/o Sanna Fakkirappa Karabulli
Age: 46 years, Occ: Agriculturist
R/o: Makaravalli, Tq:Hangal, Dist: Haveri
and 4 others.

(Def.No.1,2,6 By Sri.B.S.Akkivalli – Adv.)

(Def.No.3 By Sri.N.H.Koppad – Adv.)

(Def.No.4 & 5 AGP)

PARTIES TO I.A.No.II

Applicant/

Plaintiff: 3. Sri.Prakash S/o Hanumanthappa
Karabulli and 2 others

- V/s -

Opponents/

Defendants: Sri.Nagendra S/o Sanna Fakkirappa
Karabulli and 4 others

PARTIES TO I.A. No.V**Applicant/**

Defendants: 1.Sri. Nagendra S/o Sanna Fakkirappa
Karabulli and another

- V/s -

Opponents/

Plaintiffs: Sri.Puttappa S/o Hanumanthappa Karabulli
and 2 others

I	Provision under which the application is filed	I.A.No.II -U/O.39 Rule 1 & 2 R/w Sec.151 of C.P.C., I.A.No.V -U/O.39 Rule 4 of C.P.C.,
II	Relief sought for	I.A.No.II - Temporary injunction I.A.No.V -To vacate Temporary injunction
III	Date on which the application is filed	I.A.No.II – 25-04-2024 i.e., Along with institution of suit I.A.No.V- 23-07-2024
IV	Number of application	I.A.No.II and V
V	The date of which objections filed by the different opponents	I.A.No.II - 24-04-2024 I.A.No.V- 13-09-2024
VI	Date on which the order was passed on said application	09-02-2026

(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.

COMMON ORDERS ON I.A.No.II AND I.A.No.V

The applicant/plaintiff No.3 has filed I.A.No.II U/O 39 Rule 1 & 2 R/w Sec.151 of C.P.C., by seeking an order of Temporary Injunction against the defendant No.1 to 3 restraining the defendant No.1 and 2 from starting a petrol pump in the suit schedule property till the disposal of the suit by way of ad-interim temporary injunction in the ends of justice and equity. On the other hand, the defendant No.1 and 2 have filed I.A.No.V U/O 39 Rule 4 of C.P.C., to vacate the temporary injunction granted in I.A.No.I in the interest of justice and equity.

2. In the affidavit annexed to the application, the applicant/plaintiff No.3 by reiterating facts asserted in the plaint has deposed that, the suit schedule property in R.Sy.No.171/1 measuring 12 guntas and R.Sy.No.171/3 measuring 23 guntas are situated at Makaravalli village of Hangal Taluk more full described in the plaint schedule. The above suit schedule properties are the part of the original R.Sy.No.171 totally measuring 1 acre 26 guntas. It is further pleaded that, the suit schedule property belongs to Sri.Tippanna Karabulli R/o Makaravalli and he had begotten 6 male children by names Sri.Bharamappa, Sri.Yallappa, Sri.Fakkirappa, Sri. Timmappa, Sri.Hanumanthappa, Sri.Durgappa and these 6 sons and

the original propositus died long ago. The suit schedule property includes another property in R.Sy.No.197 measuring 2 acres 35 guntas and these two properties were not partitioned between the parties. These two properties were the properties of family of the plaintiffs and after the demise of father of the plaintiffs, their names were entered in the revenue records but entry of the plaintiffs is the main cause for filing the suit.

(b) Further, the members of the family of original propositus Sri.Thippanna Karabulli were not able to lead as joint family and on 21-12-2022 the defendants denied the share of the plaintiffs and as such, the legal heirs of Sri.Thippanna Karabulli by name Sri.Hanumanthappa Karabulli has filed a suit in O.S.No.97/2023 before the Civil Judge and JMFC, Hangal and plaintiffs of this suit were entered as plaintiff No.1 to 10 in another suit. As such, till today, the partition of the family properties were not confirmed in the joint family. Such being the facts, the defendant No.17 and 18 have intended to start the petrol-pump along with the defendant No.3 leads to lis pendency and oppose to the legal share of the plaintiffs over the suit schedule properties.

(c) During the pendency of the suit in O.S.No.97/2023 before the Civil Judge and JMFC, Hangal, the defendant

No.1 and 2 have concocted the M.R.No.T/58/2023 for conversion of land for commercial purpose and it is not binding on the share of the plaintiffs. Further, on 20-06-2023, these defendants colluded with the defendant No.4 have obtained the no objection certificate from Department of Public works for conversion of the suit schedule property into commercial purpose to start petrol-pump. At this juncture, the defendant No.4 has not followed the rules of Government in Circular No. 466 ಸಿ ಆರ್ ಎನ್ 2022 (ಇ), as per this rule there must be distance between the 40 meter from the middle of the road.

(d). Further, on 16-04-2024 the plaintiffs have filed objection against the 'no objection certificate' issued by the defendant No.4 but it went in vain. The plaintiffs and defendants belongs to the SC/ST caste and as such, the Government will sanction rupees one crore to SCST community and as such, the defendant No.1 to 4 have colluded with each other to grab the sanction amount. On 05-04-2024, the defendant No.3 and 4 started to harass the plaintiffs and as such, plaintiffs have filed complaint before the Adur police but on 07-04-2024 and the police have filed police notice in LPT.No.42/2024 against the plaintiffs.

(e). Hence, the counsel for the plaintiffs have issued legal notice to the defendant No.3 on 18-04-2024 but it went in vain and on 23-04-2024 the defendant No.1 and 2 tried to construct the petrol-pump and defendant No.3 obtained permission letter No.15455556551679 and which constrain the plaintiffs to file this suit.

(f). On aforesaid grounds and by specifically claiming that they got prima facie case, balance of convenience lies in their favour and irreparable loss would be caused to them if temporary injunction is not granted, the applicant/ plaintiff No.3 prayed to allow the present application.

3. In response to suit summons, the defendant No.1, 2 have appeared through their counsel and filed their written statement and filed a memo to consider their written statement as objections to IA.No.2. Further the defendant No.6 was impleaded in the present suit later on and he has filed his separate written statement and filed a memo to treat his written statement as objections to IA.No.2. Further the defendant No.4 and 5 have appeared through the learned AGP and did not opt to file their written statement or objections to the IA.No.2. The defendant No.1 and 2 have specifically contended that the suit of the plaintiffs is based on false and concocted assertions of facts and therefore, not maintainable under

the law and thereby denied each and every plaintiff averments as false. In addition, the defendants have contended that, the plaintiffs and the defendant No.1 and 2 are co- owners/Co-parceners of the suit schedule properties and injunction cannot be granted against the coparceners/co- owners.

(b). The defendant No.1 and 2 have contended that there was a mutual partition between the plaintiffs and them and the plaintiff No.2 has constructed a commercial complex out of the joint family income in Sy.No.171/4 and has given on rent and enjoying the rental income. It is further contended that the plaintiff No.2 has also constructed a RCC house in the said property and given on rent and the plaintiff No.1 has also constructed a house in Sy.No.171/4.

(c) The defendant No.1 and 2 have contended that they are not the necessary parties in the present suit and this suit is filed with an intention to harass the defendant No.6. It is contended that Sri.Yallappa Hanumathappa Karabulli has obtained permission from the concerned Authority and started construction of the Petrol pump and he has already invested a huge amount and 90% work of erecting Petrol pump is completed and fixation of machinery is left. The defendant No.1 and 2 have

contended that they have not constructed any Petrol pump in the suit schedule property and the present application is not maintainable against them and prayed to dismiss the present application with exemplary costs.

4. The defendant No.6 has contended that the defendant No.1 and 2 have not filed any application before the defendant No.3 to 5 and the defendant No.6 and his family members have filed application for to start a petrol-pump in their respective share of the properties and after enquiry the defendant No.3 to 5 have given consent to start the petrol-bump in the name of defendant No.6. It is contended that the defendant No.1 and 2 are not necessary parties to the suit and the defendant No.4 obtained the 'no objection certificate' from defendant No.5 by following other rules and regulations.

(b). The defendant No.6 has contended that he has constructed in 3 directions 8 to 10 ft walls as equal to the road by investing Rs.30,00,000/- and the defendant No.1 has supported him and he is unemployed person and during the year 2001 there was a apasat tippani in the family and as per that partition, the plaintiffs have constructed house and commercial complex and they are earning their money and he had intended to start the

petrol-bunk and the defendant No.3 has given consent to that effect.

(c). The defendant No.6 has contended that the plaintiffs and defendants have filed partition suit in OS.No.97/2023 over the suit schedule property bearing R.Sy.No.171 measuring 1 acre 26 guntas and R.Sy.No.197 measuring 2 acres 35 guntas and they left the R.Sy.No.73/2, 145/4B, 203 and 205/1 of lands of Makaravalli village and the said properties are not included in the present suit. The plaintiffs have 1/6th share over R.Sy.No.171 and constructed house and commercial complex and as such, the defendant No.6 has also 1/6th share over the suit schedule property and the petrol-pump has fallen to the share of defendant No.6 and there is no encroachment of the share of the plaintiffs. The defendant No.6 has contended that the plaintiffs have created false documents and false story and filed this suit with intention to harass the defendant No.6. On these grounds, the defendant No.6 prayed to dismiss the application with costs.

5. Per contra, the defendant No.1 has filed application U/o XXIX Rule 4 of C.P.C., against the plaintiffs. In the affidavit annexed to the application, the defendant No.1 has stated that the plaintiffs have created, concocted false

documents to harass the defendants and obtained the temporary injunction on I.A.No.I from this Court and said documents have not been supplied by the plaintiffs to the defendants. It is contended that, the plaintiffs have sent the copy of interim application and affidavit through registered post and hence, exparte injunction granted by this Hon'ble Court may kindly be vacated.

(b) Further, the suit of the plaintiffs is not maintainable and already plaintiffs filed O.S.No.97/2023 for partition and separate possession which includes suit properties. Now the plaintiffs filed this suit without seeking declaration. Hence, the suit of the plaintiffs is not tenable.

(c) It is further stated that as per allegations narrated in the plaint, the defendant No.1 and plaintiffs are co-owners of the suit schedule properties. Hence, suit for injunction is not tenable against the co-owners of the suit properties. Further, the plaintiffs are not absolute owners of the suit property and the plaintiffs are deliberately filed false suit and made false allegation against the defendant No.1 and 2.

(d) It is further contended that, one Sri.Yallappa Karabulli has started to construct of the petrol-bunk in the

suit schedule property and already it is completed 90% of work and at this stage the plaintiffs have filed false suit against the defendants. Hence, the suit of the plaintiffs is not tenable and there is no question of granting temporary injunction.

(e) Further facts that, plaintiffs have not made out prima facie case and balance of convenience and hardship also is not in favour of plaintiffs. It is stated that the temporary injunction is not granted no harm or loss cause to the plaintiffs and on the other hand if the injunction as prayed is granted the defendants will put into hardship. On these grounds, the defendant No.1 prayed to vacate the temporary exparte injunction granted in favour of plaintiffs.

6. On the other hand, the plaintiffs have filed objections to the I.A.No.V and stated that, the present application is not maintainable under the law. Further the plaintiffs have denied all other facts narrated in the IA.No.V and contended that during the pendency of the suit in O.S.No.97/2023 before the Civil Judge and JMFC, Hangal, the defendant No.1 and 2 have concocted the M.R.No.T/58/2023 for conversion of land for commercial purpose and it is not binding on the share of the plaintiffs. Further, on 20-06-2023, these defendants colluded with

the defendant No.4 have obtained the 'no objection certificate' from Department of Public works for conversion of the suit schedule property into commercial purpose to start petrol-bump. At this juncture, the defendant No.4 has not followed the rules of Government in Circular No.1000 466 ಸಿ ಆರ್ ಎನ್ 2022 (ಇ). Therefore, the plaintiffs have been caused irreparable loss and injury if the said act of defendants not restrained and it is not possible to set aside the order of temporary injunction till the disposal of the suit. The plaintiffs have contended that there are no valid reasons to vacate the order of temporary injunction. On these grounds, prayed to allow the I.A.No.II and reject the I.A.No.V in the interest of justice and equity.

7. Having heard and on perusal of the materials on records, the following common points that would arise on I.A.No.II and V for my consideration:

- 1. Whether the plaintiffs have made out prima-facie case?**
- 2. Whether the balance of convenience lies in favour of plaintiffs?**
- 3. Whether the comparative hardship and injury caused to the plaintiffs is more when compared the same to the defendants?**
- 4. Whether the defendant No.1 and 2 have**

made out grounds to allow the application?

5 What Order?

8. My findings on 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 : In the Affirmative

***Point No.5 : As per final order,
for the following;***

-: R E A S O N S :-

9. **Point No.1 to 4 :-** Since, these three points are interconnected with each other, the determination of which requires common facts and materials. Hence, these points are taken together for common discussion, in order to avoid repetition of facts. Admittedly, the plaintiffs have filed the present suit for the relief of permanent injunction against the defendants in respect of the suit schedule property.

10. Before having discussion on the merits of the application, it is just and necessary to bear in mind that, the interim order of injunction would be granted as an aid to the main relief. It is pertinent to note that, at this budding stage of the proceedings the Court need not conduct a mini trial. It is also necessary to bear in mind that, even after

placing of the requisite materials in respect of aforesaid three ingredients, the Courts are required to consider the conduct of the parties, their approach in seeking equitable relief and has to exercise its discretionary power while granting an order of Temporary injunction as per the provisions of Specific Relief Act.

11. Before discussing the merits of the application, it is appropriate to highlight the admitted facts of this case. There is no dispute that OS.No.97/2023 is pending before this Court for the relief of partition and separate possession. It is necessary to note that OS.No.97/2023 is pending and the share of the plaintiffs and defendants in the joint family properties is not determined. In order to prove their contentions the plaintiffs have produced the RTC of Sy.No.171/1 and Sy.No.171/3, certified copy of plaint in OS.No.97/2023, True copy of ME.No.169, 1634, 1755 and 1869, True copy of MR.No.T58/2022- 2023, original office copy of NOC issued by the defendant No.4, copies of 3 objections, office copy of Legal notice dated 18.04.2024 to the defendant No.3, xerox copy of paper advertisement issued by the defendant No.3, appointment letter for retail outlet to the defendant No.1 and 2, Government circular dated 30.06.2022, police notice and police acknowledgment.

12. On the other hand the defendant No.1, 2 and 6 have produced copy of the NA order issued by the Deputy Commissioner, Haveri in respect of Sy.No.171/1 and 171/3, No objection certificate dated 06.09.2023 issued by the Deputy Commissioner, Haveri in respect of Sy.No.171/1 and 171/3, 4 photo copies, Letter of intent – category SC issued by proposed MS/HSD Retail Outlet dealership Haveri, location at Makaravalli Village, True copy of the written statement and counter claim filed in OS.No.97/2023, MR No.T89/2021- 2022 and RTC of Sy.No.171/4. At the time of arguments the learned counsel for the defendant No.1, 2 and 6 has produced 4 photo copies and 5 Electrical bills.

13. At the time of arguments the learned counsel for the plaintiffs has relied upon the judgment of the Hon'ble High Court of Orissa in **(1986) 04 OHC CK 0047 between Narayan Bisoi and another Vs Raghunath Bisoi** wherein it is observed that while a suit for partition is pending, no permanent construction should be made or permitted on the suit homestead land. All the parties should maintain status quo till their shares are defined by the preliminary decree and adjustments and equities are settled in the final decree proceeding.

14. The learned counsel for the plaintiffs has also relied upon the judgment of the Hon'ble High Court of Karnataka of Bengaluru in **MFA.No.6094/2023 between Smt.Jagadeshwari Vs Smt. M.Revathi**, it is observed that based on the fresh cause of action a separate suit is filed and the Trial Court has committed an error in coming to the conclusion that already comprehensive suit is filed and ought to have filed very same applications before the said Court.

15. The plaintiffs have pleaded that the suit schedule properties are the joint family properties of the plaintiffs and the defendant No.1 and 2 and other joint family members of the deceased propositus Sri.Tippanna Kuruballi and in their joint possession. According to the defendant No.1, 2 and 6 as per ME 1869 there was partition between the plaintiffs and the defendants' family in respect of one family property. But the plaintiffs have stated that there was no partition and the name of the father of the plaintiffs was removed and taking advantage of the same and during the pendency of the suit in OS.No.97/2023 for the relief of partition and separate possession of the same suit schedule property the defendant No.1 and 2 (defendant No.17 and 18 in OS.No.97/2023) without there being partition are trying to establish a petrol bunk in the suit schedule property.

16. The documents reveal that the defendant No.1 and 2 have already obtained permission from the defendant No.3 and NOC from the defendant No.5. It is pertinent to note that the name of the plaintiffs' father was reduced as per ME 1869 on the basis of the alleged oral partition deed. The learned counsel for the defendant No.1,2 and 6 has argued that the suit schedule properties are not subject matter of OS.No.97/2023 and when no suit is filed for partition in respect of the suit schedule property then the present application is not maintainable and the plaintiffs have already constructed a house and a commercial complex. The learned counsel for the defendant No.1, 2 and 6 has argued that the suit schedule property is converted for commercial purpose and loan has been availed for the construction of the petrol bunk.

17. On the other hand the learned counsel for the plaintiffs has argued that until and unless the share of the plaintiffs and the defendants are determined in the partition suit the defendant No.1 and 2 cannot put up construction of a petrol bunk in the suit schedule property.

18. The RTC of the year 2024 – 2025 pertaining to Sy.No.171/4 measuring 4 acres is standing in joint khata of the plaintiff No.1 and 6 acres is standing in joint khata of

the plaintiff No.2 and the mode of possession is mentioned as MR T89/2021-2022 dated 05.04.2022 by partition. This fact has not been mentioned by the plaintiffs in the plaint which shows that the plaintiffs have not approached the Court with clean hands.

19. On the one hand the plaintiffs are enjoying the share that came to them by constructing a house and commercial complex in Sy.No.171/4 and on the other hand they are trying to prevent the defendant No.1 and 2 (actually the defendant No.6) from establishing a petrol bunk in the suit schedule property, which shows their conduct. It is humbly submitted that the ratio laid down in the judgments relied upon by the plaintiffs is not applicable to the present suit.

20. It is to be noted that Apex Court in **COLGATE PALMOLIVE (INDIA) LTD. V/s HINDUSTHAN LEVER LTD-AIR 1999 SC 3105-** has held that, Trial Court shouldn't express opinion regarding the merits of the case, while deciding IA filed under O 39 Rule 1 and 2 of CPC.

21. As per the decision of Hon'ble Supreme Court in **AIR 1997 SC 2674-AGRICULTURAL PRODUCE MARKET COMMITTEE V/s GIRIDHARBHAI RAMJIBHAI CHHANIYARA** it is held that, 'a temporary injunction can

be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction.'

22. Further the Hon'ble Supreme Court in **AIR 2010 SUPREME COURT 296-KASHI MATH SAMSTHAN AND ANOTHER V/s SRIMAD SUDHINDRA THIRTHA SWAMY AND ANOTHER-** has held that,

“ it is well settled that in order to obtain 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. 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 and irreparable loss and injury if no injunction order is granted”.

23. In view of ratio held in the above said decisions and my discussions, I am of the considered opinion that, the plaintiffs have not made out any prima-facie case at this stage to grant temporary injunction as prayed. When,

the plaintiffs have not made out any prima-facie case, then certainly balance of convenience also does not lie in favour of plaintiffs. In such circumstances, if temporary injunction as prayed is granted in favour of plaintiffs, the irreparable hardship will be caused to the defendants than the plaintiffs. Further looking to the nature of the suit and the documents on record produced by both sides, the defendant No.1 and 2 have made out prima facie grounds to vacate the exparte temporary injunction order dated 27.04.2024. With these observations, I answer the **Point No.1 to 3 in the Negative and Point No.4 in the Affirmative.**

24. **Point No.5:-** In view of my findings to the Point No. 1 to 4, I proceed to pass the following;

ORDER

***I.A.No.II filed by the plaintiff No.3
U/O.39 Rule 1 & 2 R/w Section 151 of
C.P.C., is hereby rejected.***

***I.A.No.V filed by the defendant
No.1 and 2 U/O.39 Rule 4 of C.P.C., is
hereby allowed.***

***The exparte order dated
27-04-2024 is hereby vacated.***

The Parties shall bear their own costs.

(Dictated to Stenographer, directly typed by him on computer, once corrected and later initialed by me and then pronounced by me in the open court on this the 9th Day of February - 2026)

(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.